

 THE CHURCH OF ENGLAND

**REPORT OF THE SEAL
OF THE CONFSSIONAL
WORKING PARTY**

March 2018

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SEAL OF THE CONFESSIONAL

FOREWORD

It has been an immense privilege to chair this working group. The group worked longer than originally planned due to the complexities of the work that it had to undertake. It is grateful to the Archbishops for their agreement to extend the time available to us. A further extension was then required to examine carefully the material coming from the Royal Commission in Australia and the work of the Anglican Church of Australia on its canons. Whilst recognising that the call for this working group came initially from the context of concern regarding child and adult sexual abuse, the terms of reference related to the seal of the confessional as a whole, thus relating to every context in which it is used. Even with the extended time given the group has not reached a unanimous conclusion, which observers had noted from the start might well be the case.

However, the report as it stands does come with the agreement of all its members.

It was important for the group to gather as much evidence as it could around the use of the confessional and the specificity of 'the seal'. By the very nature of the subject this was not an easy task. Confessors could not break the confidentiality of matters shared with them. Those using the opportunity of making confession are not necessarily willing to share their story. However, the group did obtain significant input from those who exercise the ministry of hearing confessions, some from those who have experienced the abuse and misuse of the confessional and reflections from those who value the discipline of sacramental confession.

The evidence is clear that there have been priests, acting as confessors, who have misused and abused their position to exercise dominant power over those making confession, and in some cases seriously abusing those who had placed their trust in them. This is deeply disturbing and clearly wrong.

The evidence is also clear that there are many who have been abused and maltreated who have found the confessional and the confidentiality of it a significant place and space of safety in which to share their story, and have false guilt dealt with. This is therefore clearly of deep value.

In wrestling with the way forward the group had to recognise both realities and weigh up the contrasting evidence. The significant weight of evidence lay in the use of the confessional as a place of safety for those who have been abused rather than a place from which a priest abused their position to commit abuse.

Alongside gathering stories and evidence the group undertook careful study of the legal framework in which the seal of the confessional has operated through history, and in the contemporary world. It explored the issues theologically in much depth wrestling with contrasting theological perspectives. It sought to understand the practice in the Roman Catholic and Orthodox churches. All of this made it clear that there is a specific Anglican understanding of the place of the formal confessional which is distinct from that of both the Roman Catholic and Orthodox churches. It is much more limited in scope than in either of these churches. It is a more specialist ministry than the more general use made of formal personal confession in our sister churches. This is important in understanding how some of the evidence presented

was handled as there is often a lumping together of confession in all three churches in popular reference which fails to recognise the distinctiveness of each.

What became clear to everyone on the group is that currently there is inadequate training given to clergy about the confessional. We are unanimous that this needs to change, and that such training must be offered in very close connection with Safeguarding training. We are also unanimous in proposing that every Diocesan Bishop should appoint someone to oversee the ministry of confession in their diocese, similar in nature to the role of a Diocesan Deliverance Adviser.

Every member of the group has been on a significant learning journey through this work. We all finally agreed that seeking to find an 'exemptive' clause relating to child abuse, or abuse more generally, would not be legally workable; although some had hoped and thought this might be an outcome. This remained the case after careful examination of the material from Australia. So we all agreed that either the 'seal' had to be abolished all together or upheld. If it were abolished it would be replaced by the normal legal rules about confidentiality which apply in professional, commercial and other relationships where there is an expectation of privacy, and which permit the making of disclosures that are in the public interest. Whilst a clear majority concluded that the weight of evidence falls in favour of the seal being maintained, this is not the view of the whole group. So the group agreed that it should not make a formal proposal either to maintain the seal or to abolish it. Rather it concluded that it had undertaken the very extensive work requested of it by the Archbishops, that it should present that work in the form of this report including its unanimous views about training and oversight. But that it should then place its work back into the hands of the Archbishops and House of Bishops for their consideration.

+ PAUL DUNELM:

27 February 2018

CHAPTER 1: THE CONTEXT

- 1.1 The Group was set up following a discussion at the Archbishops' Council on 30 September 2014 when it was considering what advice to offer to the Convocations on its treatment, in the proposed revision of the *Guidelines for the Professional Conduct of the Clergy*, of the ministry of absolution for which provision is made in Canon B 29¹. The Convocations' Working Party preparing the revised draft of the revised *Guidelines* proposed that the section dealing with 'Reconciliation' should, amongst other matters, describe the current legal position in relation to the formal ministry of absolution.
- 1.2 The legal position in that respect is governed by the unrepealed proviso to Canon 113 of the Code of 1603, which reads as follows:
- “Provided always, that if any man confess his secret and hidden sins to the minister, for the unburdening of his conscience, and to receive spiritual consolation and ease of mind from him; we do not in any way bind the said minister by this our Constitution, but do straitly charge and admonish him, that he do not at any time reveal and make known to any person whatsoever any crime or offence so committed to his trust and secrecy (except they be such crimes as by the laws of this realm his own life may be called into question for concealing the same), under pain of irregularity.”*
- 1.3 This is the one provision of the 1603 Code which was not repealed as part of the complete overhaul of the Canons of the Church of England in the 1950s, which led to the present Code being enacted by the Convocations in 1964 and 1969.
- 1.4 The effect of the proviso is that, where the formal ministry of absolution as described in Canon B 29 is sought, if the penitent makes a confession with the intention of receiving absolution, the priest is forbidden to reveal or make

¹ **Canon B 29 'Of the ministry of absolution'** is as follows:

1. It is the duty of baptized persons at all times to the best of their understanding to examine their lives and conversations by the rule of God's commandments, and whereinsoever they perceive themselves to have offended by will, act, or omission, there to bewail their own sinfulness and to confess themselves to Almighty God with full purpose of amendment of life, that they may receive of him the forgiveness of their sins which he has promised to all who turn to him with hearty repentance and true faith; acknowledging their sins and seeking forgiveness, especially in the general Confessions of the congregation and in the Absolution pronounced by the priest in the services of the Church.
2. If there be any who by these means cannot quiet his own conscience, but requires further comfort or counsel, let him come to some discreet and learned minister of God's Word; that by the ministry of God's holy Word he may receive the benefit of absolution, together with ghostly counsel and advice, to the quieting of his conscience and avoiding of all scruple and doubtfulness.
3. In particular a sick person, if he feels his conscience troubled in any weighty matter, should make a special confession of his sins, that the priest may absolve him if he humbly and heartily desire it.
4. No priest shall exercise the ministry of absolution in any place without the permission of the minister having the cure of souls thereof, unless he is by law authorized to exercise his ministry in that place without being subject to the control of the minister having the general cure of souls of the parish or district in which it is situated: Provided always that, notwithstanding the foregoing provisions of the Canon, a priest may exercise the ministry of absolution anywhere in respect of any person who is in danger of death or if there is some urgent or weighty cause.

known to any person what has been confessed. That requirement of absolute confidentiality applies even after the death of the penitent.²

- 1.5 The Archbishops' Council recognised that the practice of the ministry of absolution had a well-established place in the life of the Church of England, playing an important part in the spiritual life of some of its members and representing a significant aspect of the ministry of some of its clergy.
- 1.6 However, the Council also recognised the responsibility of the Church to protect children and vulnerable adults from harm, and the force of the argument that the legal framework of the Church should accordingly, in all respects, be such as to enable those who present a risk to children and vulnerable adults to be identified – both so that they can be held to account for past wrongs and be prevented from doing further harm. The Council was also aware that there had been some wider debate as to whether Parliament should legislate to make it an offence not to report evidence of child abuse to the statutory agencies. The Government's consultation on the possible introduction of mandatory reporting of child abuse and neglect, or a duty to act in relation to child abuse or neglect, ran from 21 July 2016 to 13 October 2016. On 5 March 2018 the Government announced that it had decided not to introduce mandatory reporting requirements.³
- 1.7 The Council accordingly decided to set up a working party with the following terms of reference:
- To carry out further theological and legal work to enable the Archbishops' Council and the House of Bishops to review the purpose and effect of the purpose and effect of the un-repealed proviso to the Canon of 1603;
 - To assist the Archbishops' Council and the House of Bishops in considering whether they wish to recommend to Synod that they legislate to amend the Canon; and
 - To provide a report with recommendations for discussion by the House of Bishops Standing Committee, the Archbishops' Council and the House of Bishops. The report should include recommendations in relation to any motion that might be brought to the Synod and to the shape that any legislative amendment might take.
- 1.8 In the meantime the Convocations agreed the final version of the *Guidelines for the Professional Conduct of the Clergy* and it was published in September 2015. The relevant passage touching upon the Ministry of Absolution reflected the legal position as it then was. This is set out as follows:

² As is apparent from the text, the Canon allowed for an exception to the duty of confidentiality where non-disclosure could have rendered the priest himself vulnerable to prosecution for a capital offence. This provision was, however, never operative since by 1603 Parliament had already legislated to abolish the common law capital offence for a person who had knowledge of a treasonous plot not to reveal the plot to the Crown. Instead, it had created a statutory offence of misprision of treason, with a maximum sentence of life imprisonment.

³https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/685465/Reporting_and_acting_on_child_abuse_and_neglect_-_response_to_consultati....pdf

“3. RECONCILIATION

They are to teach and to admonish, to feed and provide for his family, to search for his children in the wilderness of this world’s temptations, and to guide them through its confusions, that they may be saved through Christ for ever. They are to call their hearers to repentance and to declare in Christ’s name the absolution and forgiveness of their sins.
[from the Ordinal]

3.1 The ministry of reconciliation, as an extension of Jesus’ own ministry, lies at the heart of this vocation. It is to be exercised gently, patiently and undergirded by mutual trust. It may include spiritual or godly counsel as appropriate and as requested by those concerned; it may include mediation between those who have found themselves at enmity with one another.

3.2 Where it is freely sought by a penitent, a priest may exercise the formal ministry of absolution as described in Canon B29.

3.3 The ministry of absolution may only be exercised by the minister who has the cure of souls of the place in question or by another priest with that minister’s permission, or by a priest who is authorized by law to exercise ministry in that place without being subject to the control of the minister who has the cure of souls (e.g. a priest who is licensed to exercise ministry under the Extra-Parochial Ministry Measure 1967). This rule is subject to an exception that permits a priest to exercise the ministry of absolution anywhere in respect of a person who is in danger of death or if there is “some urgent or weighty cause” (See Canon B 29.4)

3.4 Before undertaking the ministry of absolution a priest should receive appropriate training and be familiar with any guidelines published by the House of Bishops that relate to the exercise of this ministry.

3.5 A clear distinction must be made between pastoral conversations and a confession that is made in the context of the ministry of absolution. Where such a confession is to be made both the priest and the penitent should be clear that that is the case. If a penitent makes a confession with the intention of receiving absolution the priest is forbidden (by the unrepealed Proviso to Canon 113 of the Code of 1603) to reveal or make known to any person what has been confessed. This requirement of absolute confidentiality applies even after the death of the penitent.

3.6 If, in the context of such a confession, the penitent discloses that he or she has committed a serious crime, such as the abuse of children or vulnerable adults, the priest must require the penitent to report his or her conduct to the police or other statutory authority. If the penitent refuses to do so the priest should withhold absolution.

3.7 The canonical duty of absolute confidentiality does not apply to anything that is said outside the context of such a confession. In particular, if information about abuse that was disclosed when seeking the ministry of absolution is repeated by the penitent outside that context the priest must follow the established procedures for reporting abuse of children or vulnerable adults.

3.8 However confidentiality extends far beyond the specific situation of the ministry of absolution. People have to be able to trust clergy with their stories, their fears, and especially their confidences. The duty of confidentiality relating to the ministry of absolution sets a standard for our ministry against which all other instances should be set and judged. Those to

whom we minister must know that they can depend upon us to maintain proper discretion with respect to the information which they have shared with us.”⁴

- 1.9 Different terms have been used over the centuries to describe a ministry that has been exercised in different churches and to some extent in different ways, but remains recognisably the same across time and space. In the report that follows, sometimes terms are used that reflect the historical or ecclesial context under consideration, or texts that are being discussed. Generally, however, we have preferred the phrase ‘**sacramental ministry of reconciliation**’. Though it needs to be noted that there are places in the report where we have consciously not adopted this usage, principally in those places where to do so would be anachronistic (for example in the paragraphs that deal with the historic development of the ministry and the associated canon law).
- 1.10 Reconciliation is used in the section title for the relevant paragraphs in the guidelines just quoted and for the liturgical provision of Common Worship in this area. It underlines the point that this ministry needs to be understood first and foremost in relation to the reconciling work of Christ. Such reconciliation involves confession of sin and the receiving of forgiveness, but also true repentance and a willingness to take steps to put right wrong that has been done and to accept the requirements of justice. Reconciliation through Christ always concerns both reconciliation of the sinner with God and of those who have done wrong with those against whom it has been done. It cannot be reduced to a private ‘transaction’ between God and the penitent, insulated from human relationships and from the need for justice.⁵
- 1.11 Some may fear that the use of the adjective ‘sacramental’ indicates a Catholic understanding of this ministry that would not be shared by all Anglicans and is in tension with our historic formularies. That is not our intention. Our choice of this term is guided in part by the Revised Catechism, (authorized by the General Synod since 1973) at paragraphs 38 and 39, which read as follows:

How many sacraments has Christ, in the Gospel, appointed for his Church?

Christ in the Gospel has appointed two sacraments for his Church, as needed by all for fullness of life, Baptism and Holy Communion.

What other sacramental ministries of grace are provided in the Church?

Other sacramental ministries are confirmation, ordination, holy matrimony, the ministry of absolution, and the ministry of healing.”

⁴ The text of the Guidelines included the following note: “The text of this section reflects the current legal position in relation to the ministry of absolution, arising from the unrepealed proviso to Canon 113 of the Code of 1603. In September 2014 the Archbishops’ Council decided to commission further theological and legal work to enable it to review, in consultation with the House of Bishops, the purpose and effect of the proviso to the Canon of 1603, with a view to enabling the General Synod to decide whether it wished to legislate to amend it.”

⁵ See the report from the Faith and Order Commission, *Forgiveness and Reconciliation in the Aftermath of Abuse*:
https://www.churchofengland.org/sites/default/files/2017-10/forgivenessandreconciliation_0.pdf

- 1.12 'Sacramental' emphasises the formal and liturgical character of this ministry, which as the guidelines stress needs to be kept distinct from 'pastoral conversations' which may cover similar ground. It also indicates its inseparability from the two sacraments appointed by Christ. Its significance in preparation for sharing in the Eucharist is well attested historically, while Common Worship places its relevant resources for services of reconciliation in the volume on Christian Initiation, under the heading of 'Recovering Baptism'. The commentary provided on the services in this volume sets out their context as 'the renewal of the baptismal covenant' (pp. 351-54).
- 1.13 While the presenting issue behind the establishment of the Working Party was that of safeguarding, the Group's terms of reference were cast more widely, and the group believed that its thinking should extend potentially to cover all serious crime (including, but not exclusively, adult and child abuse). Readers for whom the sacramental ministry of reconciliation may be outside their own direct experience also need to bear in mind that instances in which serious crimes feature in this ministry are likely to be extremely rare; and that it would be very misleading to view this valued ministry entirely through this lens.
- 1.14 Following the September 2014 meeting of the Archbishops' Council, subsequent consultation was carried out, and the working party's membership as agreed by the Archbishops was as follows:
- **Rt Revd Paul Butler**, Bishop of Durham (Chair)
 - **Rt Revd Mark Sowerby**, Bishop of Horsham (Vice-Chair)
 - **Fr Andrew Cole** Ecumenical (Roman Catholic) representative, Private Secretary to the Bishop of Nottingham and Parish Priest of Grimsby, Cleethorpes and Immingham
 - **Revd Dr Michael Lloyd**, Principal, Wycliffe Hall, Oxford [June 2015 to November 2015]
 - **Professor David McClean CBE QC** Emeritus Professor, School of Law, University of Sheffield
 - **Very Revd Andrew Nunn**, Dean of Southwark (& member of General Synod)
 - **Fr Thomas Seville CR**, Community of the Resurrection, Mirfield (a member of Faith and Order Commission and the General Synod)
 - **Ven Cherry Vann**, Archdeacon of Rochdale (Prolocutor of the Northern Convocation & General Synod member)
 - **Dr Jane Williams**, Assistant Dean & Lecture in Systematic Theology, St Mellitus College [February 2016 to January 2017]
 - **Graham Wilmer MBE** Founder, Lantern Project and member of the National Safeguarding Panel

- 1.15 The working party was supported by the following staff in Church House who attended some or all of its meetings:
- Revd Alexander MacGregor, Deputy Legal Adviser
 - Jonathan Neil-Smith, Secretary to the House of Clergy [Secretary to the Working Party]
 - Stephen Slack, Chief Legal Adviser
 - Graham Tilby, National Safeguarding Adviser
 - Revd Canon Dr Jeremy Worthen, Secretary for Ecumenical Relations and Theology, Council for Christian Unity
- 1.16 The working party met for the first time on 9 June 2015 and met on 8 subsequent occasions.
- 1.17 The working party initially commissioned three strands of work:
- Legal review
 - Theological review
 - Practice review
- 1.18 The practice review was to encompass four potential groups of people:
- Practitioners: Parish Priests, Cathedral Deans and others who practised the Seal of Confession (regardless of frequency and across the spectrum of the Anglican context)
 - Safeguarding: Professionals who had experience of the practice of Confession being used to a positive or negative end
 - Survivors: Those who had experienced abuse within or external to the Church, where Confession had been part of their story
 - Perpetrators: Those who had used confession as part of their abusive behaviours, either indirectly or as part of the abuse that they have perpetrated.
- 1.19 Given the level of interest in the Group's work among members of the General Synod, the Chair also issued a general invitation to those on the Synod in July 2015 to write in with comments if they wished to do so. A further survey of training for the sacramental ministry of reconciliation in theological training institutions and dioceses was carried out in July 2016.
- 1.20 The Group initially completed its work on the Report at its meeting on 28 March 2017. It submitted it to the House of Bishops Standing Committee on 14 June 2017, which approved the Report's recommendations, but asked for some further work on:
- (1) A draft note of Guidance from the House of Bishops;
 - (2) A Role Description for the proposed Bishop's Adviser; and
 - (3) Draft material for the Church of England website.
- These were drafted by a sub-group and remitted to the House of Bishops' Delegation Committee at its meeting on 20 November 2017, which signed

these off subject to some fine-tuning. The Chair subsequently reconvened the Group to consider the further Australian material, and it met again on 19 February 2018. An Addendum to the Report [Appendix 2] was agreed in the light of its discussion.

CHAPTER 2: SOME THEMES IN THE SUBMISSIONS

- 2.1 The working party gave careful consideration to a range of representations which it received both in writing and through members and staff engaging with practitioners – including those clergy who heard confessions, and diocesan safeguarding advisers. The working party is very grateful to those who took the trouble to contribute in this way, and the various papers and conversations have greatly assisted its thinking. We wish to draw attention to the difficulty of gathering a full range of evidence in this area, given the nature of the subject under review. Attached as Appendix 1 is a list of contributors. This chapter draws out some of the prevailing themes, and quotes extracts from some of the evidence to help others share the journey undertaken by the working party.
- 2.2 It is evident that **the sacramental ministry of reconciliation is clearly regarded by a significant part of the Church of England as an extremely important pastoral ministry**. While this ministry may typically form part of the ministry of parishes worshipping in the catholic tradition, the contexts in which it may be used range much more widely encompassing parish churches exercising the healing ministry, and prison chaplaincy. The working party did also seek evidence from ‘Soul Survivor’ to ascertain whether comparable issues arose in the context of testimonies from participants but came to the view that this context – as perhaps other prayer ministries – fell outside its terms of reference as such testimonies were not necessarily made to clergy, nor was it clear that absolution would be given (though we refer to some material from them at para 2.11).
- 2.3 Reconciliation forms one of the personal priorities of the current Archbishop of Canterbury, and it is noteworthy that it is under this heading that the ministry of absolution is covered in the *Guidelines for the Professional Conduct of the Clergy* [see Chapter 1, para 8]. Texts for *The Reconciliation of a Penitent* appear in Common Worship as liturgical resources for general use throughout the Church of England.⁶

“Reconciliation lies at the heart of the Christian faith.... For some Christians and traditions of Anglicanism, this ministry is important and life-giving, an important aid on the path to holiness.”

Extract from a submission from Anglican Catholic Future’s submission

“The obligation of a priest not to reveal what is confessed in sacramental confession was not created by Canon 113 of the Code of 1603. The Seal is intrinsic to the sacrament: this Canon merely recognizes it and gives expression to it. Repealing it would not remove the duty of non-disclosure, because it is part of the nature of the sacrament.... we shall feel obliged to resist as strongly as we can any attack on the integrity of sacramental Confession.”

Extract from a submission from the Bishop of Wakefield on behalf of Forward-in-Faith

⁶ See <https://www.churchofengland.org/prayer-and-worship/worship-texts-and-resources/common-worship/wholeness-and-healing/reconciliation-and-restoration-recovering-baptism#mm063> [*Common Worship: Christian Initiation* pp.274-280]

“I think it’s probably true to say that even if the legislative position were changed by the repeal of the Proviso of Canon 113, many priests within the Catholic tradition would go to prison rather than reveal what had been said there.”

Extract from a submission from a priest in the Diocese of Birmingham

- 2.4 The Church of England forms part of the universal church and **the sacramental ministry of reconciliation is also practised widely in other Churches**. The working party received papers from one of its members, the Revd Andrew Cole, outlining practice in the Roman Catholic Church [<https://www.churchofengland.org/media/17482>] and from Archpriest Maxim Nikolsky, the representative of the Russian Orthodox Church on the General Synod [<https://www.churchofengland.org/media/17483>]. In both instances it would be fair to say that the sacramental ministry of reconciliation is much more widely practised across those Churches than in the Church of England, but any decision to change our practice would be followed keenly by those other Churches.
- 2.5 As far as the Church of England is concerned, the working party is aware that there are differences of view on retaining the Seal and **some support was expressed for changing the Church’s practice**.

“...I cannot see how an individual’s right to confess a sin completely confidentially should be protected to the extent that in some cases victims may continue to be harmed, and the offending individual (current and potential) escape justice. These outcomes surely deeply offend our understanding of Christian love and justice.”

Contribution from a Diocesan Safeguarding Adviser

“The churches including the CofE are perceived as dragging their feet and one of the big obstacles to addressing the problem is the Secrecy of the Confessional and it is high time that a thorough review is undertaken....An obligation on all persons; whether ordained or lay, in positions of responsibility or not, that any serious complaints should be pursued by bringing them to the attention of diocesan authorities who in turn should be obliged to bring serious complaints to the attention of Social Services, the Police and others as necessary. Repeal of the 1603 Canon is long overdue.”

Extract from a submission from Mr John Freeman

“Society has changed, quite rightly so, and it is no longer acceptable to remain silent in the face of the abuse of children or vulnerable adults. We cannot continue to offer a ministry which might be thought to be involved in the cover-up of such abuse. So the unrepealed proviso to the Canon of 1603 must be addressed. The present position of the Church of England is unsustainable.... Confession goes hand in hand with penitence. Such penitence must include full disclosure to proper authorities. It is not a matter of breaking the seal of the confessional, so much as further developing our understanding of honesty and transparency in saying that in such cases confession is heard only as part of a process which will involve disclosure to the proper authorities.”

