

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

Lullington with Orchardleigh: Report of the Independent Reviewer

Introduction

1. On 25 September Mr Simon McKie wrote to put me on behalf of the PCC of Lullington and Orchardleigh, a parish in the Diocese of Bath and Wells which has a resolution in place under the House of Bishops' Declaration of 2014. The purpose of his letter was to put me on notice that a grievance would be coming to me following a decision taken by the acting Bishop of Bath and Wells¹ earlier that month to provide arrangements under the Declaration that the PCC regarded as inadequate both as to form and substance.
2. On 3 November Mr McKie duly submitted to me a grievance running to 271 pages, with supporting material in appendices constituting a further 817 pages. Having studied the extensive material I concluded that the grievance fell within the scope of the Regulations made by the House of Bishops under Canon C 29 and that I therefore needed to carry out a review under Regulation 18 to determine whether the grievance was justified, partly justified or unjustified.
3. The grievance catalogues a number of alleged failures by the Bishop of Bath and Wells and subsequently by the acting bishop over a four year period. Some of these are very recent while others stretch back to the time when the PCC passed a resolution under the Declaration on 26 October 2016. Under the Regulations a PCC is normally expected to bring a grievance within three months of the alleged action or omission. I do, though, have discretion to waive the time limit in exceptional circumstances and if I am satisfied that there is good reason to do so.
4. In this instance I am satisfied that it would make little sense to review the decision taken by the acting Bishop of Bath and Wells this autumn on the arrangements to be made for the parish under the Declaration without also considering the actions taken by the bishops since October 2016. As will become apparent from the narrative below, the sequence of events hangs together.
5. I would in any event have been loath to penalise a parish for holding back from submitting a grievance until the possibility of an amicable local settlement had disappeared. The formal step of submitting a grievance under the Regulations should generally be a last resort. That is, perhaps, why this is only the second grievance since the Regulations came into force in 2014 (though there have also been four inquiries into concerns raised about the operation of the Declaration).

¹ The Bishop of Bath and Wells announced on 3 August that he was suffering from acute myeloid leukaemia and that the Bishop of Taunton would be acting diocesan bishop while he was absent receiving treatment. The legal basis for the acting bishop's role and for her earlier exercise of powers by an instrument of delegation from the diocesan bishop in 2015 has been questioned by the PCC. I return to this later in the report.

6. Under the Regulations I am required to complete my report within two months unless I am unable to do so, in which case I must give my reasons for taking more time. In all the circumstances I concluded that it would be in the interests of all concerned if I were able to conclude this report promptly, notwithstanding the complexity of the material and the need to address some questions of clarification to McKie and the acting bishop. I am grateful for their timely responses. With the agreement of the parties the report is being published slightly later than the target date of Sunday 3 January to avoid the immediate Christmas and New Year period.
7. With a view to establishing an agreed statement of facts I have also shared in draft with the acting bishop and Mr McKie the narrative part of this report (though not the analysis, decision and recommendations) and have taken account of the comments made. The narrative is intended to provide a dispassionate and inevitably selective account of the sequence of events and the context which lie behind the grievance. It does not attempt to summarise or assess the arguments adduced in support of the grievance; they are for later in the report.

Narrative

Setting the scene

8. The parish of Lullington with Orchardleigh is one of four rural parishes in the benefice of Beckington in the Frome Deanery. The others are Beckington with Standerwick, Berkley and Rodden. According to the benefice profile prepared in 2019, the total benefice population is just over 3000 with 152 on one or other of the four electoral rolls and an average Sunday attendance of 83.
9. In terms of population Lullington with Orchardleigh is the smallest parish of the four with a population of 50 people. In 2018/19 it also had the smallest electoral roll (16). Its usual Sunday attendance of 27 is, however, the second largest in the benefice. All services are according to the Book of Common Prayer. At Christmas somewhere between 100 and 150 usually attend its carol service. The most distinctive feature of its ministry has been its active promotion of itself as a venue for weddings and baptisms. In each year from 2012 to 2018 between 50 and 100 couples had been married there, making it one of the busiest churches for weddings in the country.
10. According to the benefice profile the parish had reserves at the end of 2018 of around £100k, though it has responsibility for two grade 1 listed buildings where the cost of conservation work over the coming years was expected to be around £250k.
11. The recent history of the benefice has been difficult. In 2006, a rector died suddenly after only a year in office. His successor, after some years in post, was then suspended on 26 April 2015 in connection with alleged sexual misconduct. On 11 May 2016 he was acquitted at the Crown Court of sexually assaulting a woman but remained

suspended pending a separate investigation under the Clergy Discipline Measure until eventually agreeing to resign his office on 30 September 2018. Throughout this long period and the subsequent vacancy, the benefice relied heavily on the ministry of retired clergy and of its five readers.

12. The section of the 2019 benefice profile on Lullington with Orchardleigh begins by saying : *'the parish can best be described as 'very different'*. To find two grade 1 listed buildings in a parish of only 50 inhabitants, an average Sunday attendance that is more than half the parish population and a more active wedding ministry than most other churches in England is indeed an unusual if not unique combination.
13. The parish is also different in another way in that it has for some years had resolutions in place concerning women's ministry. It had passed Resolutions A and B under the 1993 Measure on 5 February 2004² and, following the repeal of that legislation, passed a resolution under the House of Bishops' Declaration on 26 October 2016 by 4 votes to 2 (with one PCC member absent). The decision was communicated by letter to the Bishop of Bath and Wells.
14. With an appointment process in prospect following the resignation of the then rector in September 2018 the PCC discussed the issue of women's ministry again on 23 October 2018. It voted by 5 votes to 2 against reconsidering the earlier resolution. A short document was prepared by the PCC secretary and shared with the archdeacon in response to her request for an explanation of the nature of the theological conviction underlying the resolution.

The recent appointment process

15. The appointment process did not move quickly. It was not until 5 June 2019 that the four PCCs held the requisite section 11 meeting to agree various procedural matters in relation to the appointment process. In preparation for that meeting there was a discussion on 20 May between the archdeacon and the Lullington and Orchardleigh PCC and a subsequent exchange of emails between one of the churchwardens and the registrar. These explored the implications of the fact that three of the parishes in the benefice were open to the ministry of a woman priest and one not.
16. The archdeacon's notes reveal some diversity of view, with some from the resolution parish saying they would find it hard to remain if a female incumbent were appointed and others saying that everything would turn on the adequacy of the arrangements made for the parish in accordance with the resolution. The archdeacon seems to have established, however, that the PCC would seek to agree a benefice profile with the three other parishes and that its representatives would not necessarily block the appointment of a female rector provided adequate arrangements were made for the parish. What might count as adequate was not determined.

² Resolution A by 2 votes to 1 with 6 Abstentions and resolution B by 5 votes to 1 with 3 abstentions.

17. On 21 May one of the churchwardens asked the registrar to advise whether the section 11 meeting would be able to determine whether to advertise the rector appointment as open only to male candidates. The registrar advised that it wouldn't. This was because, in his view, the bishop (who on this round was the patron with the right of presentation) would be vulnerable to a discrimination claim under the Equality Act if he included such a limitation. This, he argued, was because the conviction of the parish was not the conviction of the benefice as a whole³.
18. At the section 11 meeting the four parishes were able to agree a benefice profile, which included specific mentions of the resolution passed by Lullington with Orchardleigh under the Declaration. They also agreed procedural matters, including the involvement of two representatives from each parish in the selection process. Of the two representatives appointed by Lullington with Orchardleigh, one was a reader who had voted for the resolution and one a church warden who had opposed it.
19. The parishes decided to request a section 12 meeting, which the Bishop of Bath and Wells attended at Rodden on 27 June. An aide-mémoire made by the archdeacon following the meeting records that there was some discussion of the diversity of views across the benefice in relation to the ordained ministry of women.
20. In particular it says: *'L and O – actual parishioners, those who live here, completely pro-women's ordained ministry. But if woman appointed then several L and O will resign. Beckington – coming from other direction, supportive, don't want to exclude women or men who would be put off if only male.'* The bishop is recorded as saying that: *'Assurance can be given about proper provision for pastoral/sacramental ministry, much more difficult re headship.'* There appears not to have been any discussion about what the arrangements would be for Lullington with Orchardleigh under the House of Bishops' Declaration in the event of a woman being appointed.
21. After two rounds of advertising interviewing for the appointment took place on 6 February 2020. There was one candidate, a female priest. She had met some people from the benefice on 5 February, accompanied by her female partner.
22. Following the interview on 6 February Mr McKie, a reader in the benefice, who at that time was mainly based at Rodden rather than Lullington with Orchardleigh, wrote to the bishop on 19 February on behalf of himself and others. Mr McKie had not been one of the parish representatives but he and other readers in the benefice had heard that the appointment of a female rector was in prospect.
23. The letter asked the bishop not to proceed with the appointment given the Lullington with Orchardleigh resolution and the fact that, according to Mr McKie, four of the

³ The registrar's view is contested by Mr McKie and I shall return to this point later.

five readers in the benefice had grave reservations about appointing a female rector. It also suggested that a larger number of people in the benefice would be concerned that the person in prospect was, according to material on the internet, an active campaigner for a change in the Church of England's teaching on homosexual practice. It predicted that a majority of readers and some of the retired clergy would have difficulty in continuing in ministry if the appointment proceeded.

24. The bishop replied on 27 February, following a meeting with the archdeacon and area dean. He said that, in the light of the wishes and decision of the selection panel, which predominately consisted of the parish representatives, the appointment would proceed. On Sunday 1 March it was announced that Prebendary Sharon ('Ronnie') Crossman from the Diocese of Salisbury was to be the new rector.

The search for arrangements-phase 1

25. Following the announcement a number of those from Lullington with Orchardleigh who had supported the resolution under the Declaration discussed with Mr and Mrs McKie what was now to be done. No one in the parish had any experience of the operation of the House of Bishops' Declaration and it was agreed that Mr and Mrs McKie (partners in a tax advisory practice, both qualified lawyers – Mr McKie is also an accountant – and authors of books on aspects of tax law) would do some research in order to enable the parish to respond in an informed way when the bishop came forward with arrangements consistent with the parish's theological conviction concerning the ministry of women.
26. Mr McKie has continued to advise the Lullington with Orchardleigh PCC through all the ensuing discussions and is now a member of it⁴. The length and quality of the supporting material and arguments submitted in connection with this grievance are clearly the result of the exceptional personal effort and expertise that he has expended on behalf of his PCC colleagues.
27. On 26 April, a letter was sent from two of the churchwardens⁵ to the diocesan bishop. It enclosed the statement of the parish's theological conviction that had been sent to the archdeacon in 2018. The letter noted that Prebendary Crossman was to be licensed on 9 July⁶ and that the bishop had not yet proposed any arrangements for the parish in accordance with the Declaration. Without going into detail it offered some ideas for what these might be.

⁴ He was co-opted on 11 September and appointed to the PCC by the APCM on 20 October as a reader licensed to the parish.

⁵ It appears that the parish has had four churchwardens, one of whom is supportive of the ordained ministry of women. He decided in June to resign as warden, given the parish's wish to receive episcopal ministry from someone other than the Diocesan Bishop..

⁶ The decision to license initially as priest in charge was in line with the approach being adopted across the diocese during the COVID restrictions. The intention was to hold services of institution once face to face worship was once again possible.

28. It also suggested that the Bishop of Ebbsfleet (with whom Mr McKie had had initial discussions) might be invited to provide episcopal ministry for the parish. This was not because of difficulty with the diocesan bishop but to put in place arrangements that would be durable irrespective of the gender of any eventual successor.
29. It was 8 June before the bishop's office was ready to have exploratory discussions with three representatives of the parish, by which time Prebendary Crossman had moved into the rectory. The bishop's chaplain noted the parish representatives' suggestions. He also checked that the parish would wish to receive ministry from the Bishop of Ebbsfleet rather than the Bishop of Maidstone.
30. The PCC met on 22 June. At the beginning of the meeting a motion was passed removing as vice chair of the council the churchwarden who was in favour of the ordained ministry of women and replacing him with a churchwarden who was not.
31. The PCC then formalised its proposals including for episcopal ministry from the Bishop of Ebbsfleet and the appointment of a male priest to 'exercise all the functions of the rector in the parish.' The council did not wish the rector to take services in the parish at all, except possibly weddings and funerals at the request of the families concerned and with the agreement of the male priest. These proposals were communicated to the bishop's chaplain.
32. On 26 June, the Bishop of Bath and Wells sent a holding letter to the new vice chair of the PCC to say that some of the parish's proposals raised substantial matters that needed further consideration not least in relation to the rights and responsibilities of an incumbent. He added that he might not be able to reach a decision before Prebendary Crossman's licensing on 9 July.
33. The vice chair responded on 30 June at some length expressing alarm that matters were still to be unclear when the licensing took place. The letter included a recital of alleged failures in implementing the House of Bishops' Declaration and delays in responding to points raised in correspondence from the PCC. For the first time mention was made of the possible need to submit a grievance to me if matters were not quickly and satisfactorily resolved.
34. The bishop responded on 3 July to confirm that he had been in discussion with the Bishop of Ebbsfleet who had agreed to provide episcopal ministry for the parish. He also reported conversations with Prebendary Crossman in which she had confirmed her willingness to work consistently with the resolution. He did not, however, go into the detail of what the proposed arrangements for ministry within the parish might look like, suggesting that there should be a round table discussion with all concerned, including himself and the Bishop of Ebbsfleet.

35. Mr McKie responded directly and robustly to the bishop on 6 July after discussion with the PCC vice-chair. The letter reiterated the PCC's concerns about the lack of clear answers from the diocese with only three days to go before the licensing and urged a very early date for the proposed meeting. The meeting was subsequently set for 13 July.
36. On the morning of 9 July, with Prebendary Crossman's licensing due for later that day, the bishop informed the PCC through Mr McKie that he had added a qualification to Prebendary Crossman's licence so that it read '*and to perform all ecclesiastical duties belonging to that office saving unto Ourselves provisions for the Parish of Lullington with Orchardleigh in consequence of their resolution under the House of Bishops' Declaration.*'
37. The Zoom meeting of 13 July lasted for nearly two and a quarter hours. It was attended by the Bishops of Bath and Wells, Taunton and Ebbsfleet, the Archdeacon of Wells, the Diocesan Bishop's Chaplain, Prebendary Crossman, the PCC vice chair and Mr McKie. Although the discussion was wide ranging, the PCC representatives were disappointed that the diocesan representatives appeared unready to address the key issues that were on the table and still some way from offering clear proposals.
38. It emerged that, while there were examples from elsewhere of arrangements for a resolution parish within a multi parish benefice that constituted a team ministry, there appeared to be no off the shelf solution to the situation where there was only one stipendiary priest in a multi-parish benefice containing a resolution parish.
39. The meeting also revealed significant differences of view between the parish representatives on the one hand and other participants on the other over the extent to which the rector could be expected to stand back from operating in the resolution parish. While there was agreement that she would not exercise functions which only priests can carry out (presiding at the sacraments, pronouncing the absolution or priestly blessing) there was disagreement over the parish's suggestion that she should not personally exercise ministry in the parish as the incumbent save in very limited circumstances and, in particular should not lead Morning or Evening Prayer or attend PCC meetings.
40. It was agreed that all concerned would reflect further and that another early meeting would be arranged. This took place on 23 July and lasted for an hour and three quarters⁷. The previous day the diocesan bishop's office had circulated a paper from the registrar analysing an incumbent's responsibilities and the circumstances in which they could lawfully be delegated to someone else. Mr McKie responded that he saw nothing in the analysis which need prevent the implementation of the arrangements that he had proposed.

⁷ The Bishop of Taunton was on leave and did not attend.

