

## Protocol - Emmanuel Church Wimbledon and the Diocese of Southwark

This Protocol is dated 4<sup>th</sup> December 2023.

### Parties

The parties to this Protocol are:

1. Emmanuel Church Wimbledon, a charitable company limited by guarantee incorporated in England and Wales with charity number 1146577 and company number 07904564 whose registered office is at Emmanuel Church, 24 Ridgway, London SW19 4QL (“ECW”)
2. The Diocese of Southwark, represented by The South London Church Fund and Southwark Diocese Board of Finance a charitable company limited by guarantee incorporated in England and Wales with charity number 249678 and company number 00236594 whose registered office is at Trinity House, 4 Chapel Court, Borough High Street, London SE1 1HW (the “Diocese”)
3. The Bishop of Southwark in his corporate capacity, care of Trinity House, 4 Chapel Court, Borough High Street, London SE1 1HW (the “Bishop”)

### Overriding Principle

This Protocol is based on goodwill amongst the Parties and it is not legally binding. This is grounded in a desire for mutual flourishing, based on our common faith in the Lord Jesus Christ: the example of his life and Passion, his reconciling work on the Cross, his resurrection to new life and the gift of the Holy Spirit, echoing his heartfelt prayer in John 17.11, “that they may be one just as we are one”.

Therefore, this Protocol is written in the hope that it may promote excellent working relationships amongst the Parties in partnership for the Gospel.

### Background

Emmanuel Church Wimbledon is a “proprietary chapel”. The Parties understand this to be a church that:

1. does not fit within the normal parish or mission initiative structures of the Church of England but is, instead, operated by an independent proprietor, ECW; and
2. may nevertheless be led by ministers who are ordained in the Church of England or a Church that is a member of the Anglican Communion (in addition to ministers of another denomination).

Any duly ordained Anglican minister exercising ministry in the Church of England is bound by the Canons of the Church of England. Therefore, in order to exercise lawful ministry,

such an Anglican minister is required to hold the Bishop's licence, which is given at the discretion of the Bishop.

On the advice of the Charity Commission, the directors and trustees of ECW ("the Trustees") commissioned an independent review into the safeguarding culture at ECW. This review was undertaken by Thirtyone:eight and led to a report being published entitled 'Independent *lessons learnt review concerning Jonathan Fletcher and Emmanuel Church Wimbledon*' and dated March 2021. This Protocol has been drawn up in response to the recommendations for the Diocese contained in that report. The following recommendations from the report are particularly relevant to this Protocol:

### **Recommendation 10**

*The Trustees and Leadership Team should continue to develop the relationship with the Diocese of Southwark, CofE structures and the House of Bishops. This development of relationships should ensure ECW is accountable and does not operate as independent from the Diocese or other CofE structures. This should also ensure the status of proprietary chapel is not seen as a license for independence.*

### **Recommendation 16**

*Trustees, Leadership Team and the Safeguarding Officer should develop a mutual and effective working partnership with the Diocese to improve safeguarding practice and partnership working.*

## **Agreed Principles**

Taking into account the background and the overriding principle as set out above, the Parties have agreed the following general obligations amongst themselves, which they believe will foster a positive relationship based on mutual accountability and goodwill. (More detailed and specific obligations, some of which relate to these general obligations, are set out further below).

1. ECW, acting through its Trustees, shall:
  - a. Ensure that all trustees, churchwardens and employees together with licensed ministers of ECW will comply with the terms of this Protocol;
  - b. Ensure that ECW is in good standing with the Diocese. This includes, but is not limited to ensuring that those who exercise any authority in the name of ECW comply with the '*In Good Standing with the Diocese*' policy (attached as Appendix 2) and such other Diocesan policies and procedures as may be in force from time to time;
  - c. Fully comply, and ensure that any person referred to in sub-paragraph a. above will fully comply, with the terms of this Protocol in relation to safeguarding matters below;
  - d. Contribute financially to the Diocese by contributing to the Parish Support Fund;