Extract from a submission from the Revd Canon Nigel LLoyd

- 2.6 Further to **the Cahill Report** into the Church of England's response to child abuse allegations made against Robert Waddington,⁷ the Archbishop of York gave evidence in person to the working party. Although this was not mentioned specifically in the Report, Robert Waddington had claimed that he had been absolved of sinful child abuse in the context of the sacramental ministry of reconciliation, and subsequently told his victim that he could not talk about it to anyone because of the Seal of the Confessional. This led the Archbishop to argue that the Seal should not apply in child abuse cases. The working party carefully considered this evidence. It could see that Robert Waddington had used the Seal in a manipulative way. But, while the priest to whom he had confessed (who had since died) was bound by it; the Seal did not prevent his victim from reporting the matter to the authorities. The working party was not clear that abolishing the Seal would have helped, as Robert Waddington would not then presumably have felt able to share the abuse in the first place. The lesson to be drawn from this regrettable episode was **the need for better education about, and understanding of, the Seal of the Confessional, to make it clear that while the priest is bound by the Seal, the penitent is not.**

"There is some evidence that abusive priests have used the Seal to silence their own victims (or indeed the victims of other priests). Effectively, the priest abuses a victim and then hears their confession (because the abuse was their fault, of course...), and tells the victim that this is now all under the Seal and therefore must never be spoken of again.

This is of course a complete misuse of the Seal, and I think it might be worth producing some clear guidance for laity, particularly in churches in which the confessional is an active part of their ministry, that makes clear that whilst the *priest* might be bound by the Seal, the supplicant is not."

Extract from evidence from a Diocesan Safeguarding Adviser

- 2.7 Evidence from the 2011 Report of Minister and Clergy Sex Abuse Survivors [MACSAS] *The Stones Cry Out*⁸ was also brought to the working party's attention.

"In the Diocese of Chelmsford multiple allegations had been made against a vicar [name redacted] alleged to have abused children over decades. A previous conviction for child sexual abuse was overturned on appeal because of a technicality (one of the cited offences took place whilst on a youth trip to France). The respondent in the Survey reported an allegation of sexual abuse by this vicar in 2005. At the time of the alleged sexual abuse in the 1970s he was in London and training for ordination. She told her family but as he was a family friend she was not believed and she was told to not speak of it again. It is clear that the multiple allegations made by others took place after his ordination.

⁷ See <https://chbookshop.hymnsam.co.uk/books/9786000008000/cahill-report>

⁸ See http://www.macsas.org.uk/MACSAS_SurveyReportMay2011.pdf

Police again investigated the respondent's allegations however the CPS did not prosecute because they could not contact the other victims for a retrial. It is believed that no action has been taken against the alleged abuser by the Diocesan Authorities. The priest is understood to still be in ministry in the Diocese of Chelmsford [as of 2011]. Numerous attempts have been made to have this man removed from ministry but the Church has refused to take actions against him. Local community outrage was expressed when a children's home situated beside the parish house where this man lives, had to be closed down in 2007 after he was deemed by Social Services to be a risk to the safety of the children in the home. The respondent reported that she "[w]as told by police that the Rev [name] had confessed to a bishop but neither would reveal details as it has the seal of the confessional on it."

Extract from 'The Stones Cry Out' [MACSAS 2011]

- 2.8 Alana Lawrence (former Chair of MACSAS) also supplied the working party with the details of various cases where bishops had been informed by clergy of abuse that they had committed without the bishops reporting the matter to the authorities. It was not however clear to the working party whether the notification was in the context of the sacramental ministry of reconciliation and therefore the extent to which the Seal of the Confessional was a factor in any regrettable cover up.

"...the sacrament of confession has been used and abused with terrible consequences in sexual abuse and domestic violence cases, distorting forgiveness and causing terrible damage and enabling ongoing abusive and dysfunctional behaviour for both victims and offenders.....some clergy and bishops have used the confessional to abuse people, physically, spiritually, sexually and emotionally, but it is far more common that confession has been used to silence reports, collude with, and take responsibility away from offenders for their actions and from victims for reporting and bring the truth to light. This way reconciliation, relational transformation and the grace of God's forgiveness has been delayed and distorted sometimes for decades and sometimes throughout the victims' or offenders' life."

Extract from a submission from Alana Lawrence [ex-MACSAS]

- 2.9 Notwithstanding the material referred to above, participants in the consultation with Diocesan Safeguarding Advisers in October 2015 – while concerned at the implications of the Seal – acknowledged just how rare the instance of an offender confessing to child abuse in the context of the ministry of absolution was likely to be. It also needs to be noted that some survivor groups have told the working party that they simply do not have such evidence. In this context it should be noted that the working party received evidence expressing **scepticism about the evidence to support abolition of the Seal.**

“We hope that the Working Group will report on the question of whether there is any evidence that in any specific case breach of the Seal of the Confessional by a priest would have made any difference to the safety of any specific child or vulnerable adult. We are not aware of any. Without such evidence, we suggest, there is no justification for even considering a change that would purport to remove the duty of non-disclosure or seek to impose a duty of disclosure. It would simply be an emotional gesture.”

Extract from a submission from the Bishop of Wakefield on behalf of Forward-in-Faith

“There was concern that some of the agenda in the church is being run by a mythology of the confessional that is fuelled by the TV and movies. Most priests will never encounter the kinds of disclosures being considered in the course of sacramental confession. In most situations clergy know their penitents and the confession comes out of a pastoral relationship or out of ongoing Spiritual Direction. In a very few circumstances – cathedrals and shrines – are there more likely to be strangers in the confessional... Only in a few Anglican churches are there formal confessionals in the ‘movie’ or Roman Catholic style. Confessions tend to be in a much more open and therefore known space.”

Extract from a report on focus groups with practitioners

“This ministry of reconciliation, in the form we have received and preserved it, is a unique part of the pastoral and spiritual riches of the church. It would be tragic if it were compromised simply in order that the institution of the church could be seen to be ‘doing something’, when the proposed changes are entirely tangential – even unrelated – to the problem, indeed scandal, that is the context for these discussions.”

Extract from a submission from Anglican Catholic Future’s submission

- 2.10 Returning to evidence that supported retaining the Seal, a key consideration that was made in a number of submissions is that **people would be unlikely to confess a grave sin (such as child abuse) to a priest in the first place if they did not trust the priest to uphold the Seal of the Confessional.**

“...if there is uncertainty about whether or not confidentiality would be respected, it is less likely that someone will take the risk and make their confession. That would be a failure of pastoral care.”

Extract from a submission from the Bishop of Salisbury

“Considering first the prevention of crime, we do not believe that allowing for breaking the seal of confessional will be any aid. The central point is that without the unbreakable seal of the confessional, not only would many confessions in general not be made but so, most of all, would those few, but precious, confessions related to the sorts of sins and crimes that have been laid before the working group and before Synod. With the seal in place, even those who have transgressed in these ways may feel able to approach a priest. In that way, a journey of penitence is able to begin. Without the seal, we will not have confessions of serious crime that can be acted upon by the police; rather, we will not have confessions of serious crime at all.”

Extract from a submission from Anglican Catholic Future’s submission

“...once the seal of confession is broken, even in matters of the abuse of children or vulnerable adults, then the whole process of confession loses its purpose and value. If a penitent knows that what they confess may be spoken of outside of confession, then they will simply not confess the most serious crimes to a priest. This in turn will mean that the valuable pastoral opportunity of penitent being able to tell the police of their crimes as an act of contrition and reparation will be lost. Thus if we move away from the view that the seal of confession must always be kept, we will gain nothing and will lose much.”

Extract from a submission from a prison chaplain

- 2.11 In the context of safeguarding concerns the point has been made that the Seal of the Confessional provides **a safe space for those who have been abused**. An analogous context is the Chat Rooms provided in the context of Soul Survivor festivals.

“... on countless occasions penitents have spoken of their experiences of being abused, often doing so for the first time ever. The secrecy of the confessional creates for them a safe space in which dark and difficult experiences can be shared. It also creates an environment in which a skilled confessor can explore the shame and guilt around being an abuse survivor, can offer counsel and point people on to those who can accompany them on a journey of healing.”

Extract from a submission from the Bishop of Burnley

“...Our Catholic colleague argued that in practice, very few abusers turn up in a confessional (particularly unrepentant ones). What happens more often is that victims come to a confessional, feeling guilty about what others have done to them (his words were that they ‘come to confess the sin of another’, believing the sin to be theirs). In our discussions, we agreed that the confidentiality guaranteed by the Seal may encourage victims to come forward, and a well-trained priest could assist greatly by helping that person see that they have nothing to confess, that the abuse wasn’t their fault, and that they can go to the police to make a complaint.”

Extract from a submission from a Diocesan Safeguarding Adviser

“We also have a Chat Room Team who are available outside of the meetings. Our hope is that the youth leaders will deal with most of the issues that come to light but anyone who wants to talk and pray further is encouraged to go to the Chat Room.

The role of the Chat Room Team is to provide a person outside of the local context of the delegate to listen and pray with. They are there to listen and to reassure as well as to occasionally advise. In our experience young people are growing up in a more complex and dysfunctional environment than ever before and as such are more likely to be exposed to abuse. In recent years the amount of pain that has come to the surface in at our events has been heart-breaking and overwhelming. The Chat Room is

limited in what it can achieve but aims to provide a place for young people to process and reflect on what is going on in their lives and what God may be speaking to them about. Naturally during the course of these conversations sin is confessed.”

Extract from a submission from Andy Croft of Soul Survivor Ministries

- 2.12 The need for **proper training for clergy in hearing confessions** has been stressed.

“I hope the Working Group will encourage training to be offered for this ministry. This could be through external groups, e.g. Praxis or Affirming Catholicism; or through Theological Education Institutes; by diocesan officers; or in other ways. Guidance as to the content of this training would be welcome. It would also be good not to leave training to any one tradition within the Church of England.”

Extract from a submission from the Revd Canon Dr Simon Taylor

“There is often a burden of pain to be borne by a priest who hears confessions. Training is needed for priests to be able to learn how to carry that pain. Lack of training can result not only in poor performance but also in inappropriate behaviour. We therefore hope that the Working Group will recommend that the deficit in training be addressed. Training in the hearing of confessions should form a core element in Initial Ministerial Education. Such training should emphasize that, where a serious crime is confessed, absolution should be withheld until the penitent has reported him- or herself to the Police.”

Extract from a submission from the Bishop of Wakefield on behalf of Forward-in-Faith

“There is a fundamental want of education about this issue among the clergy. From my own experience of attending safeguarding events and following debates on social media, it seems that most clergy either ignore the existence of the seal completely, associating it with a sacramental definition of absolution they deny, or extend it at will over large areas of their confidential pastoral ministry in an unjustifiable way. Both are equally unsatisfactory and dangerous for effective safeguarding.... I am not confident at all that IME 4-7 covers this ministry in any way consistently across the country.”

Extract from a submission from the Revd Dr Robin Ward, Principal of St Stephen's House

“There was a very clear concern that training be provided as part of IME and CME and that this needs to be clearly and consistently given across the dioceses. At present guidelines to the clergy seem to vary and are not consistent in some cases with Canon Law, which places the church and the clergy in a very vulnerable position... There would appear to be variance in practice about when a priest can hear Sacramental Confessions. In some dioceses priests had to be 5 years in orders, in others 3, and in others there was no guidance. In some it was clear that a priest had also to be a penitent to hear confessions though of course in extremis any priest should be ready and able to hear a confession.”

Extract from a report on focus groups with practitioners

2.13 Allied with the point above it has also been suggested that **the House of Bishops should issue guidance for priests involved in this ministry.**

“The Guidelines for the Professional Conduct of the Clergy also speak of ‘guidelines published by the House of Bishops’ (3.4). I am not aware of any such guidance being available. I hope that the working group will suggest that the House of Bishops produce some guidelines for all priests involved in this ministry.

These guidelines should cover how to offer clarity in distinguishing ‘pastoral conversations’ and confession; how to use the time of discussion with the penitent to encourage them to speak to the police; when to withhold or delay absolution; when it is not appropriate for a priest to hear a particular confession; and other matters that will support good practice in the ministry of reconciliation.”

Extract from a submission from the Revd Canon Dr Simon Taylor

“...what happens if an admission is made in confession, but no undertaking is given to go to the authorities – more to the point, when there is a deliberate and conscious refusal to do so? What should the priest do, what is their obligation in law? urgent consideration of clear guidelines and undertakings to support and protect clergy caught up in the circumstances to which I have alluded”

Extract from a submission from a priest in the Diocese of Birmingham

“Particular guidance needs to be given about what a priest can do if a disclosure of a safeguarding or any other serious criminal offence is made in the confessional without asking the priest to break the seal.”

Extract from a report on focus groups with practitioners

2.14 A related point is the need for **clarity as to when the Seal of the Confessional applies.**

“The *Guidelines for the Professional Conduct of the Clergy (2015)* distinguish between ‘pastoral conversations’ and ‘a confession’ (3.5). This is a helpful distinction, but one which is less clear in pastoral practice, especially amongst those whose church tradition is less familiar with the practice of confession.

Clarity could be offered by defining ‘confession’ (and the attendant seal) as applying only to conversations occurring by appointment and following a written liturgy.”

Extract from a submission from the Revd Canon Dr Simon Taylor

“.... the need to be clear of the distinction between confession – and information given under the seal of the confessional – and pastoral discussion, spiritual direction, counselling, advice – which yields confidential information but which is not under the seal of the confessional.... robust training is needed here to help priests to find clarity on this distinction.”

Extract from a submission from Affirming Catholicism

- 2.15 A further consideration is that a priest's confession should not be heard by someone who held line management responsibility for the priest.

“...it would not be sensible for a priest who was in a ‘line-management’ type relationship with another priest to hear that priest’s confession. (e.g. a Bishop should not hear one of his priest’s confessions). We were worried that the confessing priest may use the Seal to prevent a suspicious Bishop from reporting his abuse. i.e. a priest is abusing a child, he thinks the Bishop might be getting suspicious, so he makes a confession to the abuse under the Seal to prevent his Bishop from doing anything about it, putting his Bishop in an impossible position. Effectively, the abusing priest would be using the Seal to gag his Bishop. For this reason line-management and confession are two duties that should be held separately.”

Extract from a submission from a Diocesan Safeguarding Adviser

- 2.16 The evidence summarised above informed the working group’s thinking as it sought to address the legal and theological issues explored in the following chapters.

CHAPTER 3: LEGAL CONSIDERATIONS

The Group is directed by its terms of reference to report on the purpose and effect of the Proviso to Canon 113. The proper interpretation of a legal provision requires attention to be paid to the context, both textual and historical.

3.1 Pre-Reformation canon law

3.1.1 Canon 21 of the Fourth Lateran Council of 1215 provided as follows:

All the faithful of either sex, after they have reached the age of discernment, should individually confess all their sins in a faithful manner to their own priest at least once a year, and let them take care to do what they can to perform the penance imposed on them. Let them reverently receive the sacrament of the eucharist at least at Easter unless they think, for a good reason and on the advice of their own priest, that they should abstain from receiving it for a time. Otherwise they shall be barred from entering a church during their lifetime and they shall be denied a Christian burial at death. Let this salutary decree be frequently published in churches, so that nobody may find the pretence of an excuse in the blindness of ignorance. If any persons wish, for good reasons, to confess their sins to another priest let them first ask and obtain the permission of their own priest; for otherwise the other priest will not have the power to absolve or to bind them. The priest shall be discerning and prudent, so that like a skilled doctor he may pour wine and oil over the wounds of the injured one. Let him carefully inquire about the circumstances of both the sinner and the sin, so that he may prudently discern what sort of advice he ought to give and what remedy to apply, using various means to heal the sick person. Let him take the utmost care, however, not to betray the sinner at all by word or sign or in any other way. If the priest needs wise advice, let him seek it cautiously without any mention of the person concerned. For if anyone presumes to reveal a sin disclosed to him in confession, we decree that he is not only to be deposed from his priestly office but also to be confined to a strict monastery to do perpetual penance.

3.1.2 It seems that the seal of the confessional dates, as a matter of canon law binding on the whole Church, from this Council, held exactly 800 years before our Group was established. Unsuccessful attempts have been made, notably by Edward Badeley in a polemical piece published in 1865,⁹ to demonstrate that it is much earlier. What is clear is that the Lateran Canon 21 was applied in England and supplemented by diocesan statutes in several English dioceses;¹⁰ at least those in Salisbury went further and required confession three times a year.¹¹ All underlined the need to keep the secrets of the confessional.¹²

⁹ E Badeley, *The Privilege of Religious Confessions in English Courts of Justice Considered in a Letter to a Friend* (London: Butterworths, 1865), republished by Forgotten Books, 2012. Hereinafter 'Badeley'.

¹⁰ See the decrees of the bishop of Sarum 1217, of the Council of Durham 1220, of the provincial Council of Oxford 1222, and of the Synod of Exeter 1287.

¹¹ A provision described as 'quixotic' by H Mayr-Harling, *Religion, Politics and Society in Britain 1066-1272* (London: Routledge 2013), p 244, on account of the scarcity of clergy well-educated enough to act as wise confessors.

¹² See Lyndwood, *Provinciale Angliae*, p 334. This is a collection of Canons of various dates, with commentary, which became authoritative in both provinces in 1462.

3.2 The effect of the Reformation

- 3.2.1 Although the Reformation ended papal authority over the English Church, pre-Reformation canon law was not necessarily abrogated. By the Submission of the Clergy Act 1533 read with the Ecclesiastical Licences Act 1533, the previous canon law continued in force unless 'contrariant or repugnant to the laws, statutes and customs of this realm'. Auricular confession¹³ was still to be found in practice and nothing suggests that the seal of the confessional was repugnant to the law of the realm.
- 3.2.2 Furthermore, as explained below, the rule of the pre-Reformation canon law concerning the priest's duty of absolute confidentiality in relation to auricular confession has been 'recognised, continued and acted upon in England since the Reformation'.¹⁴ That being so, it can be 'shewn ... to have been received and adopted as part of the law ecclesiastical recognised by the common law'. So we must assume that the seal of the confessional continued to be part of the Law of England.

3.3 Canon 113

- 3.3.1 Canon 113 is part of a section headed 'Ecclesiastical courts belonging to the jurisdiction of bishops and archdeacons and the proceedings in them'. Those courts had jurisdiction over certain types of misbehaviour by the laity as well as the clergy, and it was the duty of churchwardens and their assistants to report such misbehaviour by way of 'presentation'. There is a reference to this practice in a particular context in the 1571 Canons.¹⁵
- 3.3.2 The 1603 Canons spell out the obligation to present:¹⁶

109. Notorious crimes and scandals to be certified into ecclesiastical courts by presentment.

If any offend their brethren, either by adultery, whoredom, incest, or drunkenness, or by swearing, ribaldry, usury and any other uncleanness, and wickedness of life, the churchwardens or questmen,¹⁷ and sidemen, in their next presentments to their ordinaries, shall faithfully present all and every of the said offenders to the intent that they, and every of them, may be punished by the severity of the laws, according to their deserts, and such notorious offenders shall not be admitted to the holy communion till they be reformed.

- 3.3.3 The following Canons dealt specifically with the presentation of particular types of offenders: Canon 110 with schismatics, Canon 111 with disturbers

¹³ We use this term as it is that used in several of the legal sources and avoids the term 'sacramental' which reflects Roman Catholic understandings, even if it is also sometimes found in Anglican usage.

¹⁴ This test represents what the Court of Arches has described as the "practical solution which was used by the House of Lords in *Bishop of Exeter v Marshall* (1868) LR 3 HL 17 when faced with the well known uncertainty about what ecclesiastical law remained in force after the Reformation": see *In Re St Peter, Draycott* [2009] Fam 93 at 43.

¹⁵ '[The churchwardens] in all visitations of bishops and archdeacons ... shall truly and personally present and name all those which rudely behave themselves in church...' Canon 5.2; see G Bray, *The Anglican Canons 1529-1947* (Woodbridge: Boydell, 1998) (hereinafter 'Bray'), 191.

¹⁶ Technically only the Latin text of the 1603 Canons received approval but it seems that the drafting was in English, so the English text is the original, the Latin one a translation.

¹⁷ Questmen were assistants to the churchwardens, concerned especially with alms.

of divine service and Canon 112 with non-communicants at Easter. Canon 57 requires the presentation of those who thought that the sacraments could not be validly administered by a minister not qualified to preach and so communicated, or took their children to be baptized, in another parish.

- 3.3.4 It seems that the churchwardens and their assistants were often unwilling to present their neighbours even when aware of offences. Documents prepared for the Convocation of 1563 contained a draft article dealing with the negligence of churchwardens in presenting offenders.¹⁸ The 1603 Canons go so far as to provide that churchwardens who falsely swore that there were no matters to report were not to be admitted to communion:

26. Notorious offenders not to be admitted to the communion.

No minister shall in any wise admit to the receiving of the holy communion any of his cure or flock, which be openly known to live in sin notorious, without repentance; nor any who have maliciously and openly contended with their neighbours, until they shall be reconciled; nor any churchwardens or side-men, who, having taken their oaths to present to their ordinaries¹⁹ all such public offences as they are particularly charged to inquire of in their several parishes, shall (notwithstanding their said oaths, and that their faithful discharging of them is the chief means whereby public sins and offences may be reformed and punished) wittingly and willingly, desperately and irreligiously, incur the horrible crime of perjury, either in neglecting or in refusing to present such of the said enormities and public offences, as they know themselves to be committed in their said parishes, or are notoriously offensive to the congregation to the congregation there; although they be urged by some of their neighbours, or by their minister, or by the ordinary himself, to discharge their consciences by presenting them, and not incur so desperately the said horrible sin of perjury.

As Bray observes, the severity of this Canon is extraordinary and it is hard to believe that it was ever applied in practice.²⁰

- 3.3.5 The authors of the 1603 Canons sought a solution to the problem of non-presentation. Canon 113 noted again that churchwardens and others were negligent in carrying out this function and provided for the first time that the clergy might also present offenders:

113. Ministers may present

Because it often cometh to pass that the churchwardens, sidemen, questmen and such other persons of the laity as are to take care for the suppressing of sin and wickedness in their several parishes, as much as in them lieth, by admonition, reprehension and denunciation to their ordinaries, do forbear to discharge their duties therein, either through fear of their superiors or through negligence, more than were fit, the licentiousness of these times considered; we ordain that hereafter every parson and vicar, or in the lawful absence of any parson or vicar, then their curates and substitutes, may join in every presentment with the said churchwardens, sidemen and the rest above mentioned, at the times hereafter limited, if they, the said

¹⁸ Articles for Ecclesiastical Government 1563, art 8; Bray, p 742.

¹⁹ The Latin text adds at this point *bis quolibet anno* (at least twice a year) but this is not in the English version.

²⁰ Bray at p 296, citing E R Rodes, *Lay authority and reformation in the English church* (Notre Dame: Notre Dame Press, 1982), p 163.

churchwardens and the rest will present such enormities as are apparent in the parish, or if they will not, then every such parson and vicar, or in their absence, as aforesaid, their curates, may themselves present to their ordinaries at such times, and when else they think it meet, all such crimes as they have in charge or otherwise, as by them (being the persons that should have the chief care for the suppressing of sin and impiety in their parishes) shall be thought to require due reformation.

