

Discussion Paper

Safeguarding and Independence in the Church of England.

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1. Introduction

- a. Calls for an ‘independent’ safeguarding service for the Church of England have been made by many survivors of church abuse, and in particular by some of the organised groups representing these survivors. They have also been made by solicitors who regularly act for these survivors, and more recently by the *Social Care Institute of Excellence* in the overview report² of their audit of safeguarding in CofE Dioceses.
- b. The argument for independence has obvious initial appeal. The common finding of public inquiries and other similar investigative bodies worldwide is that churches prioritise their reputation over the welfare of abuse victims. Self-protective responses appear to be so automatic and endemic that there is considerable force to the argument that the church should not be allowed to ‘police’ itself³.
- c. However, some submissions to the Independent Inquiry Into Child Sexual Abuse in the public hearings regarding the Diocese of Chichester in March 2018 expressed concern that a safeguarding service for the Church of England that is external to the current Diocesan structure would be detrimental to the overall process of culture-change that is clearly required. In order to change culture, safeguarding is something that should be done ‘with’ the church, rather than ‘to’ the church. It is difficult to imagine an external

¹ This paper is written from the author’s perspective as an experienced Diocesan Safeguarding Adviser. It in no way reflects the policy of either the Diocese of Chichester or the Church of England. The author takes full and sole responsibility for the opinions expressed in this paper.

² SCIE (2019), *Final Overview Report of the independent diocesan safeguarding audits and additional work on improving responses to survivors of abuse* London: Social Care Institute for Excellence.

³ This reaction may be explained by affective reactions that can be understood through recognised psychological theories rather than being as the result of an organisational ‘pathology’. See e.g. Harper, C.A. and Perkins, C., 2018. Reporting child sexual abuse within religious settings: Challenges and future directions. *Child abuse review*, 27(1), pp.30-41; also Harper, C.A., Perkins, C., & Johnson, D. (2019) ‘Psychological factors influencing religious congregation members’ reporting of alleged sexual abuse’ *Journal of Sexual Aggression*, DOI: [10.1080/13552600.2019.1599453](https://doi.org/10.1080/13552600.2019.1599453)

the autonomy of Diocesan Bishops in the professional, statutory safeguarding world⁷, in which procedural checks-and-balances have been added over decades. Whilst recent changes to legislation and practice guidance in the Church of England have begun to remedy this situation, many serving Diocesan Bishops will have commenced their episcopal ministry before these changes were implemented. It may well be that the expectations of at least some Diocesan Bishops (and many other supporting staff) regarding the limits to their authority are informed more by their historic experience than the very recent improvements that the church has made.

3. The Data Protection Officer as a model for third-sector safeguarding

- a. This section makes a recommendation based on the aforementioned principle of 'separation of powers', and draws from a discipline with a number of parallels to safeguarding in the non-statutory sector: data protection.
- b. The primary recommendation of this paper is that legislation should be enacted that allows for the creation of a new statutory role, which for the sake of argument shall be referred to here as the 'Diocesan Safeguarding Officer'⁸.
- c. This role will have many parallels with the role of 'Data Protection Officer' (DPO) created by the General Data Protection Regulations (GDPR) and the Data Protection Act 2018.
- d. Section 69(3) of DPA 2018 states that '*the same person may be designated as a DPO by several controllers, taking account of their organisational structure and size*'. This allows for the possibility that the DPO will not be directly employed by any one of the data controllers they are designated by.
- e. UK government guidance regarding the GDPR states that '*A DPO can be an existing employee or externally appointed...In some cases several organisations can appoint a single DPO between them*'⁹. The same guidance also states that '*The DPO must be independent...*'¹⁰.

⁷ It is the opinion of this author that of all the evidence given to IICSA during the March 2018 Chichester case study, one of the most revealing items was Bishop John Hind's admission that in 19 years of episcopal ministry, he had received what would approximate to 'supervision' on just one occasion.

⁸ Whilst this paper is primarily concerned with safeguarding in the Church of England, it should be noted that a more general 'Designated Safeguarding Officer' role, following many of the principles outlined in this Section, may have applicability across the third sector. The reader is invited to reflect on the extent to which other areas pertinent to third-sector organisations, such as data protection, health and safety, and financial management, are regulated far more stringently than the safeguarding of children and adults.

