

APPEALS IN RESPECT OF THE ELECTION OF MEMBERS OF THE CROWN NOMINATIONS COMMISSION BY THE HOUSES OF LAITY AND CLERGY OF THE GENERAL SYNOD

Constitution of the Panel:

Canon Linda Ali	[York]
Ven Mark Ireland	[Blackburn]
Canon Geoffrey Tattersall KC	[Manchester] [Chair]

DECISION published on 25 October 2022

1. These appeals relate to an election for membership of the Crown Nominations Commission [‘CNC’] which took place on 10 July 2022.
2. This Decision sets out the unanimous conclusions of the Panel appointed pursuant to Standing Order [‘SO’] 135K of the Standing Orders of the General Synod of the Church of England.

Introduction

3. SO 136 provides that the CNC must consider any vacancy in a diocesan bishopric and the candidates for appointment to fill the vacancy and must agree upon the name of one candidate for submission to the Prime Minister.
4. SO 137 provides for the membership of the CNC to include 6 members to be elected from the House of Clergy and 6 members from the House of Laity to be elected as 6 pairs with 3 pairs from the House of Clergy and 3 pairs from the House of Laity. Only one member of each pair may serve as a member of the CNC during any vacancy.
5. SO 137B provides, inter alia, that:

- 5.1. the Business Committee is to decide whether such election is to be conducted by using an electronic system and on this occasion, it did so decide;
 - 5.2. the election of such members is to take place as a single election held at a group of sessions with for this purpose members of both Houses of Clergy and Laity who are present at the group of sessions when the election is held constituting a single electorate;
 - 5.3. a member who by reason of illness or disability is unable to be physically present at the group of sessions when the election is held is entitled to vote in the election;
 - 5.4. the election is to be conducted by the method of the single transferable vote in accordance with the election rules;
 - 5.5. the Clerk [to the Synod] must cause the votes to be counted and must enable each candidate, or a person nominated by the candidate, to be present at the count; and
 - 5.6. the Clerk must declare the result at the group of sessions.
6. The provisions of SO 137B had their genesis in GS 2209 *Implementation of 'Responsible Representation: A Review of the Electoral Processes to the Crown Nominations Commission'* which envisaged that the election would take place "in the context of prayer and worship" but SO 137B did not expressly require this.
7. During the evening session of the General Synod on 10 July 2022 members of the Houses of Clergy and Laity voted in an election for those to represent it on the CNC for the forthcoming triennium. The result of the election was announced on 12 July 2022.
8. The election did not go well. As hereinafter described, the voting system did not work satisfactorily and it is to the credit of the Synod staff that a complete collapse of the process was avoided by giving advice as to how people might vote on other devices online and by providing paper ballots.
9. Such result is now the subject of two appeals which this Panel is required to determine. Before we can address the merits of each appeal, we need to set out some of the background history to these appeals, the nature of each appeal, the responses

thereto and the process by which we are required to determine this appeal. This will involve a consideration of the appropriate Standing Orders approved by the Synod.

10. Although SO 135O(8) provides that our decision and the reasons therefor must be published on the General Synod website, submissions made to the Panel are not so published. We have thus decided, in the interests of transparency and without seeking to unduly lengthen this Decision, to incorporate verbatim the most significant submissions made to us.

11. It should be noted that the determination of an earlier appeal - *Patterson* - in April 2018 in which it was alleged that there had been a failure to disclose material facts led to the General Synod fortuitously revising its appeal procedures as set out in its Standing Orders so as to provide a detailed framework of on what basis an appeal should lie and how it should be determined.

The nature of each appeal

12. There were two appeals. The first appeal based on SO 135B(1)(c) alleged that one of the candidates misrepresented a material fact in connection with the election. If that were to succeed such might only affect that candidate or pair of candidates. The second appeal based on SO 135B(3) alleged that the conduct of the election was such as to affect the outcome of the election. If that were to succeed, such might require the election to be held again.

13. We are aware that requiring the election to be held again would probably cause major disruption to the work of the CNC but, that notwithstanding, we are satisfied that whether or not the appeals succeed cannot be influenced by such considerations and that we should determine each of the appeals irrespective of any consequences which might result.

14. It should be noted that no appeal is made by any member pursuant to SO 135B(2), namely that a person who was entitled to vote was not allowed to vote or that a person who was not entitled to vote was allowed to vote, so that no member of Synod is alleging that he/she was entitled to vote and was not allowed to vote.

The first appeal

15. The first appeal [‘the first appeal’] was by Ms Jayne Ozanne and related to one pair of candidates Mr Clive Scowen and Mr Temitope Taiwo. The substance of the appeal was expressed in two emails.

16. In an email sent on 15 July 2022 to the Chair of the House of Laity and the Secretary General, copied to the Acting Clerk and the Chair of the Business Committee, Ms Ozanne stated:

“I am writing to you both as I wish to appeal against the recent vote that we have that has resulted in the election of Clive Scowen and Temitope Taiwo.

As you will see from the information that was circulated to Synod members on July 7th, just days ahead of the vote, no mention was made of the fact that Temi is in fact an ordinand and therefore in all probability will not be able to serve a full term on the CNC, leaving Clive to serve alone and so making this pairing virtually redundant and so against the spirit of the new CNC system we have agreed.

I believe transparency is critically important in elections, particularly after the events of the Sheffield CNC, not least so that there can be trust in the process and in those who seek to serve in such important roles on behalf of us all. It seems really quite disingenuous that such a serious piece of information was withheld from us, and that Synod members were not therefore given the full facts.”

17. In an email sent on 18 July 2022 to the Acting Clerk, copied to the Secretary General, the Chairs of the House of Laity and the Business Committee, Ms Ozanne stated:

“I am writing to you as Acting Clerk to the General Synod to launch an appeal against the appointment of Clive Scowen and Temitope Taiwo to the CNC, as announced in Synod on Tuesday 12th July 2022.

I do so under Standing Order 135B (1c).