41. The 23 July meeting was regarded by parish representatives as more constructive in that it systematically worked through the proposals made by the PCC on 22 June. While agreement was not reached on specific points, clarifications were offered and positions explored. In addition the diocesan bishop agreed to Mr McKie's proposal that the next step should be for him to have direct discussions with the registrar.
42. Just before the meeting, on 21 July, the Bishop of Bath and Wells had written to the PCC secretaries of the benefice to announce that the Bishop of Ebbsfleet was to provide episcopal ministry for Lullington with Orchardleigh. He also summarised the requests that the parish had made regarding the provision of priestly ministry in the parish. He noted that he was '*considering the legal and practical implications of the PCC's request*' and also needed '*to have regard to any views that your PCC may have on the arrangements that Lullington with Orchardleigh are requesting.*' He asked for comments by 31 July or as soon thereafter as possible.
43. On 29 July, the bishop wrote a letter of apology to the vice chair of the Lullington with Orchardleigh PCC for the fact that he had not invited the Bishop of Ebbsfleet to provide episcopal ministry for the parish at an earlier point. He also offered the thought that it might have turned out to be a blessing that Prebendary Crossman had been appointed before arrangements were settled since this had enabled her to be part of the discussions. He noted the New Testament principle of grace above law. Nevertheless he accepted that '*to have made adequate provision in a timely way would have ensured the parish's security and stability would have been protected and I am sorry that this was not the case.*'
44. This was the bishop's final involvement in the exchanges. Five days later, he announced that he was having to step back for a while in order to receive treatment for leukaemia, which had just been diagnosed.

The search for arrangements-phase 2

45. As the acting diocesan bishop⁸, it now fell to the Bishop of Taunton to oversee attempts to bring discussions to a successful conclusion. The next step was for Mr McKie and the registrar to have the agreed lawyer to lawyer discussions. In preparation for this Mr McKie sent to the Registrar on 6 August a 71 page paper.
46. The discussion, which took place on 11 August, went badly. The nub of the difficulty was that Mr McKie regarded it as '*absolutely fundamental that legally enforceable arrangements are made*' whereas the Registrar said that he intended to incorporate any arrangements in a memorandum of understanding.

⁸ Though see footnote 1.

47. Mr McKie believed that the arrangements needed to be incorporated in a deed. This would, he believed, provide clarity, deter breaches in what had been agreed and provide the potential for remedy, by way of litigation, in the event that a breach, nevertheless, occurred. He said that it was quite clear that *'it was intended by Bishop Hancock that the implementing steps should have legal force'*. Without entering into the legal arguments advanced by Mr McKie, the registrar said that a memorandum of understanding was the appropriate vehicle for setting our arrangements made under the Declaration. He declined to consider Mr McKie's draft deed.
48. After this, hopes of any agreed outcome rapidly receded. Mr McKie wrote to the acting diocesan bishop⁹ on 12 August urging her to intervene to address the fundamental difference that had emerged over enforceability. By the time that the bishop and Mr McKie spoke on the phone on 25 August the registrar, after discussion with the diocesan chancellor, had concluded his drafting of the memorandum of understanding and, on 21 August, the acting diocesan bishop had sent it for the churchwardens of the benefice parishes to consider¹⁰. In her covering letter she had said that she intended to have further phone conversations with the Bishop of Ebbsfleet, the archdeacon, Prebendary Crossman and Mr McKie the following week.
49. In the 25 August conversation Mr McKie made it clear that enforceability was non-negotiable for the PCC. He considered that it was required by the Declaration. Without it the bishop would have failed to fulfil the duty to make arrangements for a resolution parish.
50. He also expressed frustration over what he saw as a lack of clarity over the bishop and registrar's reasoning. Were they saying that proceeding by way of deed rather than memorandum of understanding was impossible or merely, in their view, undesirable? He now saw the submission of a grievance as inevitable, in the absence of some change in the bishop's approach.
51. On 26 August, the acting diocesan bishop indicated that the registrar, having consulted the diocesan chancellor and the head of the Legal Office at Church House Westminster, held to the view that a memorandum of understanding was the appropriate way forward¹¹. She outlined the further steps she was taking so that the

⁹ See footnote 1.

¹⁰ Mr McKie protested to the bishop for circulating a draft which the PCC in question regarded as inadequate.

¹¹ The single exchange with the head of the Legal Office had in fact been an email from the registrar on 6 July asking two questions, to which the head of the Legal Office had responded the following day. The questions were whether there was an off the shelf solution for a situation like this and whether arrangements made under the Declaration could be included in the incumbent's statement of particulars. The head of the Legal Office had replied in the negative to both questions, though had said that a mention of the arrangements in the statement of particulars might be possible if they were set out in a memorandum of understanding. He had not been asked to express a view on the range of options more generally nor on the specific question of enforceability, which had not surfaced at that stage. The registrar had subsequently consulted the diocesan chancellor on more than one occasion but the head of the Legal Office had had no involvement after 7 July. To the extent that the acting diocesan bishop's words implied further consultation of the head of the Legal Office they were misleading.

memorandum could be finalised. She also, in response to an earlier question from Mr McKie confirmed that she would not be making a date for Prebendary Crossman's induction as rector '*until such time as we have such arrangements in place.*'

52. After further exchanges between Mr McKie and the bishop, the Lullington with Orchardleigh PCC met on 11 September. The six members present unanimously approved various resolutions drafted by Mr McKie. These, among other things, approved the submission of a grievance to me unless satisfactory undertakings were received from the bishop by 25 September about the nature and basis for the arrangements under the Declaration.
53. On 18 September, the acting diocesan bishop sent by email to the wardens of the benefice parishes and others directly concerned the final version of the memorandum of understanding, slightly revised after further discussion with the Bishop of Ebbsfleet. Given the importance of this document I attach it at **Annex A**.
54. The acting diocesan bishop also attached a copy of her letter to the Bishop of Ebbsfleet, formally inviting him to minister to Lullington with Orchardleigh and setting out some suggested discussions to help bed in the new arrangements. In her covering letter she acknowledged that her decision '*may not meet with everyone's approval.*'
55. On 21 September, the vice chair of the Lullington with Orchardleigh PCC wrote to various office holders in the benefice and also to the acting diocesan bishop, the archdeacon and the incumbent designate noting that the 18 September '*email gives a partial and inadequate account of what has happened.*' He noted that a submission to me was in preparation. Continuing, he said: '*Most of those who are active in L&O Parish have made it clear that, as a matter of conscience, in the event that the Independent Reviewer does not support the PCC's view of the matter, they will be forced, after fulfilling their current commitments, to withdraw from involvement in the Benefice. The whole ministry of the parish is, therefore, at stake.*'
56. The following day, Mr McKie wrote to the acting diocesan bishop to say that her communication of 18 September was misleading and dishonest. As noted above, he then sent me notice of the forthcoming grievance on 25 September and submitted it on 3 November. The full text of the grievance is being made available online. For ease of reference I attach at **Annex B** the concluding part of the grievance (sections 35-37) which provide a summary.

Some background

57. The central issue in this case is whether the arrangements set out in the memorandum of 18 September from the acting diocesan bishop are consistent with the responsibilities that a bishop has towards a resolution parish under the House of Bishops' Declaration.

58. If the rest of this report could be confined just to that issue it would be significantly shorter than it is. The PCC has, however, raised a number of concerns over alleged mistakes and shortcomings at diocesan level since the parish first passed its resolution under the Declaration on 26 October 2016. These, it is claimed, have materially contributed to the unsatisfactory position in which the parish finds itself and have increased its need for assurance that the arrangements now put in place are both adequate and resilient.
59. Without prejudging my conclusions on the grievance, I decided, after studying the extensive dossier submitted to me, that I needed to review the entire sequence of events over the past years and all the elements of the grievance brought by the PCC.
60. I must, in fact, start by going back even further, because it is not possible fully to grasp the issues that arise from this case without having some understanding of the decisions that the Church of England took when it legislated in 1992/3 to allow women to become priests and in 2014 for them to become bishops. On both occasions special arrangements were made for those whose convictions did not enable them to receive the newly authorised ministry of women. The basis and effect of the 2014 settlement were, however, materially different from the earlier arrangements.

The 1992/3 Settlement

61. The General Synod gave approval to the Priests (Ordination of Women) Measure on 11 November 1992. It received parliamentary approval and royal assent in 1993 and came into force in 1994. In addition, in 1993 the Synod approved an Act of Synod¹² making additional provisions in relation to episcopal ministry.
62. The 1993 Measure made it lawful for a Canon to be made admitting women to the priesthood, though not the episcopate. It also made provision for those who were unable to accept this new development in the history of the Church. A separate financial provision measure established a financial compensation package for clergy who decided to leave office within ten years because of the admission of women to the priesthood.
63. In addition, the legislation made it possible for PCCs to pass one or both of two kinds of resolution¹³: resolution A, preventing a woman from celebrating the Holy Communion and from pronouncing the Absolution; and resolution B, preventing the appointment of a woman as incumbent.

¹² An Act of Synod is, despite its name, not a piece of legislation. Primary church legislation-the equivalent of an Act of Parliament- is called a measure. An Act of Synod is 'the embodiment of the will or opinion of the Church of England...' It has more persuasive and declaratory force than a simple Synod resolution and can set out administrative arrangements that church bodies are expected to follow (the so called 'Vacancy in See regulations' are for example an Act of Synod, not statutory regulations). But it is not legislation.

¹³ What has often been referred to colloquially as 'Resolution C' was in fact a petition under the Act of Synod for extended episcopal ministry.

64. The Canons approved under the 1993 legislation prevented a woman from being appointed incumbent of a benefice where resolution A or B was in force in any of its parishes.¹⁴ So the effect of the resolution passed by Lullington with Orchardleigh in 2004 had been to prevent the patron from appointing a female rector to the benefice even though the other parishes in the benefice had been open to the priestly ministry of women. The parish had not petitioned under the Act of Synod for extended episcopal ministry so episcopal ministry remained the sole responsibility of the Bishop of Bath and Wells, assisted by the Bishop of Taunton.

The 2014 Settlement

65. Following earlier theological work, the Synod agreed in July 2006 to establish a legislative drafting group on the admission of women to the episcopate. The discussions that followed were long and difficult primarily because of deep differences of view over what, if any, arrangements should be made for those unable to receive the episcopal and priestly ministry of women.

66. Some argued that the minority still needed, as in 1993, special arrangements which, at least in part, were underpinned by statute. It was also argued that these should be more extensive given the juridical responsibilities of bishops. Others argued that the pivotal role of bishops in an episcopal church meant that this was not possible without, in effect, changing the church's understanding of what it meant to be a bishop and perpetuating discrimination on the face of the legislation. They argued that a non-statutory code of practice and informal, local arrangements should suffice.

67. During the legislative process proposals were made to create separate juridical entities for the minority or to mandate the transfer or delegation of jurisdiction from female bishops to male bishops where parishes so requested. These proposals were defeated. Instead, the legislation which went to Synod for final approval in November 2012 included a statutory duty on bishops to devise local schemes containing arrangements for parishes unable to receive the priestly or episcopal ministry of women. The schemes were to take account of a statutory code of practice to be made by the House of Bishops.

68. The legislation failed by six votes to secure the requisite two-thirds majority in the House of Laity, essentially because the minority had not been satisfied that the arrangements proposed for them would prove sufficiently reliable and resilient. Following this setback, intensive facilitated discussions were arranged to try to find

1. ¹⁴ Canon C 10 provided at para 2A:
“2A. No bishop shall admit or institute a priest who is a woman to a benefice if a resolution under section 3(1) of the Priests (Ordination of Women) Measure 1993 is in force in the parish concerned or, in the case of a benefice which comprises two or more parishes, in any of the parishes concerned.”

an alternative approach which would deliver the will of the majority for women to become bishops while providing a greater measure of reassurance for the minority.

69. This time, all the elements of the package were settled together¹⁵. To meet the wishes of the majority, a much shorter and simpler measure was drafted. At the same time, safeguards for the minority were embodied in a House of Bishops' Declaration, with a new Canon (C29) placing the House of Bishops under a duty to make Regulations prescribing a procedure for the resolution of disputes arising from the House of Bishops' Declaration. These Regulations, creating the role of Independent Reviewer, were prepared before the Synod was invited to give the legislation final approval. They were made on 17 November 2014, the day that the Canon came into force.
70. The 2014 measure repealed the Priests (Ordination of Women) Measure 1993 (as the failed 2012 draft measure would also have done). Thus resolutions passed by PCCs in the intervening years ceased to have any legal effect. A provision in the Declaration said that resolutions passed under the Measure (or petitions made under the 1993 Act of Synod) should be treated for two years as if they were resolutions passed under the Declaration. The resolution passed by the Lullington with Orchardleigh PCC on 26 October 2016 came just before the end of that two year transitional period.
71. The Amending Canon made under the Bishops and Priests (Consecration and Ordination of Women) Measure 2014 had repealed paragraph 2A of Canon C10. Thus, since November 2014, the fact that a parish in a multi-parish benefice has passed a resolution requesting, on grounds of theological conviction, that arrangements be made for it in accordance with the House of Bishops' Declaration does not preclude the appointment of a female incumbent for the benefice.
72. Indeed, paragraph 25 of the Declaration states that *'in the case of multi-parish benefices the needs of the parishes in the benefice that have not passed a resolution should be weighed alongside those of any parish that has when decisions are taken about appointments to the benefice.'*
73. In addition paragraph 20 of the guidance note from the House of Bishops on the Declaration (GS MISC 1077) states: *'Given the diversity of situations in multi-parish benefices it is not possible, nationally, to give guidance that will cover all situations. The aim should be to explore options that will avoid, on the one hand, a single parish being able to frustrate the wishes of the others in the benefice and, on the other, that parish being denied the pastoral and sacramental provision that the PCC has sought.'*

¹⁵ One of the intrinsic weaknesses of the first legislation had been that the Synod could not be sure when considering whether to give the measure final approval what the text of the code of practice would be since it could only be made once the legislation was in force and any draft would have been amendable at that stage.

Analysis

74. I turn now from the background to an analysis of the sequence of events and of the issues that are the subject of this grievance. In the first three sections I consider the events chronologically. In the following four sections I address specific issues raised in the grievance. In the light of the analysis, I shall then move on to my findings on the seven elements of the grievance and conclude with some recommendations.

From the Resolution to the Appointment of the Rector Designate

75. The resolution of 26 October 2016 was passed a year and a half into what turned out to be the nearly three and a half year's suspension of the rector of the benefice under the Clergy Discipline Measure 2003. As noted above, there was less than a month to go at that point before the 2004 resolution would have ceased to be treated as a resolution under the 2014 Declaration.
76. A copy of the resolution and a record of the voting was sent to the diocesan bishop by the PCC secretary on the day of the PCC meeting. There is no evidence that the bishop initiated either directly or via the then archdeacon any conversations to ascertain the nature of the theological conviction underlying the resolution with a view to implementing it effectively.
77. It is not clear why the bishop failed to act as he should have done under paragraph 22 of the Declaration. It may be that the fact that the rector was suspended caused some caution over engaging with the parish over the implications of the resolution for the next time that a vacancy arose. While that would, if true, be understandable, it would, to my mind, be an insufficient reason for not opening up the conversation. For while the implications for appointing an incumbent were not immediate the question of episcopal ministry for the parish was.
78. In 2015 the bishop had secured the appointment of a female bishop to fill the vacant suffragan see of Taunton. He had also, by virtue of an instrument of delegation of 21 October 2015 conferred wide ranging powers¹⁶ on her. It was therefore possible by 2016 that the Bishop of Taunton would exercise episcopal ministry in respect of the benefice and parish. The passing of the resolution meant that the diocesan bishop could no longer assume that the parish would be content to receive the ministry of the Bishop of Taunton. The fact that between 2004 and 2016 the parish had not petitioned under the Act of Synod for extended episcopal ministry was by the way.
79. The responsibility for initiating discussions rested with the bishop. He should, in my view, have done so, notwithstanding the delicate situation arising from the suspension¹⁷. I do not accept that the suspension of the then rector was a sufficient

¹⁶ As noted I footnote 1, Mr McKie disputes the legal effect of this instrument. See later discussion.

¹⁷ It is also fair to add that from 2016 to 2020 the Bishop of Bath and Wells was the Church of England's lead bishop for safeguarding. This coincided with a peak of work in connection with the Independent Inquiry into

reason for delaying discussion of the implications for future priestly ministry in the parish. It seems to me that the bishop and his senior diocesan colleagues failed to appreciate a key difference between the 1993 and 2014 settlements: under the former Measure the passing of a resolution had direct legal effect without the need for further discussion; under the Declaration, the passing of a resolution, important though it is, is simply the beginning of a process of discussion that is needed in order to ascertain the nature of the parish's theological conviction and, in the light of those, the arrangements for priestly and episcopal ministry that need to be made.

