Rupert David Hingston Bursell  
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Exhibits: RDHB-1  
Dated: 8 November 2017

THE INDEPENDENT INQUIRY INTO CHILD SEXUAL ABUSE

WITNESS STATEMENT OF RUPERT DAVID HINGSTON BURSELL

I, Rupert David Hingston Bursell, will say as follows:

1. I make this statement in response to a letter dated 31 July 2017 from the Solicitor to the Independent Inquiry into Child Sexual Abuse to Mr Peter Frost of Herbert Smith Freehills LLP (the "Request"). The structure of this witness statement follows, as closely as possible, that of the Request (including through the use of subheadings). Whilst I do not repeat the questions contained in the Request, I broadly answer them in the order in which they appear in the Request.

2. Save where I state otherwise, the facts and matters set out below are within my own knowledge and are true. Where I refer to matters that are not within my own knowledge, they are derived from the sources stated and are true to the best of my knowledge and belief.

3. I enclose an index which sets out the key documents referred to in this statement with their corresponding ACCOE numbers. When I refer to this index I do so in the format: [RDHB-1/tab].

   General:

4. I was born on the [DPA] 1942.

5. I was myself sexually abused between the ages of 12 and 13 (although not by a cleric). I regard myself both as a victim and a survivor and it is a matter that still impinges upon my everyday life. Indeed, I find making this statement deeply distressing, just as I did the visitation of the Chichester diocese.

6. I have a law degree from Exeter University and a degree in theology from Oxford University; in the latter degree I sat a paper on canon law. I also have a doctorate in philosophy from Oxford University; my thesis was on ecclesiastical law.

7. I was both called to the Bar and ordained in 1968. I am a Queen’s Counsel and a retired senior circuit judge; as such I was either an advocate or judge in many sexual
abuse cases. In the Church I have always been a non-stipendiary cleric and currently hold a licence to officiate in the diocese of Oxford.

8. I am an honorary canon of Christ Church Cathedral, Oxford.

9. I have been the diocesan chancellor and vicar general\(^1\) of the dioceses of Durham, St Albans, Bath & Wells, and Oxford; I remain the diocesan chancellor and vicar general of the diocese of Durham until 10 November 2017 having been appointed in 1998.

10. I have been a member of the Legal Advisory Commission of the General Synod of the Church of England since 1990 and the chairman since 2007.

11. I have contributed to the ecclesiastical law volumes in *Halsbury’s Laws of England, 4\(^{th}\) & 5\(^{th}\) eds*, and to a previous volume on ecclesiastical law in *Atkins’ Court Forms* as well as to volumes on criminal law and sentencing. I am the author of *Liturgy, Order and the Law*.

12. I am the author of a number of articles, particularly in the *Ecclesiastical Law Journal*, one of those articles was concerned with the seal of the confessional in the Church of England [RDHB-1/29; ACE025271]. I also wrote an article on safeguarding in the July 2016 edition of the *Crucible*, the Journal of Christian Social Ethics, entitled *Are the Clergy Discipline Measure 2003 and the Safeguarding and Clergy Discipline Measure 2016 Fit for Safeguarding Purposes?* [RDHB-1/11; ACE025167] In addition, I have written a contribution entitled *Safeguarding in the Church of England for a forthcoming book, SPCK Study of Ministry Handbook* [RDHB-1/14; ACE025270].

13. I am a member of the team which provides Initial Ministerial Education (IME) Part II training for curates in the diocese of Oxford; in that capacity I have taught the curates on the subject of safeguarding. I have also been one of the team providing safeguarding training within the diocese of Oxford although this is currently on hold due to its effect upon me in the light of my own sexual abuse.

**The Archiepiscopal Visitation:**

14. The terms of reference for the visitation of the diocese of Chichester were as follows:

> “The Archbishop of Canterbury\(^2\) hereby:

1. Appoints as his Commissaries for Visitation of the Diocese of Chichester the Right Reverend John Gladwin and the Worshipful Chancellor Rupert Bursell QC

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\(^1\) The chancellor is the judge of the consistory court of the diocese dealing primarily with faculty matters; the vicar general is primarily concerned with the issue of common licences for marriages but also advises the bishop and senior diocesan clergy on legal matters. A faculty is a permission to carry out works in a consecrated church or churchyard; a common licence is an alternative to the calling of marriage banns in an Anglican church.

\(^2\) At this time it was the Most Reverend and Right Honourable Rowan Williams.
2. Directs that during the period of the Visitation, all issues relating to Safeguarding within the Diocese shall be dealt with solely by those persons to whom the Archbishop may from time to time make delegation in writing, and by no other

3. Mandates that the Visitation shall be limited in its scope to:
   3.1 Examining progress made in implementation of and actions taken upon the 2009 Diocesan Safeguarding Guidelines (The Care and Protection of Children, 2009), the current House of Bishops’ Guidelines (Protecting All God’s Children, 2010) and the recommendation made by Elizabeth Butler-Sloss in her report dated 19 May 2011; and
   3.2 Making such further recommendations as may appear necessary and expedient

4. Directs that during the period of such Visitation the inhibition provided by Canon G5 Paragraph 2 shall have effect only in relation to the matters referred to in Articles 2 and 3 above

5. The Visitation shall commence with immediate effect

It was dated the 21st December 2011: see [RDHB-1/1; ACE025145].

15. The matter of my having been sexually abused was disclosed by me to the Right Reverend John Gladwin and, I think, to the Archbishop of Canterbury. I did not, and do not, regard it as any bar to my acting as a commissary. I did not at that time divulge that information to other people involved in the visitation (other than, perhaps, to the Chichester diocesan safeguarding adviser, Colin Perkins) as I believed it might skew the reactions of others, whether in the media or otherwise.

16. The purpose of the visitation was as outlined in our terms of reference and was limited to safeguarding in the diocese of Chichester, although it became clear to us that it was essential to place our reports in the context of the wider Church. Although technically a visitation is a judicial process it “no longer has the character, or even the semblance, of court proceedings”; although a visitation still implies some coercive authority, it is the act of a pastor rather than a judge. As such, the visitation was not considered the equivalent of an inspection even though it had some similarities.

17. The decision to proceed by way of visitation was that of the Archbishop of Canterbury but it is doubtful whether the ecclesiastical law has any other legal mechanism by which an archbishop can interfere in the running of a diocese. My recollection is that I discussed this with the archbishop’s Provincial Registrar, Canon John Rees; I certainly had some input into the final wording of the terms of reference. Originally it was suggested that I might be a legal adviser to any persons appointed to look into the situation in Chichester but I expressed the view that a greater legal input was likely to be needed in the whole process due to the complexities of ecclesiastical law (particularly in relation to clergy discipline) as well as into any final determination. Hence my own appointment as a commissary.

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4 Ibid.
18. I cannot now recall what information I was given before the visitation commenced other than that the Archbishop had received criticism in the media as well as strong representations in correspondence[^5] as to his non-intervention in the safeguarding situation in the diocese and that there were tensions in the diocese surrounding the then Bishop of Lewes, the Right Reverend Wallace Benn. I do not now recall whether I was then told of issues surrounding the Right Reverend Peter Ball or the possibility of criminal proceedings against members of the diocesan clergy (although I think it is likely on both counts).

19. We conducted the visitation by reading relevant documentation[^6] (together with correspondence sent to us), interviewing various people (see the list in [RDHB-1/2; ACE025146]) and discussing the safeguarding situation in the diocese with the Bishop of Horsham (The Right Reverend Mark Sowerby), the Diocesan Safeguarding Officer (Colin Perkins) and the Diocesan Secretary (Angela Sibson).

20. I do not now recall precisely how many victims/survivors we interviewed. However, when we met them Bishop Gladwin and I gave them undertakings that we would not disclose their identities[^7], although this anonymity was declined by Philip Johnson. As a survivor myself I take that undertaking particularly seriously. Indeed, as at least two of the victims/survivors were at risk of suicide I believe that there would be a real risk that one or more of them might be driven to that step if the promised undertakings were broken. Indeed, the Inquiry will know that one of Bishop Peter Ball’s victims committed suicide after the BBC journalist, Colin Campbell, attempted to contact him during the course of the visitation.

21. Our interviews were conducted jointly (although I have some recollection that Bishop John Gladwin conducted one by himself) and the bishop and I shared the various documents and pieces of correspondence. I believe that I may have read more of the blue files than the bishop. We kept in contact by telephone, email and by meeting in person. Both the interim and final reports were written by us jointly although I drafted the legal content and the bishop most of the theological content. As will appear later[^8], we received some useful input on the legal aspects from the Head of the Legal Office, Stephen Slack, although I did not agree (nor do I now agree) with all that advice.