“An appeal may be made against the result of a relevant election on the grounds that a person whose election is the subject of an appeal ... (c) before the election, misrepresented a material fact in connection with the election.”

I believe there may also be a case to say that Temitope Taiwo was not qualified to be a candidate at the time of the election - which would therefore fall under Standing Order 135B (1b). This is on the understanding that he in fact knew he had been accepted for ordination training at the time of the election and therefore knew that he would not be able to fulfil his duties on the CNC. I note that I should have launched this specific appeal within 2 days of the vote, but that was impossible to do as the information has only just been brought to my attention - due to the fact it had been concealed.”

18. We are satisfied that, in so far as Ms Ozanne sought to rely on SO 135B(1)(b), such is misconceived. The only qualification to be a candidate for election to the CNC was that Mr Taiwo be a member of the House of Laity, be proposed and seconded and to be willing to serve with Mr Scowen, both of which conditions he met. Moreover. if

Mr Taiwo was ineligible to be a candidate as a member of the House of Clergy, since he was not at the time of the election ordained, he was not entitled to be a candidate at all, which makes no sense. With respect, we do not think that such reliance adds anything to Ms Ozanne`s reliance on SO 135B(1)(c) which we regard as the substance of her appeal.

19. In response thereto Messrs Scowen and Taiwo submitted that there was no arguable ground for the appeal and that it should be summarily dismissed. They emphasised that there was no evidence to substantiate the allegation that Mr Taiwo had misrepresented a material fact and continued thus:

“a. The appellant does not allege any misrepresentation (which is making an untrue or misleading statement) but merely that it was not mentioned in our written communication to electors that Temitope has been selected for training for ordination. That is an allegation of non-disclosure, not an allegation of misrepresentation, and is not a valid ground of appeal.

b. Nothing we said to the electors stated that Temitope had not been selected for ordination training, and a statement to that effect cannot be inferred from anything we did say. Likewise, we nowhere said, or implied, that we were not aware of any future contingency which, if it materialized, would result in either of us not completing the 5-year term if elected. The absence of any untrue or misleading statement is itself sufficient for the appeal on that ground to be dismissed.

c. On the appeal against the election to the CNC of Jane Patterson in 2018 it was decided that there is no obligation to communicate any particular information to the electors. Standing Order 135B was drafted in the light of that decision: had it been intended to change the position and to impose a positive obligation to state particular information, failure to do so would have been specified as a ground of appeal, but it was not. Furthermore the Standing Orders relating to the CNC were extensively revised in 2021. In the light of the *Patterson* decision, had it been intended that there should be a positive obligation on candidates for CNC to inform the electors of specific information, provision to that effect would have been included in SOs 137A or 137B. As it is, the only information required to be given by those Standing Orders (as part of the nomination) is (i) that each nominated candidate is willing to stand in a pair with the other candidate and (ii) each candidate`s year of birth. There is no obligation for candidates to communicate with electors; what they choose to tell electors is entirely a matter for them, provided that what they say is true and not misleading. In particular, candidates are not required to state whether they have been selected for training for ordination, or to commit to completing their full 5-year term if elected, or even to reveal any known contingencies which might in certain circumstances result in them not completing their synodical term.

d. In short, there is no basis for the suggestion that, in not saying in our election communications that Temitope had been selected for ordination training, we were in breach of any rules or misrepresenting any fact. In any event, the fact that he had been so selected was no secret, and no attempt was made to conceal it. It was public knowledge of which many members of synod (including most if not all of the candidates in the CNC election) were aware.

Temitope spoke of it publicly at the November 2021 Group of Sessions. ... He also recalls mentioning the fact in conversations with many synod members at the July Group of Sessions.

e. Selection for ordination training is but one step in a journey of discernment and does not in any way guarantee that the candidate will be ordained either at any particular time or at all. Contrary to the appellant's contention, it does not therefore follow from the fact that Temitope has been so selected that he will not be able to complete his term on the CNC. He might withdraw from training. He might choose to delay his candidacy for ordination. He might be unable to find a curacy. Or his bishop might decline to sign him off for ordination, as recently happened to Calvin Robinson. Temitope's position is no different from a candidate who might move diocese for work or to take up a new clerical post. There may be many circumstances where such a contingency is likely to occur, but far from certain. There is no express requirement that a candidate has to tell the electors about such foreseen or foreseeable contingencies and none can be inferred."

20. SO 135C(2) provides that appeals under 135B(1)(c) and 135B(3) are full election appeals and SO 135I provides, inter alia, that in respect of full election appeals:

20.1. the Clerk must without delay [and in any event within 48 hours of receiving it] give a written notification to each candidate in the election;

20.2. any person to whom notification is given is entitled to make written representations to the Appeal Panel within 28 days; and

20.3. the Clerk is entitled to provide the Appeal Panel with a written explanation for any decision made by the Clerk to which the appeal related within 28 days.

21. Unfortunately, after the Panel was appointed, it was discovered that although notification of the first appeal had been given to all candidates, no such notification had been given in respect of the second appeal. Such notification of the second appeal was thus belatedly given and candidates were given until 12 September 2022 to make their responses and, as hereinafter appears, some did. The Appeal Panel was thus unable to commence its work until after 12 September 2022. It has thus completed its work within about six weeks and during that time has required further information from the Synod Office, has considered such information and as hereinafter appears, after conducting a preliminary assessment of each appeal, it advised the parties to the appeal that there would be a hearing on Zoom on 19 October 2022 at which each such party was able to make further written or oral representations on the matters in issue.

22. In response to the notification of the first appeal, there was one response from Revd Claire Lording and Revd Joanna Stobart who stated:

“In short, we are both disappointed that during the election process Mr Taiwo did not share the material fact of his having been accepted for ordination training. As a church we have a right to expect those seeking election are held to the highest possible standards of honesty. However, we are also aware that simply commencing ordination training is not in and of itself a guarantee of ordination, which remains at the ordaining bishop’s discretion. There will be things for all of us who stood that are ‘unknown’ for the future. The difference in the case of Mr Taiwo appears to be that his having been accepted for training for ordination was a ‘known’ fact. However, whether this would have had an effect on either the outcome of the vote or indeed his eligibility to stand will - we imagine - be hard to determine. We are both content to trust that the panel appointed will have the wisdom to come to a fair and wise response.”