- 3.3.6 This did not require the clergy to act: they were placed under no duty to present offenders. Rather they were given the power and right to present. Given the context it seems clear that the 'crimes' referred to are offences within the ecclesiastical as opposed to the secular jurisdiction; the list in Canon 109 indicates what sort of behaviour is involved.
- 3.3.7 It is very likely that those types of behaviour would come to the notice of the minister either in the course of auricular confession or in the normal course of pastoral care. A minister might well be as reluctant as a churchwarden to present one of his parishioners. There then follows the Proviso. Although it is not set out in this way in the official texts, we set it out in paragraphs to identify the Proviso, the Exception to it, and the effect of not complying with the duty it imposes on the minister.

Provided always that if any man confess his secret and hidden sins to the minister, for the unburdening of his conscience, and to receive spiritual consolation and ease of mind from him; we do not in any way bind the said minister by this our constitution, but do straitly charge and admonish him that he do not at any time reveal and make known to any person whatsoever any crime or offence so committed to his trust and secrecy,

(except they be such crimes as by the laws of this realm his own life may be called into question for concealing the same)

under pain of irregularity.²¹

- 3.3.8 This whole text has the hallmarks of a late amendment which does not easily fit into a section on the ecclesiastical courts. (There are unfortunately no extant records of the proceedings that led to the making of the 1603 Canons; the Convocation records were lost in the Great Fire of London.) If the Exception were not there, the 'crime or offence' referred to would be one of those within the ecclesiastical jurisdiction. The Exception, however, with its reference to crimes under 'the laws of this realm', plainly includes crimes and offences within the secular jurisdiction; and indeed it would be odd to prohibit disclosure of only ecclesiastical crimes. It needs to be remembered that in the absence of a police force, the parish constables and the justices of the peace were primarily responsible for law and order and would rely, except where an offence was committed in public, on reports made to them.
- 3.3.9 The Exception can now for all practical purposes be disregarded. There is of course no capital punishment in England today, and the only capital offence

²¹ 'Irregularity' has greater significance than might be thought: it implies deprivation and disqualification from holding any benefice: see P Winkworth, *The Seal of the Confessional and the Law of Evidence* (London: SPCK, 1952) (hereafter 'Winkworth') at p 4, citing J H Blunt, *The Book of Church Law* (London: Longmans, Green & Co., 10th edn, 1905), p 175.

of non-disclosure was in relation to treason.²² It seems that the Exception covered only confessions of treason and was intended to reflect pre-Reformation law on that point. Edward Coke (1552-1634; Chief Justice and author of a famous commentary on the laws of England) wrote of a statute of Edward II:

This branch extendeth only to thieves and approvers indited of felony, but extendeth not to high treasons; for if high treason be discovered to the confessor, he ought to discover it [i.e., disclose], for the danger that thereupon dependeth to the King and the whole Realme; therefore this branch declareth the common law, that the priviledge of confession extendeth only to felonies: so this branch beginneth with thieves, extendeth only to approvers of thievery or felony, and not to appeales of treason.²³

As Badeley correctly points out,²⁴ there is no express reference to the seal of the confessional though it is certainly implied.

3.4 Practice at the time of the Proviso

3.4.1 Before the Reformation, and during the Catholic restoration under Mary I, auricular confession was of course well-established. It seems that the manner of making and hearing confessions was not prescribed by law but was a matter of custom, and would have been similar to that followed in Roman Catholic practice today.

3.4.2 Nothing was said about confession in the Canons of 1529, and the best guide to practice in 1603 is in the 1559 Prayer Book. Like the 1552 and 1662 Books, it contains relevant references in an exhortation that might be read at the Communion:

And because it is requisite, that no man should come to the holy Communion, but with a full trust in God's mercy, and with a quiet conscience; therefore if there be any of you, who by this means cannot quiet his own conscience herein, but requireth further comfort or counsel, let him come to me, or to some other discreet and learned Minister of God's Word, and open his grief; that by the ministry of God's holy Word he may receive the benefit of absolution, together with ghostly counsel and advice, to the quieting of his conscience, and avoiding of all scruple and doubtfulness

and in a rubric in the order for the Visitation of the Sick:

²² In fact the exception was probably already a dead letter in 1603. At common law 'concealment of treason was itself treason. If anyone knew that another was guilty or in any way incriminated in treason, he was bound at once to go to the King or to anyone in his immediate circle and tell him all that happened; see Bracton, *De Legibus*, Book III, fol 118, 119. If he did not do so, he could be indicted either for treason which carried the death penalty, or misprision of treason which did not. But this alternative was taken away in 1555. By the statute of 1555 (1 & 2 Phil & Mary), s 8, it was enacted that "conceyement or keeping secret of any high treason be demed and taken onely misprision of treason ...": per Lord Denning in *Sykes v DPP* [1961] 3 All ER 33. While a failure to disclose knowledge of treason acquired in circumstances where the person concerned had foreknowledge of the purpose of the conversation remained treason, such circumstances would not obtain where a priest first heard of treason in an auricular confession.

²³ Bursell argues that Coke's view was based on a misunderstanding of the statute *Articuli Cleri*: R D H Bursell, 'The Seal of the Confessional' (1990) 2 EccLJ 84 (hereafter 'Bursell'), 85.

²⁴ Badeley, p 13.

Here shall the sick person be moved to make a special confession of his sins, if he feel his conscience troubled with any weighty matter. After which confession, the Priest shall absolve him after this sort

which was slightly expanded in the 1662 Book.²⁵

- 3.4.3 Auricular confession was the subject of some controversy in the 16th century. The Statute of Six Articles of 1539²⁶ expressly declared it to be 'expedient and necessary to be retained, continued, used and frequented, in the Church of God'. That statute was repealed under Edward VI, and there were attempts to prohibit auricular confession in documents prepared for a Convocation in 1563,²⁷ but the proposals were never accepted.
- 3.4.4 There is no reason to doubt that auricular confession was practised at the time of the 1603 canons. Equally, there would be other types of conversation between parishioners and their priest which could include admissions of sinful behaviour.

3.5 The scope of the Proviso

- 3.5.1 Against this background, it is necessary to determine the scope of application of the Proviso. Does it apply only to auricular confession or has it a wider application? A number of different interpretations have been advanced.
- 3.5.2 The narrowest interpretation is that adopted by a Clergy Discipline Working Group of the Anglican Church in Australia in 2001. It reported:

When considered in the light of the following matters:

- (a) the similarity of the language of the proviso to Canon 113 and the rubric providing for private confession in *The Order for the Visitation of the Sick* in BCP and the reference to private confession in The Exhortation in *The Order for the Administration of Holy Communion* in BCP;
- (b) the fact that the proviso to Canon 113 was promulgated against the background that under the pre-Reformation canon law of England the seal only applied to sacramental confession: *The Seal of the Confessional*, at 84; and
- (c) the fact that the only provision in BCP for private confession was *The Order for the Visitation of the Sick*;

it appears clear that the duty imposed by the proviso to Canon 113 and section 2 of the *Confessions Canon* only applies to a confession made in accordance with *The Order for the Visitation of the Sick* in BCP, the service *The Ministration to the Sick* in AAPB or the service *Reconciliation of a Penitent* in APBA. [The latter references are to service books of the Australian church]

²⁵ By the insertion of '(if he humbly and heartily desire it)' before the last three words.

²⁶ An Act for Abolishing Diversity in Opinions on Certain Articles of the Christian Religion.

²⁷ *Matters to be moved by the Clergy*, 3.38: 'What priest or minister soever, under cover hereof, shall practise auricular confession, shall be deprived of all his livings and deposed from the ministry.' See Bray, p 735. The same text appears in the draft *Articles for Ecclesiastical Government* 1563, art 53; Bray, p 760. There is no doubt that auricular confession is lawful in the Church of England; see Bursell, 100ff.

- 3.5.3 The reasoning that led to this conclusion is not at all clear.²⁸ There is no justification for limiting the scope of the Proviso to cases in which a particular liturgical form is used. More generally, the 1603 Canon was not intended to narrow the scope of the seal: it applies at least to all cases of auricular confession.
- 3.5.4 A second view is that the Proviso applies to auricular confession (whether or not a particular rite is used) but to no other cases. The Guidelines for the Professional Conduct of the Clergy²⁹ (drawn up after advice from the Legal Office) speak of a distinction between ‘pastoral conversations and a confession made in the context of the ministry of absolution’. The Guidelines draw a distinction between the ‘canonical duty of absolute confidentiality’, applying to confessions within the ministry of absolution,³⁰ and ‘confidentiality’ *simpliciter* applying more widely:³¹ ‘People have to be able to trust clergy with their stories, their fears and especially their confidences’.³² The ‘ministry of absolution’ is not further defined but would seem in the context to refer to auricular confession, and the Proviso would on that basis be interpreted as similarly limited, and in effect confirming the continued effect of the pre-Reformation canons. The reference to ‘irregularity’ is consistent with many aspects of the penalty fixed by the Lateran Council. It is true that the language of the 1603 Canon is very different from that of the pre-Reformation texts but, on this view, the intent was to preserve the *status quo* but to express it in language drawn from more recent sources.
- 3.5.5 The Proviso can, however, be interpreted differently. The use of new language, which does not use the word ‘absolution’,³³ may have greater significance. Auricular confession was controversial in the decades before the 1603 Canons were adopted and the Hampton Court Conference of 1604 dealt with objections to the use of the term ‘absolution’ (though interestingly in the context of General Confession). On this view, there seems no compelling reason to give the Proviso a narrower interpretation than its actual words suggest. In other words, it seems to be capable of application not only to auricular confession of the traditional Catholic variety but equally to any case in which ‘any man confess his secret and hidden sins to the minister, for the unburdening of his conscience, and to receive spiritual consolation and ease of mind from him’.
- 3.5.6 The matter is perhaps made more difficult by the absence of any formal definition of the ministry of absolution. A Rite for the Reconciliation of a Penitent has been commended for use (though not formally ‘authorized’) but the procedure commonly used rests solely on custom.

²⁸ Bursell is cited, but it gives no support to the conclusion reached.

²⁹ Guidelines, para 3.5.

³⁰ Guidelines, para 3.7.

³¹ We discuss the issue of confidentiality further below.

³² Guidelines, para 3.8.

³³ But nor did the Lateran Canon 21. It is notable that the draft Canon prepared in 1947, and the resolutions of the Convocations based upon that draft, expand the language to include such a reference: ‘... for the unburdening of his conscience and to receive spiritual consolation and ease of mind and absolution from him’. Draft Canon 65 in the 1947 set is headed ‘of priests hearing confessions’; Canon B29, based upon it, has the more neutral, and probably wider, phrase ‘Of the Ministry of Absolution’. The texts are set out in the Opinion, paras 23 and 24.

3.5.7 Notwithstanding different views on the scope of the Proviso, (a) the number of cases in which that difference of view would have any practical effect is extremely small; and (b) whenever events are put into categories, border-line cases are almost certain to present themselves.³⁴

3.5.8 It is nevertheless the case that, under the law as it now stands, there is a boundary, wherever precisely it should properly be drawn, between the category of cases falling within the Proviso and a wider category of pastoral conversation. The distinction between Proviso and non-Proviso cases may be relevant in a disciplinary context and in connection with the legal rules governing confidentiality, both considered below. The Guidelines for the Professional Conduct of the Clergy, in the passage already quoted, says that when the conversation is within the ministry of absolution ‘both the priest and the penitent should be clear that that is the case’. That wise advice may be easy to apply in an Anglo-Catholic parish and to regular members of its congregation. Where the parish is of a different tradition or where an admission is made by someone who may not be a regular churchgoer, it may be much harder.

3.6 The Proviso and clergy discipline

3.6.1 The distinction between Proviso and non-Proviso cases has implications in the context of clergy discipline. In a Proviso case, any breach of the seal of the confessional would constitute misconduct under section 8(1)(a) of the Clergy Discipline Measure 2003 as it amounts to ‘doing any act in contravention of the laws ecclesiastical’. In a non-Proviso case, that provision would not apply, although there might be circumstances in which a breach of the minister’s general duty of confidentiality would be held to be conduct ‘unbecoming or inappropriate to the office and work of a clerk in Holy Orders’ within section 8(1)(d).

3.7 Cases in which absolution is withheld

3.8.1 Whatever breadth of interpretation is given to the Proviso, the fact that the intention of the penitent at the outset of the conversation determines its application means that it is irrelevant for our present purposes whether or not absolution is given; the seal applies in either case.

3.8 Confidentiality – the general duty

3.8.1 Information obtained in the context of a more general pastoral conversation, where on the facts the Proviso is plainly inapplicable, attracts the legal principle addressed in the Legal Advisory Commission’s Opinion, *Clergy: Confidentiality*³⁵ as the equitable doctrine of confidentiality – a general duty

³⁴ It is often said that donning a purple stole marks the beginning of the confessional event but that may not resolve all questions. Suppose that a priest in a parish in the Anglo-Catholic tradition is actually on his way to hear confessions but before he enters the church is met by a very distressed parishioner who blurts out a confession of a serious nature; does the seal apply? Should it apply? Similar questions could be asked about admissions made to the incumbent of a parish where stoles of any colour are not used.

³⁵ In *Legal Opinions Concerning the Church of England*, Church House Publishing, 2007, para 3ff.

which could potentially apply to anyone and which is unrelated to the seal of the confessional described above. As the Opinion states:

A person seeking pastoral guidance and counsel from the clergy has the right to expect that the minister concerned will not pass on to a third party confidential information so obtained, without consent. There are, of course, cases in which the person concerned is advised, and is willing that the information should be given to others. If the minister seeks to do this without such consent, he or she can be restrained by injunction, and may also face a claim for damages.

- 3.8.2 There are cases in which the public interest overrides the general duty of confidentiality. A relevant passage from a judgment in the House of Lords makes this clear:³⁶

... the law requires the public interest in the preservation of confidences and the private interest of the parties in maintaining the confidentiality of their communications to be balanced against the administration of justice reasons for requiring disclosure of the confidential material. There is a strong public interest that in criminal cases the innocent should be acquitted and the guilty convicted, that in civil cases the claimant should succeed if he is entitled to do so and should fail if he is not, that every trial should be a fair trial and that to provide the best chance of these desiderata being achieved all relevant material should be available to be taken into account. These are the administration of justice reasons to be placed in the balance. They will usually prevail.

- 3.8.3 The public interest test must always be applied to the particular case; the fact that within an organisation (including the Church) procedures may exist for reporting certain matters does not in itself justify the disclosure of information obtained in confidence. But where the matter involves sexual misconduct in relation to a child or vulnerable adult, the public interest test will normally be readily satisfied.
- 3.8.4 Questions of the public interest are not, however, relevant to the priest's duty of confidentiality under the Proviso to Canon 113 which is an absolute duty.

3.9 'Privilege' in the law of evidence

- 3.9.1 This topic concerns the position of a priest who is called to give evidence in court and is asked questions that can only be answered by disclosing the contents of a confession made to him or her. It is very unlikely to arise in practice: the fact that relevant things were said in the confessional will not itself be known. Although this is in a sense a side issue (and it may be said at once that the legal position is unclear), it has been and may remain a factor in the matters the Group is addressing.
- 3.9.2 To understand the legal issues, it is necessary to distinguish (a) a duty of confidentiality to, in our context, the person making an admission or confession; and (b) a duty owed to a court to give truthful and complete evidence, and answer proper questions. The distinction was clearly drawn by the Court of Appeal in 1987:³⁷

³⁶ *Three Rivers DC v Governor and Co of the Bank of England* [2005] 1 AC 610 at para [28].

³⁷ *Goddard v Nationwide Building Society* [1987] QB 670 (CA), 685.

The equitable jurisdiction is well able to extend, for example, to the grant of an injunction to restrain an unauthorized disclosure of confidential communications between priest and penitent or doctor and patient. But those communications are not privileged in legal proceedings and I do not believe that equity would restrain a litigant who already had a record of such a communication in his possession from using it for the purposes of his litigation.

- 3.9.3 There has been repeated examination of the question whether communications between priest and penitent are 'privileged' so that the priest could refuse to give evidence about them or answer direct questions from counsel or the court.³⁸ Such 'privilege' exists in relation to communications between lawyer and client, and to others in very similar positions such as mediators and conciliators³⁹ but, at least in recent times, the courts have shown a great reluctance to extend the privilege to any other categories such as doctors, bankers or priests.
- 3.9.4 There have been cases in which the court seemed to treat a confession to a clergyman as privileged. They include a case concerning a confession made to a Roman Catholic priest in accordance with the practice of that church⁴⁰ and another involving a less formal confession in the course of a conversation with the chaplain of a workhouse.⁴¹ Denying the existence of any priest-penitent privilege are a number of statements in cases made in a variety of contexts⁴² and in an emphatic extra-judicial statement made in the House of Lords in 1865 by the then Lord Chancellor, a statement which prompted Badeley's rebuttal. None of these cases dealt with auricular confession in an Anglican context and all are *obiter dicta* (statements made by a judge which were not an essential part of the reasoning on the facts before the court). However, the accumulation of such *dicta* and the expressions of a similar view of the law in authoritative legal textbooks and the reports of law reform agencies make it likely that the temporal courts will not accept the existence of a priest-penitent privilege in English law.
- 3.9.5 The most that can be said with any certainty is that a judge may in his or her discretion refuse to compel a priest to give evidence. Boreham J in a case already cited⁴³ said:

I accept that the doctor has no right to refuse to disclose confidential information in the course of judicial or quasi-judicial proceedings; but I also accept that the judge

³⁸ See Bursell; Winkworth; D W Elliott, 'An Evidential Privilege for Priest-penitent Communications' (1995) 3 EccLJ 272; J R Lindsay, 'Privileged Communications: Communications with Spiritual Advisers' (1959) NILQ 160 (dealing with the history of the matter in Ireland).

³⁹ This applies to clergy seeking to act as conciliators, and even if the initiative came from the minister and not one of the parties: *Henley v Henley* [1955] P 202.

⁴⁰ *R v Hay* (1860) 2 F & F 4; see especially the long note by the reporter.

⁴¹ *R v Griffin* (1853) 6 Cox C C 219.

⁴² See *R v Sparkes* (discussed by Lord Kenyon in *Du Barre v Livette* (1791) Peake 108); *Broad v Pitt* (1823) 3 C & P 518 ('the privilege does not apply to clergymen'); *Wheeler v Le Marchant* (1893) 69 LT 468 ('communications made to the priest in the confessional are not protected'); *Normanshaw v Normanshaw* (1893) 69 LT 468 (a divorce case); *Anderson v Bank of British Columbia* (1876) LR 2 ChD 644 (privilege given to RC priests in some countries not recognised here); *McTaggart v McTaggart* [1949] P 94; and *Att-Gen v Mulholland* [1963] 1 All ER 767.

⁴³ *Hunter v Mann* [1974] QB 767 at 772-3 (Div Ct).

in certain circumstances, and in the exercise of his judicial discretion, may refuse to compel the doctor to do so.

3.9.6 Best CJ in *R v Hay*⁴⁴ indicated that he would not compel a priest to answer, but again as a matter of discretion rather than law.

3.9.7 It is the case that a priest of the Church of England is theoretically in a stronger position than any other claimant to a privileged status. All others rely on the ethics or rules of their profession; this includes Roman Catholic priests, because the Catholic Code of Canon Law has no legal status in England. Hence the advice of the Legal Advisory Commission:⁴⁵

that if a priest with knowledge received in the circumstances described in Canon 113 is summoned to give evidence in Court, he or she should seek legal advice, if possible, and should certainly claim privilege, even though this might not be upheld.

3.9.8 There are a number of cases, some of which are set out in the Legal Advisory Commission's Opinion,⁴⁶ where, in the absence of a 'reasonable excuse', there is, exceptionally, a positive duty to report a crime. Failure to report a crime of which one becomes aware, by whatever means, is not in itself an offence outside those exceptional cases (which do not include crimes involving the **abuse of children or vulnerable adults**).

3.10 Previous attempts to legislate on the seal of the confessional

3.10.1 It is, perhaps, surprising that the proviso to Canon 113 of the 1603 code is still in effect and states the present law on the subject. The draft revised canons annexed to the 1947 Report of the Archbishops' Commission on Canon Law included the following:

"If any man confesses any secret or hidden sin to a Priest for the unburdening of his conscience and to receive spiritual consolation and ease of mind and absolution from him, such Priest shall not either by word, writing, or sign directly or indirectly, openly or covertly, or in any other way whatsoever, at any time reveal and make known to any person whatsoever, any sin, crime, or offence so committed to his trust and secrecy; neither shall any Priest make use of knowledge gained in the exercise of such ministry to the offence or detriment of the person from whom he has received it, even if there be no danger of betraying the identity of such person; neither shall any Priest who is in a position of authority in any place, make use of any such knowledge in the exercise of his authority".

3.10.2 This draft canon was not included in the new code of canons promulgated in 1964 and 1969. It appears that advice was received that a new canon in this form was unlikely to receive the Royal Licence, and, rather than risk a refusal, it was decided to retain the proviso to the old Canon 113, whilst repealing the rest of the code of 1603. Resolutions were, nevertheless passed in the Convocations of Canterbury and York on 29 April 1959, as follows:

⁴⁴ *R v Hay* (1860) 2 F & F 4.

⁴⁵ 'Clergy: confidentiality' in *Legal Opinions Concerning the Church of England*, Church House Publishing, 2007, para 33.

⁴⁶ *Ibid*, para 28ff.

“That this House (*York*, That this Synod) reaffirms as an essential principle of Church doctrine that if any person confess his secret and hidden sin to a priest for the unburdening of his conscience, and to receive spiritual consolation and absolution from him, such priest is strictly charged that he do not at any time reveal or make known to any person whatsoever any sin so committed to his trust and secrecy”.

- 3.10.3 In the case of Canterbury the resolution was declared to be an Act of Convocation. Acts of Convocation have moral force, but are not law.
- 3.10.4 The reason why advice was given that the draft new canon might not receive the Royal Licence is that it was questioned whether it was in accordance with the law. The implication of the canon being passed in these absolute terms was that the clergy have the privilege of not being obliged to disclose information received in the confessional, if called to give evidence in court. It was thought that whilst that privilege might have existed in the past, the modern law of evidence had evolved without reference to it, and that it was, at the least, doubtful whether the privilege existed under the civil (as opposed to ecclesiastical) law. Rather than put the point to the test, it was decided to retain the status quo, and the proviso to Canon 113 was not repealed.
- 3.10.5 The Convocations decided, in response to news of an investigation of the question of privilege by two law reform bodies, not to proceed but to leave in place the existing canonical rule as to the seal.

3.11 Attempts to reform canon law in Australia

- 3.11.1 Care must always be taken before one adopts what has been done in another jurisdiction, and the legal background in the various States of Australia is not the same as that in England. There is in Australia a long history of legislation providing for mandatory reporting of certain types of child abuse. That being said, an account can usefully be given of the canon law as it emerged from a revision of the Canon concerning Confessions 1989 by the 2014 Australian General Synod.⁴⁷
- 3.11.2 The Canon continues to provide as the general rule:
- Subject to section 2A, if any person confess his or her secret and hidden sins to an ordained minister for the unburdening of conscience and to receive spiritual consolation and ease of mind, such minister shall not at any time reveal or make known any crime or offence or sin so confessed and committed to trust and secrecy by that person without the consent of that person.
- 3.11.3 In 2014 the new section 2A set out the exceptional cases. The substantive provisions are as follows:
- (2) Subject to subsection (3), where a person confesses that he or she has committed a serious offence an ordained minister is only obliged to keep confidential the serious offence so confessed where the ordained minister is reasonably satisfied that

⁴⁷ This type of Canon, although made by the General Synod of the Anglican Church in Australia, requires adoption by the synod of each diocese before coming into effect there.

the person has reported the serious offence to the police, and if the person is a church worker or a member of the clergy to the Director of Professional Standards.