22. I am asked why an interim report was published and the purpose of publishing such a report. There was a vacancy in see in the diocese of Chichester and a new bishop was about to be appointed. We therefore felt it necessary to publish our findings as

[^5]: See the subsequent letter to the Archbishop dated the 16th May 2012 from the Director and the Independent Chair of the East Sussex Children’s Services Department at [RDHB-1/2; ACE025164].
[^6]: I cannot now recall each and every document that I examined, or sought, but they are to be found or referenced (i) in the lever arch files that I still have in my possession; (ii) some blue files of the Chichester diocesan clergy; and (iii) the blue files on Bishop Peter Ball held at Lambeth Palace. I also have the (incomplete) notes that I took during some of the interviews.
[^7]: I have therefore redacted the names (and in one case the address) of those victims/survivors from my contemporaneous notes and the various files.
[^8]: See paragraph 45, footnote 20.
soon as possible in order that the new bishop should not be wrong footed in any way. However, the National Safeguarding Officer, Elizabeth Hall, contacted us in relation to a safeguarding issue that had recently arisen in relation to a bishop who had been an archdeacon in the Chichester diocese, the then Bishop of Blackburn, which she felt might impact on our report (see [RDHB-1/3; ACE025147-ACE025149 and ACE025172]); quite apart from the seriousness of that suggestion it also impinged on the reliability, or otherwise, of the review of previous cases carried out by Roger Meekings. We believed that it was essential that our report should not be undermined by any subsequent such revelation or revelations: hence our publication of an interim report.

23. Before our interim report was published a draft was seen by the Archbishop of Canterbury who made some comments upon it. It was also circulated by (I think) the Archbishop’s Secretary (Christopher Smith) to the Secretary-General of the General Synod (Sir William Fittal) and, upon his insistence, to the Right Reverend Paul Butler who was then the lead bishop on safeguarding in the Church of England. It was also circulated to Stephen Slack (see above paragraph 21) and the new bishop of Chichester, the Right Reverend Martin Warner. In addition, a few minor amendments were then made. I did not accept the Legal Office’s interpretation of Canon C 8 (as it then stood).

24. Parts of the draft interim report were also shown to the Bishop of Lewes and his legal advisers. He pressed for a number of amendments and Bishop Gladwin and I were intent upon keeping the hard thrust of our report while not leaving the matter open to legal challenge or to non-publication generally (as had apparently occurred in relation to the Meekings report): see the various documents in [RDHB-1/4; ACE025150-ACE025158]. We were also concerned not to jeopardise what we understood to be delicate negotiations then going on in relation the Bishop of Lewes’ retirement as we believed it was essential that he should retire so that the diocese could move on. Indeed, only if the then dysfunctionality of the diocese (of which he was seen, rightly or wrongly, to be a part by a number or persons in the diocese: see, too, my email to Bishop Gladwin dated the 12th April 2012 at [RDHB-1/5; ACE025159]) were to be addressed could the safeguarding situation in the diocese be properly addressed.

25. Between the publication of the interim report and the final report, we sent an updated update to the Archbishop of Canterbury to which I think his letter dated the 28th November 2012 refers (see [RDHB-1/6; ACE025161]). Although I do not recollect sending a second update there is in my possession a draft second update dated the 1st December 2012: see [RDHB-1/6; ACE025160-ACE025162]. I am afraid that I do not now recall what other work we did between the interim and final reports but I note that on pages 2 and 3 of the final report we summarise the further steps we had taken since the publication of the interim report.

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9 I do not now remember what these were. Nor do I recall whether there was an explicit threat of legal action if those amendments were not made. However, we certainly felt that such a threat was at the least implicit.
26. We had discussions with Archbishop Rowan Williams and Archbishop Justin Welby respectively in relation to the two reports. In addition to our explanations of the seriousness of the safeguarding situation in the national Church as we saw it, we also underlined our belief to one, or possibly both, archbishops that the question of Bishop Peter Ball and the actions of Archbishop George Carey in relation to him had to be given further close scrutiny.

27. We also discussed our reports with Bishop Martin Warner and made a presentation to the House of Bishops when it convened at York. I drafted a submission to the House of Bishops working group on the position of the seal of the confessional in English law [RDHB-1/15; ACE025268] (see also paragraph 47 below).

28. After the publication of our reports the Legal Office permitted me to comment upon some of the draft legislation arising out of them that they proposed placing before the General Synod. Although I confess to a feeling of frustration (shared, I have no doubt, by others) in relation to the slowness of the different legislative processes involved\(^\text{10}\) (that is, in relation to amendments of the Canons and the passing of Measures), I have been very impressed by the legislative changes that have ensued (some of which go further than those proposed in our reports: see sections 2 & 3 of the Safeguarding and Clergy Discipline Measure 2016 (the “2016 Measure”) [RDHB-1/16; ACE002233]). In particular, section 5 of the 2016 Measure provides a very welcome, and ingenious, method both (i) to update safeguarding duties without going through the cumbersome legislative processes to which I have already referred, and (ii) to impose a duty of compliance upon the clergy and others.\(^\text{11}\) The

\(^{10}\) See, for example, [RDHB-1/12; ACE025168-ACE025170]. The Safeguarding (Clergy Risk Assessment) Regulations 2016 [RDHB-1/17; ACE025272] have now been made and guidance has been issued by the House of Bishops in relation to risk assessments of the clergy: see Practice Guidance: Risk Assessment for Individuals who may Pose Risk to Children or Adults (24\(^\text{th}\) June 2015) [RDHB-1/18; ACE002227]. The House of Bishops has also given guidance in relation to serious safeguarding situations in relation to church officers: see Practice Guidance: Responding to Serious Safeguarding Situations Relating to Church Officers (24\(^\text{th}\) June 2015) [RDHB-1/19; ACE002226]. I understand that both sets of guidance have recently been replaced by Practice Guidance: Responding to, Assessing and Managing Safeguarding Concerns or Allegations against Church Officers (October 2017) [RDHB-1/20; ACE025256]. Canon B 43, paragraph 2, has been amended to require that non-Anglicans who minister in Anglican churches must be “of good standing”. I am unaware of any attempt to clarify the possible confusion as to suffragan or area bishops (see the interim report, page 7 at note 4) but appreciate that this may be felt too minor or too thorny a problem to address at this stage. In addition, guidance has been given in relations to references, current status letters and personal files: see Episcopal Reference and Clergy Current Status Letter (undated) [RDHB-1/21; ACE004262] and Personal Files Relating to Clergy Guidance for Bishops and their staff (approved on the 13\(^\text{th}\) March 2013) [RDHB-1/22; ACE002214].

\(^{11}\) Nevertheless, it will be essential to impress on those to whom the section applies the real legal rigour embraced in the phrase “to have regard to” as I doubt if the legal meaning of that phrase will be obvious to non-lawyers (see Explanatory Memorandum GS 1952-3x at paragraph 16: see [RDHB-1/23; ACE025269]). It is also very welcome as in law it negates any suggestion that any ‘guidance’ or ‘policy’ issued by particular dioceses can, even on safeguarding related matters, be legally binding on its clergy: see my article “Are the Clergy Discipline Measure 2003 and the Safeguarding and Clergy Discipline Measure 2016 Fit for Safeguarding Purposes?” in the Crucible dated July 2016 at page 52-53 [RDHB-1/11; ACE025167]. The only Church guidance on safeguarding that is legally binding is that issued by the House of Bishops pursuant to section 5 of the Safeguarding and Clergy Discipline Measure 2016. (In my opinion it is essential that there is consistency of safeguarding advice throughout all dioceses and this cannot be achieved if individual diocese can issue different guidance. The only way for such consistency is for it to it to be issued from the national Church.)
new definition of “vulnerable adult” (although on occasions difficult to apply on the ground) is also very welcome, as is the change to the limitation period for complaints in sexual misconduct cases. However, I understand that those appointed by the House of Bishops to report on the question of confidentiality and the seal of the confessional have not yet finalised their report. This must continue to be a matter for concern.

Conclusions of the reports:
29. I doubt that I can usefully amplify on how our conclusions at page 2 of the Interim Report were reached or give our reasons for arriving at those conclusions other than to say they were as a result of (i) that which the victims/survivors told us, (ii) that which Colin Perkins told us, and (iii) our readings of the various papers. Any sexual abuse is appalling in itself and this is especially so when it is within the context of a breach of trust. When the consequences of that abuse are placed within the context of the effect (whether understood or not) on families, friends, future relationships and others’ lives, it is clear that their lives are often blighted too. This was demonstrated in the examples that we give in the report and in other examples related to us second hand.