The second appeal

23. The second appeal [‘the second appeal’] was by Dr Felicity Cooke, Mrs Nicola Denyer and Professor Helen King [‘the Appellants’]. They each relied upon SO 135B(3) which provides that:

“an appeal against the result of a relevant election may be made on the grounds that the conduct of the election was such as to affect the outcome of the election.”

24. In their letter dated 18 July 2022 Dr Cooke and Mrs Denyer stated:

“As candidates we are writing to ask for some clarification around the CNC voting process. Our first concern is that despite assurances given about the process during and after the vote there was no doubt that there was considerable confusion amongst all those in the central hall. We cannot therefore be confident that the vote was secure and ask for assurances about these concerns.

- What evidence is there that all votes were counted?
- What evidence is there that all those eligible to vote did so?
- What evidence is there that there were no duplicate votes (someone voting both electronically and on paper)?
- Were all paper votes identified?

We both experienced difficulty in recording our votes, in particular receiving the message on the voting page that insufficient votes had been recorded, even though we had reached the limit of votes which we chose to cast. At that point Nicola approached a member of Synod staff on the enquiry desk and was told that she had to add a vote for every pair (so 12 votes). When she suggested this wasn’t the case, she was again told a vote must be cast for every pair in order for her vote to be accepted. This was clearly wrong and in contradiction to the rules set out for the STV. We therefore remain concerned that other people were given the same information and so voted for candidates that they did not support. We ask:

- What evidence is there that every voter only voted for the candidates of choice and were not forced to vote for other candidates by the glitches in the voting system?

We have a further question about the rules applied for this particular STV process. Our understanding was that, as is usual, votes applied to candidates who either met the quota or were eliminated would be transferred to the next pair of candidates in the voting order. However, this system was complicated by the quota of places available for lay and clergy candidates. It was not clear to us, as candidates, what would happen in the event of a fourth lay or clergy pair coming to the top of the remaining poll, when the laity or clergy quota was already full.

- We would like to understand why the votes for Robert Thompson and Anderson Jeremiah were not distributed amongst the remaining eligible candidates.”

25. In her email sent on 20 July 2020 Professor King stated:

“I have been reflecting on what happened in the CNC voting and have decided that I would like to register an appeal ... on the grounds that the conduct of the election was such as to affect the outcome of the election.

Apart from my own stress causing by having a one-hour slot, being unable to use either of my devices and not being sure how to vote effectively before that slot expired, I have noted much discussion of what happened on social media, in conversation with other members, and on the Save the Parish WhatsApp group. This includes the following aspects of the conduct of the election:

For myself; on my iPad, I was not able to reach the page on which selected pairs could be moved to the section where one put them in order of preference. I then used my smartphone which told me my vote couldn't be accepted because I had not placed sufficient votes. I then moved to the paper form. I have direct knowledge of one member who had the same problem, asked a member of staff for help, and was told that you had to vote for all 12 pairs. This was not correct information. I have written to Civica asking why this message appeared but as yet have not had a reply.

This was not a secret ballot. Had you wanted to, it would be very easy indeed to see how people voted. I noticed those in front of me had the voting paper open throughout the time of prayerful worship.

A further point on this: when people lent their laptops to others, I have heard that some laptop owners suggested to them how to place their vote. A member of the Save the Parish WhatsApp group stated that the man who lent her his laptop put her votes in for her.

The paper form for voting. This did not ask for one's synod number and printed name, and I did not enter them because I did not want my vote to be excluded on the grounds that I had given information not asked for. There was also no information given as to where to put the completed forms, so that there was no security in voting. Of course, my inclination is to trust the staff, but in the chaos of the voting period and the novelty of the whole process to them I am not convinced. I wrote to Jenny Jacobs on 13 July to confirm that my vote was counted but have not had a reply yet.

The mixture of paper voting and online voting: it was not clear how these were reconciled. Were paper votes entered in an online system? If so, what checks existed to ensure that the

correct information was entered? (I have experience of the errors which can arise when this move from paper to online happens in the context of entering marks in higher education)

Finally, there was a request made that those who had not been able to vote reported this to the help desk. Does this mean that anyone who had been unable to vote during that one-hour slot was then allowed to vote outside it?"

26. The Acting Clerk provided a written explanation of events. It included the following:

"The voting began, but within a few minutes it became apparent that numerous people in the Central Hall were having difficulties. Members using some types of device were able to vote online, but members using other types of device were not able to vote as they should have been. Members with Apple devices, and some other devices, were being told by the voting system that they had to rank all pairs in order to be able to vote and were unable to register their vote online. Members should have been able to vote for as many pairs as they wanted to, without needing to rank all of them (rule 5, Single Transferable Vote Rules 2020). Contrary to the suggestion by Helen King, staff did not tell members that they had to vote for all candidates. This was checked with the staff who were members of the Synod support team and supported the members on Sunday evening.

When it became clear that there was an issue - around 8.55 pm - we took steps to deal with the problem:

- We had about half a dozen staff members with laptops (which worked) which we could use to enable members to vote using those devices. Some members were able to use those devices on their own; some members required assistance for using unfamiliar devices.
- We asked members who had finished voting using their own devices to lend them to other members to use if they were willing to do so we believe that a number did so.
- We produced paper voting forms for use instead of the devices for members who preferred to record their votes in that way. We were able to provide these because we had a paper voting record ready, as a contingency, and printed off more during the voting period until there were enough for every member who wished to do so to record their votes. The paper ballots asked members to include their signature, and the date. It did not require them to give their name in capitals or their synod number. (This was consistent with SO 133(2A) and Rule 7 of the Single Transferable Vote Rules 2020.) After 2-3 minutes of using paper ballots, we then asked all members using them to include their name and/or synod number on the ballots.