- e. Ensure that any ECW minister holding the Bishop's licence recognises and accepts that by doing so they are bound by the same canonical obedience to the Bishop as any other licensed minister in the Diocese. As such, they are subject to the same disciplinary regime as other equivalent parochial ministers in the Diocese;
  - f. Demonstrate their commitment to supporting the Diocese and the wider mission and ministry of the Church of England as a whole while respecting theological convictions of ECW. As such, ECW:
    - i. Acknowledges and accepts the representative nature of ECW's ministry in the wider community, in the Diocese, and in the Church of England as a whole; and
    - ii. will ensure that all media produced or used by ECW and all in-person teaching associated with ECW is consistent with the doctrine of the Church of England and is courteous if registering disagreement with others' opinions.
2. The Diocese of Southwark shall:
- a. Continue to build a good working relationship with ECW in order that the ministry and mission of ECW might flourish;
  - b. Provide safeguarding advice and support to ECW in line with that provided for parishes in the Diocese;
  - c. Ensure that all other relevant Diocesan support and services (such as Human Resources, Communications, Training, and clergy well-being initiatives) are made available on the same basis as they are to Diocesan parishes.
3. The Bishop shall:
- a. In exercising his sole discretion, give due and proper consideration to all requests from ECW for Bishop's licences for ordained and lay ministers, provided that all reasonable assurances are met regarding compliance with relevant safeguarding policies. The Bishop may, to his reasonable satisfaction, complete appropriate enquiries before awarding any such licence. Such enquiries may include, but are not limited to, any enquiries normally made in respect of ministers seeking the Bishop's licence for long-term ministry in the Diocese.

### **Extended Episcopal Care ("EEC")**

In order to enable the mutual flourishing of congregations with different theological understandings of women's ministry, the House of Bishops of the Church of England agreed to "*The Five Guiding Principles*", which are as follows:

- *Now that legislation has been passed to enable women to become bishops the Church of England is fully and unequivocally committed to all orders of ministry being open equally to all, without reference to gender, and holds that those whom it has duly ordained and appointed to office are the true and lawful holders of the office which they occupy and thus deserve due respect and canonical obedience;*

- *Anyone who ministers within the Church of England must be prepared to acknowledge that the Church of England has reached a clear decision on the matter;*
- *Since it continues to share the historic episcopate with other Churches, including the Roman Catholic Church, the Orthodox Church and those provinces of the Anglican Communion which continue to ordain only men as priests or bishops, the Church of England acknowledges that its own clear decision on ministry and gender is set within a broader process of discernment within the Anglican Communion and the whole Church of God*
- *Since those within the Church of England who, on grounds of theological conviction, are unable to receive the ministry of women bishops or priests continue to be within the spectrum of teaching and tradition of the Anglican Communion, the Church of England remains committed to enabling them to flourish within its life and structures;*
- *Pastoral and sacramental provision for the minority within the Church of England will be made without specifying a limit of time and in a way that maintains the highest possible degree of communion and contributes to mutual flourishing across the whole Church of England.*

Given that all ministers who hold a bishop's licence must agree to the Five Guiding Principles, and in order to enable the flourishing of ECW, the Bishop has invited for the Bishop of Ebbsfleet to provide extended episcopal care by way of pastoral and sacramental ministry. This is following the request of the Trustees. This ministry will be exercised in line with the provisions of the Diocese's 'Principles and processes for enacting the HoB's Declaration on the Ministry of Bishops and Priests in the Diocese of Southwark'. It is noted that such ministry does not include oversight of safeguarding arrangements or responsibility for the exercise of discipline.

The Trustees acknowledge and agree that:

- a. This EEC is in addition to, and not as replacement of, the episcopal oversight of the Bishop, to whom clergy holding the Bishop's licence remain accountable and to whom they owe canonical obedience in all things lawful and honest;
- b. They and all those who exercise ministry at ECW will work for the flourishing of the Diocese in a way that fulfils principle five.

### **Ministers who hold the Bishop's Licence**

ECW will continue to ensure that all ordained Anglican ministers who exercise ministry at ECW are licensed by the Bishop.

ECW acknowledges that Anglican ministry within the parish of Wimbledon may, under Canon C8(4), be exercised only with the permission of the minister with the cure of souls, that is to say the Rector of Wimbledon (the "Rector"). The Bishop's policy is therefore to seek the approval of the Rector prior to granting licences to ministers at ECW. The Rector of Wimbledon may ask to meet with the candidate prior to the grant of the Bishop's licence and thereafter make representations to the Bishop as to the candidate's suitability.