80. The resignation of the rector with effect from 30 September 2018 was announced on 12 August. The archdeacon (by this time the present Archdeacon of Wells) met benefice wardens on 17 September to discuss arrangements for the forthcoming appointments process. Among other things she said at this meeting that the Lullington with Orchardleigh PCC should confirm formally whether it wished to retain the resolution passed in 2016. Paragraph 21 of the Declaration states that parishes that *'have passed a resolution should review it from time, especially when a vacancy in a benefice arises.'*
81. The PCC reaffirmed its earlier decision on 23 October. This time a short statement of theological conviction was prepared and sent to the archdeacon at her request. It asserted the PCC's view that it was impossible theologically for a woman to be a priest or a bishop without denying the *'authority and sufficiency of Scripture.'*
82. Again the bishop and archdeacon initiated no discussions with the parish about the implications of the resolution and the statement of theological conviction for the provision of episcopal ministry or for the arrangements that would be made in the event of a female incumbent being appointed.
83. This was, in my view, a serious oversight. Instead, discussions focused solely on the arrangements for establishing an appointments process. The key issues here on which comment from me is required concern, first, the discussions around **whether the advertisement could specify that the incumbent had to be male** and secondly, **the role of the parish's representatives in giving consent to the proposed appointment.**
84. The archdeacon met the churchwardens of the parishes in the benefice on 17 September. The following day, Mr McKie (who had attended the meeting on behalf of a warden from Rodden, where he then worshipped) circulated to those who had attended a note of what he understood the archdeacon to have said. This included the statement that, at the forthcoming benefice meeting under section 11 of the Patronage Benefices Measure 1986, one of the matters to be decided would be whether, because

Child Sexual Abuse (IICSA). The Bishop said to IICSA in March 2018 that the national work was taking more than half of his time.

one parish had passed a resolution under the Declaration, *‘applications should only be invited from male Priests.’*

85. The archdeacon responded to Mr McKie on 23 October. She did not comment directly on the possible limiting of the field to male candidates. But she drew attention to the words of the Declaration concerning the need to weigh the needs of all parishes in the benefice. And she said that the relevance of this to the section 11 meeting was whether the four parishes could agree a single statement of needs or whether there would need to be a separate statement for Lullington with Orchardleigh.
86. Whether the section 11 meeting had the option to advertise for only male candidates resurfaced shortly before that meeting of 5 June. In preparation for it, the archdeacon met the Lullington with Orchardleigh PCC on 20 May and according to the then vice chair of the PCC (who had voted in the minority against the 2016 resolution and in favour of reconsideration in 2018) she had again given the impression that it would be for the section 11 meeting to decide whether the post should be confined to male candidates. From other material he had read, he was not sure that was correct and directed an inquiry to the diocesan registrar.
87. Before the registrar responded the archdeacon clarified on 21 May what she had said: *‘It is not the case that the Section 11 meeting has to decide whether the appointment is open to men only or to both genders equally. I’m sorry if that’s what I appeared to say. This is an immensely complicated circle to square, and it is hard to point to a straightforward way through.’*
88. As noted above, the registrar offered his view that *‘the religious exemption in the Equality Act will not protect the Bishop from a discrimination claim if the benefice restricted applications to male candidates. This is because the exemption only applies where it is required to avoid conflicting with the strongly held religious convictions of a significant number of the religion’s followers. Only Lullington with Orchardleigh has passed a resolution and that does not represent the theological conviction of the benefice as a whole.’*
89. In the grievance Mr McKie has challenged what he regards as an unduly restrictive interpretation of the Equality Act exemption. This is a complex area and I shall not set out his arguments in full, not least because it is clear that both he and the registrar have not taken account of *Appointment of Clergy Office Holders*, a document approved by the House of Bishops Standing Committee in 2013 and updated in 2015. Annex A to that is a memorandum approved by the Legal Office at Church House on the relevance of the Equality Act to parochial appointments.
90. It follows from the analysis there that:
- Because of the way that the Equality Act is drafted most parochial appointments, excluding Crown appointments [but including the one at issue

here], are outside its provisions. The protections which it confers against unlawful discrimination do not therefore apply and so the question of how the religious exemption should best be construed is not relevant because any claim of unlawful discrimination under the Act would be bound to fail¹⁸

- Nevertheless, as a matter of Church of England policy rather than the law of the land, *‘an equitable approach would ... suggest treating all clergy appointments, for practical purposes, as if they were subject to the Act’*. This is to avoid the otherwise rather arbitrary distinctions which follow from the way in which the Act is drafted
- *‘Applying any of these excepted requirements [e.g. to be male] to a particular appointment may therefore be lawful but needs approaching with care and clarity. Consideration must be given not just to the views of the local congregation but also to the law and polity of the Church of England. For example, a requirement that applicants for a parochial office should be male would probably not be defensible except in a parish where the requisite resolution under the House of Bishops’ Declaration on the Ministry of Bishops and Priests had been passed.’*

91. Where does this leave us? As a matter of law the Legal Office document suggests that this parochial appointment, like many others, did not attract the protections against discrimination conferred by the Act. The registrar rather muddled things up, therefore by suggesting that the bishop was legally obliged to act as he did when in fact he had a choice to make. I am also advised that his exposition of the non-conflict principle was misleading since, where the Act applies, the availability of the exemption turns on whether those with the requisite theological conviction in the resolution parish represent a significant number (albeit a minority) of the worshippers in the benefice. One parish out of four could be held to be significant.

92. The registrar’s advice meant that neither the bishop nor the archdeacon acting on his behalf seem to have appreciated this. If they had, they would still have been entitled to conclude, as a matter of justice and policy, that restricting the field to male candidates was undesirable given that three of four parishes in a benefice had not passed a resolution under the Declaration. But it would and should have been a considered judgement having weighed up the interests of all four parishes.

93. It would, moreover, have been a more securely based judgement to have reached if they had already given thought to how proper arrangements would be made for the resolution parish in the event of a female incumbent being appointed. The bishop’s remarks at the section 12 meeting (see paragraph 20 above) suggest that he was, indeed, already aware that this might not be entirely straightforward, especially for

¹⁸ This does not, of course, mean that someone might not seek to bring a case which the bishop would need to defend.

those for whom the issue was headship and authority. All the more reason, therefore, for him to have engaged with the resolution parish at an early stage.

94. The fact that the incumbency was to be open to candidates irrespective of gender does not mean that the Lullington with Orchardleigh parish representatives were obliged to give their consent to the appointment of a female incumbent.
95. As noted in paragraph 16 above, in a discussion with the archdeacon of 20 May 2019 the PCC seems to have indicated that it would not seek to block the appointment of a female incumbent so long as adequate arrangements were made for the parish in accordance with the Declaration. Over the following nine months, the PCC appears, however, not to have pressed for clarity over the arrangements in advance of an appointment being made.
96. I hesitate to criticise the PCC for this. They were a small body in a very small parish and had no experience of the House of Bishops' Declaration. They also did not have the advantage that many catholic and evangelical resolution parishes have of being part of an organisation or network that provides guidance material and support.
97. As Mr McKie quite fairly notes in the grievance, the parish was at a serious disadvantage in discussions with diocesan personnel given the imbalance in resource, knowledge and experience. At that point they did not have the benefit of the expertise that Mr McKie has been able to bring since his involvement in the business of the parish. Moreover, the responsibility for initiating discussions about arrangements under the Declaration clearly rests with diocesan bishops not parishes.
98. All that said, the PCC would have been well advised to press the bishop and the diocese for at least an outline agreement to be reached on the nature of arrangements for the parish under the Declaration before the appointment process was concluded. It would, in my view, have been far preferable for arrangements to have been settled before the post was advertised.
99. This would have meant that the issues could have been considered dispassionately and without reference to personalities. It would also have meant that any female candidates considering applying would have known what would be expected of them in relation to their role in relation to the resolution parish in the benefice.
100. There is another consideration. Paragraph 24 of the Declaration says that the diocesan bishop *'should do all in his or her own power to achieve an outcome that respects the declared view of the parish and protects the parish representatives from having to resort to their own power of veto under the Patronage (Benefices) Measure 1986'*.
101. The paragraph concerns the situation where someone other than the diocesan bishop is the patron and might be minded to ignore the Declaration. Nevertheless the principle

here of trying to shield parish representatives from having to consider whether they need to use the blunt instrument of the veto in order to prevent a resolution under the Declaration being undermined seems to me to be of general application. By not discussing with the parish and seeking to agree in advance the arrangements to give effect to their resolution the bishop left the parish representatives with potentially an unenviable choice over whether to use their veto.

102. The power of parish representatives to withhold consent to an appointment is not necessarily the end of the affair, since the diocesan bishop can ask the archbishop to review the matter. Nevertheless, the power is an important safeguard for parishes. In this case, and with whatever degree of affirmation or reservation, the two Lullington with Orchardleigh parish representatives decided not to exercise their right to withhold consent. They therefore allowed Prebendary Crossman's appointment to proceed without any clarity from the bishop over the arrangements that would be made to give effect to the PCC's 2016 and 2018 resolutions.

103. The PCC is still entitled to expect arrangements which are in accordance with the resolution and the Declaration. But these now have to be consistent with the fact that an offer to Prebendary Crossman to present her to the benefice has been lawfully made¹⁹. The decision announced on 1 March was taken with the consent of the parish's representatives and cannot be reversed or hollowed out.

From the appointment to the diocesan bishop's illness

104. The most striking fact about this five month period is that serious engagement on possible arrangements for the parish occurred only in the final few weeks. The diocesan bishop chaired two long, exploratory meetings on Zoom with relevant parties on 13 and 23 July. While they covered a lot of ground and helped to clarify a number of issues, they were somewhat discursive occasions, as a reading of the transcripts of both occasions reveals.

105. Again, the question arises why the bishop and diocese did not take the initiative and begin discussions as soon as Prebendary Crossman's appointment had been announced in March. One factor may have been the view that the rector designate should be part of the discussions and that she was not moving to the diocese until late May, ready for her licensing²⁰ on 9 July. While there was some force in this, the delay

¹⁹ I asked to see the Form 37 consents from the Lullington and Orchardleigh parish representatives. Although one records the representative's serious reservations about the appointment, he and his fellow representative both indicated their consent. I did not see it as necessary to ask to see the forms from the representatives of the other parishes but the fact that the bishop felt able to proceed with the appointment must mean that they too were in order.

²⁰ Because of COVID restrictions it was not immediately practicable to plan the collation and induction, so the diocese, like others, adopted a practice of licensing clergy as priests in charge/rectors designate pending an institution at a later date. A date for Prebendary Crossman's institution as rector (at which point the licence will cease) has yet to be set.

only served to increase the anxiety of the parish, for whom the prospect of a female incumbent was now a reality not a hypothetical possibility.

106. In particular it meant that when the parish, now advised by Mr McKie, tried to pin things down it was met by equivocation and delay. This was extremely unfortunate. It meant that, as noted above, by the time discussions started in earnest, the new vice chair of the PCC, drawing on material prepared by Mr McKie, had already sent to the bishop a letter of 30 June which listed a number of alleged shortcomings on the bishop's part and alluded to the possibility of submitting a grievance to me.
107. Perhaps the most striking failure on the part of the bishop and diocese was to anticipate the inevitable tension that was going to grow within the PCC as the day of Prebendary Crossman's licensing drew near. It was only at 11.10am on the day when the licensing was to take place in the evening that the bishop informed Mr McKie that he had inserted a clause into the licence which would mean that Prebendary Crossman would not for the time being be authorised to minister in the parish.
108. By the time of the 13 July meeting Mr McKie, with the support of the diocesan bishop, had established a relationship with the Bishop of Ebbsfleet, who was already an Assistant Bishop in the Diocese and provided ministry for a number of resolution parishes. As a result of this and the mutual respect already established between the two bishops, the question of episcopal arrangements for the parish was not a source of difficulty in the discussions and is not an element in this grievance. Instead the meetings focused on the role of the incumbent and the need for priestly ministry consistent with the theological conviction underlying the PCC resolution.
109. The diocesan bishop explained and the Bishop of Ebbsfleet²¹ agreed that, so far as they and the Legal Office at Church House were aware, there was no ready-made template for the situation that had arisen. The other known examples of multi-parish benefices with a female priest and a resolution parish were team ministries. There, the fact that there was a plurality of clergy made it possible for licences to be drafted in a way that avoided a female priest undertaking priestly ministry in the resolution parish²².
110. Although one or two possible examples were subsequently mooted, no one could identify a case where a multi-parish benefice with only one stipendiary member of clergy and a resolution parish had appointed a female incumbent and made satisfactory and durable arrangements for the parish. So, something new was needed.

²¹ When he was first approached about the parish in April the Bishop of Ebbsfleet had one informal exchange with the Head of the Legal Office about multi-parish benefices.

²² My predecessor produced a report on one such case – All Saints, Cheltenham – on 10 August 2015 in response to an expression of concern.

111. This important point simply underlines, to my mind, the risks that the bishop and diocese had been running in not doing some serious thinking about the options and engaging in dialogue with the parish before concluding (or better still launching) the appointment process. It also sits uncomfortably with the fact that the diocese had not produced some proposals in the four months since the appointment was made.
112. As Prebendary Crossman graciously acknowledged in the discussion, it was a '*big undertaking to expect a parish that has requested alternative oversight to remain with a benefice and to hold respect for a female incumbent.*' She also observed that it was '*a big ask, as well, I don't deny it, for a female incumbent to be respectful of a parish that, for theological reasons, cannot recognise her calling to the priesthood but that is what is being asked of me and that is the calling to which I have responded.*'
113. As noted above, some of the exchanges revealed differences of view which have contributed to this grievance. In particular:
- Mr McKie made it clear that the parish wished the rector to agree that virtually the totality of her functions in relation to the parish would be exercised by a male priest (the PCC had a retired male priest in mind who was already heavily involved in the life of the parish). The diocesan bishop said that he '*wasn't sure whether that was legally possible and there is a question as to whether it is prudent.*' The Bishop of Ebbsfleet said: '*I can't think that it could be possible to say of the rector of a benefice that they should even think about agreeing not to do things that any lay person or licensed lay role in the parish could do.*'
 - Mr McKie emphasised that the limitations on Prebendary Crossman's role in the parish needed to be written into a document such as the statement of particulars required by statute. The diocesan bishop suggested that these might not be within the scope of that document and that instead it might carry a reference to a Memorandum of Understanding (MOU), where the arrangements could be captured in more detail.
114. It is not altogether clear to me from the transcript of the 23 July meeting why the PCC representatives regarded it as so much more constructive an occasion than the first meeting, save for the fact that the diocesan bishop indicated at the outset that he was content for Mr McKie to have the meeting that he had requested with the registrar.
115. It is true that the bishop made a fulsome apology for past delays and the meeting did review the proposals approved by the PCC on 22 June but not in a way that led to precise conclusions. So when towards the end Mr McKie said: '*I think we have reached a lot of unanimity, unless I am misinterpreting*', my reading, borne out by subsequent events, is that he was underestimating the differences that remained.
116. In addition, Mr McKie's statement in the meeting that he would now '*write a paper to set out how the 22 June Resolutions could be implemented taking into account the*

material which the Registrar has provided so that we actually have a series of legal steps for the registrar to examine’ was noted but not discussed.

117. I have not been able to find anything in the transcript to substantiate the assertion made by Mr McKie in an email of 12 August to the Bishop of Taunton that *‘it was quite clear that it was intended by Bishop Hancock that the implementing steps should have legal force.’*

118. I have no doubt that the diocesan bishop intended any arrangements to be consistent with the law but whether he intended them to be legally enforceable in the courts is a different matter and cannot be determined from the documents. In his letter of 29 July to the Lullington with Orchardleigh PCC vice chair he noted that *‘the New Testament teaches us of the pre-eminence of grace over law’*. This and his reference in the 23 July meeting to an MOU give grounds for caution over trying to read his mind.