All the completed paper voting forms were collected by Synod staff and placed in a box. The box containing the voting forms remained in my custody throughout the voting period and thereafter up to and including the count.

Shortly before 9.30 pm, William Nye spoke to everyone in the Central Hall and apologized for what had happened, thanked them for their forbearance and asked whether everyone had now been able to vote. There was no indication from the floor of anyone still unable to vote - though

there was some understandable anxiety and crossness about the process. There were no indications from Zoom of anyone still unable to vote while on Zoom

Voting was concluded at 9.30 pm. No member was able to cast a vote after this time.

There were 84 completed paper voting forms. Subsequent inspection on the Monday showed that all but 5 could be identified from the signature, name and/or Synod number. In the course of Monday we tried to identify the remaining 5. We told Synod that we had 5 unidentified paper ballots without names or numbers, and with signatures that were hard to read, and invited members who thought that they might have had an illegible signature to come forward and show us their signature (without seeing the ballots); this enabled us to identify at least one more, and in the end there were only 2 ballots which could not be identified from the signatures.

The paper ballots were all scanned and sent to Civica. This was witnessed by two of the candidates (Debbie Buggs and Christina Baron).

In the course of Monday we considered how to proceed, taking soundings from the Prolocutors and the Chair and Vice-chair of the House of Laity. Three public statements were made to Synod, apologising for the problems, explaining what we were doing, and giving them updates.

In the third statement, on Monday afternoon, William Nye explained that we had a dilemma. We believed that everyone who had been entitled to vote had been able to vote, either electronically or on paper. We had no reason to believe that anyone had been able to vote more than once, though we could not be absolutely certain of this. We did not believe that any of the paper ballots would not be valid. The two members who had said that they had been unable to vote turned out not to be qualified to vote, because they were not present either in the chamber or on Zoom

The dilemma was that if we proceeded with counting the ballots, there might be an appeal because of the conduct of the election. On the other hand, if we did not count the ballots, we would need to rerun the election later that day. But in that case, some people who had been present to vote on Sunday evening might have left York, and/or not be able to join on Zoom and so would be disenfranchised; in which case it was very likely that there would be an election appeal if we re-ran the election. It was therefore concluded that the better course was to count the ballots and not re-run the election. The announcement was met with considerable applause; it appeared that the view of the majority of members present was that we should not re-run the election.

Civica proceeded to run the election count on Tuesday morning, with many of the election candidates present (via video). All the electronic ballots and paper ballots were used, Civica having checked as far as they could that there were no duplicates between the paper and the electronic ballots. That checking revealed that there was one member who had voted both online and on paper, and so the paper ballot was classed as invalid. The turnout was 88% which is a high turnout, noting that some members will not vote at all."

27. We expressly record that we have ignored the fact that a pragmatic [and probably wise] decision taken by the Secretary General and/or the Clerk was met with applause. No amount of applause can affect the determination of whether the conduct of the election was such as to affect its outcome.

28. As to the discrete point raised by Dr Cooke and Mrs Denyer as to why votes for Robert Thompson/Anderson Jeremiah were not distributed amongst the remaining eligible candidates, the Acting Clerk stated:

“Part 6 of the Single Transferable Vote Rules 2020 makes provision for constraints in elections. In this election the constraint was that not more than 3 pairs of clergy and not more than 3 pairs of laity were to be elected. At the start of stage 10 of the count there were 3 remaining vacancies to be filled and there were 5 continuing pairs of candidates. During stage 10 Cooke and Denyer were excluded and Stobart and Lording were elected. That took the number of Clergy candidates elected to 3 pairs. That meant that Thompson and Jeremiah could not be elected as they were Clergy candidates. That just left 2 eligible pairs of candidates remaining at stage 10, Scowen & Taiwo and Dailey and Buggs, both pairs of Laity candidates, for 2 vacant places. So under the STV rules they were deemed elected and there was no need to go any further after the end of stage 10; the count was complete. (Rule 27, Single Transferable Vote Rules 2020)”

29. Such written explanation exhibited documents showing how the result of the election was arrived.

30. Such explanation identified the various stages at which candidates were elected or eliminated. Such may be summarised thus:

<i>Stage</i>	<i>Elected</i>	<i>Eliminated</i>
1	Vanessa Pinto/Christina Baron	-
3	-	Nick Weir/Jack Shepherd
4	-	Jonathan Stevens/Sarah Jackson
5	-	Nadine Daniel/Jane Evans
6	Andrew Cornes/Paul Benfield	Benjamin John/Rebecca Hunt
7	-	Andrew Dotchin/Joshua Askwith
8	Elisabeth Goddard/Esther Prior	Nick Land/Matt Orr
10	Jo Stobart/Claire Lording	Nicola Denyer/Mary Cooke

31. So it was that at the end of stage 10, 3 pairs of clergy had been elected [Andrew Cornes/Paul Benfield, Elisabeth Goddard/Esther Prior and Jo Stobart/Claire Lording] and there remained 3 pairs of candidates had not been eliminated. Of those 3 pairs Robert Thompson/Anderson Jeremiah could not be elected because a full quota of clergy pairs had already been elected. Accordingly, Prudence Dailey/Debbie Buggs

and Clive Scowen/Temitope Taiwo were elected as the remaining pairs and it was unnecessary to redistribute the votes of Robert Thompson/Anderson Jeremiah because Prudence Dailey/Debbie Buggs and Clive Scowen/Temitope Taiwo were the only pairs of candidates who could be elected.

32. The belated notification of the second appeal to the other candidates gave rise to various responses.

33. Miss Debbie Buggs made two introductory points, namely she:

33.1. highlighted the fact that the second appeal was founded on SO 135B(3) and was not founded on SO 135B(1), (2) or (4) and in particular that there was no appeal from anyone entitled to vote that they were prevented from voting; and

33.2. submitted that the burden of proof fell on the appellants who were required to demonstrate that the conduct of the election was such as to affect its outcome which she contended that they had failed to do.