(3) An ordained minister may reveal the conduct so confessed to a professional Adviser for the purpose of obtaining advice as to whether that conduct constitutes a serious offence.

(4) It is a defence to a charge of breach of discipline or any offence against the ordained minister arising from his or her disclosure to any person of the conduct so confessed that does not constitute a serious offence that the ordained minister in good faith believed that the conduct did constitute a serious offence.

- 3.11.4 The drafting style of the Canon means that reference has to be made to a large number of definitions, some contained in other Canons. So, “serious offence” is defined to mean a criminal offence of the Commonwealth [of Australia], of a State or of a Territory, or of another country which is equivalent to such a criminal offence of the Commonwealth, of a State or of a Territory: (a) involving child abuse; or (b) involving child exploitation material; or (c) punishable by imprisonment for life or for a term of 5 years or more. “Child abuse” is defined as the following conduct in relation to a child (a person under 18): (a) emotional abuse (meaning acts or omissions in relation to a child where the child has suffered, or is likely to suffer, significant harm to his or her wellbeing or development); (b) neglect (neglect of a child where the child has suffered, or is likely to suffer, significant harm to his or her wellbeing or development); (c) physical abuse (the physical assault of a child other than lawful discipline by a parent or guardian); (d) sexual abuse (sexual misconduct in relation to a child); and (e) spiritual abuse (the mistreatment of a child by actions or threats when justified by appeal to God, faith or religion where the child has suffered, or is likely to suffer, significant harm to his or her wellbeing or development).
- 3.11.5 Although the Australian material provides an instructive precedent, similar legislation could not be recommended here. It is not at all clear how a confessor can be expected to apply the rules. How is the confessor to know if the actions described in the confession amount to a crime? There are said to be some 10,000 offences known to English law, and guilt may depend on quite subtle issues of intent or, in some cases, recklessness. Using the maximum penalty as determinative of ‘seriousness’ is wholly unsatisfactory, especially as in England there are many common law offences with no maximum penalty. How is a priest to decide whether a child ‘has suffered, or is likely to suffer, significant harm to his or her wellbeing or development’?
- 3.11.6 The Australian Canon points to the possibility of legal advice for the confessor. We consider that also to be unworkable. The legal Adviser would have an account from the confessor of what the confessor recalls being said by the penitent. That is a wholly inadequate basis for any advice. In any event, it is not for the Church’s legal advisers to say whether certain facts amount to the commission of a criminal offence. In the first instance, that is question on which only the police and prosecution authorities can make a judgment, on the basis of full information. Ultimately it is a question for the courts.

3.11.7 We understand that since it was passed in 2014 concerns have been raised in Australia about both the workability and the validity of the Australian Canon. The 1989 Canon concerning Confessions is itself not in force in all dioceses. These concerns led to the further work undertaken in Australia that led to the 2017 revisions to the Canons. This work is examined in the Addendum [Appendix 2].

3.12 Scope for legislative reform in the Church of England

3.12.1 Given that the seal of the confessional is as much part of the law of England now as it was in pre-Reformation times, if it were desired to make any change in the current position that would require a Measure as well as an amending canon.

3.12.2 Such a Measure could itself set out any new rules or it could authorise the General Synod to legislate by canon, either in relatively general terms or by reference to the specific text of a proposed canon. But any recommendations for a change in the law would have to be precisely formulated.

3.12.3 In Chapter 6 we examine the pros and cons of recommending an exception to the seal of the confessional. Here, we simply make the following observations of a more general nature which formed part of the group's thinking.

3.12.4 First, as the discussion of the Australian canon has shown, a confessor may well hear facts that suggest that a crime or an incident of child abuse has taken place, but will not enable the confessor to make a properly informed judgment. The Australian text merely says that the confessor is in the stated circumstances not obliged to keep the matter confidential. If the relevant English law were to be changed, would that be sufficient or should there be a mandatory duty to report what the confessor has heard, failure to report (if discovered) being misconduct for the purpose of clergy discipline? To whom, or to which body, should such a report be made? How is a confessor to proceed if the confession necessarily implicates persons other than the penitent?

3.12.5 Secondly, the Australian Canon, and other proposals to permit or require the reporting of certain categories of disclosures made in the context of the sacramental ministry of reconciliation, all appear to proceed on an assumption that the priest will know the identity of the individual who has made a disclosure; and that the priest would, therefore, be in a position to make a report about that individual to the secular authorities. We are, however, aware that in churches and cathedrals where the sacramental ministry of reconciliation is available on a regular basis there will be many individuals who seek that ministry whose identity is – and remains – unknown to the priest. In our view, therefore, any new rules could not proceed on an assumption that the priest would be in a position to identify an individual who had made a confession to him or her.

3.12.6 Thirdly, if there were to be new rules, would they apply only to confessions made after the coming into effect of the new legislation? Would that satisfy

those concerned about past inaction in the case of known or suspected offences?

3.13 Concluding comment

- 3.13.1 The implications of the analysis in this Chapter, and the consideration of legal options for the future are explored further in Chapter 6.

CHAPTER 4: THEOLOGICAL REFLECTIONS ON CONFESSION IN THE CHURCH OF ENGLAND

4 Introduction

4.1 'Forgive us our sins'

- 4.1.1 Forgiveness and reconciliation are at the heart of the Christian faith. The Incarnation, death, resurrection and ascension are the mighty work of God to reconcile the world to himself.
- 4.1.2 Forgiving and teaching about forgiveness are characteristic of Jesus' ministry (*cf.* Mark 2.5-12; Matt. 18.21ff; the teaching of the Lord's Prayer etc.) Jesus welcomes those who acknowledge their sin and their need of forgiveness, and condemns those who think they have no need of confession.
- 4.1.3 Confession and forgiveness are built into the nature and mission of the Church, from the start. The two great founders of the early Christian missionary movement, Peter and Paul, tell the story of how they betrayed and persecuted Jesus. This is the story that fits them to be missionaries and apostles: they have confessed their sin and been forgiven and restored. The gospels see the proclamation of the forgiveness of sins as the mission that Jesus gives to his followers: Matthew 16.19 and John 20.22-23 are the texts classically used to illustrate this, but Matthew and Mark both say that Jesus urged his disciples to baptise new believers, which is at the very least a purificatory rite, and Luke 24.47 says that the disciples are to witness to the coming of repentance and forgiveness in Jesus' name. So to declare forgiveness with the authority of Christ to those who repent and believe is simply characteristic of the mission of the Church; this is the good news.
- 4.1.4 Questions around how the Church exercises this precious gift of calling people to repent and receive God's forgiveness could hardly be dealing with anything more important.
- 4.1.5 The practice of confiding one's experience of distance from God⁴⁸ to a priest privately and seeking assurance of His forgiveness – often termed confession of sins – has been part of the common practice of the Church of England, and is reflected in her prayer books. This practice arises out of the profound theology of the God who saves and reconciles. Forgiveness and reconciliation are at the heart of the Christian faith. The Incarnation, death, resurrection and ascension are the mighty work of God to reconcile the world to himself and in so doing, to reconcile creatures to each other as well as to God. The Church is, most fundamentally, the community of the forgiven, a reconciled and reconciling foretaste of the new creation. Thus there is no such thing as 'private' sin, since the Church is called to be the beginning of the new humanity, not just a disparate group of individuals, each with their own personal relationship with God.

⁴⁸ This phrase covers both the unquiet conscience and sins, which are the subject of the ministry according to the Book of Common Prayer.

- 4.1.6 The Church, the body of Christ, is called to be a witness to God's reconciling work, pointing beyond itself to the action of God, and to the coming final fulfilment of God's work. But it is also entrusted with the good news of Jesus Christ, present and active in the Holy Spirit, at work in those the Spirit makes in the likeness of the Son. The Church in the power of the Holy Spirit is, despite its manifest failings, given a share in God's reconciling work.
- 4.1.7 **Baptism:** Sinners enter into the new humanity of the body of Christ through baptism. Here, the old life which was under the reign of sin, is surrendered, and the gift of God's new life received: 'no one can enter the kingdom of God without being born of water and Spirit' (John 3.5), used in the baptism service of the Book of Common Prayer. The call to repentance and conversion is preached; the response is to confess the faith that Jesus is Lord to the glory of God the Father in the Spirit, and to enter the waters of baptism. The baptized are welcomed into the new community, the new social reality, a new relationship with each other as well as with God. It is important to note that this continues after sin. After sin the baptised does not cease being a member of the church. When they confess their sin in hope of being reconciled, then their penitence is something which can be said to contribute to the ministry of absolution. The 'ministry' of the penitent as one of the royal priesthood of God is no less important than the 'ministry' of the priest.
- 4.1.8 **Eucharist:** This first conversion from sin to being reconciled with God is renewed and strengthened in the eucharist. The people of God come together to confess their sins and receive assurance of forgiveness so that they can sit together at the Lord's table. The eucharist is a place of reconciliation both with God and with neighbour. The text of the confession in the BCP communion office left no doubt as to the seriousness of the sinful state of those confessing. Both in this rite and elsewhere, the importance of reconciliation with fellow Christians against whom one had sinned has been seen as something needed before one approached the sacrament.
- 4.1.9 **Binding and loosing:**⁴⁹ The Church acknowledges, with sadness but also with faith, that each person needs to be converted daily, to turn away from sin and to receive again the gift of forgiveness. The authority to bind and loose, given by Christ to the church, highlights the seriousness of sin, but also the assurance of forgiveness to the penitent. Absolution of sinners is regarded as part of what binding and loosing involve, as found in texts such as Matthew 16.19, 18.18, and also the forgiveness of sins in John 20.23; indeed a case can be made for seeing such texts as referring in the first place to baptism. For some in Anglicanism, absolution denotes the setting free of sinners by the power of the gospel; for others it denotes the ministry of pronouncing this in the liturgy. For this purpose the Church of England prays for the gift to absolve in her ordination rites for priests. Reconciliation always has a public outcome, in the restoration of the sinner to the fellowship of the people of God at the Lord's Table. In pre-Reformation times private confession of sins to a minister of the Church was practised as a precursor to receiving the eucharist, as is the case in some Churches today.

⁴⁹ For the NT background of this see Thomas Lakey's contribution <https://www.churchofengland.org/media/17239>

- 4.1.10 **Ordained ministry:** The work of reconciliation is at the heart of the calling to ordination, and a fearful and wonderful responsibility to offer to others the reconciling mission of Christ. Part of the ministry of reconciliation is assuring those who are truly penitent of God's forgiveness, using a word of grace from scripture such as 'Your sins are forgiven', or with a more formal prayer such as those in the BCP, declaring the absolution of sins. In the context of an attempt at a major reform of the ministry and how the Church's ministry of reconciliation was located, the Reformation in England saw the practice of going to a priest cease being obligatory and being left open to members of the Church whether they used it or not. Its ongoing usefulness was recognised, if sometimes reluctantly, and particularly for those who found it hard to believe that they were forgiven, and needed assurance, and for those in sickness or approaching death.
- 4.1.11 **Conclusion:** The ministry of confession is part of the ministry of reconciliation entrusted to the Church. This ministry inevitably has corporate and personal aspects, moments of significant repentance and change, and an ongoing process of growing in holiness. Private confession to a priest, under the obligation of absolute non-disclosure' (the 'seal') is one part of this ministry, which flows from the primary reconciling sacraments of baptism and eucharist. Private confession to a priest should not be separated, either theologically or in practice, from this wider context of the whole work of God in and through the Church. The *Guidelines for the Professional Conduct of Clergy* (2003, 2015) make it clear that this is a ministry that needs to be properly authorized and conducted, and that makes demands on the priestly character: it is not an 'automatic' rite for confessor any more than for penitent.

4.2 Transition points in practice

4.2.1 The Early Church

- 4.2.1.1 There is evidence of early practice in the Church to be found in 1 Cor 5.1-13⁵⁰ after baptism, those who refused to acknowledge their sin were not admitted to the community until they had made a public acknowledgement of their sin. So confession was public, and led to restitution. What is envisaged here is a small, largely 'private' group of converts, who knew each other and lived as a kind of extended family, very much a society within the wider society of the Roman Empire. Paul devotes much labour to instructing the church on how to admonish and receive those who repent (2 Cor 2.6-8; 10.6). On the other hand, both Hebrews (10.26-27) and 1 John 3.9 give evidence of a greater horror of sin in the baptized and are meagre in their allowance of a return to fellowship; there are those who worry about the presence of sin in those who are baptized, whether it is possible in someone who is truly a Christian. Other texts influenced the early teachers of the Church, so that her discipline became more forgiving but the number of times serious sin was remitted by penance did not often exceed one and it was several centuries before it was accepted that the sin of apostasy could be remitted by the Church. The issue of post-baptismal sin remained a difficult one such that persons avoided being

⁵⁰ See also Matthew 18 where a whole process seems to be described from private reproof to exclusion from the church.

baptized until death was approaching and were reluctant to be admitted to the order of penitents. Being reconciled apart from this – for less serious sins – might involve talking with another Christian or a monk; for serious matters it was a public matter.

- 4.2.1.2 However, there is some evidence of private confession in this early period, so that Christians living under Roman Law, could confess and receive forgiveness for things that Roman Law considered a capital offence, with no right of forgiveness. Ambrose of Milan wrote *On Repentance*, specifically arguing, against the Novatians, that forgiveness for the contrite is at the heart of priestly ministry.⁵¹
- 4.2.1.3 The development of practice of private, confidential confession seems to have had two main drivers. The first was the monastic movement, with its emphasis on growth in holiness and asceticism. For example, the Rule of Benedict, speaks of the importance of confessing sins to the one in authority with a view to the healing of the sinner and this is in strict confidence.⁵² This is a practical and theological necessity in holding a community together and ensuring common discipline and common purpose, while also ensuring that there is not either competitive holiness or community gossip and backbiting. While the ‘seal’ is not mentioned as such, it does seem clear that a practice is developing which sees the role of private as well as public confession within monastic community. Even in the case of public penance, the confession of sins, it would seem, was made to someone, usually the bishop privately, though the rite was public. As capital sins carried the death penalty under civil law, anything which endangered the sinner would be kept private.
- 4.2.1.4 The second driver towards the ‘seal’ seems to have been the growing ‘public’ nature of the Christian Church after the conversion of the Emperor Constantine in the 4th century, so that confession could no longer be seen primarily as a ‘family’ dealing with its own, but inevitably became more public. In this context, public confession of sin could lead to damaging consequences for the individual, so that the practice of private confession became widespread.⁵³
- 4.2.1.5 Private confession was often accompanied by the imposition of public penance, thus maintaining the connection between contrition and forgiveness, and also the continuing affirmation that sin is never private. Public rites of reconciliation continued, in the early middle ages in a closer relation to the newer form of being reconciled to the Church. It was not a matter of straightforward alternative between a public and formal or private and interior penance.⁵⁴
- 4.2.1.6 Canon 21 of the 4th Lateran Council makes explicit that confession is to be made at least annually, and made to the priest who oversees the normal

⁵¹ See *On Repentance*, 2.7, <http://www.newadvent.org/fathers/34062.htm>

⁵² ‘When the cause of the sin lies hidden in his conscience, he is to reveal it only to the abbot or to one of the spiritual elders, 6 who know how to heal their own wounds as well as those of others, without exposing them and making them public. ‘*RB 1980; The Rule of St. Benedict in Latin and English with Notes*, ed. Timothy Fry, O.S.B., Collegeville, Minn.: The Liturgical Press 1981, ch 46.5-6

⁵³ This is a point made by Richard Hooker *Laws of Ecclesiastical Polity*, VI.4.2, OUP, 2013, p.12, ‘faults not corrected in charity. But noted with delight and kept for malice’.

⁵⁴ See Rob Meens, *Penance in Medieval Europe, 600-1200* Cambridge UP, 2014.

Christian life of the community. Confession to another priest can only be made with permission from your own priest. This provision maintains the assumption that confession is about the fabric of the Christian community: even if made privately, confession has a public, visible effect. This is also the Canon that states that a priest who betrays a confession, whether 'by word or sign', is to be deprived of his priesthood and sent to live in a monastery. Again, the theology underlying this, concerns the building up of the body: the priest who damages the practice of confession and absolution needs to be removed from the community.

- 4.2.1.7 The Council does not invent this practice of the 'seal', but brings to a term a number of local councils and also civil legislatures which have ruled on the necessity of the seal. The penalties which were imposed on those who infringed the prohibition on communicating matter from the confessional were severe. The practice gave rise to discussions on to whom the seal applied and what was and was not excluded; the issue of hard cases was something which has not arisen for the first time in recent years.
- 4.2.1.8 The evolution of the practice of the seal of the confessional, then, seems to have been designed to maintain the balance between the needs of the community and the needs of the individual. Through the assumption that confession is made to the priest who oversees the pastoral and spiritual well-being of the whole community, and who has ongoing oversight over the one making the confession, the theology of 'no such thing as private sin' is maintained. The effect of confession in changed behaviour within the community is to be observed. But equally, the individual who acknowledges their sin and the power of God to transform the sinner can trust that no civic use will be made of their confession.

4.2.2 Calvin and Luther

- 4.2.2.1 In *The Institutes* 3.19, Calvin writes 'a complete summary of the Gospel is included under these two heads—viz. repentance and the remission of sins'.
- 4.2.2.2 Calvin, like most of the Reformers, does not dispute the importance of confession to a minister, though he does dispute that it is the primary form of confession, or that it is always necessary. Instead, he assumes that each Christian can assure others of God's forgiveness in Christ, if they repent. He does, however, suggest that there are three occasions when the power of the 'keys' will be useful: when the whole Church confesses its sins (e.g. in the General Confession); when an individual has committed a public wrong and needs to make a public repentance and receive public forgiveness; or when an individual cannot quiet their own conscience, and needs the aid of their minister (*Institutes* 4.14).
- 4.2.2.3 Luther like Calvin was severely critical of the abuses of confession in the late medieval Church; for him it was a practice in which the sinner bound in sin came to the absolution of the gospel and he defended its use with characteristic vigour. The practice declined in the early seventeenth century and diminished further under the influence of Pietist and Rationalist movements, being revived in the nineteenth and twentieth centuries. Frequency of practice varies widely, being rare in some Lutheran Churches.

Nonetheless, orders for private confession are found in the Church orders of many if not most Lutheran Churches, and the duty of the pastor not to disclose anything heard in this context is explicitly mentioned as one of the obligations of ministry in some Lutheran ordination rites.

- 4.2.2.4 In confessing sins to the pastor the sinner is set free to the liberty of the sons of God; it is voluntary and needs be freely made. It is not a burden to the sinner but where the gospel of the justification of the unrighteous becomes personally real; the confession is a human work, the absolution is God's.⁵⁵ The pastor has an absolute duty of non-disclosure, something which is expressed in a promise in Lutheran rites of ordination. Speaking the absolution from God, the pastor stands in His place.
- 4.2.2.5 In both cases, it is clear that what is being offered is through the power of the Gospel, not an authority that resides in the Church or its priesthood independently of the Word of God.

4.2.3 Richard Hooker

- 4.2.3.1 Hooker deals at some length with repentance, confession and absolution.⁵⁶ He is, as always, judicious: 'upon the people no such necessity imposed of opening their transgressions to men, as if remission of sins otherwise impossible, neither any such opinion had of the thing itself, as though it were either unlawful, or unprofitable' (VI.4.15, p. 33).
- 4.2.3.2 In general, Hooker argues, the weight of theological tradition is that confession and absolution is between God and the sinner, but 'if peace with God do not follow [personal confession] ...it argues that our sore does exceed the power of our own skill: and that the wisdom of the Pastor must bind up those parts' (VI.4.16, p. 36).
- 4.2.3.3 In this, Hooker is in line with the practice of the Church of England, as expressed in the 1559 Prayer Book. His friend, the Dutch Calvinist Adrian Saravia and he '*were supposed to be confessors to each other*' and he confessed to Saravia on his death bed.⁵⁷

4.2.4 The Prayer Book

- 4.2.4.1 The BCP is, 'a set of words to accompany everyday life, a way of coming to terms with pain, pleasure, and sorrow as well as a means to worship a creator'; it is, in other words, intended to be 'common'.⁵⁸
- 4.2.4.2 In setting the scene for the Holy Communion, the 1662 BCP envisages a community who are well-known to each other and to the Curate. It is a scene familiar from Herbert's *The Country Parson* through Parson Woodforde's diary, through the pages of Jane Austen and Trollope novels. It begins in 1549 by providing explicitly for regular confessions to allowing pastoral

⁵⁵ For a good discussion, see Gerhard Forde, "Absolution: Systematic Considerations" in *The Preached Word: Proclamation in Word and Sacrament*, edited by Mark C. Mattes and Steven Paulson (Grand Rapids: Eerdmans Publishing Company, 2007)

⁵⁶ Richard Hooker, *The Laws of Ecclesiastical Polity*, OUP, 2013, vol. 3, Bk 6.

⁵⁷ Izaak Walton, *The Life of Mr Richard Hooker 1675* <http://anglicanhistory.org/walton/hooker/life.html>.

It is doubtful whether Saravia, though a defender of a high doctrine of episcopacy, was ordained.

⁵⁸ *The Book of Common Prayer*, ed. B. Cummings, OUP, 2011, p. xi

ministry in relation to the eucharist and a ministry of confession to someone on a sick- or a death-bed. The locus of confession and absolution has shifted from the sacrament of penance to the public one of the preaching and praying of God's word and the eucharist, and also the daily offices – by hearing the gospel and the gospel preached, those who were truly penitent would be welcomed at the Lord's table. Before coming to the Lord's Supper, the people are bidden to prepare themselves by self-examination, confession of sin against God and neighbour, purpose of amendment and restitution, the classical virtues of the medieval sacrament of penance.

4.2.4.3 In other words, confession of sins to a minister of God's word⁵⁹ was retained in a very different context by the Elizabethan church; howsoever grudgingly, it was retained. At the Reformation, the Church of England, while placing great weight on the preaching of God's free grace through the cross of Christ as the means of loosing sinners from their sins, retained the practice of confessing sins to a priest while marking herself off in the writings of her divines and in her liturgy from the prevailing practice and teaching of late medieval Catholicism. This was part of a comprehensive plan for Church and society in bringing both into conformity with God's purposes in which penance, both public and private was intended to have a part.⁶⁰ The practice of going to a minister of God's word with one's sense of distance from God, troubled and unquietly minded, or what would be interpreted as confessing sins, was allowed a small part in this scheme, vastly less than it enjoyed in the late medieval Church. Together with the confession of sins in the Book of Common Prayer it is almost the only piece of this impressive programme which survives.⁶¹

4.2.4.4 In the order for the Visitation of the Sick, the rubric says, 'Here shall the sick person be moved to make a special confession of his sins, if he feel his conscience troubled with any weighty matter. After which confession, the Priest shall absolve him (if he humbly and heartily desire it).' Three things are worth noting here: the sudden use of the word 'Priest', where the word 'Minister' is used elsewhere, limiting this authority very clearly as a priestly one; and the bracketed sentence, which makes it clear that the absolution is not a vital part of the reception of forgiveness upon repentance, though it may be necessary for assurance. In the Latin translation of 1560, the phrase 'Here shall the sick person be moved to make a special confession of his

⁵⁹ This is not the language of the Book of Common Prayer, save in the *Visitation of the Sick*; In the *Exhortation to Communion*, it notes And because it is requisite, that no man should come to the holy Communion, but with a full trust in God's mercy, and with a quiet conscience; therefore if there be any of you, who by this means cannot quiet his own conscience herein, but requireth further comfort or counsel, let him come to me, or to some other discreet and learned Minister of God's Word, and open his grief; that by the ministry of God's holy Word he may receive the benefit of absolution, together with ghostly counsel and advice, to the quieting of his conscience, and avoiding of all scruple and doubtfulness.