30. Our comment that the authorities were “very slow” to recognise what was happening is based on a number of factors, including, the apparent safe reception by Bishop Eric Kemp of those to whom other diocesan bishops were not prepared to offer jobs; the senior clergy’s inadequate response to the reports placed before them such as the Meekings report and, especially, the diocesan bishop’s failure to respond to the report by Ian Sandbrook dated May 2011; their failure to react timeously to some clergy flouting the need for Permissions to Officiate (PTOs) or to appreciate the difficulties involved in restricting them; and their failure to react to the reports of the misbehaviour of those clergy who have ultimately been convicted of abusive behaviour. It is my belief that the dysfunction within the diocese, coupled with the strong evangelical and Anglo-Catholic bases within the diocese which tended to side-line those from of a more middle-of-the-road churchmanship, distracted the senior clergy from the urgency of safeguarding matters, an urgency which (I regret) the Church has been slow to embrace in any event, particularly amongst the older clergy. Hence the failure to act with the necessary rigour and expedition.

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12 Eric Kemp was my tutor at Oxford, the chair of examiners for my doctoral thesis and a friend through the Ecclesiastical Law Society. I did not know him particularly well but I find it very difficult to believe that he would have consciously harboured practising paedophiles or abusers; rather, I think his motives were likely to have been based on a strong belief in Christian forgiveness and a naïve belief that such people are able to alter their impulses/predilections or, at least, to control them. I acknowledge, however, that this view cannot be entirely objective.

13 Although seemingly often polarised because of their different doctrinal positions, they nevertheless both tended to oppose the ordination of women; in spite of this particular agreement the polarisation seemed frequently to have contributed within the diocese to the dysfunctionality and to the feeling amongst those of middle churchmanship of being side-lined. It was the dysfunctionality that impinged upon safeguarding.

14 It is for this reason we advised the new diocesan bishop to appoint a suffragan bishop who would ordain women as soon as possible. I believe that he has in fact done so.
31. We reached the conclusion that the Church in the Chichester diocese had lost the respect of many of those in the public services by reason of what we were told by the directors of the Children’s Services of West Sussex, East Sussex and Brighton, together with their respective independent chairs, and by Colin Perkins.

32. I understand that the Meekings report was only circulated amongst the senior clergy whose attention to its contents was distracted by disputes over its details; they were also distracted by the resignation and subsequent proceedings in the employment tribunal by Shirley Hosgood, the previous diocesan safeguarding adviser. I think that the senior clergy were, in effect, paralysed by the dysfunction within the diocese.

33. The radical change of culture which we believed needed to occur was primarily in relation to the absolute necessity of placing safeguarding at the forefront of the diocesan agenda; this also necessitated a clear and enforced training programme not only amongst the clergy, but also amongst the laity. Such training was then only in its infancy and was not being followed through with any apparent urgency, though this was no doubt affected by personnel and financial restraints. Part and parcel with this was what was reported to us as a tendency to believe the abusing cleric rather than the victim/survivor; this was partly through loyalty to long standing friends or colleagues (some of whom were apparently charismatic in character) and partly due to the time lapse between the alleged abuse and its disclosure. I have no direct evidence as to the extent that such a culture was prevalent in other dioceses but it is my impression from what was explained to us that it has in fact been so.

34. As we say in the Interim Report _

“we were told by the outgoing diocesan bishop\(^{15}\) ... that the diocese was “dysfunctional”, a description with which others within the senior team have agreed either expressly or by implication.”

We readily accepted this description, especially as it was self-evident in the fact that the diocesan safeguarding advisory group (which included all three archdeacons) had felt compelled to bring a CDM complaint against the Bishop of Lewes. This is so even though the complaint was ultimately dismissed. It was also reflected in the fact that the outgoing diocesan bishop felt (rightly or wrongly) that he was leaving the diocese with less authority in the east of the diocese than when he first came. We did not believe that any organisation can function adequately if colleagues do not feel they can rely on each other and also, as was the case in Chichester, there were those who were unsure whether all documents, such as blue files, or information was or were being properly shared. All this seems to have led to mistrust amongst the senior team and, in effect, meant that the basic administration pertaining to the issue and enforcement of PTOs, and to CRB checks and safeguarding training tended to slip. We regarded the problems as systemic as we felt that they could not be laid solely at the door of any one person; those problems were those identified throughout our reports.

\(^{15}\) He also described how he felt “paralysed".
35. An area scheme is one in which episcopal authority is delegated by the diocesan bishop to suffragan bishops within specified geographical areas: see [RDHB-1/7; ACE025163].

36. I am asked to explain how leadership within a diocese should work to promote a culture of safeguarding. I believe that, if the bishops and other clergy make it clear in both their words and actions that they regard safeguarding not only as a theological imperative but also as something to be woven into the mesh of their diocese or parish, a positive safeguarding culture will begin to prevail. They should demonstrate this not so much in sermons (although that is no doubt important), clergy letters and admonitions but in their everyday dealings. In this regard it is important that bishops and other senior clergy should attend the safeguarding training of other clergy even when they have undertaken their own personal training: actions often speak louder than words. In my view such behaviour may help to alter safeguarding culture or, once imbued, would reinforce a strong safeguarding culture in any diocese. Nonetheless, it is only too easy for an organisation to slip into complacency and the senior clergy must be vigilant to ensure that this does not occur. In addition, although it is important for the clergy and relevant lay to have refresher courses in safeguarding, it is also important that those rolling out training strive to make it fresh and interesting. Good training ultimately depends upon good teachers and care should be taken in choosing both those who teach and those who implement that teaching.

37. I am not qualified to specify what steps the national Church can take to assist in promoting safeguarding and avoiding difficulties. However, I draw attention to the fact that the Archbishops' Council has found more funding for the National Safeguarding Team and that the national safeguarding officer is now a full time appointment. Training frameworks and protocols are, I believe, now being provided nationally although it is too early to say how well they are working in practice and their implementation obviously needs to be closely evaluated and monitored. I wish to state, however, that I am sure that safeguarding training needs to be delivered at diocesan and parish level but within firm frameworks laid down and provided nationally. The latter is because (i) only the national Church has the necessary resources and expertise to research and provide the requisite training framework and guidance, and (ii) it is essential that the training is uniform and unaffected by the views of individual safeguarding providers. That is not to say, however, that there is not a strong argument for the consideration of abuse and safeguarding complaints against the clergy at a national, rather than on a diocesan, level.

38. I am asked for a summary of any shortcomings we identified in the implementation of policies regarding the diocese of Chichester but I regret that after this length of time I can add nothing to that which already appears in the interim report itself. Nor am I qualified, or able, to state what resources are required practically to deal with allegations of child sexual abuse within the national Church: not only am I

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16 In this context, although online training is no doubt both cheaper and an easier way to reach more people, there is an obvious danger that it becomes a mere exercise to be gone through almost as a tick box exercise.
insufficiently cognisant of the resources currently in place but I also have no inside knowledge of what is planned as to the future.

39. The breakdowns of trust are those raised by the Director of East Sussex Children’s Services Department and the Independent Chair of the East Sussex Local Safeguarding Children’s Board in their letter to the Archbishop of Canterbury dated the 16th May 2012 (see [RDHB-1/8; ACE025164]). I am also aware of concerns raised at the Bishop Bell CE Mathematics & Computing Specialist School in Eastbourne with regard to the safeguarding status of a clerical governor, namely, Canon Gordon Rideout, at the school: see [RDHB-1/9; ACE025165].

40. I acknowledge that the wording of statements in response to criminal convictions of the clergy or any safeguarding lapse by the Church is a very difficult one but, when doing so, it is necessary to stand back and consider whether those who are directly or indirectly affected by the situation may not misread that statement. In particular, it is too easy inadvertently to give the impression that all has now been put right and to ignore that the consequences of the abuse or lapse are nonetheless ongoing.

41. When speaking of “a process of truth and reconciliation” in our final report, we did not especially have in mind a process such as that which occurred in South Africa. 17 Although such a process might be considered, we had in mind a more general culture in which the Church is entirely open about what has occurred and acknowledges from the outset any mistakes that have been made. In no circumstances should undertakings as to confidentiality be sought in such circumstances (as happened after an investigation at Chichester Cathedral) and proper apologies should be made; no apologies should be in formal language or legalese and the diocesan bishop (and/or other appropriate officer according to the circumstances) should offer to meet the victims/survivors in person not only to apologise but also to listen to their hurt and to respond to it. We believe that only if this occurs is there a real chance of reconciliation of the victims/survivors with the Church and the commencement of some healing. In this regard we believe that Bishop Martin Warner has met at least some of the victims/survivors of abuse by members of the Chichester clergy.

42. I presume that the request for an explanation regarding the changes of law recommended in the “conclusions reached at page 8” of our final report is in fact a request in relation to page 9 and a mandatory power of suspension in safeguarding matters. Such a change in the law was essential as, until the coming into force of the 2016 Measure, no mandatory (that is, a non-voluntary) suspension could be imposed upon a cleric holding either a freehold office or common tenure immediately after a complaint of abuse had been raised: see pages 18-21 of our interim report. Hence, there was a greater risk of any abuse continuing. The changes in the law brought about by the 2016 Measure have now addressed this problem and are therefore most welcome.