34. Miss Buggs` own account of what happened was that:

“After the time of prayer, those in the chamber found their laptops, tablets and mobile phones to vote. I attempted to use an android phone to vote, and found the voting interface slightly cumbersome to use and therefore switched instead to my laptop. I was able to successfully connect to the wifi network, log on and cast my vote, I was aware that my screen was visible to those sitting behind me, and had the option to move elsewhere in the chamber to avoid this had I so wished. I had to put all fourteen candidates in order to be able to submit my vote on the portal.

A few minutes into the voting session it became apparent to me that some electors were having difficulty in voting. Announcements were made by Synod staff to assist. Members in the chamber were given the option of using laptops of members of the Synod staff, or other members or of completing a paper ballot form.

At the end of the session I approached Synod staff to express concern, and I was assured that everyone who had wanted to vote had been able to.

I noted to synod staff that I was keen to be assured that:

- All paper voting papers could be attributed to a known and valid voter
- That voters could not register two votes: one on paper and one on line
- That all valid votes would be counted.”

35. Finally, Miss Buggs provided a detailed rebuttal of the matters raised in the second appeal which I will summarise thus:

Some votes were not counted

- 375 votes were cast, over 90% of those expected to vote
- The Civica system is designed to ensure all electronic votes are counted
- The method of scanning in and emailing the paper ballots prevented votes being lost
- There were no appeals under SO 135B(2): entitlement to vote

Some eligible voters were prevented from voting

- There were no appeals under SO 1325B(2): entitlement to vote
- The Secretary General invited those who were unable to vote to lodge an appeal

Some voters were not able to vote in the way they wanted

- Members have been able to vote in about 10 elections using the Civica portal
- Requiring ranking of all candidates, though a conscience issue for some, did not affect result

Some illegitimate votes were counted

- Though possible, no evidence that it affected the outcome of the election
- No evidence that any duplicate votes were counted or that affected outcome of election

Instructions given by staff or portal were wrong

- Though instructions given as to need to express a preference for all candidates were wrong, a later preference vote cannot count against an earlier preference vote and cannot affect the outcome of the election
- Though initial instructions re ballot papers may have been wrong, of the 84 paper ballots, 81 were signed and traceable to voters and of the 3 which had unreadable signatures, opportunity was given for this to be remedied.

Errors in the STV counting system

- Civica are specialist in STV counting systems
- The votes for Thompson/Jeremiah had no candidates to be distributed to
- No evidence that using a different STV counting system would have affected the result

Lack of secrecy

- Secrecy is not a requirement of the SOs
- Voters could have moved to where them voting could not be seen or used paper ballots
- No evidence the lack of secrecy affect the outcome of the election

Errors in transcribing data from paper ballots

- Paper ballots were scanned in and sent by email to Civica who have well trained staff and controls to ensure votes correctly transcribed
- No evidence that conduct of election affected its outcome

Help provided by other members was coercive

- Voters were not obliged to seek assistance from other members
- Laptops of Synod staff and paper ballots were available on request
- No evidence votes were cast under duress or that conduct of election affected outcome.

36. Revd Paul Benfield supported Miss Buggs' submissions and noted that in many cases the appellants were simply asking for assurances that everything was conducted properly and reminded the Appeal Panel that the Appellants needed to show that the election was defective in some way. He observed, inter alia, that:

"There were undoubtedly difficulties with voting but that does not of itself invalidate the election. It was incorrect to inform electors must vote for all 12 pairs but the appellants would need to show that by being forced to vote for more than they wished to the result of the election is unsafe. This would be very difficult to do since most people's single vote will have been used up in an earlier preference or preferences and later preferences will be of no effect."

"If people were worried about others seeing how they voted they should have moved to a more private area of the Chamber"

"People are free to encourage others how to vote and to help them place their vote if they wish. To challenge the election the appellants must show that one or more voters were *forced* to vote in [a] way they did not wish to."

"There is no appeal from anyone on the ground that they were denied a vote and there is no evidence that anyone voted after the closure of voting."

37. Mr Nic Tall made it clear that he was not commenting on the outcome of the election but was making observations on how the election process fell short of best practice. He highlighted the following matters relating to the security of the ballot, namely that:

- 37.1. it was possible to see how members sitting directly in front of you or at your side had voted;
- 37.2. there may have been undue influence placed on voters in that there were undoubtedly occasions of neighbours commenting on candidates and giving advice as to voting, particularly when devices were shared;
- 37.3. he highlighted problems relating to remote participation. He gave the example of Peter Barrett who was not able to vote remotely on his smartphone and wondered whether others had been able to vote without having participated in the period of prayer and worship;
- 37.4. there was inadequate instruction on the paper ballots which might have led to votes being invalidated; and
- 37.5. there was inadequate security for ballot papers in that there was no secure box in which they could be placed.

38. In almost identically worded responses, Revd Nick Weir, Ms Rebecca Hunt and Mr Benjamin John each stated, as unsuccessful candidates in the election, that they were able to vote in the way that they wanted and saw no evidence that the conduct of the election was such as to affect its outcome.

39. It may be noted that of all the submissions made, Ms Ozanne, Professor King and Mr Tall were not candidates in the election, Dr Cooke and Mrs Denyer were unsuccessful candidates who support the second appeal, Messrs Scowen and Taiwo, Miss Buggs and Revd Benfield were successful candidates resisting the appeal and Revd Weir, Ms Hunt and Mr John were unsuccessful candidates who expressly stated that they saw no evidence that the conduct of the election was such as to affect its outcome.

The process adopted to determine the appeals

40. SO 135L(1) requires the Panel to undertake a preliminary assessment of each appeal and in conducting such preliminary assessment SO 135L(2) provides that the Panel may only consider in respect of each appeal the notice of appeal and any accompanying written submissions and any representation or explanation made pursuant to SO 135E(5) or SO 135(6).