⁶⁰ See Ashley Null, *Thomas Cranmer's Doctrine of Repentance: Renewing the Power to Love* (Oxford: Oxford University Press, 2000); from a different perspective see Joan Lockwood O'Donovan, *Theology of Law and Authority in the English Reformation*, Scholars Press, Atlanta 1991.

⁶¹ For a classical statement of this see John Jewel, ed Henry Morley. *The Apology of the Church of England* (London: Cassell, 1888). For the biblical background see Lakey in <https://www.churchofengland.org/media/17239>

sins' is, *de illa sacerdotei privatim confiteatur*, indicating that it was a private confession.

- 4.2.4.5 *Common Worship*, similarly, provides penitential rites for use by a whole community and by an individual. The rubric for the latter says that even when received individually, reconciliation remains a 'corporate action of the Church' (*Common Worship: Christian Initiation*, p. 266), since sin affects the whole body of Christ, and reconciliation restores the person to this body. The Pastoral Notes in *Common Worship* also make clear that confession is part of an ongoing process, not a one-off, quick fix.
- 4.2.4.6 The Prayer Book tradition of the Church of England makes it clear that contrition is sufficient for receiving God's forgiveness, so private confession to a priest and priestly absolution are not necessary for receiving God's forgiveness, though they may be pastorally and morally necessary. Particularly at a time of severe sickness or approaching death, the Prayer Book provides for the practice of confession to a priest who then may absolve the penitent if that is desired and assures them of God's forgiveness.
- 4.2.4.7 From an acknowledgment of the goodness of making confession to another Christian, and indeed more guardedly to a minister, in the early and middle years of the reign of the first Elizabeth, her latter years see an emergence of a more self-confident practice of the ministry and it is taught – not only by Laudians and High Churchmen – in the following two centuries. The office of the Confessor Royal is retained (until 1859).

4.2.5 The Tractarians

- 4.2.5.1 The Oxford Movement highlighted differences of Anglican understanding and practice regarding confession as well as introducing elements from the Roman Catholic Church which were new and which alarmed many. Extrapolating from the BCP offices, Tractarians argued that Anglicanism upholds the central significance of repentance and priestly absolution. While some might hold that in pronouncing absolution, the ordained minister merely declares what has already happened,⁶² rather than offering forgiveness through the authority of the Church vested in it by Christ, most agreed that the confession of sins to a minister in certain circumstances is permitted. What was stressed by the Tractarians was that this could be a customary response to the evil of postbaptismal sin and that the absolution by the priest was pivotal. This elicited theological hostility especially on the part of Evangelicals, fearing the interposition of human constructions in between the sinner and the Word of God.⁶³

⁶² See Peter B. Nockles, *The Oxford Movement in Context*, CUP, 1997, p. 249.

⁶³ The Lambeth Conference in 1878 recommended as follows: 'Having in view certain novel practices and teachings on the subject of Confession, your committee desire to affirm that in the matter of Confession the Churches of the Anglican communion hold fast those principles which are set forth in Holy Scripture, which were professed by the Primitive Church, and which were reaffirmed at the English Reformation: and it is their deliberate opinion that no minister of the Church is authorized to require, from those who may resort to him to open their grief, a particular or detailed enumeration of all their sins; or to require private confession previous to receiving the Holy Communion; or to enjoin or even encourage the practice of habitual confession to a priest; or to teach that such practice of

- 4.2.5.2 What was less clear was whether ‘repentance’ and ‘confession’ are the same, and if so, whether ‘confession’ implies individual confession to a priest, under the seal of the confessional. The level of debate about this suggests that the practice of private confession had become uncommon in the Church of England by the first years of the 19th century, even in the context of the visitation of the sick. In his 1846 sermon, *The Entire Absolution of the Penitent*, Pusey asks for charity between those who find a general confession and absolution enough and those who need to make confession to a priest in order to find assurance.⁶⁴
- 4.2.5.3 What emerges from this period is a mixed picture; private confession remains part of the life of the Church of England, but it is uncommon and becomes a marker of party allegiance. Found in the Book of Common Prayer, the ministry remains one which, howsoever infrequently administered, remains a normal part of the life of the Church of England.
- 4.2.5.4 Much of this had to do with the Oxford Movement; however, one of the unintended consequences of the revival of the practice was to divide sharply the interpretation of the ministry in the BCP and to put a disproportionate emphasis on absolution to the detriment of the role of the penitent and of conversion to Christ.

4.2.6 Evangelicals, Charismatics and Confession

- 4.2.6.1 The evangelical emphasis on the atoning work of the cross of Christ keeps repentance and forgiveness theologically central, as in others within the Church of England. Most evangelicals would want, with Calvin, to affirm that the authority to pronounce forgiveness, based in the certainty offered by the cross and resurrection, is given to all God’s people. But, as with the Prayer Book, there is also a recognition that the assurance of forgiveness, offered with the authority not just of an individual but of the whole people of God, is sometimes a vital pastoral duty.⁶⁵
- 4.2.6.2 T.W. Drury, writing in 1903, sums up a Reformed approach to the discipline of confession, in saying that it belongs within the ministry of the cure of souls: ‘in that happy relationship which should exist between the pastor and his flock, the value of confession in time of need cannot be denied.’ About the practice of regular use of the ministry he has serious doubts.⁶⁶ As with Hooker, general, public confession, or personal expression of contrition between the individual and God have become the norm, and private confession to a priest has become the exception, for emergency use.

habitual confession, or the being subject to what has been termed the direction of a priest, is a condition of attaining to the highest spiritual life. At the same time your committee are not to be understood as desiring to limit in any way the Provision made in the Book of Common Prayer for the relief of troubled consciences.’ http://anglicanhistory.org/lambeth/letter_reports1878.html *Letter from the Bishops. Of the Conference of Bishops of the Anglican Communion holden at Lambeth Palace July 1978*, E.41

⁶⁴ See Project Canterbury, <http://anglicanhistory.org/pusey/>

⁶⁵ See Richard Foster, *Celebration of Discipline*, Hodder and Stoughton, 1989, ‘Confession’, pp. 181-198. This is a good example of an evangelically serious case for confession, but the practice of the ‘seal’ is not mentioned.

⁶⁶ TW Drury, *Confession and Absolution*, Hodder and Stoughton, 1903, p. 312.

- 4.2.6.3 Actual hostility to confession to a priest is found in the 19th century reaction against the Oxford Movement. In 1858, for example, Bishop Montagu Villiers of Carlisle called it 'filthiness', and one clergyman, James Ormiston, committed an act of 'aggressive Protestantism' in 1867, when he harangued a priest hearing confession at St Alban's, Holborn. Although Ormiston was required to apologise, opposition to the practice of confessing sins to a priest remains part of the Evangelical world: for example, John Stott, in his *Confess your Sins: the Way of Reconciliation* (Word Books, 1974), argued strongly that confession to a priest is a crutch that we ought not to need, though he did not suggest it should be banned. The main objection is to the interposition of a priest between a Christian and God.
- 4.2.6.4 Some writers have contested the comprehensive nature of the absolute duty of non-disclosure claimed for the ministry, in the light of the qualification made in Canon 113. This was related to the fear – indeed the reality – of regicide in the conflicted religious politics of the sixteenth and seventeenth centuries. King James VI and I in a work defending the oath of allegiance took a view which exempted confessors from the obligation to keep silent about crimes against the sovereign or country;⁶⁷ he was answered by many leading Catholic theologians.⁶⁸ Jeremy Taylor also echoes King James in his last and most polemical work.⁶⁹ The obligation to confidentiality is not in question; what is, is its abuse and the claim made that the obligation is *de jure divino*. The canon is not in question and in commentaries the seal is defended.⁷⁰ A Tractarian writer such as T. T. Carter recognises the exception made in the canon, arguing that the extent of the seal may, be varied by episcopal authority.⁷¹ It is not always rightly understood; before the late nineteenth century, it is rare to find in these and other qualifications of the obligation to the seal an understanding of the exception that shows that it relates to the offence of the misprision of treason and consequent placing in jeopardy of the life of the confessor.
- 4.2.6.5 The objection cited in 4.2.6.4 is a live one for some Evangelical Anglicans who would see a definite difference from the practice of assuring a penitent that their sins had indeed been put away and doing this through the words of scripture. Some would claim that this is the original perspective of the Book of Common Prayer; it calls for absolute duty of non-disclosure for similar reasons and to the same level as for those who would use the language of confession. There are however those formed in the evangelical tradition who make their confession regularly: Archbishop Justin Welby, for example, is quoted (*Daily Telegraph*, 9.10.2013), as advocating confession to a priest, 'the sacrament of reconciliation', as an important spiritual discipline. The

⁶⁷ *Apologia pro iuramento fidelitatis*, London 1609 His own mother had been executed and in the previous twenty years there had been four attempts on the kings of France, one of them successful.

⁶⁸ Coefeteau, Perron and Bellarmine.

⁶⁹ A Dissuasive against popery, 1664 in *Works VI*, p496-503

⁷⁰ E.g. John Stearne's popular *Tractatus de Visitatione Infirmorum*, Dublin, 1697. The 1840 edition entitled *The Curate's Manual* is substantially altered without acknowledgment in a direction contrary to the author's intention. The translation of *A Treatise of the Visitation of the Sick; or, of the duties of the Parochial Clergy* Exeter, J Trewman, 1775 is an accurate rendering.

⁷¹ T T Carter, *The doctrine of confession in the Church of England*, London: J. Masters, 1869, 2nd edition, p 275

practice of confession and forgiveness to a brother or sister in Christ is known in ministries of healing and discernment in charismatic and evangelical piety as part of the process of healing for hurt and broken people. In most churches, those who offer prayer ministry are trained and supervised, and would expect to disclose nothing to a third person, but would not necessarily be ordained, and would not be bound by the 'seal' of the confessional.

4.2.6.6 Some Common Threads:

- Confession to a priest is a normal part of the pastoral repertory in the Church of England; any Anglican may, if so moved, go to a priest to receive the assurance of God's forgiveness of their sins.
- It is not a ministry whose use is necessary to live a Christian life; it is not encountered by many faithful churchgoers and clergy.
- Confession to another person gives seriousness and depth to the practice of confession that is central to a life of faith.
- Confidentiality is a normal expectation of confession between Christians, so that what is confessed is not misused, and not treated as matter for ordinary discussion.
- If the ability to confess to God in the presence of another is something to be valued, then it calls for a respect which is proportionate to the one to whom confession is made.
- It is sometimes the only way in which a person can truly make their own the forgiveness of God.
- It is a way by which Christians can be reconciled to God through the means of the Church, represented by the minister.

4.3 Theological and Pastoral Pointers to the way forward

4.3.1 This discussion has focussed on the ministry, rather than its status about which there are differing perspectives in both the Church of England and the Anglican communion of Churches, e.g. can one use the language of sacrament of the ministry, for example? Some would see more than a difference of emphasis between seeing the ministry as a sacramental ministry of reconciliation and one for communicating assurance of divine forgiveness in unusual situations.

4.3.2 There are five contexts in which the ministry is customarily made in the Church of England. As with baptism the ministry is administered in the interests of the penitent and never those of the priest hearing the confession. This is to enable them to know the forgiveness of God and to share in the fellowship of God's people.

4.3.3 It is a ministry in which

- difficulties experienced in approaching the Lord's Table are set aside. The sinner is assured of the forgiveness of Christ and can then take a full part

in the eucharist. Restoration to the eucharist, to the full life as a member of the Church is arguably the basic reason for the practice.

- the Church ministers to those in situations of crisis. This ministry is for sin, but also for the consequences of sin. An example would be circumstances when the ministry of absolution is sought by someone who is in great trial or distress who does not know to whom they may turn.
- the Church ministers to those, aware of their sinfulness, want to grow in holiness and intimacy with God. Anglican writers since the 17th century have, for obvious reasons, brought this practice of confession into conjunction with spiritual direction.
- the Church ministers to those preparing for death. The Church offers this ministry to those in grave sickness and near to death, when the temptation to doubt or fear may be strong.
- God's forgiveness and mercy are available to those for whom sin, the words of the Holy Communion service in the BCP, is 'intolerable'. It is therefore meant for all who are guilty of grave sin; it may not be required of anyone, but it may be something some need to do.

4.3.4 Penitents are at liberty to confess to whom they wish, but the normal practice would be to confess to their own minister, as a representative of the community to which they are being reconciled. This can be set aside in an emergency, for example if death is near, if there is "some urgent or weighty cause" (See Canon B 29.4).

4.3.5 Forgiveness is not automatic, it is not a kind of panacea for personal discomfort; it includes a willingness to accept the judgement of God and turn away from sinful practice. The penitent is one who wishes to turn again, to change ways. A confession may bring something to term or be a beginning on a way. The sinner who comes to confession needs to be penitent, however weak they may be and however feeble their contrition. Without a measure of contrition, and an intention to change, no amount of absolving will accomplish anything. If a penitent confesses something which is also a major crime – murder or abuse or terrorism – then it is right to withhold absolution or give it conditionally; penitence implies being ready to accept responsibilities which may mean being exposed to human justice. Part of the ministry of the Church is to accompany those who are. This belongs to the social aspect of reconciliation; as noted above, 'sin' is not a private matter but a wound in the body of Christ. There is work to be done after absolution.

4.3.6 Appropriate training is required for all clergy who minister to those needing the assurance of God's mercy, that God may forgive the sins of those who are truly penitent and turn to Christ, and desire to receive the absolution of the gospel. Though any priest at one level may absolve a penitent sinner (and do so when they baptise and at the eucharist), discretion, some experience in making moral judgments, in speaking and praying so as to give medicine appropriate to someone's needs and an awareness that they are also unworthy sinners are to be looked for in addition to the being versed in the holy scriptures. They need to be 'a discreet and learned minister of God's word'.

CHAPTER 5: EVALUATING ARGUMENTS FOR CHANGE IN THE CURRENT POSITION

5.1 Introduction

5.1.1 The preceding chapter on 'Theological Reflections on Confession in the Church of England' sets out how the sacramental ministry of reconciliation is rooted in the theology, history and practice of the Church of England, with the 'seal' of absolute non-disclosure being considered as an integral dimension of it. Moreover, this ministry neither begins nor ends with the Church of England, but continues to be shared today with the Roman Catholic Church, the Orthodox Churches and Lutheran Churches [cross references]. This account given in Chapter 4 amounts to a strong case for retaining the 'seal', arguing that without it, the sacramental ministry of reconciliation is fatally undermined, and showing that this ministry is one that belongs firmly and clearly within the Church of England.

5.1.2 It is clear, however, from other chapters of this report that there is also a case to be made for changing the current situation, either by abolishing the 'seal' as such or by introducing specific exceptions to it. The purpose of this chapter is to outline some of the key arguments for change and then comment briefly on how those who would advocate retention of the 'seal' in an unqualified form might respond to them. The arguments for change are summarised under four headings:

- Responsibility for preventing grave harm
- Securing justice
- The proper exercise of priestly ministry
- Breaking patterns of abuse.

5.2 Responsibility for preventing grave harm

5.2.1 This is the area of concern indicated by the discussion within the Archbishops' Council that led to the current report being commissioned. As reported in the Introduction at paragraph 1.5 above, the Council 'recognised the responsibility of the Church to protect children and vulnerable adults from harm, and the force of the argument that the legal framework of the Church should accordingly, in all respects, be such as to enable those who present a risk to children and vulnerable adults to be identified – both so that they can be held to account for past wrongs and be prevented from doing further harm.'

5.2.2 There is a fundamental human duty to prevent grave harm to other persons where we have the power to intervene to that effect. Exegesis of the Ten Commandments would identify such intervention where life itself is at stake as part of our obedience to the divine command not to kill. Love of our neighbour, part of the Law of Moses and underlined by Jesus as one of the two commandments of God on which the teaching of the Old Testament depends, means being willing to take action for the protection and well-being of our neighbour that may be in tension with other duties and indeed with our own interests and security.

- 5.2.3 Of course, the responsibility for preventing grave harm can lead to some difficult questions. If telling the truth would put another person in danger, can a Christian set aside the obligation to speak the truth? If the best way to protect one person's life appears to be to risk another's, how are we to choose? The point here would be, however, that part of ordinary moral responsibility is making decisions about when the need to prevent grave harm trumps other moral duties – such as confidentiality. We accept that there can be hard choices and even situations where there is no obviously 'moral' choice at all, but navigating our way through such situations is part of responsible human living in a fallen world. To create a situation where the possibility of an exception to the rule of non-disclosure is ruled out on *any* grounds, including the prevention of serious harm, seems both unnecessary and contrary to our normal understanding of moral responsibility.
- 5.2.4 It might also be noted in this context that the first post-Reformation restatement of the 'seal' in the Church of England, the 1603 Proviso, explicitly provided for an exception to the rule: in other words, there was no absolute 'seal' of non-disclosure. While the specific grounds given for such exception – risk to the confessor's own life in cases where withholding information would be a capital offence (i.e. treason) – may no longer be considered relevant, the precedent remains compelling. In choosing to continue with the 'seal', the Church of England was from the beginning willing to qualify it in cases where the confessor received information that raised the possibility of intervening to prevent grave harm, and it correspondingly expected confessors to exercise responsible judgement in this context as to whether what they had heard gave grounds for setting aside the normal rule of non-disclosure.
- 5.2.5 For Christians, the general duty to prevent harm being done to others applies with particular force to children; they may wish to reflect on biblical passages such as Matthew 18.1-7 in this context. This would strengthen the case for maintaining that using information disclosed during the sacramental ministry of reconciliation to seek to prevent abuse of a child constitutes appropriate grounds for an exception in ecclesiastical law regarding the 'seal', paralleling the clause originally inserted in the 1603 Proviso.

5.3 Securing justice

- 5.3.1 This area is also flagged up in the quotation from the Introduction regarding the Archbishops' Council cited above: abusers should be identified 'so that they can be held to account for past wrongs and be prevented from doing further harm.' Here again, we begin with a basic moral duty: if I find out that someone has definitely or probably committed a serious crime, I normally have an obligation to consider carefully what I should do. There may be a case for deciding to do nothing in the particular instance, but there does need to be a decision, and I need to accept responsibility for it. Again, this is the kind of moral discernment that we expect of one another within society. We accept that people sometimes get such decisions wrong, of course. We also have a sense that some crimes are so serious that there should be a norm of reporting to the authorities where a person has substantial grounds for believing that an offence has taken place. Abuse of children would be a

case in point, as expressed in statutory guidelines as well as in guidance specific to the Church of England.

- 5.3.2 The argument here would parallel that of the previous section. The obligation to ensure known offenders face justice, like the duty to intervene to prevent harm, can come into real or apparent conflict with other obligations, but deliberating on how to act in such cases is something we expect as part of exercising moral responsibility. An absolute rule that says information received in a particular Church context can *never* be used to help bring someone to justice who has hitherto evaded it seems to undermine moral responsibility and indeed to weaken the Church's commitment to seeking justice, in a way that compromises its witness within society as well as its practice of the virtues. It is accepted within the general law that public interest may override the duty of confidentiality, and that confidential disclosure of a serious crime would be an instance where this should happen (see paras 3.8.2-3.8.3). A Church committed to justice should not be seeking an exemption from this general principle.
- 5.3.3 The point here gains added force from the recent history of the Churches' response to child abuse allegations. It has become clear that in far too many cases within living memory, Church leaders have taken the decision to shield abusers within the Church from justice and to deal with their behaviour as a matter of pastoral care and/or ministerial discipline. The Churches therefore have a particular need to demonstrate that they are no longer prepared to let their own procedures trump the demands of justice or be used to insulate abusers from them. The 'seal' remains an obvious case where this may continue to happen, and therefore it needs to be either suitably qualified or abolished altogether.

5.4 The proper exercise of priestly ministry

- 5.5.1 Objections in this area are long-standing, though unsurprisingly their focus has shifted. In the sixteenth and earlier seventeenth centuries, some within the Church of England objected to the continuing practice of auricular confession as such. They believed it had no place within a reformed Church, where the gospel of salvation through faith in Christ was consistently proclaimed. Confession of sins should be made to God alone, either privately or corporately in public worship. To continue the practice of confessing sins to a priest was to perpetuate models of priestly mediation that were at odds with the biblical proclamation of one mediator between God and humanity, the Lord Jesus Christ (see above, 3.4.3 and 3.5.5; 4.2.1.2 and 4.2.6.2).
- 5.5.2 These concerns resurface among Anglican Evangelicals in the nineteenth century in the context of the self-conscious recovery within Anglo-Catholicism of individual confession to a priest as a regular spiritual discipline that could be seen as belonging within the church's sacramental ministry. There would continue to be a view among some Anglicans that the practice envisaged in the Proviso of 1603 should not be equated with a *sacramental* ministry at all: it is a pastoral ministry in which the aim of the pastor is to bring the person concerned to a deeper apprehension of the truth of the gospel that our sins are forgiven in Christ and we are called to

sanctification of life in the power of the Holy Spirit. Its efficacy lies solely in the communication of that message, and not in some ritual form invested with mysterious theological significance.

- 5.5.3 One implication of this perspective would be that such ministry is of a piece with the general ministry of a Christian pastor, and therefore should fit within the same framework as the rest of that ministry when it comes to confidentiality. Take away a late-medieval Catholic view, alien to Anglicanism, of the supposedly sacramental quality of such pastoral conversations between pastor and disciple, and the case for having special rules about disclosure that do not apply in any other pastoral conversation simply evaporates. Of course, pastors need to act with great discretion and sensitivity and should be utterly trustworthy with the secrets of others. All the same, in this context as in any other, it is part of their responsibility to discern when they are in an exceptional situation where the obligation to use or share the information they have received for the sake of some other good overrides the obligation to respect the desire of the person giving the information that it go no further.
- 5.5.4 Concerns that the 'seal' distorts priestly ministry might also be expressed in ways that do not relate directly to Reformation critiques of Catholic sacramental theology. For instance, it could be argued that it undermines the principle that priests are accountable within the life of the Church for their ministry, in that it creates a zone of activity about which they cannot be questioned. Serious errors of judgment in advice and guidance offered to penitents may be made – but can never be investigated, and therefore discipline cannot be administered. At the same time, clergy are prevented from seeking the kind of support and counsel that they might normally do in the course of their pastoral ministry. In other pastoral situations, clergy will of course have to think carefully about whom they approach for such support and counsel, and what information it would be legitimate to share. Getting it wrong, with the result that information comes into the public domain that should not have done, will itself become a disciplinary matter. Like other professionals, clergy have to learn to exercise good judgment in such matters as part of their formation. Yet the effect of the 'seal' is to take all such considerations out of their hands and to leave them unable to take responsibility for their own support and guidance, at the same time as it exempts them from the ordinary processes of accountability for their actions.