From 3 August to 25 September

119. The news of the diocesan bishop’s illness came while Mr McKie was preparing a substantial paper in preparation for his meeting of 11 August with the registrar. With the bishop now absent, he sent part of it to the bishop’s chaplain to check that his summary of the 23 July meeting was accurate.

120. The paper included five criteria that arrangements made under the Declaration should satisfy. These included that the arrangements *‘and their purpose should be formally recorded in writing so as to provide a permanent record of them’*; and that they *‘should provide protection to the PCC and the parishioners from being forced to receive the ministry of a female priest or bishop and against any breach of the implementing arrangements.’* The chaplain replied that these were *‘a fair reflection of what was generally agreed’* and *‘seem to reflect, in my opinion, where we were going.’* He added that *‘mutual flourishing...is a vital essence of the arrangements....legal clarification needs to contribute to that flourishing.’*

121. Against that apparently promising background, why did the meeting of 11 August between Mr McKie prove a watershed in the discussions after which the prospect of agreement rapidly receded? The fundamental reason, as noted above, is that Mr McKie insisted on a legally enforceable document whereas the registrar refused to countenance such a possibility, preferring to proceed by way of an MOU.

122. The question whether arrangements need to be made in a legally enforceable form is a key issue in this grievance and will be considered in the section after next. For now, the point to note is that the registrar does not seem to have succeeded in communicating to Mr McKie precisely why he had so definitively ruled out such a possibility. This was unfortunate.

123. In particular it seems not to have been made wholly clear at the time whether the registrar regarded such an approach as not possible as a matter of law or not necessary or desirable given the nature of the 2014 settlement and the non-statutory nature of the House of Bishops' Declaration. Subsequent exchanges between Mr McKie and the registrar and the acting diocesan bishop imply the latter. It might have helped the temper of the exchanges had this been teased out more clearly on 11 August.
124. It is also unfortunate that by the time that the acting diocesan bishop was able to have a conversation with Mr McKie on 25 August she had, on 21 August, circulated to all the parishes in the benefice the draft memorandum that the registrar had prepared.
125. I entirely understand why the acting diocesan bishop wished to quicken the pace. Indeed, after all the earlier delays she should be commended for wanting to move matters purposefully towards a conclusion. I can also understand why she and her colleagues may have found the forthright tone and extremely detailed content of some of Mr McKie's communications uncongenial.
126. But after the meetings of 13 and 23 July and even after the difficult meeting of 11 August with the registrar, it does seem to me that Mr McKie was entitled to expect his PCC, for whom, after all, the arrangements were to be made, to have had one more opportunity to comment on the draft before it was circulated more widely.
127. To this it may be countered that Mr McKie had already made it clear that the PCC would not be prepared to countenance an MOU and was preparing to submit a grievance to me. It may, indeed, be the case that the PCC would have decided not to engage with the detail of the draft given its objection of principle to proceeding by way of MOU.
128. Nevertheless, before circulating the draft to the other parishes the bishop should, in my judgement, have given the PCC an opportunity to comment on the extent to which, in their view, the details of the arrangements that she was proposing were (leaving aside the key issue of enforceability) consistent with what the PCC had requested on 22 June and its representatives argued for on 13 and 23 July.
129. Having suggested one way in which the acting diocesan bishop might have handled things differently I do need to make another observation on what Mr McKie describes as a change in the tone of the discussions after the diocesan bishop's departure on 3 August. There is an implication here that things might have been very different had the diocesan bishop not fallen ill and the Bishop of Taunton not had to hold the fort.
130. As I've noted above, it is far from clear that the diocesan bishop intended arrangements to be legally enforceable. It seems to me, though certainty is not possible, that the meeting between Mr McKie and the registrar might well have gone just as unhappily as it did on 11 August had the diocesan bishop still been in place.

131. How things might have developed thereafter is necessarily speculative. But my assessment of the underlying problem was that the 13 and 23 July meetings, over which the diocesan bishop had presided, had left many matters unresolved. It is not the fault of the acting diocesan bishop that Mr McKie had concluded that there was ‘*a lot of unanimity*’ when in fact, from my reading of the records, there still seems to have been a lot of ambiguity. It was simply her misfortune to have had to take over just as these ambiguities became painfully apparent.

132. The narrative section above notes the sequence of events between the 25 August conversation and the notice of a forthcoming grievance sent to me on 25 September. They do not call for further comment.

Pastoral and sacramental provision and the priestly ministry of men

133. The fifth of the five guiding principles at paragraph 5 of the House of Bishops’ declaration states that: ‘***Pastoral and sacramental provision for the minority within the Church of England will be made without specifying a limit of time and in a way that maintains the highest possible degree of communion and contributes to mutual flourishing across the whole Church of England.***’ In addition, paragraph 18 of the Declaration refers to ‘*arrangements available to those whose theological conviction leads them to seek the priestly or episcopal ministry of men.*’

134. One of the issues at the heart of this grievance concerns the nature of the pastoral and sacramental provision and the extent of the ministry from a male priest that the resolution parish of Lullington with Orchardleigh is entitled to expect under the House of Bishops’ Declaration. Leaving aside for the moment whether an MOU is an adequate document, **do the arrangements set out in the MOU attached to the acting diocesan bishop’s email of 18 September fulfil her responsibilities under the Declaration or do they, as the PCC asserts, fall short?**

135. I need first to address an important point at section 28 of the PCC submission where Mr McKie argues that, as ‘soft law’ the House of Bishops’ Declaration needs to be ‘*construed in accordance with the normal conventions of legal construction*’. He adds, ‘*the primary determinant of legislative intention is the legislative text read in context*’ and ‘*in construing any enactment the aim should be to give effect to the legislative purpose.*’

136. Mr McKie is entirely correct that the words in the Declaration were intended to have consequences and that they need to be interpreted purposively, in accordance with their natural meaning and taking account of what can be determined about the intention at the time of the House of Bishops (as well as those others who contributed in the facilitated discussions to the preparation of the document).

137. Nevertheless, as he acknowledges, the Declaration is not legislation. Whereas the measure, canon and regulations were drafted by lawyers, the Declaration was drafted by the secretariat that provided administrative support to the bishops and other Synod members engaged in the facilitated conversations. Lawyers were part of this team but they did not lead it. It is manifest from reading the Declaration that it is written in a different register from the legal texts that form part of the 2014 settlement.
138. Moreover, the responsibility for considering grievances under the Declaration rests with the Independent Reviewer, who does not have to be legally qualified. Indeed the first two holders of the role have been retired Secretaries General of the General Synod, both of whom spent many years, in Whitehall and then Church House, supporting legislative exercises and working at the boundary between law and policy, but without being a lawyer. The Independent Reviewer is, conceptually, closer to an ombudsman than a judge.
139. What follows from this is that, to determine what the Declaration means, requires significant attention both to its words and to what can be discerned about the intention of those in the Synod and the House of Bishops who worked on it.
140. By virtue of the House of Lords judgement in *Pepper and Hart*²³ the courts too can in certain circumstances look at the legislative history of a statute in interpreting its provisions. But the circumstances are quite tightly defined. By contrast, in interpreting the Declaration- which is not legislation- context, intention and the overall shape of the 2014 settlement are highly relevant. The words on the page matter but to talk of applying normal principles of statutory construction as if they were sections of a Finance Act is apt to mislead.
141. So in interpreting what is meant by '*pastoral and sacramental provision for the minority*' and '*the priestly or episcopal ministry of men*' one needs, in my view, to start by trying to discern what the Church of England was trying to do in 1992/3 and again in 2014.
142. In the former case the challenge concerned how best to make provision for the minority once women became priests. The reason why the Synod enabled parishes to pass resolutions A and/or B was that there was a variety of theological conviction among the minority. For those of a catholic tradition the sacramental issue loomed large. Some evangelical parishes, by contrast, had no objection to a woman priest being part of a ministry team and presiding at Holy Communion. Their difficulty was over a woman priest being an incumbent and, therefore, contravening what they believed to be the scriptural principle that headship should be exercised by men.

²³ **Pepper v Hart** [1992] 3 WLR 1032

143. Thus while PCCs in the catholic tradition which passed resolutions generally passed resolutions A and B (and also generally petitioned under the Act of Synod for extended episcopal ministry) the PCCs of some evangelical parishes simply passed Resolution B. And as the case of Lullington with Orchardleigh illustrates, there were a few resolution parishes that did not stand unambiguously within either tradition.
144. The 2014 settlement is, as already described, somewhat different. It confers no statutory rights on parishes unable to receive the priestly and now episcopal, ministry of women. Nor has it changed the normal operation of law in the Church of England concerning the appointment of bishops and parish clergy and the way they exercise their responsibilities, whether directly or by way of delegation. The settlement depends on a Declaration which sets out principles and processes to which the House of Bishops and, through the Synod, the whole church has committed itself.
145. The reference in the principles to ‘the *highest possible degree of communion*’ and ‘*mutual flourishing*’ and the subsequent emphasis on mutuality militate against interpretations of the Declaration that would lead to greater restrictions than are necessary to safeguard the theological conviction on the ordained ministry of women that underlies the resolution. In addition, as I held in the case of St George’s Headstone, the theological conviction must be one which comes within the spectrum of Anglican teaching and tradition.
146. Mr McKie’s contention on behalf of his PCC is that a resolution parish is entitled, under the Declaration, not to receive any direct ministry from a woman priest (or bishop). As he puts it at paragraph 30.2.1: ‘*the correct construction of the phrase ‘the ministry of women...priests’ in the Declaration...is that, in respect of the incumbent, it includes all those acts which an incumbent priest undertakes in the execution of her incumbency.*’
147. He argues that it will be very rare if at all that a female incumbent will be appointed to a benefice that includes a resolution parish because it is impossible in such a situation for the parish to avoid receiving her indirect ministry. His PCC is prepared to accept that it cannot now, pending the possibility of pastoral reorganisation, avoid the indirect ministry of its female incumbent, but it wishes so far as possible to preclude her exercise of direct ministry in the parish.
148. Thus it is not sufficient for the PCC that she should not undertake the priestly roles of presiding at Holy Communion, conducting baptisms or pronouncing the absolution and priestly blessing. She should not, without the agreement of the PCC, lead Morning and Evening Prayer in the parish, preach, prepare people for confirmation, chair or attend the PCC, visit parishioners, designate burial plots and approve memorials and so on²⁴. All these functions should, they argue, be exercised by a

²⁴ The list is set out at page 54 of Mr McKie’s paper prepared for his 11 August meeting with the Registrar.

licensed male priest, formally by way of delegation from her but without her having the ability to withdraw the delegation. In other words, in respect of the parish, Prebendary Crossman's position as rector would be purely titular.

149. Such an approach seems to me to go beyond what the Declaration intended. The Church of England has accepted that provision needs to be made for those who, for reasons of theological conviction, do not believe that women can be priests and bishops. But, as the Bishop of Ebbsfleet noted in paragraph 113 above, that does not mean that it has conferred on resolution parishes an expectation that women priests and bishops will refrain from carrying out functions which can be carried out by deacons, readers or other authorised lay ministers such as preaching and leading services of the word.²⁵
150. An approach which seeks to create as much insulation as possible from the ministry of a female incumbent, in effect sealing off the day to day life of the parish from any involvement on her part, is not, in my judgement, consistent with mutual flourishing, the highest possible degree of communion and mutuality. The 2014 settlement was not about building high the walls of separation.
151. In his submission Mr McKie fairly notes that an incumbent is expected to lead Morning and Evening Prayer and to be ex officio chair of a PCC (though this can be delegated) with a right of attendance at meetings and that an incumbent is expected to be a priest. It is precisely the ministry of women priests which the PCC cannot accept. It is also true that for many people whether a female priest pronounces the absolution and uses the priestly form of blessing at morning prayer is probably an unnoticed nuance compared with whether she is leading the service.
152. In the MOU of 18 September from the acting diocesan bishop, Prebendary Crossman has, in fact, accepted self-denying ordinances which go beyond merely refraining from performing priestly functions. She has, for example accepted that her reading of Morning and Evening Prayer on a Sunday will be only on an occasional basis and after giving notice to the PCC and she is willing to forgo her right to chair the PCC (though not her right to attend and to receive papers). These undertakings have, I assume, been offered out of pastoral sensitivity to the PCC's wishes.
153. The MOU does, however, stop well short of preventing the incumbent from exercising any direct ministry in the resolution parish. If she were so prevented it is in fact difficult to see how the notion that she was rector of all the parishes in the benefice would have any meaning. Certainly, I do not believe that the Declaration

²⁵ As an aside, it is worth noting that when the Church of England allowed women to become readers in 1969 and deacons in 1987 it did not create provision for parishes to opt out of their ministry on grounds of theological conviction, though, of course, the licensing of readers or deacons for service in any parish depended on the willingness of the incumbent for them to be part of his team.

requires the bishop to constrain an incumbent from exercising any form of direct ministry in a resolution parish.

154. So, in summary, **I do not accept the PCC's argument that, for a multi parish benefice, the Bishop is expected, under the Declaration, to arrange that a female incumbent will not exercise any direct ministry in a resolution parish.** What the bishop must do is secure the female incumbent's agreement not to carry out any explicitly priestly functions in the parish. Beyond that, the extent to which the incumbent stands back from carrying out activities that deacons, authorised lay ministers or lay people more generally can perform needs to be determined with an eye to pastoral sensitivity and promoting the highest possible degree of communion.

155. **I also do not accept the argument that the Declaration cannot effectively be implemented if a female incumbent is appointed to a multi-parish benefice which includes a resolution parish.** That is clearly contemplated by the House of Bishops in paragraph 25 of the Declaration and paragraph 20 of GS Misc 1077. It is true that the process of agreeing suitable arrangements is likely to be a good deal more straightforward in the case of team ministries. But it should not be impossible elsewhere given a commitment to reciprocity, mutuality and forbearance.

Legal enforceability

156. I come now to the issue which caused the breakdown of discussions between parish and diocese namely whether arrangements in respect of the resolution should be legally enforceable.

157. Section 32 of Mr McKie's submission on behalf of the PCC argues that only legally enforceable arrangements will satisfy the diocesan's bishop's responsibility under the Declaration to make arrangements for the parish. He also argues that even if, which he does not concede, enforceability is not generally required, it is necessary in this case given the particular circumstances of the parish and what he describes as 'negligent behaviour' over a period of four years by diocesan personnel.

158. Mr McKie suggests that arrangements under the Declaration would not be worthy of the name if they did not have legal effect and could not be enforced if breached. He acknowledges that in some circumstances a breach of arrangements and disregard for the Independent Reviewer's findings might be the basis for action under the Clergy Discipline Measure but he dismisses this as too slow and uncertain for the parish. Hence the proposal for a legal deed, breach of which would enable any of the parties to have swift recourse to the secular courts, including potentially for an injunction.

159. The report of my predecessor on All Saints Cheltenham is prayed in aid in support of these arguments. That was, however, as noted above, a team ministry where it was perfectly possible for the bishop to confer a licence on a female member of the team

so that she did not undertake priestly ministry²⁶ in the resolution parish. My predecessor rightly criticised the bishop for not initially having done so.

160. Restricting Prebendary Crossman's licence while she remains priest in charge is precisely what the Bishop of Bath and Wells has done in this case too. Indeed, for the moment she is not authorised to exercise any (not just priestly) ministry in the resolution parish pending the putting in place of arrangements under the Declaration and her collation as rector. But, once inducted, an incumbent by definition has the cure of souls for the totality of people in the benefice and cannot be compelled to exercise that responsibility by way of delegation. It is not possible for an instrument of institution to limit the ministry of an incumbent in the way that a licence might be limited in respect of a curate's ministry within a benefice.
161. There are two issues that I need to take in turn. The first is whether all arrangements under the Declaration must be enforceable to be worthy of the name. The second is whether, even if the answer to the first question is no, in this particular case the bishop has erred in proceeding by way of an MOU.
162. As in the previous section, I believe that the starting point has to be to try and discern what the House of Bishops intended in 2014. This is illuminated by the legislative history as well as by the words on the page of the various documents that constitute the settlement reached then.
163. It would, as I noted in the background section, have been possible in theory for the Synod to have legislated, as in 1992, to create enforceable legal rights on the face of the measure. Previously parishes had the right to pass resolutions A and B and they had legal consequences. Between 1994 and 2014 legal action could, for example, have been taken against a patron or bishop who purported to appoint an incumbent to a parish that had passed resolution B.
164. The Synod decided, however, against such an approach in the eight years between 2006 and 2014 of consideration of legislation to enable women to become bishops. No legislation or statutory rights protect the minority. Their protection stems from the collective commitment given to the settlement by the House of Bishops and the Synod and by the process of review, scrutiny and calling to account conferred on the Independent Reviewer.
165. In some instances arrangements made under the Declaration will flow through into arrangements which provide significant legal assurance for the minority, for example where a resolution leads to the institution of a male incumbent in a single parish

²⁶ It is worth underlining that my predecessor's recommendation at paragraph 35 of that report referred to 'priestly ministry' and not to any kind of ministry.

benefice or where, as in the All Saints Cheltenham case, a resolution leads to a restriction in the licence of a female member of clergy.