The first appeal

41. We have undertaken a preliminary assessment of the first appeal and have concluded that there are no arguable grounds for the appeal and that it should be dismissed.

42. Our reasons for so concluding may be shortly expressed thus.

43. Notwithstanding the decision in *Patterson*, we are satisfied that the revised SOs subsequently approved by the Synod imposes no duty on candidates in an election to disclose anything to electors but simply provide that what is disclosed to electors must be accurate. In other words, for there to be a successful appeal against the result of an election, there must be a representation of a material fact in connection with the election which is false, ie a misrepresentation. The appellant does not allege that Mr Taiwo made any misrepresentation at all. Mr Taiwo did not represent that he had not been selected for ordination training or that he would complete the 5-year term if elected. Ms Ozanne's allegation is in reality that Mr Taiwo failed to disclose what she

believes was a material fact in connection with the election, namely his acceptance of ordination training. Non-disclosure is not a valid ground of appeal.

44. In these circumstances we are satisfied that Mr Taiwo was under no duty to disclose that he had been accepted for ordination training and that his failure to do so does not constitute a misrepresentation. In any event he had been very open about being accepted for ordination training and had spoken of it at Synod both when addressing the Synod and outside the Chamber.

45. In any event, being accepted for ordination training does not necessarily mean that Mr Taiwo would become ordained, as he would need to be accepted for ordination by a bishop, which does not always happen, might withdraw from training or delay his candidacy for ordination and Ms Ozanne realistically conceded in her first email, referred to in paragraph 16 above, that because Mr Taiwo was an ordinand *in all probability* he would not be able to serve a full term. Accordingly, it was not inevitable that Mr Taiwo would become ineligible to serve on the CNC as a member of the House of Laity.

46. In any event, even if misrepresentation of as material fact is to be construed as non-disclosure, which we do not believe to be the case, it is difficult to know the precise ambit of such non-disclosure. For example, if a candidate has applied for a post, clerical or lay, which he knows will inevitably render him unable to serve on the CNC because he has to resign from the House which elected him or he has a known life limiting illness which would render him unable to serve a full term, we rhetorically ask whether such would require to be disclosed. We are satisfied that such is not the case.

47. The only consequence of Mr Taiwo being unable to serve on the CNC would be that Mr Scowen alone would continue to serve as the sole member of the pair.

The second appeal

48. We undertook a preliminary assessment of the second appeal and concluded that there were arguable grounds of appeal so that the appeal stood referred to the Panel for consideration and determination under SOs 135N and 135O.

49. Pursuant to SO 135N(1) the Panel asked the Synod Office for further information which included:

49.1. a list of those members who voted online;

- 49.2. disclosure of the 84 paper ballots which had been completed by members;
 - 49.3. which of the completed 84 paper ballots had not been counted by Civica;
 - 49.4. whether any member voted both online and by paper ballot;
 - 49.5. to know from Civica what the effect on the count was of including paper ballots where the signatures of members could not be verified by Synod staff; and
 - 49.6. whether all candidates were invited to attend when the paper ballots were scanned and emailed to Civica and to witness the count online.
50. We did this because concern had been expressed in the second appeal as to whether:
- 50.1. those who had voted online had *also* voted using a paper ballot because they were unsure whether their online vote had been recorded; and
 - 50.2. the signature of those who had completed a paper ballot but had not indicated their synod number had been correctly recognised by the Synod staff.
51. Moreover, the Panel was concerned to ascertain whether:
- 51.1. the inclusion or exclusion in the count of ballot papers where the signatures of voters could not be verified by Synod staff would have affected the outcome of the election; and
 - 51.2. whether all candidates had been treated equally.
52. As hereinafter appears we were supplied with such information and disclosure.

The hearing on 19 October 2022

53. Since the Panel had determined that there were arguable grounds of appeal, SO 135N(2) required it to give each party to the appeal the opportunity to appear before the Panel or to make written representations on the matters in issue. Such hearing was required to be held in public because we were not satisfied that it would be in the interests of justice for such hearing to be held in private.

54. Accordingly on 7 October 2022 the Panel advised Sue Moore at the Synod Office, who in turn communicated such information to the parties to the appeal, that the Panel had decided that:

54.1. There were no arguable grounds of appeal in respect of the first appeal and that we would give our reasons in due course. Such reasons are now set out above;

54.2. There were arguable grounds of appeal in respect of the second appeal and that the Panel had sought and obtained the information and documentation referred to in paragraph 49 above;

54.3. The Panel had been able itself to verify that there were 84 paper ballots and that of such paper ballots 4 paper ballots were completed by persons who had already voted online, 2 ballot papers could not be identified by signatures and 1 ballot paper was rightly excluded because the member had voted for more than one pair of candidates as a first preference vote; and

54.4. Although the count included all those who voted online, excluded the 4 duplicate paper ballots and the 1 invalid vote but included the 2 votes which could not be identified by signature, Civica had, at our request, confirmed that the result would have been the same had the 2 votes which could not be identified by signature been excluded.

55. The Panel believed that it was important to give the parties to the appeal no less than 7 days' notice of the hearing which was to take place on 19 October 2022. Although the Panel, having considered the submissions thus far, had reached the preliminary view that the second appeal should be dismissed, it emphasised that it would carefully consider any submissions made to it before reaching a final decision. However, it believed that it was in everybody's interests that it should be open about its preliminary view, even though it could be persuaded to reach a contrary view.

56. Of all the parties to the appeal only Professor King, Mr Scowen, Miss Buggs and Ms Hunt indicated that they wished to make representations. Professor King did so in writing because she could not attend the hearing. Mr Scowen, Miss Buggs and Ms Hunt attended the hearing on Zoom.

57. In her written submissions Professor King raised a number of matters:

58. Unfortunately, she had not been notified of the hearing until 10 October 2022. She had learnt the date of the hearing from Ms Ozanne who had been informed on 7 October. We regret that Professor King was not notified as she should have been but are satisfied that Professor King was not prejudiced by this mistake in failing to advise her as to the date of the hearing since she still had over 7 days in which to prepare any representations she wished to make.