ECW agrees and acknowledge that those exercising ministry in the name of ECW are held accountable to the Trustees, to ECW as a whole, to the Diocese and to the Church of

England as a whole through regular reviews and training. Therefore, ECW shall ensure that any minister at ECW holding the Bishop's licence, shall:

- a. Engage with good faith with periodic Ministerial Development Reviews carried out by the Archdeacon of Lambeth or anyone delegated to carry out such a review by the Archdeacon of Lambeth or by the Bishop, and with any Continuing Ministerial Education as identified in such a review.
- b. Ensure that any Assistant Curate who is serving their Title at ECW will engage fully and in good faith with the Diocesan IME programme.

## **Safeguarding**

The Trustees shall themselves, and shall ensure that any person exercising authority at ECW who is in contact with a child or vulnerable person shall, comply fully with the Diocese's '*A Safe Church*', all National Church safeguarding policies and procedures, and the obligations stated below:

"Under section 5 of the Safeguarding and Clergy Discipline Measure 2016 all authorised clergy, bishops, archdeacons, licensed readers and lay workers, churchwardens and PCCs must have 'due regard' to safeguarding guidance issued by the House of Bishops (this will include both policy and practice guidance)".

In this instance, having "due regard" has the meaning set out in the House of Bishop's guidance dated February 2020 and set out in [**Appendix 3**].

"Under section 5A of the Safeguarding and Clergy Discipline Measure 2016, certain persons (including all licensed clergy, readers and lay workers) are required to comply with safeguarding requirements imposed on them by codes of practice issued under that section".

In this instance, having "due regard" has the meaning set out in the House of Bishop's guidance dated February 2020 and set out in [**Appendix 3**].

For the purpose of implementing safeguarding procedures at ECW:

- a. References to "parishes" shall include ECW;
- b. The chief minister at ECW's safeguarding duties shall include those duties assigned to "the Incumbent" in such procedures;
- c. ECW's Church Council shall observe and perform the responsibilities assigned to "the PCC" in such procedures; and
- d. The Trustees shall ensure that a suitable person is appointed to perform the duties assigned to "the parish safeguarding officer" in such procedures.

Through collaborative working with the Diocesan Safeguarding Team ("DST"), ECW and the Trustees shall themselves, and ensure that any other relevant person shall, do the following in good faith and without exception:

- a. Seek advice from the DST when safeguarding concerns arise;
- b. Report safeguarding concerns within the timescales and procedures set down in '*A Safe Church*';
- c. Respond fully and in a timely fashion to any enquiries from the DST;
- d. Cooperate fully and without reservation with safeguarding investigations;
- e. Carry out (or commissioning) appropriate risk assessments;

- f. Provide full and comprehensive details of any safeguarding concerns to the DST;
- g. Accept and put into practice the professional advice offered by the DST on safeguarding concerns arising at ECW; including the necessity for risk assessments and safeguarding worship agreements;
- h. Adhere to recommendations arising from Core Group Meetings; and
- i. Ensure that all who are in contact, or may come into contact, with children or vulnerable people receive timely, appropriate and ongoing safeguarding training. Such training must only be provided either by the DST directly or arranged by the DST.
- j. Ensure that recruitment of staff and volunteers adheres to the Safer Recruitment Policies and Procedures of the Church of England.

In undertaking their statutory functions, the Archdeacon and DST further agree to provide timely advice on the extent to which information from risk assessments can be more widely shared in order to promote safe environments both at ECW and further afield.

### **Synodical Governance**

The ministers of ECW holding the Bishop's licence belong to Merton Deanery Chapter by virtue of their licences. Historically ECW has played its full part in the synodical structures of the Church of England. In light of the Five Guiding Principles, the overriding principle of this Protocol, and in a spirit of collegiality, the Trustees shall ensure that such ministers will to the best of their ability attend Deanery Chapter and Deanery Synod meetings and support their fellow Deanery Chapter members in their ministry.

ECW has the right to elect synod representatives to the Deanery of Merton Synod who in turn are part of the electing body for Diocesan and General Synod.