⁹ *Guide to the General Data Protection Regulation (GDPR)*, Information Commissioner's Office, p. 153.

¹⁰ *Ibid.*

- f. DPA 2018 and the government's GDPR guidance leave the matter of whether DPOs are directly employed or not open, despite the requirement that DPOs are independent. The reason that such apparent ambiguity is possible can be found in Section 70 of DPA 2018, which is sufficiently relevant to the argument of this paper that it is reproduced here in full, in Appendix C.
- g. It can be seen that Section 70 of DPA 2018 sets a legislative firewall around the post of Data Protection Officer that renders the question of who employs them redundant. The independence of the postholder is protected such that the direct employment of DPOs presents no risk to that independence.

4. The Suggested Model

- a. An equivalent of Section 70 is, this paper argues, what is missing in relation to the role of Diocesan Safeguarding Adviser (or, as suggested here, 'Officer') within the specific case of the Church of England. Were such legislation to be drafted, enacted and implemented, it would create a similar firewall around the post of Diocesan Safeguarding Officer, such that a DSO would be entitled to act in their own authority with regards to certain key safeguarding tasks. Responsibility for executing these tasks would, *in the normative case*, rest with the DSO and not with the Diocesan Bishop.
- b. It is not intended to present a full list of such tasks here, but briefly, this paper suggests that they should cover the following main areas:
 - i. Reporting safeguarding-related matters to the statutory authorities.
 - ii. Suspension of clergy in response to safeguarding-related concerns regarding risk.
 - iii. Commissioning and instructing safeguarding investigations as required.
 - iv. Commissioning and instructing risk assessments during the course of, or following, formal investigation into safeguarding-related matters.
 - v. Ensuring that adequate support is given to complainants in safeguarding-related investigations, including criminal investigations and complaints made under the Clergy Discipline Measure.
 - vi. Reporting safeguarding-related matters to the National Safeguarding Team.
 - vii. Reporting safeguarding-related matters to the Charity Commission.
 - viii. Commissioning learning-lessons case reviews at the culmination of a case (although, as per current guidance, it is envisioned that the Chair of the Diocesan Safeguarding Advisory Panel should retain oversight of this process).

- c. Current CofE legislation allows the DSA to report matters to the statutory agencies on their own authority in the event of opposition to such reporting by the Diocesan Bishop. However, this is the exceptional case; the wording of the clause makes clear that the normative situation is for the Diocesan Bishop to make this decision, with an 'opt-out' for the DSA in the event of an unresolvable disagreement. Whilst it is accepted that in practice most DSAs will already be taking matters into their own hands regarding reporting to the police, the legislation still places primary operational responsibility for the decision to do so in the hands of Diocesan Bishops. **The argument of this paper is that the current emphasis should be reversed; the normative case, not just in practice but in legislation and guidance, is for the DSA (or DSO) to act on their own authority in regards to the matters outlined in (4b), with the Diocesan Bishop being informed of the outcome of those actions rather than being involved in delivering them.**
- d. This suggestion creates the independence from episcopal and ecclesial authority that the calls for an independent service (rightly) emphasise, whilst avoiding dislodging safeguarding practitioners from the mainstream of diocesan and local-authority life.
- e. Acting in the best interests of children, adults-at-risk, survivors and in accordance with best safeguarding practice will not create a conflict of interest for members of safeguarding teams, because to act thus is what they are required to do by the legislation that defines their role. But, crucially, the legislation that creates this freedom will not result in a national CofE safeguarding service that is dislocated from the local relationships that are necessary for good safeguarding to flourish.
- f. This suggestion also allows Diocesan Bishops to exercise their pastoral and spiritual responsibilities whilst knowing that the necessary safeguarding actions are undertaken. Decisions regarding reporting matters to the statutory authorities and even suspension will be taken by DSOs and not by Bishops, leaving the Bishop free to act pastorally towards the suspended priest, the complainant(s), the congregation, and others as necessary, rather than 'keeping their distance' in the way that the current procedures require.
- g. This model allows for clear lines of accountability regarding safeguarding decision-making. This paper does not propose simply transferring the current autonomy of Diocesan Bishops to Diocesan Safeguarding Officers. The argument that no single individual, acting largely without accountability, should be responsible for safeguarding decision-making applies to DSAs/DSOs just as it does with Bishops. The legislation that the changes proposed in this paper requires would stipulate the necessary professional