

## **GUIDANCE ON THE VISITATION OF CATHEDRALS<sup>1</sup>**

This guidance explains:

- (a) the role and jurisdiction of the cathedral Visitor;
- (b) when and how the Visitation of a cathedral may be held; and
- (c) how the Visitor's determinations or directions may be enforced.

As Visitations are fairly uncommon and tend to be undertaken in response to specific serious concerns, this guidance seeks to be generic so it can be applied to any cathedral Visitation.

### **1. Who is the Visitor of a cathedral?**

- 1.1 The bishop as the Ordinary is the Visitor of the cathedral in his or her diocese and the constitution of each cathedral must provide accordingly<sup>2</sup>.
- 1.2 The Archbishop of the Province, as the metropolitan, may also hold a Visitation of any cathedral in their Province<sup>3</sup>.

### **2. What jurisdiction does the Visitor have in a cathedral?**

- 2.1 During a Visitation, an archbishop or bishop may:

*"perform all such acts as by law and custom are assigned to his charge in that behalf for the edifying and well-governing of Christ's flock, that means may be taken thereby for the supply of such things as are lacking and the correction of such things as are amiss."<sup>4</sup>*

- 2.2 Except where a Visitation is solely pastoral in nature, the Visitor exercises a quasi-judicial function and may inquire into make determinations and give directions in relation to:
  - (a) whether a cathedral's constitution and statutes are being observed<sup>5</sup>;
  - (b) whether those with duties to perform under the cathedral's constitution and statutes are performing those duties<sup>6</sup>;
  - (c) hearing and determining any question as to the construction of the cathedral's constitution and statutes<sup>7</sup>;
  - (d) safeguarding policy and practice in the cathedral;
  - (e) the financial management of the cathedral in accordance with the cathedral's constitution and statutes;
  - (f) the administration of the cathedral's property in accordance with the constitution and statutes; and

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<sup>1</sup> This guidance will need to be amended once the MoU with the Charity Commission is agreed and the new draft Measure comes into force, as any Visitation is likely to be a Serious Incident that would need to be reported by the cathedral. It is anticipated that the Charity Commission will want to be kept informed about a Visitation's progress and, in some circumstances, be consulted on what the Visitation is to inquire into.

<sup>2</sup> Cathedrals Measure 1999 s.6(3) and Canon G5(1)

<sup>3</sup> Canon G5(1).

<sup>4</sup> Canon G5(1).

<sup>5</sup> Cathedrals Measure 1999 s.6(6)

<sup>6</sup> Cathedrals Measure 1999 s.6(6)

<sup>7</sup> Cathedrals Measure 1999 s.6(4)

- (g) the making of (or the intention to make) alterations to the cathedral building in contravention of s.2 of the Care of Cathedrals Measure 2011 (the “**2011 Measure**”)<sup>8</sup>.

In addition to the specific matters listed above, the bishop has various general powers as Visitor, which derive from the common law and cannot be set out exhaustively here. They include the power to inquire into the condition of the fabric of the cathedral church and to give orders as to its maintenance. Although they no longer include the power to hear and determine allegations of misconduct<sup>9</sup> against clergy or to impose any penalty, a Visitation might reveal matters capable of amounting to misconduct and result in a recommendation that proceedings under the relevant disciplinary legislation should be considered<sup>10</sup>. Subject to that, the Visitor continues to have the power to hold a Visitation “*to allay certain dissensions, and remedy certain grievances*”<sup>11</sup>.

- 2.3 The Visitor may, if doing so is incidental to a Visitation, inquire into but does not have the jurisdiction to make determinations and give directions in relation to:
- (a) criminal offences<sup>12</sup>; or
  - (b) matters which are based solely on a contract between two parties and which do not involve the constitution and statutes of the cathedral. For example, if a company which entered into a contract to do work or provide a service for the cathedral claimed that it had not been paid the amount laid down by the contract and wished to take legal proceedings to enforce its rights, it would go to the secular courts and not to the Visitor. Similarly, the Visitor could not determine a claim by an employee of the Chapter for wrongful dismissal from their employment.
- 2.4 The Visitor does not have the power to remove a member of the cathedral clergy from their ecclesiastical office.
- 2.5 The Chapter – or an individual – has recourse to judicial review if it considers that the Visitor has exceeded his or her jurisdiction<sup>13</sup>.