59. Professor King referred to many issues she had already raised such as being required to list all candidates in order of preference, the lack of security in voting, members advising others which candidates they should vote for and completed paper ballots being “left in various places in the chambers - some given to staff, others left out”. We will address these issues below.

60. She also raised the question of whether all candidates were treated equally as to when the paper ballots were scanned and emailed to Civica and attending the count online. The latter is something which we had already raised with the Synod Office and as to which we were satisfied that all candidates had been treated equally and fairly.

61. Professor King referred to the possibility that some members present on campus were unable to vote. She cited the example of Peter Barrett who was not able to vote. However, Mr Barrett has himself not made any appeal on the basis of his failure to vote. She says that Mr Barrett had told her that he had written to the Synod Office but did not receive a reply.

62. Professor King urged the Panel to examine the post Synod feedback questionnaires because she believes that members made comments about the conduct of the election.

63. Finally, Professor King questioned whether the Synod could have faith in the process which elected this CNC. We will address this issue below.

64. The approach taken by Mr Scowen, Miss Buggs and Ms Hunt was to answer any submissions which were raised. The Panel told them what submissions Professor King had made and they each submitted that the feedback questionnaires should not be examined because whilst the election may not have proceeded as anticipated, the question which the Panel had to determine was whether the conduct of the election affected its outcome and that anyone who criticisms of the electoral process was entitled to make an appeal under SO 135B and no person other than those already

identified above had done so. In short, such feedback questionnaires could have no evidential value.

65. The Panel raised with Mr Scowen, Miss Buggs and Ms Hunt the issue of the 4 occasions when voters had voted both online and by paper ballots and where the votes counted by Civica had been those made online and not by means of the paper ballots. All responded that this was the correct approach, given that inevitably such persons had voted online first and thereafter by means of a paper ballot, being unsure whether their online vote had been counted. In fact, Mr Scowen went somewhat further and submitted that, that given that this was an election designed to be conducted online, if a person voted online and then completed a paper ballot, the paper would be invalid and was rightly discounted because paper ballots were to be used only where members had been unable to vote online.

Our determination of the second appeal

66. Although the Panel are determining this appeal, it should not be forgotten that each member of the Panel voted in this election and are thus well able to appreciate the difficulties and frustrations which all those voting experienced. That said our task is, in accordance to SO 135B(3), to determine whether the conduct of the election affected its outcome.

67. There is no doubt that the burden of proof that the conduct of the election affected its outcome lies on the appellants although such burden is satisfied on the balance of probabilities, namely that it was more likely than not that the conduct of the election affected its outcome.

68. We are satisfied that, subject to the qualification as regards Mr Barrett set out below, everyone who was eligible to vote in the election was able to vote either online or by a paper ballot. We note that the Secretary General expressly asked Synod whether anyone had been unable to vote and no one suggested that they had not. Moreover, no member of Synod has made an appeal under SO 135B(2) that, though entitled to vote they had not been allowed to vote.

69. Both Mr Tall and Professor King have referred to Mr Barrett not being able to vote remotely on his phone, although Professor King did not do so in her original submission. Professor King also refers to him as having written to the Synod Office and that he had not received a reply. We thought this worthy of investigation to satisfy ourselves that everyone who was eligible to vote in the election was able to vote and

to ensure that his communication did not constitute an appeal against the result of the election.

70. In such circumstances we asked the Synod Office whether there was any such communication from Mr Barrett. In response, we were shown a copy of Mr Barrett's email to the Acting Clerk sent at 1627 on 11 July 2022, the day after the election took place in which he listed the candidates in his order of preference and stated "I would be glad if my vote could be included, given that the fault was outside my control".

71. Given that all other persons were able to vote online or by means of a paper ballot, this email does not explain why Mr Barrett was unable to vote online or by means of a paper ballot and felt it was appropriate for him to vote by email *after* the election had ended. We think it necessarily follows that he was not present in the Chamber when the voting took place or able to vote remotely online. However, we have ascertained that no reply was sent by the Synod Office to his email and that his voting intentions as set out in such email were not considered by Civica in conducting the count.

72. In these circumstances, we cannot be satisfied on the balance of probabilities that Mr Barrett was entitled to vote remotely and we note that he has himself lodged no such appeal relating his inability to vote, notwithstanding that he had received no response from the Synod Office and in particular no confirmation that his voting intentions would be counted by Civica.

73. However, in order to put the issue about Mr Barrett's voting intentions as set out in his email beyond any doubt, we asked Civica to re-run the election to include Mr Barrett's voting intentions. Having done this, Civica have informed us that the result of the election would have been the same. It is thus the case that Mr Barrett being unable to vote, even if he were wrong to conclude that he had been entitled to vote remotely, did not affect the outcome of the election.

74. We agree that it had been intended that the election should take place in a prayerful context but that that was not specified in the Standing Orders and the test we are required to apply is whether the conduct of the election affected its outcome. We note that no member of the Synod has stated that they would have voted differently had the election taken place in a calmer and more prayerful context.

75. When it became obvious that there were problems with people voting online, the Synod staff took immediate and appropriate action by providing an alternative means of voting by paper ballots.

76. Although there may have been inadequate privacy of voting, anyone who was concerned about this could have moved somewhere more private where their voting could not have been observed.

77. Although it is suggested that some, particularly those lending laptops, offered views about which candidates should be supported, we are satisfied that members of Synod, when voting, were free to accept or reject such suggestions or to use paper ballots which could be completed in some privacy. Again, no member of the Synod indicated that they voted in the way that they did because of what was said to them by other members or that they would have voted differently had such views not been expressed.

78. The fact that when voting online, voters were told that they had to rank all candidates in order of preference, could not affect the outcome of the election because a later preference vote cannot affect an earlier preference vote. So, whilst this is an unfortunate error on Civica's part we are satisfied that it could not affect the outcome of the election.