### **Churchwardens**

Notwithstanding any provisions to the contrary in any governing document of ECW, the ECW acknowledges and agrees that ECW's churchwardens shall undertake a role analogous to parochial churchwardens appointed under the Churchwardens Measure 2001 (the "2001 Measure"). As such, the Trustees shall ensure that the ECW's churchwardens operate as if subject to the 2001 Measure and any other laws, regulations, policies, procedures or guidance as relates to churchwardens and in force from time to time. This pertains but is not limited to: ECW's churchwardens' appointment; their rights, duties and responsibilities whilst in office; their term of office; and procedures for resigning or being suspended from office.

Before their admission to the office of churchwarden at ECW, the Trustees shall ensure that any such person shall be made aware of the terms of Canon E1(4) of the Canons of the Church of England and be made aware that they are bound by the terms of this Canon. Canon E1(4), states:

*The churchwardens when admitted are officers of the bishop. They shall discharge such duties as are by law and custom assigned to them; they shall be foremost in representing the laity and in co-operating with the incumbent; they shall use their best endeavours by example and precept to encourage the parishioners in the practice of true religion and to promote unity and peace among them. They shall also maintain*

*order and decency in the church and churchyard, especially during the time of divine service.*

Following their admission to the office of churchwarden at ECW, the Trustees shall ensure that such churchwardens:

- a. Are aware of their duties and responsibilities as officers of the Bishop. This includes, but is not limited to, the churchwardens having a responsibility to work with the Diocese in general and chiefly with the Archdeacon of Lambeth, who will normally swear them into office;
- b. Answer the Articles of Enquiry asked annually and prepare for the annual inspection by the Archdeacon or their deputy;
- c. Complete within the timescales set all financial and annual data returns.

### **Parish Support Fund (“PSF”)**

ECW shall support the Diocesan Parish Support Fund by making an annual contribution towards the work of the Diocese and its support of Diocesan churches.

In each year, this amount will be agreed between ECW and the Diocese, taking into account the overriding principle of this Protocol and the principles of generosity and proportionality.

### **Vocations**

***Promoting Vocations.*** ECW will promote vocations to all forms of lay and ordained ministry recognised in the Diocese, subject to the rules in force in the Church of England or in the Diocese. This will be done in the spirit of mutual flourishing expressed by the Five Guiding Principles and without regard to an individual's personal spirituality, theological understanding, or church tradition (so long as these things are consistent with the doctrine of the Church of England, and not only where consistent with the teaching and practice of ECW).

***Vocational Discernment.*** In accordance with Diocesan policies and procedures, ministers at ECW will work supportively with those who may be experiencing a call to ministry so that, as appropriate, they will be referred to the appropriate person to continue that exploration. For example, those considering a call to certain commissioned ministries or to licensed ministries will be referred by ECW with reasonable promptness to the Diocesan Vocations Team so that they may attend a Diocesan Vocations Forum which is the first stage of the Diocesan discernment process.

The Diocese, and in particular, members of the Vocations Team will engage with any enquirer, candidate or ordinand. As has previously been the case for ECW, and is elsewhere in the Diocese, the Sponsoring Bishop for any candidate from ECW is the Bishop. This is notwithstanding any EEC arrangements. As part of this, the Diocese funds the training and formation (IME phase 1) of those sponsored by the Bishop, including reasonable maintenance where appropriate, as for any other Diocesan candidate. This should be borne in mind by ECW when considering its financial contribution to the PSF. Any candidate from ECW will be subject to Diocesan process and policies regarding training pathway, institution, and length of training.

***Training curates.*** ECW may express interest in receiving a training curate (stipendiary or non-stipendiary) in the same way as other churches in the Diocese, that is, by receiving an

invitation from the Area Bishop to be considered as a training parish. All training curates to serve in the Diocese are placed and confirmed by the Bishop, via the DDO. Though the Diocese imports candidates from other dioceses on occasion, priority is given to placing Southwark candidates in the first instance. ECW will be considered as with other churches in the Diocese. If individuals express an interest in serving their titles directly to the chief minister at ECW, this information will be passed on so that they can be considered as part of the Diocesan process. If receiving a training curate, ECW shall ensure that the curate is committed to IME phase 2 and is subject to the guidance in this document as other ministers at ECW.