### **3. When can a Visitation be held?**

- 3.1 A Visitation is normally held either at the request of the Chapter or at the bishop’s instigation, when he or she considers it desirable or necessary to hold a Visitation<sup>14</sup>. However, when the Chapter of the cathedral has contravened, or is about to contravene, s.2 of the 2011 Measure, the bishop is required to hold a special Visitation to inquire into the matter<sup>15</sup>.
- 3.2 A bishop is not required to (but may) conduct a periodic Visitation of his or her cathedral.
- 3.3 Before deciding to conduct a Visitation, the bishop should seek legal advice from his or her diocesan registrar who is welcome to discuss the matter with the Legal Office if that would be helpful.

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<sup>8</sup> Care of Cathedrals Measure 2011 Part 3

<sup>9</sup> I.e. an offence against the laws ecclesiastical involving matter of doctrine, ritual or ceremonial for which proceedings may be taken under the Ecclesiastical Jurisdiction Measure 1963, or misconduct for which proceedings may be taken under the Clergy Discipline Measure 2003.

<sup>10</sup> *In the Matter of the Visitation of the Archbishop of York of the Dean and Chapter of York* (1841) 2 QB 1

<sup>11</sup> Phillimore, *Ecclesiastical Law of the Church of England* (1895), 169.

<sup>12</sup> *Boyd & ors. v Phillipotts* (1874) LR 4 A&E 297 at 341 – any criminal offence detected should be referred to the police.

<sup>13</sup> It is possible that there continues to be a right of appeal to the Dean of the Arches or the Auditor of the Chancery Court of York in that person’s capacity as official principal of the Archbishop of the Province.

<sup>14</sup> Cathedrals Measure 1999 s.6(5)

<sup>15</sup> Care of Cathedrals Measure 2011 s.16(1)

#### **4. What form can a Visitation take?**

A Visitation can take one of two forms:

##### **4.1 General Visitation**

A general Visitation is one which considers all aspects of the life of the cathedral, with a focus on specific aspects such as governance, leadership and management, safeguarding, finances, prayer and mission.

##### **4.2 Special Visitation**

A special Visitation is held when the bishop decides it is necessary to investigate one or more specific matters or issues of concern, rather than inquiring into the cathedral's life more generally.

Part 3 of the 2011 Measure provides for when and how a special Visitation must be held if it appears to the bishop that the Chapter has contravened, or is about to contravene, s.2 of the 2011 Measure. The 2011 Measure contains specific provisions about the procedure to be followed and the Visitor's powers in relation to that type of special Visitation.

- 4.3 Visitation (except where it is of a solely pastoral nature) is a quasi-judicial process and should be conducted in accordance with the principles of natural justice at all times. These require that the decision maker must not be biased, and that a person affected by a decision must be given an opportunity both to state his or her own case and to know and answer the opposing case.

#### **5. Holding a Visitation**

- 5.1 A Visitation may be held by the bishop in person, but this is not recommended unless the Visitation is intended to be solely pastoral in nature. Where the bishop does not hold the Visitation in person, the bishop appoints one or more commissaries to whom functions relating to the Visitation are delegated. It will normally be necessary for the commissary (or one of the commissaries) to be legally qualified. That might be the Chancellor of the diocese in the capacity of Vicar General of the diocese; but if not, it is recommended that the bishop nevertheless consults the Vicar General before proceeding.
- 5.2 It is for the bishop to decide whether to delegate the entirety of the bishop's functions in respect of the Visitation to the commissary or commissaries, or to delegate only the power to inquire into matters. Where the bishop delegates the entirety of the bishop's functions, the commissary or commissaries carry out the Visitation in its entirety, inquiring into the matters in question, determining those questions and issuing directions on behalf of the bishop. Where the bishop delegates only the power to inquire into matters, the commissary or commissaries carry out the inquiry and report their findings to the bishop, usually with recommendations. The bishop then decides whether to accept the recommendations and gives such directions as the bishop thinks fit. In recent times it has become usual for the inquiry stage of Visitations to be conducted by a small group of commissaries who have been selected on the basis of their specialist knowledge of the matter(s) to be investigated.
- 5.3 A Visitation is commenced by the bishop serving a Citation on the Chapter to which are annexed written Articles of Inquiry which must be signed and sealed by the bishop.
- 5.4 The Citation requires the persons named in it (i.e. the members of the Chapter<sup>16</sup> and any other persons to whom the Visitation relates) to appear before the Visitor or commissary at a specified date, time and place to answer any or all of the questions set

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<sup>16</sup> Chapter members must appear before the Visitor or commissaries if named in the Citation.

out in the Articles of Inquiry. That marks the formal commencement of the Visitation which may then be adjourned as necessary to future dates. The Citation may state that the persons cited may be legally represented.