17 See my comment on paragraph 3 of the first update to the Archbishop of Canterbury which is to be found at [RDHB-1/6; ACE025160].
43. I have already noted the time that it necessarily takes for amendments to be made to primary legislation in paragraph 28 (above). The Legal Office is by far the best equipped to answer the Inquiry’s question as to the time for recommendations to be formulated as I have no experience of the relevant procedures but I draw attention to GS 1896 which was a report entitled “Follow-up to the Chichester Commissaries Reports” which was presented to the General Synod in June 2013: see [RDHB-1/10; ACE025166].

44. In relation to the request for an explanation of our conclusions concerning the dealing with complaints and canonical and/or other measures to deal with disciplinary complaints, I find it difficult to expand further on what is already said in the report as it is based on the legal procedures then set out in the Clergy Discipline Measure 2003, the Clergy Discipline Rules 2005 and the Clergy Discipline Measure 2003 Code of Practice.18 However, although I am not qualified to comment upon the procedures adopted in all dioceses, I am aware of misunderstandings that have arisen when people have wished to make complaints about clergy behaviour. They have written to a bishop stating that they wish to complain although that document is not in the form required by the 2005 Rules; when the bishop does not immediately seek clarification whether the persons wish to make a formal complaint under the 2003 Measure, those persons are left in the dark as to the legal status of their complaints.19 When questions later surface the ‘complainants’ may be left with an understandable (further) grievance. None of this would arise if clarification were always sought at the initial stage. This is of particular importance if the complaint is in relation to alleged clergy abuse.

45. It was our view that retired clergy, and any other clergy who are without a formal licence but still wish to minister, may be just as much a risk to the vulnerable as any other clergy. If this view is correct, it is essential that their ability to minister is subject to proper control. Clearly, this does not happen if the grant of PTOs is not strictly administered and their requirements duly enforced.20 It is also essential that all those who have, or wish to obtain, a PTO should undergo safeguarding training (including refresher courses) like all other clergy; if they do not do so, no PTO or renewal should be granted. I appreciate that such a requirement causes administrative and logistical difficulties,21 especially in large dioceses, but the strength of the safeguarding chain is necessarily its weakest link. I regret that I do not know to what extent these problems have been addressed throughout the dioceses. I should add that I understand that there is currently a disagreement in the Church as to whether those clergy who have been convicted of sexual offences should in any

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18 Each of these has since been amended in part by reason of the matters raised in our reports.
19 Indeed, they may well be unaware of the formalities required to make a complaint under the 2005 Measure. Fortunately, the problems that could then arise by reason of the one year limitation period in relation to cases involving allegations of conduct of a sexual nature have now been overcome by amendments to the Measure.
20 The Legal Office and I disagreed as to the meaning of Canon C 8 as it was then worded. I am glad to say that this has now been addressed by an amendment to the canon whichever view was, in fact, correct in law.
21 This is because of the difficulties inherent in both keeping up-to-date with those who have, and have not, been trained and the numbers of those involved, most of whom will be retired and who may not be as IT literate as many of those actually in post.
circumstances thereafter be granted a PTO. It was our very strong view that they should not, if only because of the message otherwise sent out to victims/survivors.

46. We were not, and I am still not, able to specify precisely what safeguarding qualifications should be held by diocesan safeguarding advisers but we were certain that such advisers should have had proper training in, and adequate experience of, safeguarding before any such appointment. Without such training they will be unable properly to assess safeguarding risks or adequately to advise the senior staff. In our view he or she should never be a cleric, or related to a cleric in the diocese, as this is bound to cause difficulties for those subjected to clerical abuse. We raised the matter of training as we were told (although I am unable to speak to its accuracy) that (a) in one diocese the safeguarding officer was the diocesan secretary who had no experience or qualification in safeguarding; (b) in another the safeguarding officer was the registrar;22 (c) in yet another there was at the time no safeguarding officer as the bishop thought such a post was unnecessary; and (d) in a different diocese the view had been expressed by the diocesan bishop that the safeguarding of vulnerable adults was “too politically correct”.

47. It is essential that, if the seal of the confessional is still to apply within Anglican ecclesiastical law,23 there is a consensus both as to its legal scope24 and the jurisdictional limitations to hearing confessions25 as well as how confession should be heard. I understand that there is no consistency in the training on the hearing of confessions given by Anglican theological colleges, if any training is given at all,26 and that at my own theological college,27 the teaching given has differed dependent upon the tutor delivering that training. I have also heard the suggestion that some clergy have been advised to warn any potential penitent not to divulge any matter that should be reported to the police. Bearing in mind the reported instances in relation to abusive priests in the Roman Catholic Church and their use of the confessional28 such a situation as I have outlined is entirely unacceptable. Indeed, in the light of the amount of clerical sexual abuse within both Churches that has come

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22 I do not know what if any safeguarding experience or training the registrar may have had but in my view the holding of both posts would raise questions of conflict of interest.
23 It should be noted that the Roman Catholic canon law is a ‘foreign law’ in so far as English law is concerned whereas Anglican ecclesiastical law is part of the general law of England. It follows that any claim to recognition in law to the seal of the confession must be separately based depending upon the denomination of the priest concerned.
24 See Annex 1 in which the concept of confessions is set out in more detail. There is no legal definition of what amounts to a “confession”. Is it a confession to which the seal of the confessional applies if (i) it is made as a joke; (ii) its intention is not to receive “ghostly comfort” but, rather, to forestall the priest’s discovery of the wrong doing; (iii) no penance is carried out or due restitution (such as turning oneself into the police) made? Without answers to these questions it is arguable that the ambit of the seal of the confession is so uncertain that it cannot be recognised in law.
25 See Canon B 29, paragraph 4. Does the seal of the confessional apply if the priest does not have jurisdiction to hear the confession?
26 This is likely to depend upon the churchmanship of the relevant theological college. However, I am entirely convinced that, if there is presently a legally binding seal of the confessional, better training cannot be the answer to the problem as it relates to safeguarding. To suggest otherwise is in my view a tactic to distract from the real problem.
27 St Stephen’s House, Oxford.
28 See, for example, Podles Sacrilege + Sexual Abuse in the Catholic Church (Crossland Press, 2008) and Cornwell The Dark Box (Profile Books, 2014).
to light over recent years, it is in my view entirely unacceptable if the Anglican Church were not to have a clear and consistent legal position as to the seal of the confession. In fact, I have come to the firm conclusion that there should now be a law in England requiring the reporting of allegations and instances of sexual abuse, both against children and vulnerable adults.

48. I regret that I cannot now remember further details in relation to the handling of allegations other than as already set out in our reports. We have already set out our criticism of the letters of apology sent out to two of those who were the subject of sexual abuse. It is, however, clear that misunderstandings still arise due to the perceived, or actual, influence, of insurance companies and, although I acknowledge that it has attempted to do so in the past, the Church should in my view clarify the situation once and for all.

49. I believe that the summary of the MACSAS report set out on pages 15-16 of our interim report speaks for itself and I would not seek to place any gloss upon it. However, I believe that the new procedures and training being implemented in the Church (although not yet complete) are a great improvement on what preceded them (especially as each diocese previously had its own approach and training programme) and that they should go quite some way to address MACSAS’ first two concerns. Unfortunately, only time can tell how effective they will prove to be and continued, and unstinting, vigilance is certainly called for; in particular, I do not know what measures there may be in place, for example, for quality control. In my article in the July 2016 edition of the Crucible I detail my continuing concerns (see [RDHB-1/11; ACE025167]). As to MACSAS’ third concern I am unaware of what procedures there may now be being put in place (if any) but better training and episcopal awareness should go some way to answering the stated problem.

50. It is difficult for me after such a length of time to add to that which we said in our interim report about the implementation of Dame Butler-Sloss’ report but it was clear that the attitudes and awareness of different officers/leaders, whether clerical or lay, differed; it was also clear that the dysfunctionality within the diocese had impaired full implementation of the report. We had no doubt that the diocesan safeguarding adviser and the diocesan secretary had taken on board all the points made in the report but that the implementation of some of the recommendations was hampered by lack of human and financial resources: see, too, our comments at pages 4 and 5 of our final report.