## **Church Planting**

Whilst the Diocese welcomes church planting, it also accepts that this must be done with care and in a way that is consistent with the Southwark Vision strategy and the Diocese's policy on church planting. Accordingly, ECW shall have due regard to the Diocese's church planting policy and will work in good faith with the Archdeacon of Lambeth in the first place and then the Director of Pioneering Ministry in the second in the planning and execution of church planting.

## **Monitoring and Implementation**

Unless circumstances indicate otherwise, the Trustees shall ensure that they themselves, the ECW churchwardens and any other person in authority at ECW shall liaise with the Archdeacon of Lambeth as Diocesan representative in the implementation of this Protocol on an ongoing basis. This will ensure that there is mutual flourishing and a good working relationship amongst the Parties. As such the Bishop, the Archdeacon of Lambeth, or such other relevant person, may, after consultation with the Bishop providing EEC, request a meeting with any of the Trustees or such other person in authority at ECW at any reasonable time. The Trustees shall ensure that such a request is complied with in good faith and in good time.

In addition, the Diocesan Safeguarding Adviser will have quarterly meetings with ECW's chief minister and the Parish Safeguarding Officer to encourage mutual understanding and good collaborative working to ensure that children and vulnerable people are safeguarded. The Trustees shall ensure that ECW's chief minister and the Parish Safeguarding Officer attend such meetings.

This Protocol shall have effect from the date set out at the top of the first page.

This Protocol shall remain effective until such time as any party gives notice in writing or all the Parties agree in writing that it may be amended.

In the event of any dispute arising out of the subject matter of this Protocol or its implementation, the Parties undertake to seek a mutually acceptable resolution by engaging on a good faith basis with each other, and such other independent mediating third party as may be appointed.



### Southwark Vision 2017-2025

Our vision is founded on mutual commitment from all who make up the Diocesan family to walk together in the pilgrimage of faith, supporting, encouraging and resourcing each other in our common task.

#### **A pilgrim people**

We are a diverse community of Anglican churches, schools and chaplaincies in the hugely varied area of South London and East Surrey, from our Cathedral Church at London Bridge to our retreat house in the Surrey countryside. We work hard to journey well together, united by our faith in Christ. We're discovering that God's love changes lives, transforms society and sets our hearts on fire with the love of Christ; and so, we are working to enable others to experience that reality.

#### **Journeying together**

From the Archbishop's Charge given to Bishop Christopher in 2011, the Diocese of Southwark has been on a journey of discernment towards a shared vision which is now brought together from the themes and agreed outcomes described in the Strategy for Ministry adopted by Synod in November 2015, and Hearts on Fire Vision for Mission, with its commitment to the five marks of mission and the strategic goals, adopted by Synod in March 2016.

#### **A fruitful future**

We share a vision for the future in which we will see:

- growing churches, new worshipping communities and new Christians
- deepening discipleship: engaged, prayerful and informed Christians
- growth in vocations to existing and new ministries
- generous giving and prayer supporting all we do
- justice and peace built up, and violence challenged, in our local and global community
- a shared commitment to the integrity of creation
- a church for all which reflects our diverse community in membership and leadership.

## Resources for our journey

The two key documents which inform our work as a Diocese are:

- the *Hearts on Fire* Mission Strategy, March 2016
- the *Strategy for Ministry* Final Report, November 2015

These two documents together explain the detailed thinking behind the summary of our Diocesan Vision.

*Hearts on Fire* restates our commitment to mission, grounded in prayer that the growth of the kingdom of God may be at the heart of all we do. In particular we will:

- serve our Communities
- share our faith with great joy and gladness
- be the Church; a people with hearts on fire, loving God, walking with Jesus and led by the Spirit.

*Strategy for Ministry* sets out how we remain focused on that vision and mission, through ongoing cultural change as a Diocese. We are committed to becoming a Diocese which is:

- Adaptive - seeing a culture of risk taking, permission giving and experimentation becoming embedded in the life of the Diocese
- Diverse - with visibly increased diversity in every part of Diocesan life
- Accountable - with communication demonstrated through increased sense of engagement from parishes with Diocesan central structures
- Devolved - especially in building up deaneries and encouraging them to become viable centres for mission and ministry, but also in encouraging collaboration, team work, and leaders who can enable and form individuals and communities.
- Strategic - looking ahead, discerning new opportunities which align with our vision and mission
- Realistic - aligning resources to serve vision and mission.