5.5 Breaking the pattern of abuse

- 5.5.1 The three areas looked at so far all provide general arguments for qualifying or abolishing the 'seal'. As noted, there are ways in which the Churches' attempts to put right what has been wrong in the way they have dealt with disclosures of abuse adds particular force to these arguments and indicates the abuse of children in particular as giving grounds for not continuing with the current practice of the 'seal' in so far as it implies the absolute prohibition of disclosure. There are also however arguments arising specifically from reflection on how Churches have colluded with abusers in the past and how they might be able to break patterns of abuse more effectively in the future. Three particular lines of argument might be identified in this context.

- 5.5.2 The first would be that the existence of the ‘seal’ has allowed the sacramental ministry of reconciliation to become a place where abusers can experience relief from guilt feelings by speaking about what they have done to an adult in a position of both authority and care, while knowing that adult is prohibited from taking any kind of action that might lead to them facing consequences for what they have done, including legal action, sanction and punishment. This point is reflected in some of the responses to the consultation exercise as recorded in chapter 2 (see para 2.5, for instance). While there have, for good reasons, been very few studies of the mentality of abusers, the role of confession was explored in one study of former Roman Catholic priests in Ireland convicted of offences against children. The study indicated that some of the abusers had indeed used confession as something of a ‘release valve’ to manage their conflicted feelings about what they were doing, without having any lasting impact on their continuing abusive behaviour.⁷² To that extent, their recourse to the sacramental ministry of confession as bound by the ‘seal’ actually helped to perpetuate that behaviour, when either their own unassuaged conscience or (more likely) disclosure of information by the confessor might have made a difference. Parallel concerns emerge from evidence made available to the Australian Royal Commission into Institutional Responses to Child Sexual Abuse.⁷³
- 5.5.3 The second line of argument is linked with the first. By dissociating forgiveness from justice, and offering absolution without any compulsion to make a disclosure to the authorities, the practice of the sacramental ministry of reconciliation can appear to offer ‘cheap grace’ without costly confrontation with the holy judgement of God. This suits abusers who may feel uneasy about their behaviour but have deep resistance to changing it.
- 5.5.4 The third line of argument relates to feedback from a number of people involved in the consultation exercise (see e.g. paras 2.5-2.8, with the boxed quotations there). The concern here is that by creating a zone of secrecy protected by religious as well as legal sanction, the ‘seal’ is far too easily manipulated by abusers to protect themselves from justice and to reinforce prohibitions for those abused regarding daring to say anything about what has happened. Robert Waddington’s claim to one of his victims that he could not speak about what had happened because of the ‘seal’ would be a case in point. The danger of the sacramental ministry of reconciliation being used by abusers who are priests is one aspect of this situation, but the wider concern would be the invocation of the ‘seal’ to silence victims and survivors and close down any attempt to bring to light what has happened.
- 5.5.5 All three of these might be linked to the broader point that Churches have been attractive to abusers because particular aspects of Church culture have been susceptible of supporting abusive behaviour. Given that abuse characteristically involves strategies of deceit and suppression of

⁷² Marie Keenan, *Child Sexual Abuse and the Catholic Church: Gender, Power, and Organizational Culture* (Oxford: OUP, 2012), pp. 162–68.

⁷³ See the report in the *Guardian* from 5 February 2017, ‘Catholic use of confession to be scrutinised by child abuse royal commission’, available at <https://www.theguardian.com/australia-news/2017/feb/05/catholic-use-of-confession-to-be-scrutinised-by-child-abuse-royal-commission>

information, the existence of an area of Church life that is held in many cases in the highest esteem and in which there is an absolute ban on any disclosure can readily be seen as a case in point. The Church has an obligation to look very hard at any area of its life that may give shelter or encouragement to abusers and ask whether it is time to revisit it.

5.6 Possible responses

- 5.6.1 How might those who accept in broad terms the case made in the previous chapter – that the ‘seal’ is integral to the sacramental ministry of reconciliation, which is itself a valued and indeed necessary part of the Church’s life – respond to these arguments?
- 5.6.2 Critical to the case for retention is the articulation of the proper distinctiveness of this ministry. The different critiques of the ‘seal’ in the section above on ‘The Proper Exercise of Priestly Ministry’ have in common that they effectively deny that distinctiveness: there is nothing fundamentally different about the pastoral situation here from other contexts of ministry, and therefore the same parameters should apply as elsewhere, including with regard to confidentiality. As was noted in the first chapter, however, the use of the adjective ‘sacramental’ in this context, following the Revised Catechism, rests on some strong foundations and emphasizes the very particular character of what is happening here, including its intimate relation to the two primary sacraments of baptism and eucharist (see paras 1.9-1.12 above).
- 5.6.3 That particularity is further underlined by the prayer in the Common Worship ordination service that those to be ordained priests would ‘absolve in Christ’s name those who turn to him in faith’, and the words to be spoken by the bishop in the sixteenth-century Ordinal at the laying on of hands that ‘Whose sins thou dost forgive, they are forgiven.’⁷⁴ Hence the sacramental ministry of reconciliation is understood within the Church of England as an exercise of priestly ministry falling within the scope of e.g. Canon C 8. The common understanding of this ministry shared by the Anglican Communion as a whole with the Roman Catholic Church is summed up in the agreed statement on ‘Ordained Ministry’ from the Anglican Roman Catholic International Commission:

The responsibility of the ministers in the Christian community involves them in being not only the persons who normally administer baptism, but also those who admit converts to the communion of the faithful and restore those who have fallen away. Authority to pronounce God’s forgiveness of sin, given to bishops and presbyters at their ordination, is exercised by them to bring Christians to a closer communion with God and with their fellow men through Christ and to assure them of God’s continuing love and mercy.⁷⁵

- 5.6.4 As was argued by critics of the seal in the section above, it is true that confession of sins for Christians should be made before and to God, first and

⁷⁴ http://justus.anglican.org/resources/bcp/1549/Priests_1549.htm

⁷⁵ Anglican Roman Catholic International Commission, ‘Ordained Ministry’, 1973, paragraph 11, available at http://www.vatican.va/roman_curia/pontifical_councils/chrstuni/angl-comm-docs/rc_pc_chrstuni_doc_19730901_ministry-ordination_en.html

foremost, and not be something primarily directed to another human person who mediates the believer's relationship with God. In the sacramental ministry of reconciliation, however, the role of the priest is not primarily to 'hear' the Christian's confession but rather to create the space for the penitent to speak fully of their sins before and to God, and for them to hear and receive with corresponding fullness God's word of forgiveness and call to repentance. That space may be needed on an exceptional basis because the perceived gravity of the sin or the perceived complexity of guilt and responsibility makes it difficult to articulate what has happened and to hear the message of grace. Or it may be needed on a regular basis because the person finds the discipline of speaking of their sins aloud before God in the presence of a wise minister, who may then guide them as to action they should take as well as assuring them of God's mercy, as profoundly beneficial for growth in holiness. The critical element here, however, is that the priest is enabling the person concerned to speak truthfully and openly before and to God of their sins, and God to speak to the person of grace freely given in Christ, including grace to be transformed by the renewing of our minds.

- 5.6.5 This is not a ministerial situation that has a direct parallel elsewhere. Moreover, it is essential to it that the person confessing their sins is able to switch off the 'internal censor' that is usually prompting us when we begin to talk about what we know we have done wrong, with questions such as 'How will this sound to others?', 'What will they think of me?', 'How far can I trust the person I am talking to?' and 'What will happen if this information becomes more widely known?' In order for this ministry to be exercised, the penitent must be able to speak with absolute freedom before God about what they have done, and to do so they need to have complete confidence that the 'internal censor' can be ignored because there is simply no possibility that what they are saying will be repeated in any other context by anyone apart from them. As soon as disclosure is allowed as a possibility on the part of the confessor, then this becomes a conversation between two people, in which prudence dictates that the 'internal censor' should be left running, at however low a setting, rather than primarily a conversation of complete openness and transparency between one person and God, with another present to frame and guide, but not to intervene.
- 5.6.6 Moreover, in seeking to enable the penitent to hear the Word of God in response to the naming of their sins, it is also right that the confessor renounces the possibility of taking any kind of action themselves for addressing the situation that they have heard described, other than that of prayerful guidance within the encounter itself. The responsibility for whatever human action may belong to reconciliation rests solely and absolutely with the person who in seeking this ministry accepts that responsibility. Paradoxically, the confessor stands with the penitent in the act of confession so that the penitent may speak to God and be spoken to by God in their singularity, their uniqueness, their proper human solitude. The confessor may guide the penitent as to what repentance might mean in the light of the sins that have been confessed. It is however for the penitent alone to listen to what God is saying and to do what repentance requires as part of reconciliation with God, with the Church and with one's neighbour. The

confessor cannot act for them by taking action that is properly theirs to take – such as making a disclosure to the police in the case of a criminal offence. Here too, the distinctiveness of the sacramental ministry of reconciliation, understood as an essentially pastoral ministry in which the sinner makes the confession of their sins before God and receive God’s word of forgiveness, requires the practice of the ‘seal’ as traditionally conceived. Without it, the confessor becomes instead always a potential actor in the situation, an intrusive presence *between* God and the sinner preventing ‘heart speaking to heart’.

- 5.6.7 This is directly relevant to the arguments presented under the heading of ‘Securing Justice’. It is not that the confessor should be indifferent to justice, and it would be a profound mistake to think of what happens in the sacramental ministry of reconciliation as wholly unrelated to justice or somehow operating separately from it. This is a ministry for those who are penitent and who, for whatever reason, seek help from a priest in walking the road of repentance. Choosing what is good cannot be detached from renouncing what is bad: conversion and repentance are inseparable. If a person has sinned by doing what is unjust before God and according to the law of the land, then the path of repentance will involve asking what justice now requires – God’s justice, which is expressed and enacted in just laws within human society. The priest who is accompanying the penitent on that journey has a responsibility to ensure the question of what justice requires is heard at an appropriate point and in an appropriate way. As the *Guidelines for the Professional Conduct of the Clergy* make clear, if a penitent confesses to criminal abuse in the context of the sacramental ministry of reconciliation, the confessor should tell the penitent directly that repentance must involve making a disclosure to the police, and that absolution cannot be given without acceptance of that obligation. The task of the confessor is to help the penitent perceive what seeking God’s kingdom and God’s justice means in their situation. As soon as the idea is introduced, however, that there is an additional responsibility on the confessor’s part – to report to the authorities if the penitent does not – the unique character of the relationship between confessor and penitent is corroded, and the unique dynamic of the sacramental ministry of reconciliation is broken beyond repair.
- 5.6.8 Of course, one cannot guarantee that every priest involved in the sacramental ministry of reconciliation appreciates the relationship between that ministry and the duty of securing of justice. This, however, signals a much wider issue about formation, which is particularly relevant to the concerns raised in the section on ‘Breaking the Pattern of Abuse’. In the case of the study of priests who had committed sexual abuse cited there, those hearing their confessions simply did not seem to grasp the gravity, or indeed the criminality, of the acts that were recounted. Confessors, in other words, were ignorant, more or less culpably, about the evil of sexual abuse. Nor was there any sense of the need for the approach set out in our own guidelines for clergy that absolution in such cases should depend on willingness to make a full disclosure to the relevant authorities.
- 5.6.9 It is also evident that the issue here is not only the formation of the clergy for exercising this unique ministry, important as that is. There is also a need for

the formation of the whole people of God as to what it means to receive this ministry, of course for the benefit for those who use it, but also to demystify it for those whose understanding may be readily misled by apparently authoritative figures whose claims seem to resonate with half-remembered impressions from popular culture about the secrecy of the confessional. There is nothing to prevent a penitent speaking outside the sacramental ministry of reconciliation about matters they have mentioned there, for instance, and abusers who tell people otherwise are simply lying to protect themselves. A penitent can subsequently ask for the help and support of the confessor in taking the steps of repentance called for by what has been spoken about in the sacramental ministry of reconciliation, such as making a disclosure to the authorities in the case of abuse. A penitent may even give permission for the confessor to speak to others about what has been confessed, though of course such a request must be made freely, and never solicited by the confessor.

- 5.6.10 The fact that discussion within the Church of England of the sacramental ministry of reconciliation can lead to the rehearsal of Catholic – Protestant polemics going back to the sixteenth century on the mediation of grace may be worth noting here. It has perhaps helped to block moves to set out more fully the Church of England’s understanding of this ministry, e.g. by the House of Bishops, and to offer authoritative guidance about its exercise. There is clearly a challenge that needs to be faced. In the light of what we know about abuse in the life of the Church, if the Church of England is to remain committed to the sacramental ministry of reconciliation with an understanding that this ministry is bound up with the practice of the ‘seal’, then it has to take responsibility for ensuring that all those exercising it are properly prepared to do so, and that everyone who may receive that ministry also has a basic understanding of its nature and purpose.
- 5.6.11 Arguably, all the points raised in the section on ‘Breaking the Pattern of Abuse’ can be met by formation and education, and do not require abolition or qualification of the ‘seal’. Accessing the sacramental ministry of reconciliation in this context, for instance, in order to assuage feelings of guilt about perpetrating abuse without any resolution for amendment of life is ‘an absolute corruption of the use of the confessional’, to quote one of the comments made in the context of the Australian Royal Commission into Institutional Responses to Child Sexual Abuse.⁷⁶ Those who hear confessions may need to reflect on the ways in which this ministry can be corrupted by abusers and consider carefully how to avoid being drawn into collusion. The fact, however, that a valued practice can be manipulated in devious and wicked ways by abusers cannot of itself be an argument for discontinuing it, for such manipulation is part of the nature of abusive behaviour and has no controllable limits.
- 5.6.12 The comments just made about the formation of the clergy are also relevant to some of the concerns raised in the section on ‘The Proper Exercise of Priestly Ministry’. It might also be noted that there is evidently a need for on-going support and supervision, as well as initial formation as preparation to take on this work. The nature of the ‘seal’ needs to be properly understood

⁷⁶ *Guardian*, 5 February 2017, ‘Catholic use of confession’.

here too. It does not mean that the confessor is prevented from making any conceivable reference to their involvement in this area, including the impact it may have had on them personally and the perplexity and confusion it may have occasioned for them. How this might be handled in practice is addressed in chapter 6 below.

- 5.6.13 Finally, what of the first set of arguments, in the section on ‘Responsibility for Preventing Grave Harm’? These are perhaps the most difficult to evaluate, because so much appears to hinge on the prediction of consequences where these concern the inherently difficult to predict behaviour of human beings. If a penitent confesses to murderous thoughts about a relative, how is the confessor to evaluate the likelihood of them acting on that thought? The sacramental ministry of reconciliation is not the context within which the kind of questioning can take place that might enable that. If murderous thoughts are being confessed, then there is some intention on the part of the penitent to resist them, and therefore *not* act on them. If murderous thoughts are being articulated and not confessed as sinful, but treated as morally neutral or even being boasted about, then the conversation does not belong within the sacramental ministry of reconciliation, and the confessor needs to make that clear. The same would apply to a penitent acknowledging the desire to commit abuse. Either they speak of such a desire as a sin from which they want to desist, or they are speaking of it in a way that has no place within the sacramental ministry of reconciliation.
- 5.6.14 And what would be the consequence of penitents knowing that, under certain circumstances, what they say to their confessor might be reported without their consent? It is hard to avoid the conclusion that people who feared their acts might pertain to those circumstances would simply avoid speaking of them to a confessor, so nothing would be gained and potentially a great deal lost, in terms of the social ‘good’ of criminals finding a safe space where they can begin to face their own sense of guilt and to think about what conscience may be asking of them. The testimony of the Bishop of Burnley and others noted in para 2.11 certainly indicates that many survivors would no longer feel confident of entering in this ministry as a place whose unconditional guarantee of confidentiality has helped many to articulate for the first time an experience that has left them plagued with deeply painful feelings of guilt, however misplaced. Moreover, what would without question be lost is the distinctiveness of the sacramental ministry of reconciliation as set out at the start of this section and as understood in Christian tradition, including the tradition of the Church of England, as described in chapter 4. Ultimately, perhaps, it comes down to the question of how far that distinctiveness is valued. The more highly it is valued, the more necessary the ‘seal’ becomes as critical for maintaining it. The less highly it is valued, the greater force will be given to the arguments for change set out in the preceding sections of this chapter.

CHAPTER 6: POSSIBLE LEGISLATIVE OPTIONS

- 6.1 In Chapter 3 we set out our understanding of the current legal position in the Church of England and commented on the recent Australian legislation. Since the Group's Terms of Reference require its report to "*include recommendations in relation to ... the shape that any legislative amendment might take*", in this chapter we consider possible options in that respect. Further consideration of the 2017 Australian proposals is given in the Addendum [Appendix 2]. Nothing that follows in this chapter is altered by that Addendum.
- 6.2 The options would appear to be:
- (a) to **retain the duty of absolute confidentiality** that currently exists under the Proviso to Canon 113 without any change;
 - (b) to enact legislation that **qualifies that duty of absolute confidentiality** by allowing certain specified types of misconduct revealed in the course of confession to be disclosed by the confessor to third parties; and
 - (c) to enact legislation which **removes that duty of absolute confidentiality** and instead allows the relationship between confessor and penitent to be regulated by the equitable doctrine of confidentiality (i.e. the general legal rule which governs confidentiality in professional, commercial and other relationships where there is an expectation of privacy).
- 6.3 As regards the second of these possibilities, that of qualifying the duty of absolute confidentiality, in our view any legislative provision intended to have that effect would need to meet two requirements:
- first, it should allow disclosure of those types of activity which the Church believes should not be protected by a duty of absolute confidentiality, but no others; and
 - secondly, it should do so in a way which enables the confessor to be clear whether any particular misconduct disclosed in the course of confession falls within those types of misconduct which are no longer protected by absolute confidentiality (since otherwise the confessor would be at risk of unintentionally committing misconduct).
- 6.4 As to the first of these requirements, the Group recognised that some might wish to argue in favour of allowing the grave sin of child abuse to be treated differently, from the point of view of disclosure, from others such as homicide. However, even if it were possible to frame a qualification in relation to such cases alone with sufficient clarity, the Group considers that it would not be defensible for any legislative provision to make provision for the disclosure of abuse alone, whilst retaining the absolute duty of confidentiality in the case of other very grave sins. If that is accepted, the question therefore becomes one of whether it is possible to define a class of grave sins in general terms with sufficient clarity to enable it to be clear to a confessor, in all cases, whether something referred to in the course of confession may, exceptionally, be disclosed to third parties.

- 6.5 One possible way of doing so would be to employ the concept of ‘serious harm’ (whether past or prospective, but in the latter case presumably on the basis that the confessor considered the conduct in question to be ‘likely’ to give rise to serious harm). Under that approach, when framing the provision decisions would be needed as to the nature of the harm involved – that is, whether it would include only physical harm, or should also extend to mental and/or emotional harm. Limiting the provision to physical harm would seem to be too narrow to cover all cases of sexual abuse. But to widen the provision to include the other forms of harm would extend it so far as potentially to embrace an extremely wide range of behaviour – much of it not being criminal in character (adultery, for example). In the view of the Group, this approach would therefore qualify the absolute duty of confidentiality in a way that was both too extensive and too uncertain, so failing to meet either of the requirements set out in para 6.3 above.
- 6.6 An alternative approach would be that taken in Australia, under which the confessor would be allowed to make a disclosure if satisfied that one or more specified criminal offences had been committed. But, as our earlier analysis of the Australian legislation demonstrates, that approach also presents considerable difficulties, from the point of view of:
- selecting the offences in question (and keeping the list of specified offences up to date subsequently); and
 - the confessor having to form a view on whether what has been disclosed in confession suggested that one or more of the specified offences was likely to have taken place. (It seems to us both impracticable and wrong in principle for the latter concern to be addressed by building in a provision allowing the confessor to seek legal advice.)
- 6.7 Whilst in principle this approach could meet the first requirement set out in para 6.3 above, it would not seem to meet the second.
- 6.8 An alternative approach, that would seek to avoid some of the difficulties inherent in the Australian approach, would be to draft the provision around a belief on the part of the confessor “*that the acts involved a criminal offence that has caused serious harm to any person*”. That approach would avoid the difficulty of having to identify particular criminal offences. However, it would still not meet the first of the requirements set out in para 6.2 above: given that any criminal offence would suffice, the potential range of situations in which the qualification of the duty of absolute confidentiality could apply would be both very wide and somewhat uncertain.
- 6.9 It would also in our view present difficulties from the point of view of the second requirement, as a result of the confessor needing to form a view that (a) some criminal offence has been committed and (b) that the offence in question has caused ‘serious harm’: forming a view on either matter seems to us to involve the confessor having knowledge of kinds which he or she simply might not have. In the case of the first, the confessor would again need to have an understanding of possible criminal offences and their ingredients (including the requisite intention). In the case of the second, the issue once more arises as to what form of ‘harm’ is being referred to. But,

even if that were clear, the confessor would need to be able to form a view that, in the particular case, the criminal act had given rise to harm of the relevant kind(s).

- 6.10 We have not been able to identify any other drafting approach which would meet the requirements set out in para 6.3 above; and in the light of that, we have come to the conclusion that it would not be feasible to legislate so as to allow certain specified types of misconduct revealed in the course of confession to be disclosed by the confessor to third parties.
- 6.11 The choice is therefore in our view between:
- (a) retaining the duty of absolute confidentiality that currently exists; and
 - (b) abolishing that duty and allowing it to be regulated by the equitable doctrine of confidentiality.
- 6.12 As will be apparent from our explanation of the nature and effect of the equitable doctrine of confidentiality in chapter 3, if the second of these options were taken, the duty of confidentiality as between penitent and confessor would no longer be absolute, being capable of being displaced by the wider public interest so as to allow (for example) the disclosure of information concerning the commission of a crime or other misconduct.
- 6.13 If reliance were placed on the equitable doctrine in this way, the question would arise as to whether clergy should be given guidance on disclosure.
- 6.14 On one view, clergy might be left to form their own view on whether, and how, to make a disclosure: they are, after all, trained (to some extent) about confession and absolution, and are expected to exercise their ministry without the benefit of any guidance from the House of Bishops. It might not therefore be unthinkable for an individual confessor to be allowed to make his or her own judgment about matters relating to disclosure. And if guidance were produced, it would have the effect (assuming that reporting was not made mandatory) of identifying cases in which a report could, and so perhaps should, be made. Although the details of any case are very unlikely to become public, the position of a confessor who (whether for theological reasons or on the basis of his or her judgment) was seen as having failed to follow the guidance would be at least awkward.
- 6.15 On the other hand, what clergy would be being asked to do would be to form a view on whether a disclosure would meet the public interest requirement under the equitable doctrine of confidentiality. Whilst it would normally be readily satisfied in relation to any disclosure involving sexual misconduct towards a child or vulnerable adult, it would of course be capable of being met in a rather wider range of circumstances; and it seems likely that clergy would therefore wish to have guidance on both when and how to make a disclosure, so as to mitigate the risk of their being subject to disciplinary proceedings as a result of inadvertently making an unauthorized disclosure.
- 6.16 Were guidance to be given it would need to cover a range of matters, including:

- the types of misconduct that a confessor might need to consider disclosing; and
- the manner of disclosure, in terms of the person(s) to whom, and the manner in which, any report is to be made.

The giving of both types of guidance would raise difficult questions, to some extent reflecting the difficulties identified above in relation to the drafting of legislation.