51. With regard to the annexes to our interim report I have had no responsibility for, nor any involvement in, the monitoring of the changes recommended; indeed, other than

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29 In this regard I agree with what I understand the Australian Royal Commission into Child Sexual Abuse has said, namely, that the right to freedom of religion of religious practice is not absolute and that the Church must accommodate "civil society's obligation to provide for the safety of all and, in particular, children's safety from sexual abuse": see The Church Times dated the 18th August 2017.
30 See, for example, the response by John Titchener of the Ecclesiastical Insurance Group entitled Putting abuse survivors first in a recent issue of The Church Times and the letters and articles that preceded it.
31 I understand that an attempt may now be taking place to obtain further statistics from dioceses.
the Legal Office asking for my comments on many of the amendments made to safeguarding legislation, as far as I know neither Bishop Gladwin nor I have been asked to have any such involvement. As a result my knowledge is limited. Nonetheless, I can say that the definition of “child” has now been set out in section 6(1) of the 2016 Measure and that an excellent definition of “vulnerable adult” is provided by section 6(2); sensibly, the latter definition may easily be amended in appropriate circumstances by the Archbishops’ Council. Section 5 of the 2016 Measure also provides that certain office holders must pay due regard to future guidance from the House of Bishops on safeguarding; this provides an excellent mechanism for keeping such guidance up-to-date in the future, although I suspect that not all dioceses will appreciate that the provision necessarily negates any argument that safeguarding guidance provided by dioceses is still legally binding. The limitation period in relation to complaints in sexual misconduct cases has also been adequately amended. The legislative opportunity was also taken to plug lacunae in relation to the disqualification of churchwardens and PCC members. A new canon, Canon 30, makes the appointment of diocesan safeguarding advisers mandatory and makes provision for regulations regarding eligibility for such appointments; it also creates powers to direct members of the clergy to undergo risk assessments. The canons have also been amended to make provision for mandatory safeguarding training for readers and lay workers; I have already pointed out the amendment to Canon C 8 (see footnote 20 above). In addition, an amendment to Canon B 43, paragraph 2, has gone some way to ensuring that only persons of other denominations who are of “good standing” may assist in Anglican worship. The Clergy Discipline Measure 2003 Code of Practice has been amended to incorporate the matters raised in our report. I warmly endorse all these amendments. The House of Bishops is, I believe, in the process of updating and increasing its guidance on safeguarding.

52. In spite of what I have just said I still have a number of concerns:

52.1 I have already set out my concerns about the seal of the confessional. I believe that, if the Church of England is to have safeguarding credibility (which at the moment I do not think that it has), this matter must be robustly clarified. Indeed, unless there is a legal duty to report in every circumstance all allegations and incidents of sexual abuse - as I believe there should be - the Church’s stance must be clearly and publicly explained;

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32 I note that both the Practice Guidance: Risk Assessment for Individuals who may Pose Risk to Children and Adults and the Practice Guidance: Responding to Serious Safeguarding Situations Relating to Church Officers have now been replaced by Practice Guidance: Responding to, Assessing and Managing Safeguarding Concerns or Allegations against Church Officers (October 2017) [RDHB-1/18; ACEO02227]. The latter clearly spells out what this legal requirement amounts to (see pages 6 and 7 of guidance). This is essential as non-lawyers might well think that a lesser standard were otherwise required.

33 See the Safeguarding (Clergy Risk Assessment) Regulations 2016. I understand that an approved list of risk assessors which all dioceses must use has been created.
52.2 Although I recognise that spiritual abuse has not yet been defined by the Church and may arise in circumstances other than in relation to children and vulnerable adults, this question needs to be speedily addressed;

52.3 Similarly, the question of the misuse of the healing ministry needs to be considered. There is an important difference between on the one hand praying with, or over, those who are ill and on the other hand purporting to cast our devils from such people. Children and vulnerable adults are particularly open to suggestion and their mental well-being may be severely affected by unwarranted suggestions of demonic possession. Those involved in the healing ministry, whether cleric or lay, must therefore be specifically trained and it should be made quite clear that only those who have been given a specific licence to carry out exorcisms/the deliverance ministry should do so. My experience of training curates has demonstrated that a number of the clergy are unaware of the necessity either for such training or of having any such licence. I have no doubt that the same may be said of most, if not all, those of the laity who take part in the healing ministry;

52.4 Although the House of Bishops has issued guidance entitled Practice Guidance: Safeguarding in Religious Communities, I do not regard it as sufficiently robust in that there is no legal provision making the guidance mandatory for those members of religious communities who are not ordained. My concern is increased if, as I understand, there is no legal

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34 See Protecting All God’s Children (Church House Publishing, 4th ed., 2010) at paragraphs 3.34-3.36 [RDHB-1/24; ACE002487]. For an example see an article from Christian Today, 24th October 2017 [RDHB-1/25; ACE025274]. The National Safeguarding Team produced a draft description of spiritual abuse which is attached: see [RDHB-1/26; ACE025273]. It is my very strongly held view that discipline based upon such alleged abuse should be based upon an objective assessment of the alleged abuser’s intention (or recklessness) and the effect, if any, upon the alleged victim. I say this as it may otherwise be suggested that it should only depend upon the alleged abuser’s subjective perception of what occurred.) The abuse may be carried out by anyone exercising ministerial or similar authority, whether ordained or lay. Spiritual abuse may form part of (or accompany) other forms of abuse, such as sexual abuse. The abuser is not only in a position of power but may be seen by the victim as ‘representing God’ in which case the abuse itself may be understood by the victim as ‘the will of God’, so greatly aggravating its overall harm.

35 See the example in the interim report involving purported exorcism.

36 Otherwise called exorcism. In addition to a misuse of the deliverance ministry in order to manipulate the victim/survivor (see the previous footnote), I have no doubt that there are some who may regard the continuing effects of sexual abuse as in some way demonically driven and therefore susceptible to deliverance from demonic possession; the use of the healing ministry in the latter circumstances would be very likely to increase the harm already incurred by the victim/survivor rather than to ‘heal’ him or her. I would add, however, that by no means all Anglicans believe in demonic possession whether in that or any other context.

37 Although section 5 of the 2016 Measure imposes a duty on defined “relevant persons” to pay due regard (see paragraph 51 above) to guidance on safeguarding children and vulnerable adults issued by the House of Bishops, the only lay persons to whom that in law applies are licensed readers, licensed lay workers and churchwardens. These categories are most unlikely to embrace those who are not ordained but nevertheless who are professed within, or are trustees of, a religious order or who are teachers or students within, or trustees of, a theological college. Thus, although the Practice Guidance: Risk Assessment for Individuals who may Pose Risk to Children or Adults applies to religious communities and theological colleges (see the preface and paragraphs 1.1, 3.6, and 6.25 as well as the definition of “Christian community” at page 27), it cannot legally be enforced against those who are not ordained. In summary, unless a member of a purported Anglican religious community is ordained, there is no procedure whereby any discipline can legally be imposed upon him or her. If those religious communities which wish to be regarded as Anglican were to fall within a statutory
mechanism by which such Anglican religious communities are officially recognised as falling under the Anglican umbrella;

52.5 I understand that there is no equivalent mandatory provision in relation to safeguarding in theological colleges;\textsuperscript{38}

52.6 Although certainly outside my expertise or experience I query the sense of having different safeguarding regimes in schools depending upon who runs them. I suspect that it can lead to confusion, especially when teachers change schools;

52.7 I have already expressed my reservations about the adequacy of online safeguarding training (see footnote 16 above);

52.8 Words matter, especially to those who have suffered abuse. I therefore find it unfortunate that, although a cleric may be “deposed from Holy Orders” for offences involving matter of doctrine, ritual or ceremonial,\textsuperscript{39} the penalty in relation to any other form of misconduct (such as sexual abuse) is “prohibition for life”\textsuperscript{40}. Although the practical results are the same in each case, the message is for many rather different.\textsuperscript{41}

52.9 A church’s ability to ban from divine service\textsuperscript{42} those who are regarded as safeguarding risks should be put on a standard, and clear, basis;\textsuperscript{43}

52.10 Although I acknowledge the good sense in asking convicted sex offenders to sign good behaviour contracts with particular churches, I am concerned about the situation where those people also regularly worship in other churches, for example, at regular holiday destinations. It should be made clear not only that there is a duty on the church with which there is such a contract to contact any other church where the offender is known regularly to attend but also on whom the obligation falls to make such a notification;\textsuperscript{44}

\textsuperscript{38} See the previous footnote.

\textsuperscript{39} See the Ecclesiastical Jurisdiction Measure 1963, ss 6(1), 49(1) & 52

\textsuperscript{40} See the Clergy Discipline Measure 1963, s 24(1).

\textsuperscript{41} I understand that the reason for the change is a theological one based on the concept of the indelibility of the priesthood: see Canon C1, paragraph 2.

\textsuperscript{42} According to The Oxford Dictionary of the Christian Church (ed. Cross and Livingstone, OUP, 3rd ed., 1997) at page 492, the title ‘divine office’ “would seem properly to belong only to … Mattins and Evensong, and not to be applicable, e.g., to the Holy Communion…. It was customary in the 19th century] to distinguish between the times for Divine service and those for the Holy Communion. The expression is, however, often used more loosely for any form of religious service.” The section heading or title to Section B of the Revised Canons Ecclesiastical (namely, “Divine Service and the administration of the sacraments”) and the contents of Canons B 1-42 suggests that the latter usage has now prevailed: see 34 Halsbury’s Laws of England at paragraph 453, note 1.