## Supporting each other on the way

Our Diocese is made up of the parishes and deaneries, chaplaincies and schools in which individual Anglicans work and worship. The Diocesan vision will be realised primarily in the shared life, mission, ministry and service of all the baptised, clergy and lay together.

Diocesan structures and programmes seek to serve the whole people of God, in the following ways.

### 1. Lead, Enable, Serve

Those who work across the Diocese as a whole are committed to working in accordance with the following aim: 'To serve, support, lead, and enable the mission of God as it is worked out in the parishes, deaneries, schools and communities of the Diocese of Southwark.' This keeps the focus of Diocesan- wide bodies and officers clearly on the mission as it is worked out across the whole Diocese.

## **2. Mission Action Planning**

The Mission Action Planning process is a key means for ensuring that the Diocese as a whole is working towards our vision and mission. Parishes and other communities which produce Mission Action Plans are asked to do so in the light of this, and specifically to reference how their MAP will reflect all of the five Marks of Mission. MAPs in turn resource those working across the Diocese as a whole with a richer vision of the potential areas for support and outreach.

## **3. Parish Support Fund**

The Parish Support Fund exemplifies our mutual support in the Diocese most obviously through the sharing across the Diocese of the financial responsibility for our life and mission. Through its principles of generosity and accountability it enables all members of the Diocese to have confidence that resources are being generously given and effectively used.

### **Outcomes and Actions**

The 2015 Strategy for Ministry Report identified a number of outcomes which we wish to see if the Diocese is to deliver on its vision and mission; the Hearts on Fire document emphasised our commitment to the Five Marks of Mission. Our commitment to the environment is expressed through the policy adopted by Diocesan Synod in 2013. Some outcomes have already been achieved, and others will become the focus of later objectives: we note particularly our commitments to the common good through attention to the needs of refugees, and responding to London's housing crisis. In order to focus our energies on an achievable number of these outcomes, we set ourselves the following objectives:

- to grow our average weekly attendance by 5% by 2025 partly through having each church develop a high-quality Mission Action Plan (MAP) which includes a course for evangelism and discipleship
- by 2025, to increase the number of worshipping communities with a primary focus on areas of population growth through investment in Fresh Expressions (fxC) in the areas where the data suggests the existing congregations are increasingly unrepresentative of the resident community and therefore unlikely to be successful in reaching them without intentional intervention
- to grow a financial resource base that allows investment in growth for the future. Key measurable include: annual financial surplus, working financial reserves equivalent to 6 months operating costs by 2020, 1% of Diocesan turnover annually dedicated to major Diocesan ministry and mission projects beginning in 2016, rising to 2% by 2020
- to grow the number of ordained and lay vocations by 50% by 2020 by

enabling and discerning ordained ministers; by expanding opportunities for licensed and commissioned lay leadership; by affirming and growing other forms of lay ministry (e.g. worship leaders, family & youth leaders, spiritual directors); to offer relevant and enriching training, and create networks of support and celebration which reflect the diversity of the Diocese, our commitment to evangelism and discipleship, and delivers fully integrated and pioneering church growth and fresh expressions

- by 2025, to grow leadership and representation that reflects the rich diversity of our Diocese and especially focusing where the data suggests groups are currently underrepresented: through ethnicity, age (especially 18-40), educational opportunities, material well being, tradition.

## Appendix 2

### 'In good standing with the Diocese'

The Archdeacons and Diocesan Secretary have agreed that in order to help decision making, we should define 'in good standing'. This has been endorsed by Bishop Christopher and the senior staff team and is to be used in discussion with parishes when considering:

- Diocesan Loans
- Participation in SDF bids
- Eligibility for any curates
- Parish self funded ministry posts
- DBF Grants or other financial assistance (e.g. Marshalls, etc.)