- 6.17 In the case of the guidance on misconduct that could lawfully be disclosed, whilst the focus of the guidance would be sexual misconduct towards a child or vulnerable adult, it would have to make it plain that other crimes and serious misconduct were also potentially disclosable and give examples. The selection of those examples might prove problematic, including from the point of view of the signals they sent about the Church's values. (Presumably there would be agreement that the guidance could refer, for example, to murder and terrorist offences. But should it also include criminal offences such as tax evasion or benefit fraud?)
- 6.18 In the case of the guidance on the manner of disclosure, amongst the questions that would arise would be whether disclosure should always be to the police or other appropriate statutory authority and whether the confessor's report should pass through any sort of 'filter' – be it an ecclesiastical superior (though that could put them in a difficult position) or the diocesan registrar.
- 6.19 Finally, it might also be desirable for the guidance to say something about the likely effectiveness of a disclosure, with a view to allowing a confessor to take that into account in deciding whether to disclose. For example, if in the course of confession the penitent were to reveal the commission of a criminal offence in unspecific terms (e.g. that while a teacher at a named school, he had 'abused a pupil') simply reporting that to the police would be unlikely (unless the penitent admitted the crime to the police) to enable the matter to proceed to a prosecution. The question would be whether the guidance should simply explain that, or should go on to suggest that the confessor had some responsibility, once a serious offence has been disclosed in general terms, to explore it with the penitent – and, if so, to what extent (if any) the terms in which the confessor did so should be influenced by the possible need to report it, as opposed to being determined solely by reference to the needs of the sacramental ministry.
- 6.20 In the light of these considerations, we believe that reaching agreement on the terms of any guidance would be no easy matter.

CHAPTER 7: GUIDELINES FOR TRAINING

- 7.1.1 The need for training for those clergy practising the Sacramental Ministry of Reconciliation emerged strongly from the evidence the working party received.⁷⁷ This chapter explores this area and makes some key recommendations for the future.
- 7.1.2 Consultation with practitioners and others confirms that knowledge of the sacramental ministry of reconciliation is both patchy and variable among clergy as well as laity. It is not clear that Initial Ministerial Education covers the subject in any depth. Knowledge of this ministry is generally dependent upon the teaching, church tradition and practice of individual clergy sharing their experience.
- 7.1.3 The Working Party surveyed Theological Training Institutions and dioceses to discover what training is currently provided in this area of ministry. Two of the eight institutions that responded offer no training at all. Others covered the sacramental ministry of reconciliation in very different ways. There was evident confusion, among training institutions, about the extent to which this area of ministry would subsequently be covered in Phase Two of Initial Ministerial Education, i.e. Post-ordination.
- 7.1.4 Of the twenty-three dioceses that responded to the survey, at least nine (36%) appear to offer no specific training at all. Among those who do offer training, it is most likely to be provided within Phase Two of Initial Ministerial Training. There appears to be only very patchy provision within Continuing Ministerial Development where it is usually provided in the form of occasional days with a visiting leader.
- 7.1.5 Practitioner priests who were consulted express an overwhelming need for the church to address with urgency, rigour and seriousness, the issues surrounding priestly formation and training for this ministry. Older practitioners considered their own formation and preparation to have been more rigorous. Some remembered 'confession practice' as having played a part in their training. Concern was expressed that new syllabuses and training models may not take due account of the theology and practice of the Sacramental Ministry of Reconciliation.
- 7.1.6 Practitioners expressed uncertainty as to how far newer models of training encouraged or required ordination candidates to work with a Spiritual Director, who might also serve as their confessor.
- 7.1.7 Members of the Working Party are clear that consistent training should be provided as part of Initial Ministerial Education and Continuing Ministerial Development. At present, guidance offered to clergy seems to vary and, in some cases, is not consistent with existing Canon Law. This places individual clergy and the church as a whole in an unnecessarily vulnerable position.
- 7.1.8 Members of the Working Party noted apparent variance in practice concerning when a priest is permitted to exercise a Sacramental Ministry of

⁷⁷ See para 2.11.

Reconciliation. In some dioceses priests were expected to have been in orders for five years; in other dioceses priests had to have been in orders for three years, whilst other dioceses appear to offer no guidance. In some dioceses there is a clear expectation that a priest must be a 'penitent' in order to hear the confessions of others, though, in extremis, any priest should be ready and able to hear a confession.

- 7.1.9 The publication of *Common Worship* texts for the *Reconciliation of a Penitent* provides the Church of England with its first commended texts for the sacramental ministry of reconciliation since the Reformation. Whilst there are relevant notes on confidentiality provided in *Christian Initiation* p.270 and referred to on p.24 of the shorter book, *A Pastoral Ministry Companion*, many are not aware of this guidance and the lack of appropriate training in the use of such rites represents a serious deficit.
- 7.1.10 Particular concern has been expressed about the training of those priests who serve as chaplains in the Prison Service. Such chaplains find themselves ministering to inmates, some of them clergy, who have committed serious offences, sometimes of a sexual nature, against children or vulnerable adults.
- 7.1.11 Training should include guidelines for the practice of sacramental confession. Such guidelines, whilst respecting the breadth of Anglican custom, should be clear about the parameters of the liturgy and the obligations concerning confidentiality.
- 7.1.12 Training needs to include guidance about what a priest should do if, during the exercise of their sacramental ministry of reconciliation, a serious crime is disclosed. In particular, clergy should understand how they should respond to the disclosure of a sexual offence against a child. They should also know how to respond when information about the criminal behaviour of a third party is divulged during their ministry of reconciliation; many people carry a profound sense of guilt about crimes for which they are not responsible and of which they may indeed have been the victim.
- 7.1.13 Those undertaking this ministry need to assist penitents to have a proper understanding as to how it is conducted and what to expect. In particular, penitents need to be aware that they are not bound by the seal of confidentiality: that only applies to the priest.
- 7.1.14 A distorted view of the Church of England's Sacramental Ministry of Reconciliation is fed by insufficient teaching, inadequate training of the clergy, and popular myth, sometimes built upon the customs of other Churches. It is, therefore, a matter of considerable importance that those exercising a priestly ministry within the Church of England should understand the Ministry of Reconciliation as it is practised within the Church of England and what are the implications for their safeguarding practice and ministry to victims, survivors and perpetrators of abuse.
- 7.1.15 Given that concerns have been registered that 'the confessional' might be a place in which abuse could inadvertently be protected or hidden, we recommend that a module of Safeguarding Training should become a

required element of training of Phase Two of Initial Ministerial Education and refreshed on a regular basis.

- 7.1.16 The Working Party acknowledges that the issues and sensitivity raised by the Sacramental Ministry of Reconciliation for the area of Safeguarding in particular make it essential that training should be provided within the National Safeguarding Learning and Development Framework. This has the advantage of ensuring consistency of approach and coverage both for the newly ordained and for those of longer experience.
- 7.1.17 In the document *Practice Guidance: Safeguarding Learning and Development Framework* [the Framework], published in January 2016, a specific module on 'Pastoral Care, confidentiality and confession' is recommended as essential or desirable for a number of categories of ordained and lay ministers (Section 6 paras 17-18).
- 7.1.18 Our recommendations are intended to build on this Practice Guidance.

7.2 A Case Study – The 'Southwark' practice

- 7.2.1 For the last five years in the Diocese of Southwark all those on IME 4-7 and those who self-select to do the course as part of the CMD programme offered in the diocese have attended a half day course on 'Safeguarding and hearing Confessions.'
- 7.2.2 This has been co-led by the Diocesan Safeguarding Adviser [DSA] and the Dean.
- 7.2.3 Initially there was a course run annually that looked at the Sacrament Ministry of Reconciliation purely from the perspective of spiritual direction. However, it became clear that as there were issues around safeguarding that were beginning to enter the conversation the course on the sacramental ministry of reconciliation could be expanded in order to address more directly the implications for safeguarding. The course as it has now been operating has settled into a clear format which is updated annually to take account of changes in national and diocesan guidelines.
- 7.2.4 The aims of the course are to enable clergy to understand the theology and practice of the sacramental ministry of reconciliation and how these relate to safeguarding policies and practice. At the end of the course it is hoped that those attending have acquired
- Theological insights into the practice
 - Historical insights into the practice in the Church of England
 - Practical tools and checklist for exercising the sacramental ministry of reconciliation
 - An awareness of national and diocesan policies as they affect its practice
 - An understanding of the difference in levels of confidentiality between a pastoral conversation and the sacramental ministry of reconciliation
 - Tools for making judgements in pastoral and sacramental situations.

- 7.2.5 The course is based around presentations by the co-leaders and a series of case studies which then lead into discussion about possible courses of action and response.
- 7.2.6 PowerPoint slides and other documents that are given out to course participants can be found at <https://www.churchofengland.org/media/17240>.
- 7.2.7 The course begins with the collecting of questions and hopes from the participants. These are generally around practical issues but also around the question of withholding absolution and who is allowed to hear confessions, as well as concerns about safeguarding. The first half of the course is led by the priest-practitioner. Though it is feasible that the course could be led by a lay person it has been found useful to be able to answer from a practitioner perspective and to reflect priest-to-priest on some of the questions raised.
- 7.2.8 Beginning from a biblical and theological perspective enables people from very different church traditions to begin talking about whether this is really a sacrament alongside some of the key texts from the scriptures, not least John 20.22-23. For some at the beginning of ordained ministry it remains a mystery that this part of Anglican practice; for others it has been part of their own life. It is important that both groups of people are brought up to speed together and are able to recognise that this has always been implicitly or more explicitly part of the life of the Church of England and that there is biblical authority behind it.
- 7.2.9 This naturally leads into a discussion about the role and place of the sacramental ministry of reconciliation in the life of the Church of England, its place within the Ministry to the Sick from the Prayer Book through the Oxford Movement through to the present day and the renewed interest in healing ministry, restoration and reconciliation.
- 7.2.10 The final part of the session led by the priest-practitioner is around the practical aspects and considerations which is very important for the next part of the course. Time has to be given to consider place, vesture, liturgy, posture, preparation, resourcing reflection, what we mean by 'penance', what we mean by 'advice' and texts we would use for 'absolution'. Consideration is also given to attentive listening in the context of the confessional and the resources that the priest needs in this ministry. It is most important that those participating are able to identify what is sacramental and what is not sacramental in terms of reconciliation. For instance, a request for prayer in which a disclosure is made is not sacramental and the seal does not apply.
- 7.2.11 The DSA then looks at what has been said in the various forms of the national policy from the House of Bishops, anything that is said specifically in the diocesan guidelines and some insights from other professional bodies e.g. social workers and counsellors. Reference needs to be made in this to the recommendations from the House of Bishops about vesture and context for the sacramental ministry of reconciliation.
- 7.2.12 This is followed by an explanation of the different forms and limits to confidentiality and how this affects safeguarding most particularly in terms of mandatory reporting. It is important for discussion of the case studies that

those on the course have a clear understanding of how confidentiality in the priestly context works.

- 7.2.13 Finally, the group is divided into smaller groups and given a series of scenarios which act as case studies. This is to enable the application of some of the learning to some real instances of where safeguarding and pastoral and sacramental ministry have interacted. The case studies are mainly anonymised stories from the local context; one or two have been made up.
- 7.2.14 Feedback about the course has been very positive. However, the feel of each session is very different and it depends on the age and experience of those participating as well as their church tradition. Those attending as part of IME will of course be very mixed in background and tradition. Those who choose to come to the course are often in parishes or chaplaincies where confessions are heard. For some IME participants the fact that this form of confession is authorized and practised is a challenge in itself – the seal of the confessional often seen akin to a scandal. This therefore demands careful handling on the part of the co-leaders and a great degree of flexibility and responsiveness to create the space for a creative and useful dialogue.
- 7.2.15 It has also been found that, as with much safeguarding training, the session raises very sensitive issues for the participants which have to be dealt with by the leaders. Participants sometimes get angry about the suggestion that there might be a ‘Seal’; some are very nervous about encountering such issues; for some it challenges notions of priesthood and church; for others it can raise more personal and painful memories. It should be expected that these things will happen and that the course leaders should be ready to handle them.

7.3 Recommendations for future training

- 7.3.1 Whilst we are pleased to see the Principles set out in Section 2 as part of the Framework we feel that the issues of pastoral care are complicated and demanding of inclusion in other parts of the framework. Pastoral implications in safeguarding cases are immense and the cause of many challenges for individuals and communities and, of course, clergy and lay leaders.
- 7.3.2 We therefore recommend that a module which concentrates on the issues of the practice and implications of the sacramental ministry of reconciliation in relation to safeguarding be made a compulsory element of Initial Ministerial Training (Phase Two) and that refreshment of this should become a mandatory element of priests’ Continuing Ministerial Development.
- 7.3.3 We recognise that asking Diocesan Safeguarding Advisers to co-lead such training may be a challenge for some. This will require careful training of the trainers and the existence of a strong working relationship between the Diocesan Safeguarding Adviser and the senior priest-practitioner (see below, para 7.3.5). Consultation with Diocesan Safeguarding Advisers reveals a significant lack of understanding that Sacramental Reconciliation is a practice of the Church of England, and there is considerable variation in the advice currently given by Diocesan Safeguarding Advisers and senior clergy. In consequence of its nature, we suspect that many Diocesan Safeguarding

Advisers have no experience of the sacramental ministry of reconciliation nor of how it works in relation to safeguarding. Initial training will be essential for the recommended model to work.

- 7.3.4 We recommend that the co-leader with the Safeguarding Trainer is normally a senior priest-practitioner who is also a penitent. The issues raised by the training are complex, sensitive and, for many, touch upon the core of priestly ministry. For those who cannot accept this as part of the practice and teaching of the church there are some serious challenges which require addressing. We believe that it is essential that the trainer priests must themselves make their own confession and hear confessions on a regular basis. This training programme should be supported by guidance on the exercise of this ministry by the House of Bishops (as implied by para 3.4 of the *Guidelines for the Professional Conduct of the Clergy*).
- 7.3.5 A recommendation is made below that each Diocesan Bishop should appoint an 'Adviser in the Sacramental Ministry of Reconciliation'. This should be on a similar basis as the Adviser on Deliverance Ministry (the Diocesan Exorcist) is appointed. This senior priest who has experience of the Sacramental Ministry of Reconciliation should oversee the delivery of the training course (though not necessarily lead it) and be available to mentor and advise priests in this area of ministry. They should be the person to whom a priest would refer in an 'extended confidential' capacity, though without breaking the Seal. They would work closely with the Diocesan Safeguarding Adviser to ensure that the issue of the sacramental ministry of reconciliation is held within safeguarding policies in the diocese. The Adviser should relate directly to the Diocesan Bishop.
- 7.3.6 Given the wide misconceptions about this ministry which clearly exist, we also believe that these measures should be undergirded by resources on the Church of England website, drawing upon material in this report, which more fully explain the Sacramental Ministry of Reconciliation. This should include material explaining the nature of this ministry for the benefit of penitents.
- 7.3.7 We therefore recommend to:
- a. The Training Group that training about the sacramental ministry of reconciliation be integrated with mandatory core safeguarding training during IME Phase Two and refreshed as an obligatory element of Continuing Ministerial Development.
 - b. That the training programme should be undergirded by Guidance from the House of Bishops (as per para 3.4 of the *Guidelines for the Professional Conduct of the Clergy*)
 - c. The House of Bishops that in each diocese there be a 'Bishop's Adviser in the Sacramental Ministry of Reconciliation'.
 - d. That there should be resources on the Church of England website which fully explains the nature of the Sacramental Ministry of Reconciliation, including explanatory material for penitents.

CHAPTER 8: A CONCLUDING NOTE

- 8.1 Our principal task, as set out in our terms of reference, was to carry out further theological and legal work to enable the Archbishops' Council and the House of Bishops to review the purpose and effect of the un-repealed proviso to the Canon of 1603. In carrying out this task we have been helped by the evidence we have received, including papers on the practice in some of our sister churches, and by material from the Faith & Order Commission – *Forgiveness and Reconciliation in the Aftermath of Abuse* – which the House of Bishops published in September 2016.
- 8.2 The theological issues are examined in chapters 4 and 5 which contain respectively theological reflections on confession in the Church of England, and a discussion of the arguments for and against any change in the present rules as to the seal. Those chapters are closely reasoned and we think it would be a disservice to readers of this report were we to attempt to summarise them in a few sentences in this concluding note.
- 8.3 We were asked to assist the Archbishops' Council and the House of Bishops in considering whether they wish to recommend to Synod that they legislate to amend the Canon. Chapters 3 and 6 contain material on the background to the present legal position and respond to the request that we offer advice as to the shape that any legislative amendment might take.
- 8.4 It is clear that those who established our group envisaged that one possible outcome could be an amendment to the law to qualify the seal, especially in cases of the abuse of children or vulnerable adults: a path recently taken by the Anglican Church of Australia. For the reasons we set out in detail in chapter 6 and in Appendix 2 we conclude that such an amendment would be wholly impracticable. There is therefore a stark choice between making no change and repealing the Proviso and so abolishing the seal.
- 8.5 As the seal of the confessional is as much part of the law of England now as it was in pre-Reformation times, the repeal of the Proviso would require a Measure as well as an Amending Canon. Were such legislation passed, the position would be that confessions would be subject, as explained in chapter 3, to the general duty of confidentiality that applies in professional, commercial and other relationships where there is an expectation of privacy. This legal rule permits the making of a disclosure where the disclosure would be in the public interest. The House of Bishops is already committed, in the *Guidelines for the Professional Conduct of the Clergy*, to the production of guidance on the practice of the sacramental ministry of reconciliation, and were the Proviso to be repealed that guidance would have to cover the issues facing the clergy in the new situation. As we have observed in chapter 6, reaching agreement on the terms of that aspect of the guidance would not be easy.
- 8.6 The decision whether to invite the General Synod to legislate on this matter is one for the House of Bishops and the Archbishops' Council. Had the members of the group reached a common mind on that issue, we would have included an appropriate recommendation in this report. Unfortunately, despite much discussion, we have failed to reach that common mind. We

can only offer our report to the House of Bishops and the Archbishops' Council to assist them in reaching a decision.

- 8.7 In our own consideration of the issues and the evidence we received, we came to feel strongly that, as the sacramental ministry of reconciliation is an integral part of the ministry of the Church, it is essential to put in place proper training programmes for clergy together with the promised guidance from the House of Bishops. Not to provide such training and guidance heightens the risk of the sacramental ministry of reconciliation being misused, and leaves clergy in a potentially vulnerable position. Moreover, those coming to clergy for this ministry need to be confident that they will be handled in a professional and pastoral way.
- 8.8 In the previous chapter we set out our agreed recommendations which are designed to try and ensure that no priest should exercise this ministry without having undertaken the necessary training for this ministry. Some readers may be surprised that we have not come to an agreed conclusion as to the retention or the abolition of the Seal. Although much of the evidence presented to us was in favour of retaining the Seal, not all of it was. We discussed the pros and cons extensively; and reflected on it between meetings; and have to admit that we failed to reach a common mind on whether or not it should be retained. We are not therefore in a position either to recommend that the Seal be abolished or that it should be retained. We nevertheless offer our report to the House of Bishops and the Archbishops' Council and invite those bodies to reflect on the issues as we have presented them in the foregoing chapters.

APPENDIX 1: SUBMISSIONS TO THE WORKING PARTY

The following people or organisations submitted written representations:

Affirming Catholicism
Anglican Catholic Future
Two anonymous clergy from the Diocese of Birmingham
The Rt Revd Pete Broadbent, Bishop of Willesden
Canon Dr Rupert Bursell, Chair, Legal Advisory Commission
The Revd Andy Croft, Associate Director, Soul Survivor Ministries
Ms Lyndsey De Mestre, Barrister, Lincolns Inn
The Elliott Review⁷⁸ (relevant extracts)
Forward-in-Faith
Mr John Freeman (GS member)
Mr Paul Hancock (former GS member)
The Rt Revd Christopher Hill (former Bishop of Guildford)
Mrs Lois Haslam (former GS member)
The Rt Revd Nicholas Holtam, Bishop of Salisbury
Ms Alana Lawrence (formerly of *Ministers and Clergy Sexual Abuse Survivors [MACSAS]*)
The Revd Canon Nigel LLOYD (former GS member)
The Very Revd Archpriest Maxim Nikolsky, Russian Orthodox Church (General Synod representative)
The Rt Revd Philip North, Bishop of Burnley
The Rt Revd Robert Paterson (former Bishop of Sodor & Man)
Mrs Alison Ruoff (former GS member)
Mr Jack Shelley (GS member)
The Revd Dr Simon Taylor (GS member)
The Revd Paul Tyler, Chaplain HMP Frankland
Mr Adrian Vincent (former GS member)
The Revd Canon Dr Robin Ward, Principal, St Stephen's House, Oxford

The following practitioners of the Ministry of Absolution took part in focus groups in October 2015:

The Revd Canon Rosalind Brown, Residentiary Canon, Durham Cathedral
The Revd Helen Dearnley, Chaplain, National Offender Management Service
The Revd Canon Clare Edwards, Residentiary Canon, Canterbury Cathedral
The Revd Dr Jamie Hawkey, Dean, Clare College, Cambridge
The Revd Alan Moses, Vicar of All Saints Margaret Street
The Rt Revd Jack Nicholls, Assistant Bishop, the Dioceses of Derby & Manchester (former Bishop of Sheffield)
The Rt Revd Philip North, Bishop of Burnley
The Ven John Perumbalath, Archdeacon of Barking
The Very Revd Victor Stock, Priest Vicar, Westminster Abbey (former Dean of Guildford)
The Revd Alison Tyler, Learning & Development Manager, HM Prison Chaplaincy
The Rt Revd Alison White, Bishop of Hull
The Revd Paul Zaphiriou, Vicar of St Mary Magdalene Holloway

⁷⁸ See <https://www.churchofengland.org/sites/default/files/2017-11/Elliott%20Review%20Findings.pdf>

The meeting of Diocesan Safeguarding Advisers at Lambeth Palace on 7 October 2015 included a talk with a group of DSAs about the Seal of the Confessional. 15 of those attending also joined a focus group on this subject. Comments from the day, and thereafter, were submitted to the working party.

The following dioceses responded to a survey about training initiated in July 2015:

Bath & Wells, Bristol, Canterbury, Carlisle, Chelmsford, Chichester, Derby, Ely, Exeter, Gloucester, Guildford, Hereford, Leeds, Leicester, Lincoln, Norwich, Oxford, Salisbury, Sheffield, Southwark, Truro, Winchester and Worcester.

The following theological training institutes also responded:

Cranmer Hall, Cuddesdon (inc OMC, Portsmouth and WEMTC), The Queen's Foundation in Birmingham, St John's College Nottingham, St Mellitus College, St Stephen's House, Westcott House and Wycliffe Hall.

APPENDIX 2: ADDENDUM TO THE REPORT IN THE LIGHT OF THE FURTHER MATERIAL RELATING TO THE ANGLICAN CHURCH OF AUSTRALIA

Developments in Australia since the completion of the working group's report: a note from Prof David McClean, the Chief Legal Adviser, Stephen Slack, and the Deputy Legal Adviser, the Revd Alexander McGregor

1. In chapter 3 of the report we considered attempts that had been made to reform canon law in Australia (see paragraphs 3.11.1-3.11.7). Since the report was concluded further steps have been taken in Australia to amend canon law and the Australian Royal Commission into Institutional Responses to Child Sexual Abuse has reported.

