

GENERAL SYNOD

HOUSE OF BISHOPS

THE LIABILITY OF BISHOPS TO CLAIMS BY VICTIMS OF CHILD ABUSE

The House is invited to note this advice.

1. This note confirms and expands upon the advice I gave orally at the meeting of the House of Bishops in May.
2. Any civil claim in respect of child abuse is likely to be made against the bishop in his corporate capacity – ie as ‘corporation sole’ (a corporation comprising the bishop for the time being, which has legal personality distinct from the holder of that office). The claim may relate to the bishop’s own acts or omissions or, more probably, to those of a predecessor in office: liabilities incurred by a predecessor will attach to the corporation and so can be enforced against it even after the bishop concerned has retired from office.
3. It seems unlikely that a successful claim could be made against a current or retired bishop in his personal capacity. Any liability would be that of the office holder, represented by the corporation sole; and in general liabilities of a corporation cannot be enforced against its members (the law drawing a distinction between the two). However, the possibility cannot be ruled out of a claim being brought against a current or retired bishop in his personal capacity (even if only for tactical reasons); and retired bishops may also be drawn into procedural issues arising in the course of an action.
4. Claims could in principle be made against a diocesan bishop by victims of abuse on either of two different bases:
 - (a) for breach of a duty of care owed directly by the diocesan bishop, or a predecessor, to the claimant; or
 - (b) under the principle of ‘vicarious liability’, for breach of a duty of care owed by someone for whose acts the bishop is liable in law (normally an employee of the bishop and also possibly a suffragan bishop but not normally someone with the freehold or with a bishop’s licence).
5. Claims are more likely in practice to be made against a bishop on the first of these two bases. The basis of the claim is likely to be an omission or series of omissions – ie that the duty of care had been breached as a result of the bishop, or a predecessor, failing to take reasonably adequate steps to protect the person to whom the duty of care was owed.
6. Omissions giving rise to liability are most likely to relate to abuse by clergy and be made on the basis that the bishop could have taken steps to prevent the abuse occurring but failed to do so. Relevant omissions include taking no action when

information came to light that suggested a cleric presented a risk or, where it was recognised that there was a risk, failing to take sufficiently effective action to protect children and young people against it.

7. However, it is possible that claims could also be made on the basis of a more general failure to take appropriate protective action. For example, the possibility cannot be ruled out that a bishop might be liable for abuse committed by a cleric who was not recognised as a risk if (a) he would have been identified as a risk had the bishop proactively reviewed 'historic' evidence of possible abuse generally and (b) the bishop was aware that a predecessor had not dealt with cases of suspected child abuse properly.
8. The bishop ought not in general to be liable for abuse committed at parish level by lay employees and volunteers: liability for that should fall primarily on the relevant PCC and, possibly, the incumbent or priest in charge. However, again the possibility of a claim being made successfully against the bishop in such circumstances cannot be ruled out if the parish had not been complying with the House of Bishops' Child Protection Policy and the bishop knew, or ought to have known, that that was the case. (Thus bishops would be well advised to seek confirmation at regular intervals, perhaps through their Child Protection Officer, that parishes are complying with that policy.)
9. The corporation sole is likely to have no, or only negligible, assets of its own out of which to meet any liability. Difficult questions may arise as to whether the bishop's 'discretionary fund' represents part of the property of the corporation or of a separate trust – held expressly or by implication for the charitable purposes inherent in the bishop's office or some other charitable purpose. (The position in that respect may vary from case to case, and so advice should be sought from the diocesan registrar on the point.) If discretionary funds represent property of a distinct trust, they will not be at risk from any claim.
10. If the corporation has insufficient assets to meet any successful claim, the question that then arises is whether the Church Commissioners would be prepared to provide funds to meet the liability under s.5 Episcopal Endowments and Stipends Measure 1943, on the basis that it represents an expense of office. Whether they will be willing to do so in any particular case is a matter for them and may depend on a number of considerations, including whether or not the current bishop has to any extent been responsible for the liability arising. The Commissioners will also expect to be consulted about the handling of the claim at all stages, to ensure that it is dealt with in the most effective and efficient way possible.
11. If a claim is made against him, the bishop will of course need to take independent legal advice from those with appropriate expertise. That advice will need to address, amongst other matters, the extent to which the claim might be barred on grounds of 'limitation' – ie that it was not brought sufficiently promptly after the breach of duty (or the last of such breaches) occurred. In a case involving abuse that took place some time ago, advice may also be needed as to whether any response by the bishop's predecessor was consistent with the understanding of best practice at the relevant time.

12. It is unlikely that a bishop will have the benefit of insurance cover against claims of this kind. However, if he does, the bishop or his advisers should immediately inform the insurers of the claim.
13. Where cases of abuse come to light, especially as a result of criminal proceedings, bishops will understandably wish to express their regret at what has happened. Because of the possibility that statements of regret might have the unintended effect of accepting legal liability for the abuse, it is important that they are approved in advance by lawyers, as well as by diocesan communications officers (and, if relevant, insurers). With careful drafting, it should be possible to express them in terms which effectively apologise for what has happened whilst at the same time avoiding any concession of legal liability for it.
14. The bishop may be minded to meet the victim as part of a process of recognising the Church's responsibility in a more general sense and providing pastoral care for him or her. This may be the right course in some circumstances but great care will be needed to ensure that nothing is said which inadvertently concedes legal liability. Again, legal advice should accordingly be taken before the bishop agrees to meet the victim in this way.

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