Criteria	Criteria met (yes / no)	Notes
Completion of mandatory safeguarding training for church officers and compliance with all PCC safeguarding responsibilities as set out at 3.7-3.11 of <a href="https://bit.ly/2P2flAo">https://bit.ly/2P2flAo</a>		
Engaged in MAP process		
Stats for Mission (attendance) returns completed online <ul style="list-style-type: none"> <li>• for at least the last three years</li> <li>• by 31 January</li> </ul>		
PSF pledge payments up to date		
Acceptable PSF pledge for the last three years and promises for the next three years (as agreed by Archdeacon)		
Articles of Enquiry submitted by time of inspection		
Positive engagement with MDR process		
Annual Parish Return (known as the Parish Information Review) completed within time		
Annual accounts submitted to Charity Commission (by 31 October if applicable) and Diocesan office by 31 May for previous year		
Finance returns completed <ul style="list-style-type: none"> <li>• for at least the last three years</li> <li>• by 31 May for previous year</li> </ul>		
Parochial fees submitted (including nil returns) and up to date by 31 January for previous year		
Electoral Roll data submitted on time for triennial		

## Appendix 3

### Duty to “have due regard” to House of Bishops safeguarding guidance

#### Background and context

The Safeguarding and Clergy Discipline Measure 2016 imposes a legal duty on the clergy, readers and lay workers, churchwardens and parochial church councils to “have due regard to guidance issued by the House of Bishops on matters relating to the safeguarding of children and vulnerable adults”.

#### Recommendation from the Independent Inquiry into Child Sexual Abuse (IICSA)

In *Anglican Church Case Studies: Chichester/Peter Ball Investigation Report*, IICSA observed that the legal term “have due regard” was not well understood and that there was a need for greater clarity on the nature of the obligation ([paragraph 496 of the Report](#)).

In its [response](#) to the Report the Church of England’s National Safeguarding Steering Group (a committee of the House of Bishops) stated that the Church would consider changing the nature of the legal duty as part of a review of clergy discipline legislation. It went on to say that in the interim, the Church would seek to ensure that the requirements arising from the current legislation were better understood across the Church. This note has been produced to help those who are subject to the duty to have due regard to House of Bishops safeguarding guidance understand the legal nature of that duty.

#### What does ‘due regard’ mean?

Where legislation – whether an Act of Parliament or a Church Measure – imposes a duty on a person to “have due regard” to guidance of this sort, the law understands that duty in a particular way. The legal duty to have due regard means that the person to whom the guidance is directed is *not free to follow the guidance or not as he or she chooses*. As a matter of law, the guidance should be given great weight and must be followed unless there are ‘cogent reasons’ for not doing so (see below).

#### What is meant by ‘cogent reasons’?

‘Cogent reasons’ are reasons that are clear, logical and convincing. It will be very rare indeed for there to be cogent reasons for not following House of Bishops guidance on safeguarding. Cogent reasons are likely to arise only where the guidance does not contemplate a particular, unusual situation arising so that it becomes necessary to take a different approach from that set out in the guidance in order to meet the particular circumstances of the case.

#### When would ‘cogent reasons’ be applied?

A person who is required to have due regard to the guidance should not simply take it on him- or her-self to decide that there are cogent reasons for departing from the guidance. Such a decision should be taken – if at all – *only* after case-specific advice has been obtained from both the diocesan safeguarding adviser and the diocesan registrar.

### **What are the sanctions for clergy who do not follow ‘due regard’ guidance?**

A failure by a member of the clergy to comply with the duty to have due regard to House of Bishops safeguarding guidance is misconduct under the Clergy Discipline Measure 2003 (‘CDM’). Were proceedings under the CDM to involve an allegation of failing to have due regard to the guidance, the onus would be on the member of clergy concerned to establish that he or she had cogent reasons for not following the guidance. A disciplinary tribunal would be likely to scrutinise the reasons given with great care to test whether they were in fact clear, logical and convincing.

### **What are the sanctions for readers and lay workers, churchwardens and parochial church councils who do not follow ‘due regard’ guidance?**

A failure by a reader or lay worker to have due regard to House of Bishops safeguarding guidance would be grounds for the revocation of the reader’s or lay worker’s licence by the bishop.

A failure by a churchwarden or parochial church council to have due regard to House of Bishops safeguarding could result in an investigation being carried out by the Charity Commission and the churchwarden or PCC members being disqualified as charity trustees.

### **Where is more information available?**

More information about safeguarding guidance is available from your Diocesan Safeguarding Advisor and on the [Church of England](#) website.

More information about the legal duty of ‘due regard’ is available from your Diocesan Registrar. Diocesan Registrars may contact the NCI legal office.

The Legal Office of the National Church Institutions  
Church House  
Westminster

February 2020