166. But in other instances this is not the case. In a diocese with a female diocesan or suffragan bishop there is no legal limitation on the power of the bishop to minister in resolution parishes. She exercises a self-denying ordinance in accordance with the House of Bishops' Declaration. In addition permission is given by the diocesan to another bishop (such as the Bishop of Ebbsfleet) to provide episcopal ministry to the resolution parish.
167. Similarly, the female rector of a multi-parish benefice with a team ministry may leave it to a male team vicar to exercise sacramental and pastoral ministry in a parish in the benefice which has passed a resolution under the Declaration. But there is no legal limitation on the exercise by the rector of ministry in that parish. She too exercises a self-denying ordinance.
168. It may be objected that this places a greater reliance on the collective virtue and self-discipline of bishops and clergy around the Church than is prudent, given the nature of human frailty. That was, no doubt, partly why some opposed the 2014 settlement just as they had opposed the 2012 legislation. But it is the settlement that was agreed by overwhelming majorities and, thus far, it seems to have held as well as anyone could reasonably have hoped.
169. Against that background **I can see nothing in the Declaration or in other elements of the 2014 settlement which creates an expectation that the bishop should produce a legally enforceable agreement between the parish and the incumbent.**
170. But is an MOU sufficient in this case, given what I agree have been shortcomings at diocesan level in dealing with the concerns of the parish in an open and timely way since the 2016 resolution was passed? It is perhaps not surprising if – and this is no reflection at all on any of the individuals – faced with the prospect of a female acting diocesan bishop, incumbent and archdeacon, and with the other three parishes in the benefice open to the ministry of women the PCC is feeling rather uncertain about how sympathetically its minority convictions will be viewed as time goes by.
171. That said **I am not persuaded that it would be satisfactory to proceed, as Mr McKie proposes, by way of deed.** The appointment of Prebendary Crossman has taken place, with the consent of the Lullington with Orchardleigh parish representatives. There is now no substitute for the parish and incumbent seeking to establish a relationship of trust with each other despite the differences of theological conviction. To attempt to put in place a legally binding agreement which could at any time be the subject of litigation to the secular courts does not seem to me a good starting point for the necessary building of trust. It would also come perilously close to making Prebendary Crossman's position as incumbent of the parish purely titular.

172. Had I come to a different conclusion on this issue, it would have been necessary to consider whether it was, in fact, legally possible for Prebendary Crossman to enter into a deed under which she agreed to delegate all of her functions in relation to a parish. I am advised that this is not a straightforward question because there is no decided authority on whether an incumbent may lawfully enter into a legally binding and irrevocable agreement as to the delegation of the functions set out in the Canons. It is, therefore, at best unclear whether doing so would be lawful.
173. The functions of an incumbent as set out in the Canons – essentially the functions that are inherent in the office of rector or vicar – are generally capable of being delegated. It is, however, a normal principle with any sort of delegation that those who confer power on someone else to carry out certain functions retain the ability to withdraw that delegation. This principle proved a stumbling block when the legislative drafting group on women bishops considered in 2008 whether bishops might in some circumstances be required by statute to delegate functions to another bishop²⁷.
174. Moreover, incumbents also have particular functions that are conferred upon them by statute law (for example, the Marriage Act 1949 and the Ecclesiastical Fees Measure 1986). It is a general rule of law that a person on whom a statute confers functions may not lawfully delegate those functions unless statute law makes provision for such delegation. That rule would also need to be considered in determining whether the delegation of functions in accordance with a deed was possible.
175. As a result of the conclusion I have reached above, it is not, however, necessary for me to pursue this difficult legal area further.
176. The MOU of 18 September would, if agreed by all three parties, constitute a formal agreement freely entered into by them and noted in Prebendary Crossman's statement of particulars, which are issued under statutory regulations. It would also be open to the bishop and incumbent designate to agree the MOU without the PCC's consent and to note it in the statement of particulars since the responsibility for making arrangements under the Declaration rests with the bishop.
177. Nevertheless it seems to me that, for two reasons, the PCC would be in a stronger position if it were to agree to become a party to the MOU. One is that it would put it on a surer footing in raising concerns with the bishop in the event of difficulties arising. The other is that the prospects for building the necessary relationship of trust would be much enhanced if, before Prebendary Crossman were collated and inducted as rector, the PCC, the incumbent designate and the bishop could affirm their partnership in the gospel by coming to an agreement.

²⁷ See Report of Legislative Drafting Group 2008 on mandatory delegation (GS 1685 para 126)

Would pastoral reorganisation be a solution?

178. In the PCC's view, any arrangements made for a resolution parish in a multi parish benefice that isn't a team ministry and that has a female incumbent cannot be wholly satisfactory. It has therefore argued that it should be transferred to another benefice. It accepts that this would take time and is prepared in the interim to acquiesce in the indirect ministry of Prebendary Crossman so long as it is insulated from her direct ministry.
179. There are, as I understand it, six other resolution parishes within the diocese of Bath and Wells, none of which is in the same deanery as Lullington with Orchardleigh. So for reasons of geography, pastoral organisation involving one or other of them seems impractical. It would in theory be possible to rearrange the composition of some of the benefices in the Frome deanery so that Lullington with Orchardleigh was part of a benefice with a male incumbent. But this would be no guarantee that problems would not recur when next the living was vacant.
180. Moreover, pastoral reorganisation involves prior consultation with the affected parishes and is not something that a diocese can lawfully do simply by fiat. To the extent that it tended to produce less natural groupings of communities it would be likely to be resented, especially if seen as driven by the needs of a resolution parish.
181. So, while I have not been in a position to research the issue in detail and have no view of principle to offer on the proposal, **I doubt whether the pastoral reorganisation solution would, in practice, be straightforward to implement and it could create as many problems as it solved.**

Does the acting bishop have the powers she needs?

182. One issue that Mr McKie raises in the submission following earlier exchanges with diocesan personnel is whether the delegation of powers to the Bishop of Taunton on 21 October 2015 was achieved effectively as a matter of law.
183. That he has done so reflects in part obvious professional frustration with what he regards as inadequate reasoning on the part of the registrar and a reliance on mere assertions that other church lawyers are happy with the document. But more fundamentally it, no doubt, reflects his wish to have copper bottomed, legally enforceable arrangements which no one could wriggle out of later on a technicality.
184. Mr McKie's argument (supported by his wife who is also an experienced lawyer) concerns the interaction between the first and longer part of the instrument of delegation under section 13 of the Dioceses, Pastoral and Mission Measure 2007 concerning ordinations and confirmations and the second and shorter part. He believes that the second part, which delegates '*all other necessary functions peculiar and appropriate to the order of Bishops and to do all other things needful and necessary*

in and about the premises as I personally might or would do’ is ancillary rather than parallel to the first.

185. In other words he and Mrs McKie believe that the effect of the instrument, though not its intention, is probably only to delegate powers in relation to ordinations and confirmations plus such other powers as are necessary to the exercise of those functions. This is far from an academic point for the whole diocese since it is on the 2015 instrument that the Bishop of Taunton now relies as acting diocesan bishop. Mr McKie makes the fair point that just because a particular form of words is hallowed by long usage does not guarantee its soundness.

186. I understand the significance of the point, though Mr McKie is perhaps not giving sufficient weight to the fact that it is natural in a document of this kind to start by referring to the two actions – ordination and confirmation – which are intrinsic to the office of bishop and, at least theologically, of much greater import than all the administrative and disciplinary functions exercised by a bishop. Nevertheless I am in some difficulty because the issue in dispute is entirely one of legal construction and not, therefore one that it is within my authority to resolve.

187. The person responsible for advising the bishop is the registrar and, having considered Mr McKie’s arguments he has concluded that the latter’s interpretation is too narrow. Mr McKie has graciously said that he would accept a formal written opinion from the Chief Legal Adviser²⁸ at Church House provided it contained no obvious error, was prepared on the basis of careful instructions including the arguments set out in his own document of 24 August.

188. While not strictly necessary for the determination of this grievance I have, therefore, in a spirit of helpfulness obtained an opinion from the Chief Legal Adviser which is attached at **Annex C**. In summary, his conclusion is that **while the drafting of the 2015 instrument does not reflect the best practice now commended in a report of 2018 from the Legal Advisory Commission, the instrument does achieve the wide measure of delegation that the Bishop of Bath and Wells intended.**

²⁸ I should add that in his grievance Mr McKie urged that on other points I should take independent legal advice and not use Alex McGregor (the Chief Legal Adviser) since he had been consulted by the registrar at an earlier stage in this dispute and apparently expressed a view with which Mr McKie disagreed. As explained in footnotes 11 and 21, Mr McGregor’s involvement was extremely limited. Moreover, Mr McGregor is an employed lawyer whose Bar Council waiver enables him to provide advice only to the National Church Institutions (which for this purpose includes me as a national office holder) and not to dioceses. While therefore registrars will often consult him informally as an acknowledged expert in ecclesiastical law he is not responsible for advising them or individual bishops. I did not therefore accept Mr McKie’s contention that Mr McGregor would be conflicted in exercising his normal role of providing me with such legal advice as I might need to conduct this review.

Findings

189. Mr McKie has itemised in section 35 of his submission seven elements to his grievance. I take them in turn. The first four concern the diocesan bishop and the others the Bishop of Taunton after she assumed responsibility for matters following the diocesan bishop's departure on 3 August for medical treatment.

Failure to consult under paragraph 22

190. This is the complaint that the diocesan bishop failed to consult the PCC in a timely way after it passed its resolutions of 2016 and 2018. For reasons set out above **I find this element of the grievance to be justified.**

Failure of duty under paragraphs 22 and 23

191. This is a complaint that in appointing Prebendary Crossman the diocesan bishop failed in his duty to ensure that the parish should not receive the ministry of female bishops and priests.
192. For reasons set out above, I am satisfied that it is not a breach of the House of Bishops' Declaration to appoint a woman as an incumbent of a multi-parish benefice where one parish has passed a resolution but others haven't. I also do not accept that a resolution parish is entitled to insulate itself from any direct ministry from its female incumbent, though she should not exercise priestly functions in the parish. **I therefore find this element of the grievance to be unjustified.**
193. Consistent with my finding on element one, I do believe, however, that it was unwise of the bishop to initiate an appointment process that might lead to the appointment of a female incumbent without first having concluded his consultations on the PCC's resolution and reached at least some understanding with the PCC on the arrangements to be put in place in event of a woman being appointed. This would have been fairer to the parish and any female candidates.

Anticipatory breach of paragraphs 22 and 23

194. This is, I think, a somewhat technical argument namely that, since in Mr McKie's view the Bishop of Taunton, when acting as diocesan bishop, did not make adequate arrangements under the Declaration the Bishop of Bath and Wells committed an anticipatory breach of the Declaration by delegating powers to her and thus failing to meet his own obligations under the Declaration.
195. While the diocesan bishop had made an instrument of delegation to the Bishop of Taunton in 2015 which he and his registrar believed conferred a wide actual and potential degree of authority on her, it is clear that he regarded it as his personal responsibility to deal with the consequences of the resolution passed by the PCC under the Declaration. He led the (admittedly belated) discussions with the parish to try and agree arrangements and clearly intended to retain charge of the process.

196. It was only the news of his serious illness on 3 August and his need to step back while he received potentially life-saving treatment that led to the Bishop of Taunton taking over responsibility for the discussions, which forced was completed. **This element of the grievance is therefore unjustified.**

Failure to act in accordance with paragraph 17

197. This is a complaint that the diocesan bishop's conduct, at least until 10 July, failed to provide for the parish the arrangements which they had been entitled to expect since 2016 and meant that they were denied what they were entitled to expect under the Declaration and its guiding principles. As a result the parish, instead of flourishing, was afflicted by anxiety and uncertainty over its future.

198. For reasons given above, the diocesan bishop should in my view have sought to reach agreement on arrangements for episcopal and priestly ministry in the parish as soon as the initial resolution was passed in 2016 and, failing that, when it was reaffirmed in 2018. In addition, the conduct of the diocesan bishop and diocese between the announcement of Prebendary Crossman's appointment on 1 March and the first meeting on 13 July was dilatory and unhelpful. To have waited until the morning of Prebendary Crossman's licensing on 9 July to reassure the parish that her licence would not extend to the parish was particularly insensitive to parish anxieties.

199. **I therefore find this element of the grievance to be justified.**

Failure under paragraphs 20 and 22- 23 if the Bishop of Taunton has powers

200. This element of the grievance complains that the Bishop of Taunton, assuming the delegation from the diocesan bishop was legally effective, breached the Declaration by not making arrangements for the parish which were legally enforceable and which met the parish's proposals (in effect to exclude Prebendary Crossman from direct ministry in the parish).

201. For reasons set out above, the Declaration does not, in my view create any expectation that bishops should make arrangements which the parish can enforce by recourse to the secular courts. In addition the arrangements set out in the acting diocesan bishop's MOU of 18 September, which was finalised after consultation with others including the Bishop of Ebbsfleet, do provide not only that Prebendary Crossman will not exercise priestly functions in the resolution parish but will step back from undertaking a number of other elements of ministry that an incumbent would normally carry out.

202. **I therefore find this element of the grievance to be unjustified.**

Failure under paragraph 17 if the Bishop of Taunton does not have powers

203. This is a complaint that if the delegation to the Bishop of Taunton was not effective her purported exercise of the diocesan bishop's role served as an obstacle to providing

the arrangements that the parish was entitled to expect under paragraph 17 of the Declaration.

204. It is not my responsibility to rule on the scope of the instrument of delegation made by the Bishop of Bath and Wells on 21 October 2015. It is a matter of law that, ultimately, only the courts could settle. Nevertheless, the advice available to me indicates that the instrument, though the drafting is somewhat antique, does achieve the wide measure of delegation sought.

205. **This element of the grievance therefore falls away.**

Failure by the Bishop of Taunton under Paragraph 17

206. This element of the complaint asserts that, whether or not the Bishop of Taunton had the purported powers, she prevented, by her conduct, the parish from experiencing the flourishing that it was entitled to expect under paragraph 17 of the Declaration by virtue of having arrangements made for it consistent with the Declaration. This element of the grievance refers specifically to a number of alleged discourtesies, misleading claims and procedural mistakes in the course of August and September.

207. I find this the most difficult of the elements on which to rule. By the time that the bishop engaged with the subject, the unhappy meeting between Mr McKie and the registrar had already taken place and the parish was already talking of bringing a grievance to me. So she did not have a goodly heritage.

208. Moreover, the tone of some of the communications from Mr McKie on behalf of the parish was by this time forthright not to say peremptory and confrontational. The heavy concentration on legal points was also, I suspect, culturally difficult for the bishop and diocesan personnel who, day to day, are more used to operating relationally. Churches are, after all, part of the voluntary and community sector.

209. As noted above, I also deduce from the bishop's actions that she wanted to make up for past delays and, for everyone's sake, bring matters to an early conclusion, whether by way of early agreement or, as seemed increasingly likely, by moving into the grievance process. This was commendable. Had a bit more urgency been shown over the previous four years matters might not have got to the pitch they had.