\textsuperscript{43} In this regard I note paragraph 5.18 of the Practice Guidance: Risk Assessment for Individuals who may Pose Risk to Children or Adults but it does not define what services amount to a “divine service” in such circumstances.

\textsuperscript{44} I note the contents of paragraph 5.28 of the Practice Guidance: Risk Assessment for Individuals who may Pose Risk to Children or Adults but this does not make clear upon whom the obligation falls. I also suggest that the example of a safeguarding agreement that appears in appendix 5 of that Guidance should include an undertaking to notify other churches where the person concerned may regularly worship then or in the future; I appreciate that such a provision may in practice be written into some or all of such contracts.
52.11 There is no legal requirement upon dioceses to report to the national Church all complaints made under the 2016 Measure and in practice some dioceses have not always done so; in any event the returns are not broken down so as to show how many relate to safeguarding matters. I have pointed out in my article in the Crucible that, unless such details are gathered in relation to safeguarding complaints, it is difficult to check what the safeguarding position really is in the Church of England. Since that article I believe that those details may be being sought by the clergy discipline commission in their annual return but their provision should be made mandatory. In my view any statistical results ought to be made publicly known;

52.12 Of greater concern is the situation where a diocese is anxious, if possible, to gain the resignation of an incumbent for reasons wider than, or in addition to, any complaint of abuse. In these circumstances a conflict of interest may arise not only for the bishop considering the complaint but also for the diocesan registrar who is likely to be advising the bishop in relation to both issues. I, in no way, question the bona fides either of bishops or diocesan registrars but such situations may lead to inadvertent pressure being brought on the complainant either not to pursue the complaint or not to oppose a proposed penalty by consent. If this concern is well founded (as I believe it is), it raises an argument for complaints of a safeguarding nature being dealt with on a national, rather than a diocesan, level; this might be under the auspices of an archiepiscopal tribunal for safeguarding matters;

52.13 I am concerned about the great difficulty that arises in relation to fairness and justice to both sides when allegations of abuse are made against those who are dead. There should, of course, be no doubt that allegations of abuse in such circumstances must still be fully addressed and that the complainant must be given appropriate support and redress; however, the Church does not seem to handle such situations well and I suggest that the Archbishops’ Council should set up a separate body to provide guidance (and, if necessary, protocols) to assist those dioceses faced with such allegations in the future; and

52.14 Finally (but by no means least), I have heard anecdotal evidence that in spite of the provisions of the Practice Guidance: Responding to Serious Safeguarding Situations relating to Church Officers, adequate support is not always given to the victim/survivor and the alleged perpetrator while allegations of abuse are being investigated. I appreciate this is a difficult area but the Church needs to be vigilant always to provide such support. Indeed, if it does not, in the future some victims/survivors may be put off from making or pursuing their properly founded complaints.

2014 report:

45 See [RDHB-1/11; ACE025167] at pages 54-55. 
46 See the Clergy Discipline Rules 2005, rule 27(3) and the Clergy Discipline Measure Code of Practice at paragraph 151. 
47 "The archbishop is, within his province, the principal minister ....": Canon C 17, paragraph 3
48 See the complaints against Bishop Bell and the Reverend Garth Moore.
53. Bishop Gladwin and I were asked in 2014 by the present Bishop of Chichester to enquire into the background to a suggested failure in the 2008 historic cases review; the request related specifically to a complaint made against another bishop of Chichester, namely, Bishop Bell. I spoke to the Right Reverend Martin Warner (I think), the bishop’s secretary, Colin Perkins and the Reverend Ian Gibson; Bishop Gladwin contacted the Reverend Stephen Masters who had been the chaplain to the Right Reverend Eric Kemp, a previous bishop of Chichester; my recollection is that he was very ill at the time. The Inquiry already has a copy of our three-page report where our conclusion is already set out.

54. I presume that the Inquiry is referring to the ‘2014 report’ as opposed to our interim report. As a result of our visitation Bishop Gladwin and I believed that the clergy blue files should be kept in one place and that any safeguarding concerns should immediately be forwarded to that central registry for inclusion in the relevant file. Although the principle was certainly accepted by the senior staff, I am not in a position to know whether it has been adhered to nor do I know what the position may be in other dioceses. I do not believe that we made any further recommendations as a result of our 2014 investigation save that I remember expressing the view that all such files should be kept in fireproof cabinets.

55. During my 2014 visit to Chichester I inspected the cabinets in which the relevant files were contained and I was concerned that some files did not display Roger Meekings’ stamp from the past cases review. This, of course, raised questions as to the adequacy of the review, which we flagged up in the conclusion to our report. However, having made our report, we were not kept informed of any further investigations that may have taken place or what, if any, changes may have taken place as a result.

56. In our 2014 report we expressed no conclusion as to whether matters had been mishandled in 1995 as this was outside our brief. The details set out in the briefing note dated the 7th May 2014 in relation to the handwritten notes suggested a far from satisfactory original response to the allegations but we were entirely satisfied that such an inadequate response would not occur again while Colin Perkins was the diocesan safeguarding adviser.

57. I gave advice to the Bishop of Durham in 2012 in relation to the refusal by Canon Dr Joseph Cassidy (now deceased) who was declining to apply for an enhanced CRB check.

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49 The IICSA reference ANG000030 (running to 49 pages) embraces correspondence, emails and handwritten notes that were not part of the actual report; this additional documentation I accrued during our investigation leading up to that report. I do not believe that I shared pages 41-49 (which were concerned with Bishop Bell, not Bishop Bell) with Bishop Gladwin although I probably summarised their gist to him. Page 34 is, I think, a draft letter in relation to the diocese of Winchester. (I had filed all these documents in the same folder.)
50 I note that this is, in fact, addressed in Personal Files Relating to the Clergy Guidance for Bishops and their staff (approved on the 13th March 2013), paragraph 48, bullet point 2.
51 See the email from Bishop Martin Warner dated the 10th May 2014 at ANG000030, page 32.
52 See ANG000030, page 35.
58. I have been involved with Bishop Gladwin in a confidential internal review of a female religious community in Oxford where there had been a breakdown in relationships between some of the sisters. The breakdown centred around a dispute as to how and when a safeguarding issue should be reported (see, too, paragraph 52.4 above).

59. I have also been involved in assisting an archdeacon in relation to a complaint under the 2016 Measure by a vulnerable adult involving allegations of sexual misconduct. The complaint is currently *sub judice* but I am able to say that the new provisions in relation to complaints made outside the usual one year limitation period worked well. In addition, I have assisted another archdeacon in relation to a complaint with regard to improper manipulative behaviour (including 'man hugs' that arguably had sexual overtones) towards a 17 year old boy as well as possible spiritual abuse towards a number of persons; as far as I am aware this complaint is currently awaiting a hearing before a clergy discipline tribunal.

**Statement of Truth**
I believe that the facts stated in this witness statement are true.

Signed: __________________________

DPA

Dated: 8 November 2017
ANNEX 1

AN EXPLANATION OF THE LEGAL COMPLICATIONS SURROUNDING THE SEAL OF THE CONFESSIONAL

Confession Generally (including Private or Auricular Confession)

1. In an ecclesiastical context confession is “an acknowledgement of sin, either in general terms by a congregation in the course of liturgical worship, or specifically by an individual penitent in public confession, or more usually in private or auricular confession.” Private confession (otherwise called “auricular confession”) is “the confession of sin to God in the presence of a priest authorized to forgive them in [God’s] name.”

2. Private confession was practised in the Western (or Latin) Church prior to the Reformation throughout Europe, including in England and Wales, in accordance with Canon 21 of the Fourth Lateran Council 1215. Although after the Reformation it was no longer mandatory in the English Church to make such a private confession, it was nonetheless recognised by Canon 113 of the Canons Ecclesiastical 1604. In addition, the exhortation in the Holy Communion service in the Book of Common Prayer states:

   “And because it is requisite, that no man should come to the holy Communion, but with a full trust in God’s mercy, and with a quiet conscience; therefore if there be any, who … cannot quiet his own conscience herein, but requireth further comfort or counsel, let him come to me, or to some other discreet and learned Minister of God’s Word, and open his grief, that by the ministry of God’s holy Word he may receive the benefit of absolution, together with ghostly counsel and advice, to the quieting of his conscience, and avoiding of all scruple and doubtfulness.”