- 5.5 The Articles of Inquiry should specify whether the Visitation is general or special in nature and must set out the areas which the bishop intends to investigate during the Visitation. The Articles of Inquiry should also specify any particular information which the Chapter is required to provide.
- 5.6 The bishop should seek advice from the diocesan registrar<sup>17</sup> and consult the legally qualified commissary (if there is one) when preparing the Articles of Inquiry to ensure that they do not exceed the bishop's jurisdiction and that they meet the particular circumstances of the case.
- 5.7 Before or alongside serving the Articles of Inquiry on the Chapter, the bishop can write or speak to the Chapter informally, to explain why the Visitation is being held, what its purpose is and to introduce those persons to whom he or she has delegated inquiry powers.
- 5.8 The bishop or commissaries should seek to ensure that the duration of a Visitation is no longer than is reasonably required to carry out the Visitation. It is good practice to provide the Chapter with an initial indication of the anticipated timescales and to update the Chapter, as and when appropriate, should it become evident that more time will be needed to complete the Visitation.
- 5.9 During a Visitation, the bishop or commissary<sup>18</sup> may from time to time give such written directions to the Chapter with respect to the matter under inquiry as he or she thinks fit. However, before giving directions to the Chapter or making any determinations, such professional advice from the diocesan registrar as may be appropriate should be sought.
- 5.10 During a Visitation, the dean and the Chapter do not have the power to act in relation to the matter under inquiry without the prior approval in writing of the bishop<sup>19</sup>. Where a general Visitation is held, the bishop should provide written authority setting out those matters in relation to which the dean and the Chapter may each act (or reserving matters in relation to which they may not act) during the Visitation<sup>20</sup>.
- 5.11 If a special Visitation is held under the 2011 Measure in respect of unlawful alterations to the cathedral church:
  - (a) the processes and requirements set out in Part 3 of the 2011 Measure must be complied with; and
  - (b) during the special Visitation, the Chapter has no power to act as such with regard to the matter under inquiry without the prior approval in writing of the bishop.

## **6. What determinations or directions can a Visitor make?**

- 6.1 During the course of a Visitation the bishop may give such directions to the Chapter, to the holder of any office in the cathedral or to any person employed by the cathedral as will, in the opinion of the bishop, as Visitor, better serve the due observance of the constitution and statutes<sup>21</sup>.

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<sup>17</sup> The Legal Office of the NCIs should be contacted for precedent documents etc to assist with the Visitation.

<sup>18</sup> Unless the delegated power is to inquire into matters only.

<sup>19</sup> Canon G5(2). This is technically referred to as the inhibition of inferior jurisdictions and should be set out in the Citation.

<sup>20</sup> This is technically referred to as the grant of relaxations.

<sup>21</sup> Cathedrals Measure 1999 s.6(6)

- 6.2 At the end of the Visitation the formal findings, recommendations, directions and determinations are set out in a written determination, which must be delivered to the Chapter and a copy sent to the Church Commissioners.
- 6.3 The determination may include pastoral guidance, as well as legally binding directions.
- 6.4 Before giving directions or making determinations, the bishop should seek such professional advice from the diocesan registrar as may be appropriate.
- 6.5 Prior to publishing the determination, the bishop may, in his or her absolute discretion, choose to share it in draft form with the Chapter, the Council and/or any Chapter committee (or with the chairs of such bodies) to seek comments on the proposed directions.
- 6.6 Once issued, the determination is a public document and should be made available on the cathedral's website and the diocesan website.

## **7. Who is required to comply with the Visitor's determinations or directions?**

- 7.1 Any person or body on whom functions are conferred by or under the 1999 Measure, are required by ecclesiastical law to act in accordance with:
  - (a) any determination made by the bishop on the construction of the cathedral's constitution and statutes; and
  - (b) any direction by the bishop as will, in the bishop's opinion, better serve the due observance of the cathedral's constitution and statutes".<sup>22</sup>
- 7.2 All cathedral clergy owe canonical obedience to the bishop and they are required to comply with the determinations and directions of the Visitor as their bishop<sup>23</sup>. In addition, the dean and the residentiary canons are specifically required by canon law to observe the instructions of the bishop of the diocese in his or her Visitation.<sup>24</sup>
- 7.3 If a member of the clergy does not comply with the determinations and directions of the Visitor, it is likely to constitute misconduct under s.8(1) of the Clergy Discipline Measure 2003.

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<sup>22</sup> Cathedrals Measure 1999 s.6(7)

<sup>23</sup> Canon C1(3)

<sup>24</sup> Canon C21(2)