79. We are not satisfied on the balance of probabilities that the Synod staff stated that all candidates should be ranked in order of preference, but even if they did, we are satisfied that this did not affect the outcome of the election.

80. There is no evidence that anyone voted outside the voting period.

81. Although Professor King stated that she had not yet received confirmation from the Synod Office that her online vote had been counted, we can confirm, having seen the record of those who voted online, that her vote was counted.

82. There is a conflict in the evidence between on the one hand Mr Tall who stated that there was inadequate security concerning the paper ballots [see paragraph 37 above] and Professor King who stated that ballot papers were left in various places [see in particular paragraph 59 above] and on the other hand the Acting Clerk who stated that there was adequate security in that the votes were placed in a box and remained in her possession until they were emailed to Civica. On this issue we think that on the balance of probabilities the Acting Clerk's evidence is to be preferred since she was the person who was responsible for the conduct of the election, would have well understood the need for such security and no one has suggested that completed ballot papers were later discovered in the Chamber and had not been collected by the Synod staff or counted by Civica.

83. Although a discrete point was raised by Dr Cooke and Mrs Denyer as to why the votes for Robert Thompson and Anderson Jeremiah were not redistributed among the remaining candidates, it will be seen from what is stated above that there were by stage 10 only two remaining pair of candidates who could be elected and it would have thus mattered not how such votes were re-distributed because they would have been elected in any event.

84. The information provided by the Synod staff in answer to our request showed that 375 votes were counted, 4 paper ballots were not counted because the voters had voted both online and by means of a paper ballot and 1 vote was declared invalid because the voter had voted for more than one first preference.

85. Although Mr Tall had suggested that inadequate instructions with the paper ballots could have led to votes being invalidated on a technicality, having examined the paper ballots we can confirm that this did not in fact happen and the one vote declared invalid, as above, was properly declared to be invalid.

86. We note that 375 votes represents in the region of 90% of those eligible to vote and there would inevitably be some members who did not vote.

87. We have seen and examined a print out of those members who voted online and the 84 paper ballots.

88. We ourselves have undertaken a comparison of whether votes had been cast both online and by means of a paper ballot and we can confirm that this occurred on 4 separate occasions and that such votes were excluded. We asked the Synod Office to identify the 4 occasions when they found that there were duplications between the online ballot and the paper ballot and we can confirm that these were exactly the same duplications which we found carrying out our own independent examination.

89. Whilst we recognise that it is not inconceivable that such 4 persons voted differently online and on the paper ballots, we think that this is highly unlikely and improbable and that it was thus appropriate to not count the later paper ballots.

90. At one stage in our deliberations we considered whether we should ask the Synod Office to enquire of Civica whether such persons did vote differently online and on the paper ballots and whether, if they did, the result would have been the same if the paper ballots and not the online votes had been counted. However, we have not embarked on this hypothetical exercise because we accept Mr Scowen`s submission

set out at paragraph 65 above that in the context of an election designed to be conducted online, any later vote by means of a paper ballot would be an invalid vote which should not be counted.

91. There were 2 persons who voted by means of a paper ballot whose signatures could not be recognised, even after this had been pointed out by the Secretary General to the Synod on the day after the election and he had requested that those who thought that their signature might be illegible should supply their signatures to try and identify by whom such paper ballots had been completed.

92. We understand why these 2 paper ballots with signatures which could not be identified, were counted by Civica and were included in the 375 votes which were counted because such voters must have been present during the election to have sought and completed the ballot papers. However, it is arguable that they should not have been included.

93. We thus asked Civica to re-run the election without such paper ballots so that the count would be of 373 votes. Civica have informed us that the result would have been the same. The only difference, contrasting the results set out in paragraph 30 above, was that Nadine Daniel/Jane Evans would have been excluded at stage 4 and not stage 5 and Jonathan Stevens/Sarah Jackson would have been excluded at stage 5 and not stage 4, which did not affect the outcome of the election.

94. Because the explanation of the Acting Clerk referred to the fact that Mrs Baron and Miss Buggs were present when the paper ballots were scanned and emailed to Civica, we were concerned as to whether all candidates were invited to attend and whether they were all invited to witness the count online. In response to our request for further information, we were informed by the Synod Office that all candidates were invited to attend both the scanning and emailing of the paper ballots to Civica and the count conducted by Civica. The presence of Mrs Baron and Miss Buggs was thus merely due to the fact that they alone responded to the invitation to be present when the paper ballots were scanned and emailed to Civica.

95. We record that in reaching our decision we have not examined the post Synod feedback questionnaires for the reasons put forward by Mr Scowen, Miss Buggs and Ms Hunt and recorded in paragraph 64 above.

Conclusions

96. The first appeal is thus dismissed because, for the reasons stated above, we are satisfied that there are no arguable grounds of appeal.

97. Having initially concluded that there were arguable grounds for the second appeal, having been supplied with further information and clarification by the Synod Office we have concluded that those grounds of appeal are not established to the Panel's satisfaction and we have concluded, pursuant to SO 135O(4)(a), that the matters at issue amount to a minor infringement which did not affect the outcome of the election and accordingly that the second appeal should be dismissed.

98. In her written submissions to the Panel for the hearing on 19 October 2022 Professor King questioned whether members of the Synod could have faith in the process which elected these members of the CNC. We have carefully considered such submission but, as appears from all the matters set out above, we are completely satisfied that the Synod can have full confidence that the election process, although open to some criticism as set out above, did elect the candidates who received the greatest support from those members voting.

99. It is self-evident that it would be prudent if the process for carrying out elections to the CNC and/or online voting were to be reviewed before any further elections take place. This may be a matter for the Business Committee to reflect on.

100. We express our grateful thanks to those members of Synod who made submissions to us and to the Synod Office staff who have assisted us in conducting this appeal although we should expressly record that for obvious reasons we determined these appeals without reference to the Secretary-General, the Acting Clerk and the Chief Legal Adviser who advised them both.