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55 See Lyndwood Provinciale (sue Constitutiones Angliae) (Oxford, 1679) at page 330. Lyndwood wrote in 1430; “his commentary is the chief source of our knowledge as to how the [general law] of the Church was actually applied in England in the middle ages”: The Canon Law of the Church of England (SPCK, 1947) at page 41.
57 See below.
58 The Book of Common Prayer was authorised by the Act of Uniformity 1662. Similarly, in the Order for the Visitation of the Sick the minister is enjoined: “Here shall the sick person be moved to make a special Confession of his sins, if he feel his conscience troubled with any weighty matter. After which Confession, the priest shall absolve him (if he humbly and heartily deserves it) …”
59 In his commentary on the Book of Common Prayer (London, 1849) Stephens states at page 1182 in relation to this exhortation: “Our Church does not condemn private confession and absolution …, though she does not universally require them (as the Church of Rome does) as being necessary for the pardoning of all sins. She only recommends them as things very convenient to be put in practice, when persons cannot quiet their own consciences otherwise; but still leaves them at their liberty whether they will make use of this means or no.” (See, too, ibid at pages 402-407.) See, too,
3. Today, private confession (sometimes called "the ministry of reconciliation" or "the ministry of absolution") is enjoined in similar terms by Canon B 29, paragraphs 2 and 3. Common Worship: Christian Initiation provides two forms of service commended by the House of Bishops for such private confessions. The hearing of a private confession is therefore legal, as well as being part of the general law of the land, in this latter regard the legal status of private confession is entirely different from private confession in the Roman Catholic Church because the English courts (whether ecclesiastical or otherwise) regard Roman Catholic canon law as a foreign law.

Private Confession: Legal Requirements

4. Unfortunately, there is no legal definition of "private confession" in English law. Nevertheless, its basic requirements may be gleaned both from Canon B 29 and the exhortation in the Book of Common Prayer already referred to. These are:

(a) that the penitent is seeking "the benefit of absolution" from the sins he or she is confessing;

(b) that the penitent wishes to receive "ghostly counsel and advice" from the priest; and

(c) that the penitent will make both "restitution and satisfaction" to those he or she has harmed by those sins "according to the utmost of [his or her] powers".

5. It seems to follow logically that, if the penitent does not intend to fulfil all of these requirements, he or she is not in fact seeking to make a true confession. If this is

Stephens A Practical Treatise relating of the Laws relating to the Clergy (W. Benning & Co, 1848), volume I, at page 370.

60 See Guidelines for the Professional Conduct of the Clergy (Church House Publishing, revised edition, 2015) at paragraphs 3.1 & 3.3. See [RDHB-1/27; ACE002909]

61 A canon is legally binding upon the clergy: Matthew v Burdett (1703) 2 Salk. 345; 34 Halsbury's Laws of England (LexisNexis, 5th ed., 2011) at para. 10. Canon B 29, paragraph 4, sets out the circumstances in which a priest has jurisdiction to hear private confessions (see further in the text). See, too, the Guidelines for the Professional Conduct of the Clergy [RDHB-1/27; ACE002909] at paragraphs 3.1-3.8; paragraph 3.4 stresses that "Before undertaking the ministry of absolution a priest should receive appropriate training and be familiar with any guidelines published by the House of Bishops that relate to the exercise of that ministry."


64 The Guidelines for the Professional Conduct of the Clergy [RDHB-1/27; ACE002909] at paragraph 3.5 recognises the necessity for the penitent to intend "receiving absolution".

65 That is, spiritual counsel.

66 Prior to the quotation in the paragraph 2 of the main text the exhortation reads: "And if you perceive your offences to be such as are not only against God, but also against your neighbours; then ye shall reconcile yourselves unto them; being ready to make reconciliation and satisfaction, according to the utmost of your powers, for all injuries and wrongs done by you to any other ...."

67 The Roman Catholic Dictionnaire de Droit Canonique (Paris, 1949), volume 4, at column 61, states that the confession can be invalidated by the penitent inter alia "s'il a manqué de contrition (même
right it would, for example, rule out a confession made as a joke or for some other ulterior reason, such as to pre-empt the priest in a discovery of the penitent’s wrong doing or to gather information for journalistic purposes. In each of these cases there is no intention to make a true confession and it would seem to follow that the ‘confession’ should not be regarded as such in law.

6. In Protecting All God’s Children the House of Bishops advises in relation to the sexual abuse of children and private confession:

   "Where a penitent’s own behaviour is at issue, the priest should not only urge the person to report it to the police or local authority’s children’s social care, if that is appropriate, but may judge it necessary to withhold absolution."

Reporting the abuse to the police or local authority is regarded as part of the requisite “restitution” in relation to the harm caused. However, is there an actual, legally recognised confession before any absolution has actually been given? Similarly, is there a confession which should be recognised as such by the law if there is no restitution within a reasonable time, whether or not there has been absolution?

7. Indeed, there may be occasions when it is not immediately apparent whether the ‘penitent’ and/or the priest are intending there to be a formal private confession in the sense used here. If there are no formal parameters or trappings, how can it be known whether a private confession has taken place? It is for this reason that Protecting All God’s Children states:

   "It is in everybody’s interest to recognize the distinction between what is heard in formal confession, however this might take place, and disclosures made in pastoral situations. For this reason, it is helpful if confessions are normally heard at advertised times or by other arrangement or in some way differentiated from a general pastoral conversation or a meeting for spiritual direction. A stole might be worn and a liturgy should be used."

8. There is also a question of jurisdiction. Canon B 29, paragraph 4 states:

   "No priest shall exercise the ministry of absolution in any place without the permission of the minister having the cure of souls thereof, unless he is by law authorized to exercise his ministry in that place without being subject to

imparfaita) ou de bon propos …, s’il a menti en matière grave ou a été très négligent à examiner sa conscience." (this roughly translates to "if he was lacking in contrition (even imperfect contrition) or a right disposition if he lied about serious matters or was very negligent in examining his conscience")


69 Such as the priest wearing a stole. The Guidelines for the Professional Conduct of the Clergy state at paragraph 3.5: “A clear distinction must be made between pastoral conversations and a confession that is made in the context of the ministry of absolution. Where such a confession is to be made both the priest and the penitent should be clear that that is the case.” [RDHB-1/27; ACE002909]

70 At paragraph 6.18 [RDHB-1/24; ACE002487].

71 In general terms this means the incumbent or priest-in-charge of the parish.
the control of the minister having the general cure of souls of the parish or district in which it is situated: Provided always that, notwithstanding the foregoing provisions of the Canon, a priest may exercise the ministry of absolution anywhere in respect of any person who is in danger of death or if there is some other urgent or weighty cause."

If this proviso does not apply and a priest nevertheless purports to hear a private confession, is that ‘confession’ still to be treated as amounting in law to a confession? Is it, rather, merely ‘irregular’ in the sense that the priest is liable to ecclesiastical discipline but the confession remains a private confession? In addition, there is the question what amounts in law to a “some other urgent or weighty cause” in any particular circumstances?

9. It is, of course, for the law (not theologians) to decide what requisites there may be for a confession to be recognised as such by the law but, if there is uncertainty (whether amongst lawyers or theologians), it is likely to militate against such a recognition in any particular circumstances. This adds a further complication that a court or tribunal may demand to know not only the circumstances of the purported confession but also its content in order to reach a determination of that basic question. The court or tribunal cannot rely merely upon the view of the priest which may be ill-founded.

Confidentiality and the Seal of the Confessional

10. As the Legal Advisory Commission has noted72:

“In addition to a general pastoral responsibility to respect all information gained through personal ministry to individuals the position of a minister who receives confidential information in the course of his or her ministry is affected by a number of different legal principles:

(a) the equitable doctrine of confidence or confidentiality which may place a minister under a duty not to make a disclosure73;
(b) the Human Rights Act 1998, giving effect to the European Convention of Human Rights, has introduced an enhanced concept of privacy, the violation of which (in certain circumstance) is unlawful;
(c) Canon law, which seeks to impose an almost absolute obligation of secrecy where sins are confessed to a minister with a view to the person making a confession receiving the benefit of absolution, spiritual counsel and advice, for the quieting of his or her conscience;

72 Legal Opinions concerning the Church of England (Church House Publishing, 8th ed., 2007) at page 29 [RDHB-1/28; ACE025267].
73 See the Guidelines for the Professional Conduct of the Clergy at paragraphs 3.7 & 3.8 [RDHB-1/27; ACE002909].
(d) Exceptionally, express statutory provisions which may make it an offence not to disclose information however received.”

These categories are not mutually exclusive and legal questions in relation to them may arise both in non-Church courts, whether criminal or civil, and in Clergy Discipline Tribunals.

11. Unless a statute specifically imposes such a duty of disclosure,74 there is no legal obligation to report a crime even if it involves abuse of children or vulnerable adults. Nonetheless, subject to what is said below about the seal of the confessional, a person may breach a confidence if it is in the public interest to do so. That would almost certainly be the case in relation to abuse involving children or vulnerable adults because, even if the abuser is on the point of death75, the abused person or persons may remain at risk of suicide or self-harm.

12. The “almost absolute obligation of secrecy”76 where sins are confessed to a minister is usually called the seal of the confessional; it is also sometimes called “the privilege of the seal of the confessional”.