210. All that said, and as noted above, it was in my view an error of judgement to circulate to all the parishes of the benefice on 21 August a draft of the MOU that the registrar had prepared without first giving the PCC for whom the arrangements were proposed an opportunity to comment on them.

211. Mr McKie had been wanting to talk to the bishop since his unsatisfactory meeting of 11 August with the registrar and she had, perfectly reasonably, not been immediately available because of family commitments. By finding the time to send out the draft

document to a wider audience on 21 August, four days before she was able to speak with Mr McKie she did in my view act in a way that, no doubt unintentionally, was discourteous and provocative. In effect she was signalling that the time for further negotiations was, save perhaps on small points of detail, over.

212. It may well be, given the differences of view on the contents and the legal status of any arrangements, that further discussions would not in practice have secured much progress. But given the extensive time spent in the two July meetings on Zoom chaired by the diocesan bishop I think the acting diocesan bishop should first have sent the draft MOU to Mr McKie, Prebendary Crossman and the Bishop of Ebbsfleet with a view to getting their comments and exploring whether one further meeting could be arranged with a view to making some progress before consulting all the benefices of the PCC.

213. So, while I believe that the acting bishop was right to inject an element of urgency into the discussions, **I find this element of the complaint partly justified.**

Overall finding

214. Regulation 18 of the Regulations requires me to decide whether the grievance is justified, partly justified or unjustified. There are seven elements to this grievance of which I have found two to be justified, one to be partially justified and three to be unjustified. One was a point made in the alternative and falls away in the light of the legal advice I have received.

215. **Overall, therefore, I find the grievance to be partly justified.** The PCC was entitled to expect that the bishop and diocesan personnel would, from 2016 on, respond to its resolution in a much more timely and engaged way than it did. Shortcomings in the way the diocese has handled matters have persisted almost to the end. But on what is now proposed I do not believe that the substance of the arrangements for Lullington with Orchardleigh set out in the MOU nor the use of the MOU, with a reference to it in Prebendary Crossman's Statement of Particulars, constitute a breach of the House of Bishops' Declaration.

Conclusion and recommendations

216. After so many words it is only with some reluctance that I add any more. But, as the words quoted in paragraph 55 reveal, this is a sad story that could yet become a tragedy. So it is, I think, incumbent on me to offer some thoughts on possible next steps, not least because Regulation 24 says that where a grievance is held to be justified or partly justified the Independent Reviewer may include recommendations in the decision for addressing the grievance.

217. The difficulty for all concerned is that it is impossible to put the clock back. In his letter of apology of 29 July the diocesan bishop accepted (in relation to the involvement of the Bishop of Ebbsfleet) that *'to have made adequate provision in a*

timely way would have ensured the parish's security and stability would have been protected and I am sorry that was not the case.' He went on to say: *'The only thing that I might say which has, I hope, been a blessing is that because the appointment process has now taken place...the future incumbent has also been part of these recent discussions.'*

218. To the extent that the bishop was referring to the constructive and accommodating role that Prebendary Crossman seems to have played in the discussions I understand why he said what he did. But the reality, in my judgement, is that it would have been immeasurably easier to have concluded an agreement on arrangements acceptable to the parish had discussions taken place and been concluded before any particular appointee had come into the frame.
219. It seems clear, before February 2020, that the PCC (though not necessarily all of its members) was prepared to acquiesce in the appointment of a female incumbent provided satisfactory arrangements for it were made under the Declaration. It seems to me entirely possible, though there can be no certainty, that the PCC might have accepted something along the lines of the arrangements set out in the 18 September MOU, had it been offered them at any point before February 2020.
220. The trouble is that after Prebendary Crossman's first appearance in the benefice on 5 February the difficulties over having a female incumbent were amplified by concerns among some over the fact that Prebendary Crossman had a female partner and was on record as opposing the Church of England's teaching on sexuality.
221. The PCC, now advised by Mr McKie, became determined to try and secure arrangements which would effectively exclude her from any direct ministry in the parish. Hence the very long list of activities (many of them not priestly in nature) which the PCC did not wish the rector-designate to carry out and the determination to secure a legally binding document which would enable recourse to the courts at the parish's initiative if any provisions in the document were breached.
222. As I have explained above, however, the 2014 Declaration allowed for the possibility of a female incumbent of a multi parish benefice including a resolution parish. It did not, given the overall shape of the 2014 settlement and the earlier rejection of approaches with more legal provisions, create any expectation that arrangements for resolution parishes would be set out in legally enforceable instruments. And it was not intended to promote exclusion and barriers but reciprocity, mutuality and the highest possible degree of communion, consistent with resolution parishes not being required to receive the priestly or episcopal ministry of women.
223. How then might it now be possible to get matters back on track? It will not be easy and it may be impossible. If the PCC is determined, in effect, not to have anything to do with this incumbent it cannot be forced to agree to the MOU. The bishop would

then be entitled to put the arrangements in place under the Declaration without the PCC's consent and to proceed to collate and induct Prebendary Crossman. Thereafter the risk is that the situation could become very messy. The vice-chair of the PCC's comments noted at paragraph 55 put the matter starkly.

224. Until these difficulties and Covid came along, this tiny parish was doing a remarkable job to sustain Christian worship, run an exceptional weddings ministry, be financially resilient and maintain two grade 1 listed buildings in good repairs. That was down to the commitment and hard work of a small number of volunteers and retired clergy. It would be very sad for all concerned and for the Christian witness of the Church of England if much of that good work were now to be undone.

225. I had considered whether to pause the production of this report and, as Regulation 21 enables me to do, seek a settlement of the review by mediation. I concluded, however, that there needed first to be a report which clarified the disputed issues and showed that, sadly, both sides bear some share of responsibility for what has gone wrong.

226. It is only now, with the publication of this report, that there may be a need for help with conducting conversations which enable those concerned to pick up the broken pieces and restore a working relationship which respects honest differences of theological conviction.

227. I do, therefore, strongly urge the bishop and the PCC to consider seriously whether they would agree to invite an experienced mediator to facilitate conversations on how to move forward in the light of the findings of this report. The text of the MOU of 18 September provides a reasonable starting point for those discussions, though it should be capable of amendment if changes to the details of the proposed arrangements would help to facilitate agreement. I have identified someone who would be willing in principle to take on the challenge, though it is for the bishop and PCC to decide whether they are willing to engage with him.

228. Paul's advice to the Colossians (3: 12-14) still holds good for us all:

“ Therefore, as God’s chosen people, holy and dearly loved, clothe yourselves with compassion, kindness, humility, gentleness and patience. Bear with each other and forgive one another if any of you has a grievance against someone. Forgive as the Lord forgave you. And over all these virtues put on love, which binds them all together in perfect unity.”

Annex A

THIS MEMORANDUM OF UNDERSTANDING (Memorandum) is made on

2020

PARTIES

- (1) The Right Reverend Ruth Elizabeth Worsley Bishop of Taunton acting in the place of the Lord Bishop of Bath and Wells under and by virtue of the powers vested in her by an Instrument of Delegation made under the provisions of the Dioceses Pastoral and Mission Measure 2007 and dated the 21st day of October 2015 (the **Bishop of Taunton**).
- (2) The Reverend Prebendary Sharon Margaret Joan Crossman Clerk in Holy Orders and Priest in Charge of the Benefice of Beckington with Standerwick Berkley Rodden and Lullington with Orchardleigh within the Diocese of Bath and Wells (**Prebendary Crossman**).
- (3) The Parochial Church Council of Lullington and Orchardleigh (the **PCC**).

BACKGROUND

- (A) Prebendary Crossman is the Priest in Charge of the Benefice of Beckington with Standerwick Berkley Rodden and Lullington with Orchardleigh (the **Benefice**) and has accepted an offer to be appointed Rector of the Benefice.
- (B) The Benefice includes the parish of Lullington with Orchardleigh (the **Parish**).
- (C) On 26 October 2016 the PCC made a resolution (the **Resolution**) under the House of Bishops' Declaration on the Ministry of Bishops and Priests (the **Declaration**) requesting on grounds of theological conviction that arrangements be made for the Parish in accordance with the Declaration.
- (D) The Resolution was re-affirmed by the PCC by further resolution on 23rd October 2018.
- (E) The other parishes in the Benefice have not made a resolution under the Declaration.
- (F) By this Memorandum the parties intend to give effect to the five guiding principles set out in the Declaration through their outworking by simplicity, reciprocity and mutuality as reflected by the practical arrangements set out below in order to facilitate the Resolution.

THE PARTIES AGREE ON THE FOLLOWING PROVISIONS:

1. Following his consideration of the PCC's resolution the Lord Bishop of Bath and Wells (the **Diocesan Bishop**) chose The Right Reverend Jonathan Goodall (the **Bishop of Ebbsfleet**, a Provincial Episcopal Visitor and already an assistant bishop in the Diocese of Bath and Wells)

who accepted the Diocesan Bishop's request to provide oversight for the Parish on terms to be determined by the Diocesan Bishop or the Bishop of Taunton or other authorised commissary and agreed with the Bishop of Ebbsfleet to ensure that pastoral and sacramental ministry is provided in the Parish in a way that maintains the highest possible degree of communion and contributes to the welfare, resourcing and mission of the Parish and the Benefice, and in its relationship with the Diocese.

2. Prebendary Crossman will not preside or celebrate at the Sacraments of Baptism or the Holy Communion, nor the other sacraments, nor at morning and evening prayer say the absolution or the blessing, nor at weddings the nuptial blessing, or exercise any other ministry in the Parish that is reserved to those with the cure of souls except:
 - (a) officiating at a wedding or funeral at the express request of the bride and groom or the next of kin of the deceased;
 - (b) the reading of morning and evening prayer on a Sunday on an occasional basis after giving reasonable notice to the PCC;
 - (c) preparing and presenting Candidates from elsewhere in the Benefice for Confirmation in the Parish by the Bishop of Ebbsfleet.
3. Prebendary Crossman will use all best endeavours by the exercise of her power of delegation under Canon C24.8 to ensure that a male priest whose ministry does not conflict with the nature of the theological conviction underlying the Resolution is available to exercise priestly ministry in the Parish and will welcome the exercise of episcopal ministry by the Bishop of Ebbsfleet.
4. Should the PCC so request the Diocesan Bishop will use all best endeavours to licence a non-stipendiary assistant curate under section 99 (5) of the Mission and Pastoral Measure 2011 having a special cure of souls for the Parish provided that such appointment does not conflict with the nature of the theological conviction underlying the Resolution.
5. Prebendary Crossman's right of attendance at all meetings of the PCC and annual parish meetings and annual parochial church council meetings is recognised by the parties but if requested by the PCC to do so Prebendary Crossman will refrain from chairing the annual parish meeting or the annual parochial church council meeting of the Parish and further agrees that if requested by the PCC the Diocesan Bishop may under Rule M26 (2) of the Church Representation Rules authorise a clerk in Holy Orders licensed or having Permission to Officiate in the Parish to chair meetings of the PCC.
6. Nothing in paragraph 5 shall restrict the entitlement of Prebendary Crossman as an ex-officio member of the PCC to be given notice of and the agenda for all meetings of the PCC and the minutes of any such meetings and the PCC will welcome her attendance if the business of a meeting has a bearing on Benefice wide matters or the making of a Benefice response within Deanery or Diocese and Prebendary Crossman shall countersign the minutes of any meeting attended by her.
7. The PCC and Prebendary Crossman rejoice in each other's partnership in the Gospel and will co-operate to the maximum possible extent in mission and ministry and the PCC will do all within its power to respect encourage and support Prebendary Crossman in her role in the Benefice and Prebendary Crossman will do all within her power to enable the Parish to flourish within the life of the Benefice.

8. Hilary Daniel, Glyn Bridges, Simon McKie, Edmund Phillimore and John Bevan all being admitted to the office of Reader shall be licensed to exercise their office in the Parish should they so apply and the appointment of any other Reader licensed to the Parish should not conflict with the nature of the theological conviction underlying the Resolution.
9. Reference shall be made to this Memorandum in any Statement of Particulars issued to Prebendary Crossman under Regulation 4 (2) of the Ecclesiastical Offices (Terms of Service) Regulations 2009, as amended.

TERMS OF MEMORANDUM

10. This Memorandum is governed by grace and the parties intend it to be an expression of co-operation and collaboration to give effect to the five guiding principles of the Declaration and the mutual flourishing of the Parish and Benefice. It does not and is not intended to create any legal relationship between the parties whatsoever.
11. This Memorandum will terminate upon:
 - (a) the appointment of a male priest in charge or incumbent of the Benefice whose ministry does not conflict with the theological conviction underlying the Resolution or
 - (b) the revocation of the Resolution or
 - (c) the expiry of twelve months after the giving of written notice by the Diocesan Bishop or the PCC to the other terminating the agreement save that the Diocesan Bishop shall not give notice of termination unless equivalent provision is to be made for episcopal oversight and ministry.

The Right Reverend Ruth Elizabeth Worsley)

Bishop of Taunton)

The Reverend Prebendary Sharon)

Margaret Joan Crossman)

Signed by)

(Authorised Signatory) for and on behalf of the)

Lullington and Orchardleigh Parochial Church)

Council)

SECTION XXXV

THE GRIEVANCE

THE STRUCTURE OF THIS SECTION

35.1.1 In this Section we specify our grievance, first in respect of the acts and omissions to act of Bishop Hancock and secondly in respect of the acts and omissions to act of Bishop Worsley.

**THE ACTS, AND OMISSIONS TO ACT, OF BISHOP HANCOCK CONSTITUTING
FAILURES TO FULFIL HIS DUTY UNDER THE DECLARATION**

Why it is necessary to raise the Grievance in respect of Bishop Hancock

35.2.1 In setting out Bishop Hancock's failures to fulfil his duty under the Declaration we are conscious of, and grateful for, the change in his approach to determining Declaration Arrangements for the Parish which occurred on 10th July 2020⁵⁷⁷ and the very positive attitude to the matter which he then adopted until he was forced by his illness to withdraw from his duties.⁵⁷⁸ We are also very conscious of the grave illness from which Bishop Hancock is suffering. We have no wish to add to the stress to which he is subject.

35.2.2 Raising the Grievance, however, is the only remedy available to the PCC to ensure that Declaration Arrangements are made for the Parish and our duty to our parishioners requires us to ensure that such arrangements are made. Nor would it be possible to raise such a grievance in respect of the acts and omissions of Bishop

⁵⁷⁷ See Section XIV above

⁵⁷⁸ See Section XIX above

Worsley alone because the failure to consult the PCC and the failure to consider the Declaration Resolutions in making the decision to appoint Prebendary Crossman to the Cure, which were the key failures which were the fundamental cause of the failure to make Declaration Arrangements for the Parish, were failures of Bishop Hancock and not of Bishop Worsley. Bishop Worsley's failures to fulfil her duty under the Declaration have merely compounded the original failures of Bishop Hancock.

Failure to consult under para. 22

35.2.3 The Declaration, para. 22 provides that:

'Where a resolution has been passed, and before clergy are appointed to the parish or a bishop chosen by the diocesan bishop to provide oversight, there will, therefore, need to be consultation between bishop and parish to ascertain the nature of that conviction so that the resolution can be implemented effectively.'

35.2.4 What is meant here by the phrase '*before clergy are appointed to the parish*'? Read literally, and without reference to the Declaration's purpose, that condition might be satisfied if on the day before an incumbent were inducted the diocesan bishop made a consultation of the parish. Clearly, however, that would not fulfil the purpose of the Declaration to protect the position of the Theological Minority within the Church of England allowing its members to flourish within the Church of England's life and structures⁵⁷⁹ and so contributing to mutual flourishing across the whole Church of England⁵⁸⁰ because it would not allow the results of the bishop's consultation to inform the effective implementation of a resolution under the Declaration. Clearly the consultation must take place as part of the early planning for the filling of a vacancy at a point, for example, when it is still practical to facilitate a pastoral reorganisation under the Mission and Pastoral Measure 2011 s.31.⁵⁸¹

⁵⁷⁹ The Declaration, para. 5, the fourth principle

⁵⁸⁰ The Declaration, para. 5, the fifth principle

⁵⁸¹ See para. 4.4.1 above

35.2.5 Clearly Bishop Hancock failed in his duty to make that consultation both in respect of the 2016 Resolution and in respect of the 2018 Resolution.