The background in secular law in Australia

2. So far as the secular law is concerned, every State and mainland Territory of Australia has a mandatory reporting statute; many such statutes go back 30 or 40 years. The idea of such legislation originated in the United States in the 1960s and in its earliest forms it was concerned with what were called 'non-accidental injuries' to children. Australian legislation began with the Community Welfare Act 1972 of South Australia which referred expressly only to doctors and dentists; but the reporting duty was extended in 1976 to nurses, teachers and social workers.⁷⁹
3. The current legislation in Australia varies from State to State.
 - a. The statutes vary in their descriptions of what must be reported: for example the Northern Territory *Care and Protection of Children Act* speaks of 'any significant detrimental effect caused by any act, omission or circumstance on (a) the physical, psychological or emotional wellbeing of the child; or (b) the physical, psychological or emotional development of the child'.⁸⁰ Tasmania's *Children, Young Persons and Their Families Act 1997* has a slightly different approach: it defines 'abuse or neglect' to mean '(a) sexual abuse; or (b) physical or emotional injury or other abuse, or neglect, to the extent that (i) the injured, abused or neglected person has suffered, or is likely to suffer, physical or psychological harm detrimental to the person's wellbeing; or (ii) the injured, abused or neglected person's physical or psychological development is in jeopardy'.⁸¹
 - b. The statutes also vary in the threshold for reporting, but most usually the reporter must have a 'reasonable suspicion' of the matters reported.

⁷⁹ For an account and a critique of these developments in Australia and (in social work practice) in England, see J D McClean, 'The Battered Baby and the Limits of the Law' (the seventh Wilfred Fullagar lecture) (1978) 5 Monash Univ LR 1. For the more recent developments, see B Mathews, 'Mandatory reporting laws for child sexual abuse in Australia: A legislative history' (2014: a report for the Royal Commission into Institutional Responses to Child Sexual Abuse).

⁸⁰ *Care and Protection of Children Act 2007 (NT)*, s 15(1) (definition of harm).

⁸¹ *Children, Young Persons and Their Families Act 1997 (Tas)*, s 3.

- c. Finally, the statutes vary in the categories of persons required to report. In the Northern Territory any person who believes on reasonable grounds that a child has suffered or is likely to suffer harm or exploitation must report; failure to do so is a criminal offence.⁸² Most statutes prescribe classes of persons. The list in the *Children's Protection Act 1993* of South Australia includes 'a minister of religion' and 'a person who is an employee of, or volunteer in, an organisation formed for religious or spiritual purposes'.⁸³ However, it is stated that this provision 'does not require a priest or other minister of religion to divulge information communicated in the course of a confession made in accordance with the rules and usages of the relevant religion'.⁸⁴ No other State has a similar reference to religious personnel, but many clergy would be caught by other provisions, for example given their involvement with schools.
4. It may be noted that in Ireland the Children First Act 2015 (which came fully into force in December 2017) does impose a reporting obligation (with no sanction for failure) on any 'member of the clergy (howsoever described) or pastoral care worker (howsoever described) of a church or other religious community'.⁸⁵ In response, the Irish Catholic Bishops' Conference issued a statement in October 2017 noting that 'mandatory reporting is already a requirement for priests, religious, staff and volunteers ministering in the Catholic Church in Ireland' but nothing was said about the canon law requirement as to the secrecy of the confessional. It seems to be assumed that priests will observe canon law rather than the new Act.

Royal Commission into Institutional Responses to Child Sexual Abuse

5. In Australia, the Royal Commission into Institutional Responses to Child Sexual Abuse did refer expressly to the seal of the confessional. The Commission recommended that State and territory governments should amend laws concerning mandatory reporting to child protection authorities to include (inter alia) 'people in religious ministry';⁸⁶ and that
- 'Laws concerning mandatory reporting to child protection authorities should not exempt persons in religious ministry from being required to report knowledge or suspicions formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession'.⁸⁷
6. The Commission also recognised the canon law issue. It said,

⁸² *Care and Protection of Children Act 2007 (NT)*, s 26.

⁸³ *Children's Protection Act 1993 (SA)*, s 11(2)(g) and (ga).

⁸⁴ *Children's Protection Act 1993 (SA)*, s 11(4). *The Act is to be replaced in late 2018 by the provisions of the Children and Young People (Safety) Act 2017. In the new Act the duty to report still applies to ministers of religion (s 30), but the exception as to confessions is omitted.*

⁸⁵ Children First Act 2015, s 15(g).

⁸⁶ Royal Commission into Institutional Responses to Child Sexual Abuse, Recommendation 7.3.

⁸⁷ *Ibid.*, Recommendation 7.4. The Australian Catholic Bishops Conference has not yet formally responded to this recommendation; some individual bishops are reported to have expressed disagreement with it.

‘The Australian Catholic Bishops Conference should consult with the Holy See, and make public any advice received, in order to clarify whether:

- a. information received from a child during the sacrament of reconciliation that they have been sexually abused is covered by the seal of confession
 - b. if a person confesses during the sacrament of reconciliation to perpetrating child sexual abuse, absolution can and should be withheld until they report themselves to civil authorities.’⁸⁸
7. So far as limb a of that recommendation is concerned, we are advised that the seal should be regarded as applying to information received from a child, irrespective of whether the scope of the seal is as set out in paragraph 3.5.4 or 3.5.5 of our report. That is because it is the intention of the penitent at the outset which determines whether the seal applies: see paragraph 3.8.1. The fact that something the penitent discloses during the course of a confession turns out not in fact to be a sin committed by the penitent does not mean that the seal does not apply.
8. Whether that result is acceptable in policy terms depends on the importance that is placed on the confessional providing a safe space for those who have been abused in which the confessor can assist them in understanding that the abuse they have suffered was not their fault, thereby enabling them to go on to make a complaint to the police.⁸⁹
9. As to limb b of the recommendation – whether absolution can be withheld where a penitent who is guilty of abuse will not report him- or herself to the police – the Church of England has already addressed that issue in the *Guidelines for the Professional Conduct of the Clergy*.⁹⁰

The new Australian canonical provision

10. At paragraph 3.11.7 of the report we said
- ‘We understand that since it was passed in 2014 concerns have been raised in Australia about both the workability and the validity of the Australian Canon. ...’
11. Subsequently, the Church Law Commission of the Anglican Church of Australia has concluded that the incorrect procedure was followed in making the 2014 Canon.⁹¹ Matters were then further considered by the Standing Committee of the Australian Synod, its House of Bishops and its Doctrine Commission, which issued a report in March 2016.

⁸⁸ Royal Commission into Institutional Responses to Child Sexual Abuse, Recommendation 16.26.

⁸⁹ See paragraph 2.11 and paragraph 5.6.14.

⁹⁰ The relevant paragraphs of the *Guidelines for the Professional Conduct of the Clergy* are set out in 1.8; see *Guidelines* paragraph 3.6. See also paragraph 5.6.7.

⁹¹ Article 28 of the Constitution of the Anglican Church in Australia provides that any bill which deals with or concerns the ritual ceremonial or discipline of that Church must follow a ‘special bill’ procedure. This involves a two-thirds majority in each House of the General Synod (which meets every three years), a reference to diocesan synods, and in some cases further votes requiring a two-thirds majority at a later session of the General Synod. This procedure was not followed when the 2014 Canon was made.

12. The Doctrine Commission recommended that priests be required to keep all matters disclosed in the context of a confession strictly confidential, except in cases of grave criminal offences involving the abuse of a vulnerable person or persons. After appropriate consideration, the strong imperative of confidentiality might be overridden in these exceptional circumstances. It will be seen that this would provide a wider exception to the seal that that proposed in the 2014 Canon.
13. Before the meeting of the 17th Session of the General Synod in 2017, soundings indicated that while a majority of dioceses were likely to accept a new Canon based on the Doctrine Commission's recommendation, some would only accept one based on the 2014 proposal, i.e. limited to child abuse. In the event two Canons were passed, reflecting these different views: it will be for the diocesan synods to decide whether to adopt either Canon.
14. Canon 16 of 2017 follows the model of the 2014 proposal; Canon 17 goes further. Each Canon is technically one amending the Canon concerning Confessions 1989 which reflects the position still applying in the Church of England.
15. Each of the 2017 Canons continues to provide as the general rule:
 'Subject to section 2A, if any person confess his or her secret and hidden sins to an ordained minister for the unburdening of conscience and to receive spiritual consolation and ease of mind, such minister shall not at any time reveal or make known any crime or offence or sin so confessed and committed to trust and secrecy by that person without the consent of that person.'
16. Each Canon creates exceptions to that general rule, which permit, but do not require, the priest to report certain information obtained in the context of a confession. It follows that neither Canon would satisfy any mandatory reporting legislation.
17. The new **Canon 16** provides an exception to the seal in relation to criminal offences involving child abuse. Canon 16 in substance replicates the abandoned 2014 Canon, the material provisions of which were described in the working group's report at paragraphs 3.11.2-4. (The drafting of Canon 16 is superficially different from the 2014 Canon.) All that is said in paragraphs 3.11.5 and 3.11.6 of the report therefore remains pertinent to the new Canon 16. For the reasons fully set out there, similar legislation could not be recommended in England.
18. The new **Canon 17** goes further than Canon 16 in two respects.
19. First, as well as criminal offences involving child abuse, the exception to the seal under Canon 17 also extends to criminal offences involving abuse of a 'vulnerable person' (as defined in the Canon).
20. Secondly, Canon 17 provides an additional exception to the seal in relation to 'other conduct'. 'Other conduct' is defined in the Canon as 'conduct confessed by the penitent to an ordained minister which does not constitute a grave offence, but gives the ordained minister reasonable grounds to

believe that a vulnerable person is at risk of significant harm.’ (‘Significant harm’ is not defined.)

21. Because Canon 17 includes everything that is covered by Canon 16 – and which was covered by the 2014 Canon – what we have said in paragraphs 3.11.5 and 3.11.6 of the report about the 2014 Canon apply to that aspect of Canon 17.
22. As to what Canon 17 says about ‘other conduct’, that is precisely the sort of provision which we considered in chapter 6 of the report (possible legislative options) and concluded was unworkable for the reasons set out there. In particular, this additional provision in Canon 17 does not meet the requirements we set out in paragraph 6.3.
23. The concept of ‘other conduct’ seems unacceptably wide and almost entirely subjective, the test that is to be applied being left entirely to the confessor to formulate for him- or herself. It therefore fails to ensure that only conduct which the Church considers should not be protected by the seal may be disclosed. And it does not enable the confessor to be clear whether any particular misconduct is or is not subject to the seal (thereby exposing the confessor to the risk of unintentionally committing misconduct).
24. The concept of ‘significant harm’ is equally problematic for the reasons set out in paragraph 6.5. It is far too uncertain a concept to form the basis of a qualification to what is otherwise an absolute duty of confidentiality.
25. We acknowledge the time and effort spent by our Australian colleagues on this matter, but we nonetheless judge the 2017 Canons to be flawed; as with the 2014 Canon, similar legislation could not be recommended here.

David McClean
Stephen Slack
Alexander McGregor

February 2018

**Theological Note on recent developments within the Anglican Church of Australia
from the Secretary for Ecumenical Relations and Theology,
Dr Jeremy Worthen**

26. In 'Confessions and Confidentiality', dated March 2016, the Doctrine Commission of the Anglican Church of Australia proposed that an exception should be made to the confidentiality of confessions as set out in the ecclesiastical law of the Anglican Church of Australia. This exception is defined as enabling (not compelling) priests who have heard a confession to disclose what has been said in cases of 'grave criminal offences involving the abuse of a vulnerable person or persons'.
27. The case made for this change in the Doctrine Commission paper appears to hinge on two arguments. The first is historical: that there was provision for an exception within the original 1603 Canon, and therefore providing for an exception is consistent with Anglican tradition regarding confession. This argument is considered at various points in the report of the Working Party, including chapter 3, chapter 4 and chapter 5. No new perspective is given in the Doctrine Commission paper that adds to this careful treatment.
28. The second argument in the paper is ethical and is summarised in the phrase 'the priority of the vulnerable'. It appears to be intended to convey a position along the following lines:
- a) where a person has responsibilities towards two different persons or groups of persons, and
 - b) there is a tension between those responsibilities, and
 - c) one of the two persons or groups of persons is vulnerable, then
 - d) the responsibility towards the vulnerable person or group of persons should take priority.
- It is claimed that 'the priority of the vulnerable', as thus defined, was 'consistently' reflected in the ministry of Jesus, though no examples or evidence are given.
29. This second argument seems to restrict the responsibilities for a priest hearing a confession to the person making the confession on the one hand and on the other to any person or persons who may in the past have been abused by them or could be in the future. The idea that the priest might have a responsibility to the church as a whole regarding the exercise of this ministry, or to vulnerable people who might value the assurance of the Seal, is not deemed relevant.
30. It would be possible to argue, for instance, that to be able to speak of what burdens one's conscience to a priest with total confidence that what is said before God will not be disclosed to any other human being and then to receive the assurance of God's mercy is a significant good. But once any exception is made to confidentiality in this context, the good no longer exists, because the confidence cannot be total after all. The confessor can only be sure that what is said in confession will remain under the Seal *after* the confession has been completed and he or she has come to a view as to

whether anything mentioned in it might have a bearing on 'grave criminal offences involving the abuse of a vulnerable person or persons'. The penitent will never know whether the confession actually took place under the Seal unless the confessor informs them through some form of follow-up communication. Therefore the good of being able to speak of what burdens one's conscience to a priest with total confidence that what is said before God will not be disclosed to any other human being and then to receive the assurance of God's mercy would be lost for everyone, including all vulnerable people within the church.

31. Of course, one can make the counter-argument that the good thereby lost for all (and not just for the abuser who happens to confess) is nonetheless outweighed by the good of the increased opportunities for vulnerable people to be protected. That response however raises the question of how the Doctrine Commission understands the priority of the vulnerable in relation to other goods and moral values. Does it mean that the imperative to take any conceivable action that could be deemed to help protect the vulnerable always overrides any other moral or legal norm? Would it justify e.g. lying, or using unauthorised violence?
32. Versions of the arguments for change presented in the Doctrine Commission's paper are set out in chapter 5 of the Working Party's report, at paragraphs 5.2.1-5.2.5; indeed, one might say they are developed rather more fully. The 'Possible responses' section in turn, beginning at paragraph 5.6.1, contains much relevant material for their evaluation, particularly at paragraphs 5.6.13-14.
33. In conclusion, the two paragraphs conveying the arguments used in the Doctrine Commission paper do not present substantial new theological perspectives not already covered in the specifically theological material contained in the draft report from the Working Party, which runs to over 20 pages.

Jeremy Worthen
Secretary for Ecumenical Relations and Theology

**Briefing Note to Seal of Confession Working Group:
a note from the National Safeguarding Adviser, Graham Tilby**

34. The purpose of this briefing note is to outline the developments in respect of the Independent Inquiry into Child Sexual Abuse (IICSA) and the Australian Royal Commission (ARC) that relate to the Seal of Confession, notably in respect of their respective Anglican investigations.

Independent Inquiry into Child Sexual Abuse (IICSA)

35. IICSA published a 'Rapid Evidence Assessment into Child sexual abuse within the Catholic and Anglican Churches' in November 2017. The report outlines what it believes to be factors contributing to the occurrence of child sexual abuse in the Anglican Churches. The report highlights three key areas – greater opportunity, the position of authority, and an ineffective response.
36. The report looks at the response to child sexual abuse by the Anglican Churches, highlighting a number of themes: unwillingness to accept the existence of clergy abuse; protecting the Churches assets and reputation; prioritisation of forgiving the abuser over supporting the victim; use of internal discipline systems; confession and confidentiality; and structural and cultural challenges to implementing child safeguarding policies.
37. In the section entitled 'Confession and confidentiality', the report outlines the current position of the Church of England as defined by Canon Law and guidelines for the *Professional Conduct of the Clergy* (2015). It also refers to the development within the Australian Anglican Church, acknowledging that these have yet to have a measurable impact.
38. It is likely that via its 'Truth Strand', IICSA has already heard or will hear direct evidence from survivors of abuse with regards to the seal of confession. This may reflect the evidence that the Working Group has heard already but the Church should expect that to hear evidence that raises concerns about the seal of confession.

Australian Royal Commission (ARC)

39. During the institutional review of the Anglican Church institutions public hearing, evidence was heard in respect of the how the seal of confession has come to be adopted in the Australian Anglican Church:
- When the Anglican Church of Australia was formed in 1962, it inherited the Canons of the Church of England, 1209 including Canon 113.
 - In 1989, the General Synod repealed Canon 113 and replaced it with the Canon Concerning Confessions 1989, which established the seal of the confessional except with the consent of the person seeking confession. A canon requiring the disclosure of confessions of child sexual abuse was debated but not put to a vote.
 - In 2006 and 2011, the bishops of the Anglican Church developed guidelines to provide clergy with information about hearing confessions relating to child sexual abuse. These guidelines provide that absolution is to be withheld from 'penitents' who disclose child sexual abuse and that

such confessions are heard by priests holding a special licence of authority.

- In 2014, the Doctrine Commission of the Anglican Church of Australia concluded that Canon 113 'established both that such confidentiality is of utmost importance, and that exceptions could be made under extraordinary circumstances.' The Doctrine Commission concluded that there are 'clear deficiencies with the principle of absolute confidentiality' including that absolute confidentiality privileges the penitent confessing to serious crimes above victims and that the pastoral priority in all matters of abuse must lie with victims and potential victims.

Absolute confidentiality should not apply to confessions of serious crimes and other acts that have led or may lead to serious or irreparable harm, including domestic violence and sexual offences against children. In these cases, a minister should encourage the penitent to go to the police voluntarily, and accompany the person to ensure that this happens and to provide support. If this does not happen then the minister may reveal the contents of the communication to the appropriate civil or church authorities only.

- On 2 July 2014, the General Synod voted to amend the Canon Concerning Confessions 1989 so that clergy would no longer be required to maintain the seal of confession in relation to information about serious crimes, as follows:

where a person confesses that he or she has committed a serious offence an ordained minister is only obliged to keep confidential the serious offence so confessed where the ordained minister is reasonably satisfied that the person has reported the serious offence to the police ...

- During the Institutional review of Anglican Church institutions public hearing, evidence was heard that due to a procedural issue relating to the validity of the above amendment, the matter would be revisited at the next General Synod with the proposal to abolish any confidentiality requirement in relation to confessions of child sexual abuse, child pornography or 'a grave offence against a vulnerable person'. Plans would be put to General Synod voted to adopt an amendment to the canon designed to be 'permissive ('may reveal'), rather than coercive ('must reveal')'. This means that the priest can reveal the contents of the confession to church and civil authorities, but there is no requirement.
- General Synod passed two amending canons relating to confession at its 17th Session in September 2017. The explanatory memorandum accompanying these canons notes that 'all dioceses are likely to support a modification to the [Canon Concerning Confessions 1989] to provide a limited exception to confidentiality in relation to a confession of child abuse'. However, it says most, but not all, dioceses are likely to support a further exception to confidentiality for 'non-criminal conduct that puts "a vulnerable person at risk of significant harm"'. As a result, dioceses can adopt either the:

- Canon Concerning Confessions (Revision) Canon 217 that creates the exception to confidentiality for a 'grave offence', defined as conduct that amounts to 'child abuse'.
 - Canon Concerning Confessions (Vulnerable Persons) Canon 217 that expands the definition of 'grave offence' to 'include abuse of a vulnerable person, and expands the exceptions to confidentiality to include non-criminal conduct that is reasonably believed to put a vulnerable person at risk of significant harm'.
40. The ARC heard direct evidence from those who had suffered abuse about how the seal of confession had been used by priests to continue their abuse and maintain the silence of victims or failed to report abuse to the authorities even when the law of mandatory reporting was in force.
41. In Volume 7, Improving institutional responding and reporting, Chapter 2, 'Reporting institutional child sexual abuse to external authorities' and the Criminal justice report, we recommend that people in religious ministry should be subject to obligations to report under mandatory reporting laws and the proposed 'failure to report' offence, including when they have knowledge or suspicions of child sexual abuse formed on the basis of information received in connection with religious confession (Recommendation 35). These recommendations will help to ensure that risks to the safety of children are minimised, by requiring that disclosures of child sexual abuse in confession are reported to civil authorities.

Mandatory reporting

42. The Government conducted a formal consultation on 'a duty to act and duty to report child abuse' (mandatory reporting) in 2016, but has yet to develop a formal policy position on this since. It is likely that it is awaiting the outcome of IICSA, but clarity is being sought in the interim from the Home Office.⁹²
43. The National Safeguarding Panel has recommended that the Church of England undertake further work on their own policy position, having strengthened it the expectation to report abuse to the authorities within its practice guidance, 'Responding to, assessing and managing safeguarding concerns or allegations against church officers', published in October 2017. The working group will be established with the support of the National Safeguarding Steering Group.

Concluding remarks

44. I remain of the view that the Seal does offer an opportunity for those who have been abused to seek confession and come to an understanding with the Confessor and God that it was not their fault. Indeed, having taken part in facilitating many of the focus groups with those who hear confession regularly, I was struck by their evidence and the passion in which some of them articulated it. Indeed, increasingly this matter has become a matter for

⁹² On 5 March 2018 the Government indicated, following the consultation, that it would not introduce mandatory reporting requirements:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/685465/Reporting_and_acting_on_child_abuse_and_neglect_-_response_to_consultati....pdf

conscience for myself, namely that whilst I can see the benefits for the many, I cannot in my professional capacity defend the Seal where it might actually allow the continued perpetration of abuse against a child.

45. My visit to Australia has led me to reflect further on whether there can be a change in the law rather than a position of retain or abolish the Seal. In the light of this, I do now believe that it is possible to change the law to permit confessors to break the seal under certain circumstances. I do accept that defining the circumstances in which they would be permitted to is not at all straightforward. I accept that the view of legal professional colleagues is that such a change in law is highly problematic and untested. Arguments such as where do you draw the line are indeed persuasive. Why would we stop at child abuse, what about potential acts of terrorism or other forms of abuse against vulnerable adults?
46. Quite simply I am not a theologian or a lawyer. I am a safeguarding professional who for nearly 28 years has been committed to protecting children and young people from harm. This has included direct involvement in the UK & Ireland *Stop it Now!* Project, hosted in this country by the Lucy Faithful Foundation. Integral to this work was the Home Office sponsored Helpline for those wanting to talk about their sexual thoughts and actions towards children, both adults and young people. The Helpline is predicated on a principle of confidentiality, where those giving advice would seek to encourage callers to deal appropriately with their thoughts and behaviours in order to safeguarding children, much like a confessor might do with a penitent. To take responsibility for their behaviour and to address it. However, even in such circumstances, if a child were to be named or identified by a caller and if all attempts failed to get the caller to address this, namely report it to the police, the confidentiality of the caller would be breached and action taken to safeguard a child at immediate risk of harm. The key issue here is then whether the child is identifiable. In lots of cases they are not, for example, someone calling about downloading indecent images of children.
47. Changing the law to be permissive would allow the confessor to act on their conscience to protect a child without any fear of consequences from either the Church or God. It would in short place a higher value on the welfare of the child than it would upon the welfare of the penitent, particularly in circumstances when the penitent lacks remorse or any intention to change their behaviour. I do not believe that such a change in law would impact those who are victims or survivors of abuse, although there will be circumstances when it might be necessary to break the seal in order to protect a child. Given the average time it takes someone to disclose abuse, the likelihood of risk to others is reduced.
48. Regardless of whether there is a change in the law or the canon needs to be abolished, I fully support the recommendations of this report which I believe will help to provide further clarity for those who are confessors and those who are seeking confession. These will provide for a strengthened position for all concerned.