13. This seal of the confessional pre-dates the English Reformation and is founded in the pre-Reformation canon law.77 At the Reformation such of that law as was already applied in England and was not “repugnant, contrariant or derogatory” to the laws or statutes of the realm, nor to the prerogatives of the Crown, received statutory recognition78 and therefore continued in force. That the obligation of secrecy in relation to private confession was seen as continuing after the Reformation is demonstrated by the Canons Ecclesiastical Canon 113 and the provisions of the Book of Common Prayer quoted above.

14. Although the greater part of Canon 113 of the Canons Ecclesiastical has now been repealed, that repeal did not include its proviso79 which states:

74 Such as the Terrorism Act 2000, sections 19(1) & 38B. As ecclesiastical law is part of the general law of England, a statutory enactment overrides any other legal requirement (cp) Canon B 38, paragraph 1 (entitled “Of the burial of the dead”).
75 And therefore will not be in a position to commit further abuse.
76 See the exception to the proviso to Canon 113 considered below.
79 It appears that the reason for this non-repeal was because the Church of England was advised that a new canon was unlikely to receive the requisite Royal Licence in order to make it law; this was because it was questioned whether such a new canon would be in accordance with the law: see the Legal Opinions concerning the Church of England at page 38-39 [RDHB-1/28; ACE025287].
“Provided always, that if any man confess his secret and hidden sins to the minister, for the unburdening of his conscience, and to receive spiritual consolation and ease of mind from him, we do not in any way bind the said minister by this our Constitution, but do strictly charge and admonish him, that he do not at any time reveal and make known to any person whatsoever any crime or offence so committed to his trust and secrecy (except they be such crimes as by the laws of this realm his own life may be called into question for concealing the same), under pain of irregularity.”

It should be noted that Canon 113 did not create new law, save that the exception in brackets seems to have been new even if its scope is no longer entirely clear.

15. However, although the hearing of a private confession is certainly legal, it does not necessarily follow that the seal of the confessional is still recognised by the law. This is because, in order for a rule of pre-Reformation canon law to be binding, it is necessary for such a rule to be proved to have been recognised, continued and acted upon in England since the Reformation. It might, therefore, be argued that this procedural provision applies as much to the seal of the confessional as to any other pre-Reformation rule of law. Nonetheless, as (i) Canon 113 received the Royal Licence, (ii) the proviso has not been repealed, and (iii) a canon is legally binding upon members of the clergy, the binding force of the seal of the confessional now depends upon post-Reformation canon law and not on its pre-Reformation precursor. It follows that, although the proviso to Canon 113 (the exception apart) is a restatement of the pre-Reformation canon law, the procedural rule does not apply to the seal of the confessional. It is therefore in reliance upon the proviso that the Guidelines for the Professional Conduct of the Clergy states:

“If a penitent makes a confession with the intention of receiving absolution the priest is forbidden … to reveal or make known to any person what has been confessed. This requirement of absolute confidentiality applies even after the death of the penitent.”

16. Nevertheless, against the seal of the confession it has been argued that, while the seal might have existed in the past _

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80 The exception may refer to the crime of treason: see the Legal Opinions concerning the Church of England at page 38 [RDHB-1/28; ACE025267]; Bursell The Seal of the Confessional in Ecclesiastical Law Journal, volume 2, at page 88 [RDHB-1/29; ACE025271].
81 Bishop of Exeter v Marshall (1868) LR 3 HL 17 at pages 53-54; St Mary’s, Westwell [1968] 1 WLR 513; 34 Halsbury’s Laws of England at paragraph 9. This rule of procedure or evidence applies both in clergy tribunals as much as in the non-Church courts.
82 It may be argued that, if the exception refers to the crime of treason (see footnote 80), it is an expression of that part of the seal of the confessional which was regarded as “repugnant or contrary” to the statutes of the realm.
83 The continuation of the seal is implicit in the exception provided to the proviso to Canon 113; this was certainly the view of Baron Alderson expressed during legal argument in Attorney-General v Briant (1828) 3 C & P 518.
84 At paragraph 3.5 [RDHB-1/27; ACE002909]. It is unclear on what authority the last sentence in the quotation is based.
"the modern law of evidence has evolved without reference to it, and that it [is], at the least, doubtful whether privilege existed under the civil (as opposed to ecclesiastical) law."\footnote{Legal Opinions concerning the Church of England at page 39 [RDHB-1/28; ACE025267]. However, as the ecclesiastical law is as much a part of the law of England as any other part (see above), there cannot be conflicting provisions within that law.}

This, however, ignores the alternative arguments that rules of evidence should reflect rules of substantive law and that the ecclesiastical law is part of the general law of England. In summary, however, the existence in law of the seal of the confessional remains in doubt\footnote{In reliance upon the proviso to Canon 113 a note in the Guidelines for the Professional Conduct of the Clergy at page 7 fails to acknowledge any of these doubts, although the note concludes: “In September 2014 the Archbishops’ Council decided to commission further theological and legal work to enable it to review, in consultation with the House of Bishops, the purpose and effect of the proviso to the Canon [113] of 1603, with a view to enabling the General Synod to decide whether it wishes to legislate to amend it.” To date this commission has not published any report. (Other than in relation to the exception, the proviso, of course, merely reflects the pre-Reformation canon law.)}. As the Legal Advisory Commission has said\footnote{Legal Opinions concerning the Church of England at page 39 [RDHB-1/28; ACE025267].}

"The question of whether a priest can claim privilege, and not answer questions put to him or her in the witness box, concerning information received in the confessional is, therefore, open to question. Writers … have argued persuasively that canon law has never changed since pre-Reformation times, and that, as this is part of the law of the land, the privilege exists at law. Most, if not all, modern writers on the law of evidence do not accept this. It may be that the case is not one of privilege as such, but one in which the priest may ask the court to excuse him, with some prospect of obtaining that concession."

Nonetheless, this opinion of the Legal Advisory Commission was written in 2007 and it may be doubted whether such a concession (if that is what the ‘privilege’ amounts to) would be granted by a court in a case involving allegations of abuse of children or vulnerable adults.
Witness statement
Rupert David Hingston Bursell
First
Exhibit RDHB-1
8 November 2017

INDEPENDENT INQUIRY INTO CHILD
SEXUAL ABUSE

FIRST WITNESS STATEMENT OF RUPERT
DAVID HINGSTON BURSELL

Herbert Smith Freehills LLP
Exchange House
Primrose Street
London
EC2A 2EG
Ref: 2325/3098307
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<td>1. A.</td>
<td>Terms of reference for the visitation of the diocese of Chichester</td>
<td>21 December 2011</td>
<td>ACE025145</td>
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<td>2. A.</td>
<td>List of those interviewed for the visitation</td>
<td>N/A</td>
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<td>3. A.</td>
<td>Email correspondence between Rupert Bursell, John Rees and Bishop Gladwin re Chichester</td>
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<td>A. Area scheme for the Diocese of Chichester</td>
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<td>8. A</td>
<td>Letter from Matt Dunkley to Rowan Williams re Diocese of Chichester – Management of Children’s Safeguarding Concerns</td>
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<td>11. A</td>
<td>Article by Rupert Bursell entitled “Are the Clergy Discipline Measure 2003 and the Safeguarding and Clergy Discipline Measure 2016 Fit for Safeguarding Purposes?”</td>
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<td>13. A</td>
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<td>24 November 2014</td>
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Additional exhibits

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<td>14.</td>
<td>Safeguarding in the Church of England; extract from SPCK Study of Ministry Handbook</td>
<td>ACE025270</td>
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<td>15.</td>
<td>The Position of the Seal of the Confessional in English Law by Chancellor Bursell</td>
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<td>Safeguarding and Clergy Discipline Measure 2016</td>
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<td>The Safeguarding (Clergy Risk Assessment) Regulations</td>
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<td>House of Bishops Practice Guidance: Risk Assessment for Individuals who may Pose Risk to Children or Adults 2015</td>
<td>Published June 2015 (Reviewed December 2015)</td>
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<td>20.</td>
<td>House of Bishops Practice Guidance: Responding to, Assessing and Managing Safeguarding Concerns or Allegations against Church Officers</td>
<td>October 2017</td>
<td>ACE025256</td>
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<td>21.</td>
<td>Precedent Clergy Current Status Letter</td>
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<td>Personal Files Relating to Clergy Guidance for Bishops and their staff</td>
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<td>Draft Safeguarding and Clergy Discipline Measure and Draft Amending Canon No 34 - Explanatory Memorandum, GS 1952-3x</td>
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<td>Article in <em>Christian Today</em> entitled &quot;There are ‘Harvey Weinstine’s among Church of England clergy – abuse victim&quot;</td>
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<td>Description of &quot;spiritual abuse&quot; produced by the National Safeguarding Team</td>
<td>5 March 2017</td>
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<td>The Seal of the Confessional in the Ecclesiastical Law Journal, volume 2 by Chancellor Bursell</td>
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