Failure of duty and paras. 22 and 23

35.2.6 Bishop Hancock failed in his duty under para. 23 of the Declaration to take account of the Declaration Resolutions in making his decision to appoint Prebendary Crossman.⁵⁸²

35.2.7 As we have seen, for the reasons which we have explained,⁵⁸³ Bishop Hancock was under a duty under paras. 20, 22 and 23 of the Declaration to make arrangements which implemented the Declaration Resolutions. In order to do so, he must have made arrangements under which the PCC, representing the Parish, could not be forced to receive the ministry of women bishops or priests.⁵⁸⁴ He has not done so.

An anticipatory breach of paras. 22 and 23

35.2.8 To the extent that Bishop Hancock acts by having delegated powers to Bishop Worsley he has made an anticipatory breach⁵⁸⁵ of the Declaration by reason of Bishop Worsley's refusal to make Declaration Arrangements⁵⁸⁶ and her insistence that the only arrangements she will make for the Parish are the execution of the Memorandum of Understanding, which is legally ineffective,⁵⁸⁷ and the matters referred to in para. 33.1.2 above.

⁵⁸² See para. 7.4.1 above

⁵⁸³ See paras. 29.2.1 – 29.2.9 above

⁵⁸⁴ See para. 29.2.8 above

⁵⁸⁵ An anticipatory breach is the giving of an indication that the giver intends to breach a legal duty or undertaking

⁵⁸⁶ See paras. 25.1.1 and 25.3.2 – 25.4.1 above

⁵⁸⁷ See Appendix II, Doc. 227 and paras. 25.3.2 & 25.3.3 above

35.2.9 As we have seen,⁵⁸⁸ doing so will not fulfil Bishop Hancock's duty to make arrangements which implement the Declaration Resolutions because the Memorandum of Understanding is not legally enforceable⁵⁸⁹ and because, even if it were legally enforceable, it would not prevent the PCC being forced to receive the ministry of a female priest nor would it prevent it being forced to receive the ministry of a female bishop.

Failure to act in accordance with para. 17

35.2.10 The Declaration provides that:

*'The practical outworking of the arrangements may vary according to local circumstances but the approach commended in the following paragraphs will, in the view of the House, enable all dioceses and parishes to act consistently with the guiding principles set out above and the requirements of the law, including the Equality Act 2010.'*⁵⁹⁰

35.2.11 It is implicit in this paragraph that in making arrangements under the Declaration a diocesan bishop must act in accordance with the Five Guiding Principles. The outworking of those principles must be *'accompanied by simplicity, reciprocity and mutuality.'*

35.2.12 The Declaration para. 10 provides that:

*'In particular reciprocity will mean that those of differing conviction will do all within their power to avoid giving offence to each other. There will need to be sensitivity to the feelings of vulnerability that some will have that their position within the Church of England will gradually be eroded and that others will have because not everyone will receive their ministry.'*⁵⁹¹

35.2.13 Until 10th July 2020 Bishop Hancock's conduct in respect of his duty to make arrangements to implement the Declaration Resolutions and in response, to the

⁵⁸⁸ See para. 33.3.4 above

⁵⁸⁹ See paras. 33.4.1 – 33.4.5 & 33.6.1 above

⁵⁹⁰ The Declaration, para. 17

⁵⁹¹ The Declaration, para. 10

correspondence on behalf of the PCC attempting to recall him to that duty was marked by negligence and by a failure to respond substantively to the points made to him and, often, to respond at all.⁵⁹² Such conduct impeded, and did not enable, the parishioners' ability to flourish within the life and structures of the Church of England. It risked, as the Bishop was warned many times, alienating key members of the congregation and so risked the life of the parish becoming unviable.⁵⁹³ It prevented the PCC communicating with the Parishioners to tell them what arrangements the Bishop would make for them so that they were left in a state of uncertainty.

THE ACTS, AND OMISSIONS TO ACT, OF BISHOP WORSLEY CONSTITUTING FAILURES TO FULFIL HER DUTY UNDER THE DECLARATION

Dependent upon whether Bishop Worsley has power to act on Bishop Hancock's behalf

35.3.1 The nature and extent of Bishop Worsley's failures to fulfil her duty under the Declaration depend upon whether or not she has the power to act on Bishop Hancock's behalf in making Declaration Arrangements for the Parish.⁵⁹⁴

35.3.2 In order to determine, therefore, the extent of Bishop Worsley's dereliction of duty, the Independent Reviewer must come to a conclusion on the construction of the Instrument. That is, of course, a matter of legal construction.

Bishop Worsley's failure if she has power to act on Bishop Hancock's behalf

35.3.3 If Bishop Worsley has the power to exercise Bishop Hancock's powers in the matter she must also be under a duty to do so in a manner which is consistent with Bishop Hancock's duties. By failing to make Declaration Arrangements for the Parish she

⁵⁹² See Sections IX – XIII above

⁵⁹³ See Appendix II, Docs. 46, 54, 71, 78 & 126 and paras. 9.2.1, 10.6.1, 11.3.1, 11.4.5, 12.3.3 & 16.1.1 above

⁵⁹⁴ See Section XXIV above

has been, and continues to be, in breach of her duty⁵⁹⁵ under the Declaration paras. 20, 22 and 23 of the Declaration

35.3.4 In acquiescing in the Registrar's refusal to discuss the M^cKie Paper and, in particular, the draft Implementing Steps set out therein with Mr M^cKie which was the purpose of the 11th August Zoom Meeting and in the Registrar's refusal to discuss the legal grounds of his view that it was inappropriate for the arrangements which were to be made for the Parish to be legally enforceable and in failing to instruct him to engage in that discussion she breached the duty imposed implicitly by the Declaration para. 17 by acting in such a way in respect of the formulation of arrangements for the Parish under the Declaration as to prevent the parishioners from flourishing within the life and structures of the Church of England and preventing them from contributing to mutual flourishing across the whole of the Church of England.⁵⁹⁶

35.3.5 In announcing her intention not to make Declaration Arrangements but rather only to procure the execution of the Memorandum of Understanding, she has committed an anticipatory breach of her duty under paragraphs 20, 22 and 23 of the Declaration.⁵⁹⁷

Bishop Worsley's failure if she does not have powers to act on Bishop Hancock's behalf

35.3.6 If Bishop Worsley does not have the power to exercise Bishop Hancock's powers to make Declaration Arrangements for the Parish she will have breached the duty imposed implicitly by the Declaration para. 17 by acting in such a way in respect of the arrangements to be made for the Parish as to prevent the parishioners from flourishing within the life and structures of the Church of England and so contributing to mutual flourishing across the whole of the Church of England by reason of her *ultra*

⁵⁹⁵ See para. 25.4.1 above

⁵⁹⁶ See Sections XX and XXV above

⁵⁹⁷ See paras. 25.3.2 – 25.4.1 above

vires interference in the matter in such a way as to hinder the making of Declaration Arrangements for the Parish.⁵⁹⁸

Bishop Worsley's failures whether or not she has power to act on Bishop Hancock's behalf

35.3.7 Whether or not she has the power to act for Bishop Hancock in the matter she has also breached the duty arising implicitly under para. 17 to act in respect of the arrangements to be made for the Parish in a way which enables the parishioners to flourish within the Church of England's life and structures and therefore to contribute to mutual flourishing by her conduct in the matter consisting of:

- (a) purporting, in communications to the parishioners of the Benefice, to inform them as to the process of making arrangements for the Parish under the Declaration but giving a partial and misleading view of the matter;⁵⁹⁹
- (b) refusing to give copies of any written legal advice which Bishop Worsley may have been given on matters relevant to the arrangements to be made for the Parish and of the instructions relating to that advice, or, if those instructions were made, or that advice was given, orally a note of those oral instructions or that oral advice or, if no such advice was received or instructions given, to state that she had not received any such advice. This failure was particularly culpable in view of the undertakings Bishop Worsley gave in the 25th August Telephone Conversation to provide copies of that legal advice and to act in an open manner and in view of the imbalance of resources available to Diocesan Personnel on the one hand and the unpaid volunteers acting on behalf of the PCC on the other;⁶⁰⁰

⁵⁹⁸ See Section XXIV above

⁵⁹⁹ See paras. 20.4.1 & 25.3.3 above

⁶⁰⁰ See Section XXI above

- (c) making the apparently misleading claim to have taken advice from the Registrar in respect of the arrangements to be made for the Parish when it appears that Bishop Worsley had merely received a draft document without any accompanying legal advice;⁶⁰¹
- (d) making misleading claims as to the existence of comparable parishes and failing to provide information in relation to a putative such parish in Salisbury Diocese to which she had referred even though that information was requested;⁶⁰²
- (e) making equivocal replies to straightforward enquiries and requests for confirmation;⁶⁰³
- (f) failing to treat with due seriousness the concerns as to important matters of law of the two senior professionals dealing with the matter of the arrangements on behalf of the PCC;⁶⁰⁴
- (g) risking acting *ultra vires* on matters concerning the arrangements to be made for the Parish under the Declaration in circumstances where Bishop Worsley was aware, or ought to have been aware, that there was a significant possibility that she would do so;⁶⁰⁵ and
- (h) failing to provide evidence, when requested to do so by representatives of the PCC, that the requisite consent under the Patronage (Benefices) Measure 1986 s.13(1)(b)(i) had been given to the appointment of Prebendary Crossman.⁶⁰⁶

⁶⁰¹ See paras. 21.1.1, 21.3.1, 21.3.2 & 21.3.5 above

⁶⁰² See Section XXII above

⁶⁰³ See paras. 21.3.5, 23.2.1, 23.2.2 & 23.3.1 above

⁶⁰⁴ See Sections XX, XXI and XXIV above

⁶⁰⁵ See Section XXIV above

⁶⁰⁶ See paras. 21.2.2, 21.3.5 & 21.3.7 above

SECTION XXXVI

ADDRESSING THE GRIEVANCE

RECOMMENDATIONS UNDER REGULATION 24

36.1.1 Regulation 24 of the Regulations provides that:

'If the Independent Reviewer considers that the grievance is justified or partly justified, he or she may include in the decision recommendations for addressing the grievance.'

THE RESULT IF BISHOP HANCOCK HAD PROPERLY COMPLIED WITH HIS DUTIES

36.2.1 We have seen⁶⁰⁷ that Bishop Hancock should have consulted the PCC in response to the 2016 Resolution and again in response to the 2018 Resolution but did not do so. He should have taken the Declaration Resolutions and the need to make arrangements to implement them into account in deciding upon the person who would be suitable to appoint to the Cure but did not do so.⁶⁰⁸ We have also seen that in respect of a Mixed Benefice it will be very rare that a diocesan bishop will fulfil his duty under the Declaration if he appoints a Recently Lawful Priest as the incumbent, or priest in charge, of the Benefice. That is because doing so will inevitably mean imposing, at least indirectly, on the Resolution Parish concerned the ministry of that priest.⁶⁰⁹

36.2.2 In the circumstances of the Parish, as we have seen,⁶¹⁰ it would normally be appropriate, so as to fulfil the diocesan bishop's duty under the Declaration, either to appoint a male priest who is not a Recently Lawful Priest to the cure or, alternatively,

⁶⁰⁷ See para. 35.2.5 above

⁶⁰⁸ See para. 35.2.6 above

⁶⁰⁹ See para. 29.2.26 above

⁶¹⁰ See para. 29.2.8 above

to institute a pastoral reorganisation under the Mission and Pastoral Measure 2011 s.31 so as to place the Resolution Parish concerned into a separate benefice either on its own or with other parishes of a similar conviction.

36.2.3 Had Bishop Hancock fulfilled his duty under the Declaration at the proper time he must, almost inevitably, have adopted one of these two courses of action.

36.2.4 There is a strong argument, therefore, that the only recommendation which the Independent Reviewer could properly make to address that part of the PCC's Grievance which relates to these failures of Bishop Hancock would be that Bishop Hancock should refrain from inducting Prebendary Crossman to the Benefice whilst either seeking another, more suitable incumbent or, alternatively, facilitating a pastoral reorganisation.

THE PCC WILL ACCEPT A LESS THAN COMPLETE FULFILMENT OF BISHOP HANCOCK'S DUTY

36.3.1 The PCC is conscious, however, that undertaking such a course of action at this stage would involve a very considerable delay in filling the Vacancy and, therefore, continuing, for an indefinite period, the long period of instability with which the Benefice has had to cope since the Suspension in 2015.

TEMPORARY ARRANGEMENTS SUBJECT TO A FUTURE REORGANISATION

36.4.1 It is willing, therefore, as a matter of practicality to accept a less than complete fulfilment of Bishop Hancock's duty under the Declaration under which it accepts that it will have imposed on it temporarily the indirect receipt of Prebendary Crossman's

ministry but not its direct receipt whilst proposals for a reorganisation of the Benefice which allow the Parish to have an incumbent who is not a Recently Lawful Priest are formulated and implemented.

THE IMPLEMENTING STEPS AS A TEMPORARY EXPEDIENT

36.5.1 In the Implementing Steps, the PCC has specified in detail in carefully considered proposals actions to be taken by Bishop Hancock, or by persons acting *intra vires* on his behalf, and by others to make arrangements which will protect the Parish from being forced to receive the direct ministry of Prebendary Crossman. We respectfully suggest that the Independent Reviewer should recommend that the Implementing Steps be implemented as a temporary measure and that, in the longer term, a pastoral reorganisation should be instituted under which the Parish is placed in a separate benefice either on its own or with other parishes of a similar conviction so that a Resolution Priest may be appointed as its incumbent.

An additional undertaking in the Implementing Deed

36.5.2 In order to achieve this in a legally enforceable manner, it will be necessary to include in the Implementing Deed under Implementing Step I, in addition to the provisions specified in Section XXXII above, an undertaking by the Diocesan Bishop that he will facilitate such a pastoral reorganisation.

A reasonably satisfactory situation for the future

36.5.3 Such recommendations, whilst only imperfectly fulfilling Bishop Hancock's duty under the Declaration and only partially repairing the damage which his derelictions of duty have done to the Parish, would at least create a situation for the future which was

reasonably satisfactory in implementing, as is required by the Declaration, the Declaration Resolutions.

DRAWING WIDER CONCLUSIONS

An example?

36.6.1 In previous decisions of the Independent Reviewer, the Independent Reviewer has drawn lessons emerging from the matters which he has considered which are of wider concern than simply to the parish or diocese involved in the matter. In the *Matter of All Saints, Cheltenham*, for example, the Independent Reviewer formulated a general rule in respect of appointments of a woman to minister otherwise than as a member of the team in a multi-parish benefice of which one of the parishes is a Resolution Parish.⁶¹¹ In his decision on the *Matter of Chrism Masses*, the Independent Reviewer referred to the wider Church the question of how the Church understood the nature of mutual flourishing referred to in the fifth of the Five Guiding Principles. In the *Matter of the Nomination to the See of Sheffield and Related Concerns*, the Independent Reviewer drew general lessons for the behaviour both of the Theological Majority and the Theological Minority in the future⁶¹² as well as making four general recommendations which emerged from his consideration of the particular matters but were not confined to it.⁶¹³

36.6.2 We have seen that Bishop Hancock hoped that the arrangements made for the Parish might provide an example of good practice to which other dioceses could refer in making arrangements for parishes in a similar situation to that of the Parish. As we

⁶¹¹ *Decision of the Independent Reviewer in the Matter of All Saints, Cheltenham*, para. 37

⁶¹² *Decision of the Independent Reviewer in the Matter of the Nomination to the See of Sheffield and Related Concerns*, para. 206

⁶¹³ *Decision of the Independent Reviewer in the Matter of the Nomination to the See of Sheffield and Related Concerns*, paras. 191 - 202

have seen,⁶¹⁴ however, the behaviour of Bishop Worsley after Bishop Hancock's withdrawal from his duty due to illness, provides an example of how such matters ought not to be conducted.⁶¹⁵

The misbehaviour of Diocesan Personnel

36.6.3 We have seen that the behaviour in this matter of Diocesan Personnel has been characterised by negligence,⁶¹⁶ inordinate delay,⁶¹⁷ a failure to make substantive responses to the points made to them in correspondence⁶¹⁸ and sometimes to make any response at all,⁶¹⁹ a refusal to consider the nature of the duties imposed by the Declaration,⁶²⁰ an arrogant and irresponsible disregard of carefully considered legal analyses,⁶²¹ the provision of incorrect legal advice,⁶²² the inappropriate refusal to share documents and information⁶²³ and the making of equivocating and evasive responses to correspondence.⁶²⁴

36.6.4 Such behaviour must be seen in the light of the imbalance in the resources available to the paid Diocesan Personnel on the one hand and to the volunteers struggling to maintain Parish life on the other. Behaviour of this sort enormously increases the burden placed on pccs and, by doing so, acts as an effective bar on access to justice in respect of the matters subject to the Declaration

⁶¹⁴ See para. 32.6.75 above

⁶¹⁵ See para. 19.3.2 above

⁶¹⁶ See paras. 4.3.1, 6.3.2, 6.3.6, 6.3.7, 16.1.3 above and Sections IX – XII and XIX – XXIV above

⁶¹⁷ See Sections IX – XII above

⁶¹⁸ See Sections IX – XII above

⁶¹⁹ See Sections IX – XII above

⁶²⁰ See Sections IX – XII above

⁶²¹ See Sections XX & XXIV above

⁶²² See paras. 5.3.1 – 5.3.14, 6.3.8 – 6.3.23, 20.3.1 & 24.5.3 above

⁶²³ See Section XXI above

⁶²⁴ See paras. 21.3.5, 23.2.1, 23.2.2, 23.3.1 & 35.3.7 above

36.6.5 We request, therefore, that the Independent Reviewer's recommendations should include a clear statement that such behaviour is unacceptable in Diocesan Personnel and needs to be addressed.

The real possibility that the Declaration is not providing protection to Resolution Parishes in accordance with its purpose

36.6.6 In his report of 2017 the Independent Reviewer referred to a paper prepared by the Archdeacon of Berkshire to a colloquium on the Five Guiding Principles which concluded in relation to the Declaration that:-

' on the whole it's all going remarkably well, and the Church of England at a local level is behaving with characteristic flexibility, good humour and pragmatism.

...

On the whole it appears that the Five Guiding Principles are being used with common sense and courtesy, generosity and good will. There are about twelve thousand, six hundred parishes in the Church of England. Only about five hundred (less than four percent) of these have written letters of request [under paragraph 20 of the House of Bishops' Declaration]. How many more will come remains to be seen, but so far, this "Settlement" appears to have had the intended effect of enabling the Church of England to stay together as a family.⁶²⁵

36.6.7 It appears from the Independent Reviewer's report that this paper was based on information supplied by senior Diocesan Personnel rather than by the parishioners of the parishes concerned.⁶²⁶

36.6.8 Our experience, and the experience we have had reported to us by the parish which Bishop Worsley held up as an example, St Petroc, Hollacombe,⁶²⁷ suggests a rather less rosy picture; that the advice available to parishes of a diocese from diocesan personnel might be inadequate, inaccurate and biased. Our experience at least

⁶²⁵ Report of the Independent Reviewer for 2017 to the Archbishops of Canterbury and York under the Regulations, para. 13

⁶²⁶ Report of the Independent Reviewer for 2017 to the Archbishops of Canterbury and York under the Regulations, para. 13

⁶²⁷ See para. 22.3.1 above

suggests the possibility that many parishes which might otherwise pass a resolution under the Declaration are likely to be deterred from doing so by this lack of unbiased advice and that those who do pass such a resolution are likely to be deterred from ensuring that their diocesan bishops comply with their duties under the Declaration by the inaction and negligence of diocesan personnel.

36.6.9 Of course, it may be that our experience is unrepresentative and that generally in the Church of England the system is, as the paper referred to by the Independent Reviewer in his 2017 Report claimed, working well.

36.6.10 We request, however, that the Independent Reviewer should at least consider the possibility that our experience is representative and that, therefore, the Church of England needs to consider how to address the imbalance between the resources which are available to parishes in our situation and to diocesan bishops and whether the culture of negligence, ineptitude, secrecy and indifference to the provisions of the Declaration which we have experienced is common in other dioceses of the Church of England.

SECTION XXXVII

INTERIM RELIEF

THE NATURE OF INTERIM RELIEF

37.1.1 It is common in legal proceedings for provision to be made for Interim Relief, that is for temporary orders either requiring or prohibiting actions so as to prevent parties taking, or omitting to take, such action as would wholly or partly rob a final decision in the matter of effect. There is no express provision for Interim Relief in the Regulations.

THE POWER TO PRE-EMPT THE INDEPENDENT REVIEWER'S DECISION

37.2.1 Subject to the question of whether such action would constitute misconduct under the Clergy Discipline Measure 2003, therefore, it would appear to be lawful for Bishop Hancock, or those acting *inter vires* on his behalf, to extend Prebendary Crossman's licence or to induct her to the Benefice without having made Declaration Arrangements for the Parish so as to impose on the PCC, representing the Parish, the receipt, both directly and indirectly, of the ministry of a female priest. Similarly, Bishop Worsley could exercise the powers that have been delegated to her so as to impose her ministry both directly and indirectly on the Parish.

MR M^CKIE'S REQUEST FOR INTERIM RELIEF AND THE EQUIVOCATING REPLY

37.3.1 We have seen⁶²⁸ that in the 22nd September M^CKie Email Mr M^CKie, on behalf of the PCC, asked Bishop Worsley to:

'... undertake, without equivocation, that you will not exercise any power which you may have to extend Prebendary Crossman's licence so as to confer on her any power in respect of the parish of Lullington &

⁶²⁸ See para. 23.2.1 above

Orchardleigh or to induct her to the benefice until the Independent Reviewer's decision has been received.

- 37.3.2 In response to that request Mr M^cKie received an equivocating reply from Bishop Worsley.⁶²⁹ Mr M^cKie has received no reply to his further request for an unequivocal undertaking.⁶³⁰

THE RELEVANT PROVISIONS OF THE REGULATIONS

- 37.4.1 Although the Regulations do not confer on the Independent Reviewer a power to make orders for Interim Relief, the Independent Reviewer has the power under the Regulations, Reg. 21 to:

' ... at any time seek to achieve a settlement of the grievance which is acceptable to the parties, by some means other than the completion of the review (whether through a process of mediation conducted by some other person or persons or otherwise).'

- 37.4.2 Plainly, a unilateral imposition of the direct receipt of the ministry of a female bishop or priest on the Parish is likely to militate against achieving such a settlement. It is, therefore, within the Independent Reviewer's powers to recommend to Bishop Worsley that she should take no steps before the publication of the Independent Reviewer's decision under the Regulations, Reg. 22 which would impose the receipt of Prebendary Crossman's ministry directly on the PCC or which would unnecessarily impose the receipt of Bishop Worsley's ministry directly on the PCC.

⁶²⁹ See para. 23.2.2 above

⁶³⁰ See para. 23.3.1 above

**TO MAKE DECLARATION ARRANGEMENTS MAY NOW REQUIRE THE TEMPORARY
IMPOSITION OF THE MINISTRY OF A FEMALE BISHOP**

37.5.1 The PCC accepts, however, that, in the confused situation created by Bishop Hancock's illness, the purpose of the Declaration would be advanced if it were possible for Declaration Arrangements to be made sooner rather than later for the Parish. The PCC will accept, therefore, that making Declaration Arrangements for the Parish may require the temporary imposition of the direct receipt of the ministry of a female bishop so that, if it is possible to determine that Bishop Worsley does have the necessary powers to do so or such powers could be conferred on her or on another person, Bishop Worsley, or that other person, may exercise the powers necessary to make such arrangements.

**IN THE MATTER OF AN INSTRUMENT OF DELEGATION MADE UNDER
SECTION 13 OF THE DIOCESES, PASTORAL AND MISSION MEASURE 2007**

OPINION

1. I am asked to give my opinion on whether an instrument made by the Bishop of Bath and Wells on 21 October 2015 ('the instrument') has the effect of delegating to the Bishop of Taunton the function of making of arrangements for parishes which have passed resolutions under the House of Bishops' Declaration on the Ministry of Bishops and Priests of 2014 ('the Declaration').¹
2. The responsibility for making arrangements for such parishes is imposed by the Declaration on the diocesan bishop. See, for example, paragraphs 22, 27 and 29. However, functions exercisable by diocesan bishops are in principle delegable. The Legal Advisory Commission of the General Synod published an opinion on the delegation of episcopal functions in 2018² which helpfully sets out the relevant principles and gives useful guidance. Functions vested in a diocesan bishop by statute normally require a delegation to a suffragan or assistant bishop by means of an instrument under section 13 of the Dioceses, Pastoral and Mission Measure 2007 ('the Measure'). Episcopal functions specified in the Canons can be delegated by the same means but may, alternatively, be delegated by way of a non-statutory commission. Some functions may be delegated on an informal basis.
3. I do not consider that the diocesan bishop's functions under the Declaration may be delegated informally, as they involve such matters as the authorisation of another bishop to exercise ministry in the diocese. A formal delegation is required. As the Declaration is not legislation, and therefore issues as to the delegation of statutory functions do not arise, I consider that a diocesan bishop could delegate functions under the Declaration either by means of an instrument under the Measure or by way of a formal, non-statutory commission. In the present case, there is no suggestion that the Bishop of Taunton has been given a commission by the Bishop of Bath and Wells in respect of his functions under the Declaration. If those functions have been delegated to the Bishop of Taunton, it can only have been by means of the instrument.
4. The instrument is expressed in rather old-fashioned legal language. As the Legal Advisory Commission says in its opinion (at paragraph 4), "Although instruments made under section 13 sometimes confer authority in very broad and general terms, the better practice is to specify in some detail the functions which are the subject of delegation, so that there can be no doubt about the extent of the power of the suffragan or assistant." Unfortunately, the way in which the instrument is drafted is not in accordance with that better practice. Had it been drafted in the way the Legal

¹ I note that there is correspondence in which it is suggested that I had previously expressed a view on the instrument. That is not the case. I had not seen the instrument before today and have not previously expressed a view on it.

² Available at <https://www.churchofengland.org/about/leadership-and-governance/legal-services/legal-opinions-and-other-guidance> .

Advisory Commission recommends, the issue to which this opinion is addressed would not, I suspect, have arisen.

5. Nevertheless, as the Legal Advisory Commission recognises, an instrument under section 13 of the Measure may be expressed in “very broad and general terms”. Section 13 itself does not require an instrument made under it to follow a particular form. In principle, a diocesan bishop may delegate all of the diocesan’s functions by way of an instrument under section 13, save for two exceptions that are not material here.
6. Turning to the instrument itself, it begins with a recital referring to section 13 of the Measure. It then goes on to commit to the Bishop of Taunton authority to perform ordinations and confirmations in the diocese. Both are subject to conditions, as envisaged by section 13(2) of the Measure. The Bishop of Taunton is authorised to perform ordinations “at such time and in such places within our Diocese as I shall from time to time appoint”. And she is authorised to perform confirmations “from time to time upon my request in writing”. The Bishop of Taunton, therefore, does not have fully delegated authority to exercise these functions but may exercise them only where the diocesan bishop himself appoints a time and place for an ordination or issues a written request in respect of a particular confirmation service. (The implications of this ought to be considered in the diocese, now that the Bishop of Bath and Wells is, unfortunately, on sick leave.)
7. Having made provision for ordination and confirmation, the instrument proceeds as follows:

AND I HEREBY COMMIT unto you my full power and authority to perform within our said diocese all other necessary functions peculiar and appropriate to the order of Bishops and to do all other things needful and necessary in and about the premises as I personally might or could do

8. Mr McKie, in his email dated 24 August 2020, set out arguments to the effect that the text I have just quoted does not confer on the Bishop of Taunton delegated authority to exercise episcopal functions generally but is concerned only with conferring authority to exercise functions that are ancillary to the exercise of the delegated powers already conferred in the instrument, namely the powers to perform ordinations and confirmations. It is on that basis that he says that the Bishop of Taunton does not have delegated authority to exercise the diocesan bishop’s functions under the Declaration.
9. Mr McKie’s argument is that the word “necessary” in the expression “all other necessary functions peculiar and appropriate to the order of Bishops” is undefined, the instrument containing no means of determining what is “necessary”, and that “the most natural construction is that the [text cited above] refers back to the [text delegating ordination and confirmation] and confers such powers as may be necessary to facilitate the exercise of the powers to perform ordinations and administer confirmation”. He also argues that the use of the word “premises” is “used in the sense of a ‘previous statement from which another derives’ ... and points back to the powers conferred earlier in the document [i.e. to ordain and confirm]”.

10. With respect to Mr McKie's evident legal learning, I regret that I do not consider that he is correct. As I have said, the instrument is drafted in an old-fashioned style. While the word necessary in contemporary parlance is used to mean something indispensable or essential, that was not the way it has been used historically. As the OED notes, "In the 16th and early 17th centuries the sense frequently approaches 'useful' without being 'absolutely indispensable'." Given the archaic nature of the vocabulary generally in the instrument, I do not consider that "necessary" can be assumed to have its contemporary meaning. Even if it is not used in the manner of the 16th and early 17th centuries, it seems to me that in context it is intended to convey the sense of that which is requisite rather than that which is indispensable.
11. In any event, I do not agree that the most natural construction is that "necessary" refers back to the earlier text in the instrument concerned with ordination and confirmation. I consider that an unnatural construction. The text beginning "AND I HEREBY COMMIT", with its reference to "all other necessary functions peculiar and appropriate to the order of Bishops", reads most naturally as a provision separate from, rather than an ancillary to, the provision which precedes it. Furthermore, I cannot see what "other ... functions peculiar and appropriate to the order of Bishop" there are which might be "necessary" (in the sense argued for by Mr McKie) for the exercise of the power to ordain or confirm.
12. As to the use of "premises", I agree with Mr McKie that this is to be understood as a reference to things previously mentioned. But there is no reason in my view to relate it to the things mentioned earlier in the instrument concerning ordination and confirmation, rather than in relation to "all other necessary functions peculiar and appropriate to the order of Bishops". Coming where it does in the instrument, it seems to me to be clear that it is concerned with the latter rather than the former.
13. I agree with Mr McKie that there is some strangeness in the instrument making the powers to ordain and confirm subject to the conditions I have mentioned, but not making the subject matter of the text beginning "AND I HEREBY COMMIT" subject to any conditions. There may, of course, be an explanation; for example, that the powers of ordination and confirmation, being the most important episcopal functions, were considered as needing limitation whereas episcopal functions more generally were not. But leaving that aside, the drafting of the instrument as a whole is somewhat strange and I do not consider that any real weight can be placed on that sort of inconsistency (if that is what it is).
14. I do not consider that there is any good case for saying that the text beginning "AND I HEREBY COMMIT" implicitly refers back to the preceding provision either in terms of the language it contains, or in order to make sense of the instrument. In addition to what I have said above, that construction would result in the conclusion that the Bishop of Taunton has between 2015 and 2020, despite being in possession of an instrument of delegation which she and the Registrar considered to confer general delegate authority on her, not lawfully carried out any episcopal functions in the diocese except ordination and confirmation.
15. Finally, I should mention section 13(14) of the Measure which provides:

A statement in a document issued in discharging any such function that the person by whom the document is signed or executed has been duly authorised by an instrument under this section to discharge that function shall be conclusive evidence of that fact.

The effect of this provision is that third parties need not concern themselves with whether a formal act performed by a suffragan bishop, purportedly under an instrument of delegation, was within the powers delegated to that suffragan. If a suffragan were to act outside the scope of the powers delegated to him or her, that would be a matter for the bishop of the diocese rather than the third party.

16. In my opinion, the only construction of the instrument which makes sense – and which is also its natural construction – is that the provision beginning “AND I HEREBY COMMIT” is a separate provision from that which precedes it. Accordingly, I am of the view that the instrument does confer delegated authority on the Bishop of Taunton to exercise episcopal functions generally in the diocese, including the diocesan’s functions under the Declaration.

ALEXANDER McGREGOR

30TH NOVEMBER 2020