

To the Presidents and members of the Archbishops' Council:

The Most Revd and Rt Hon Justin Welby, Archbishop of Canterbury
The Most Revd and Rt Hon Stephen Cottrell, Archbishop of York
The Ven Luke Miller
The Revd Kate Wharton
Canon Dr Jamie Harrison
Mrs Alison Coulter
The Rt Revd Mark Tanner
The Rt Revd Paul Butler
The Revd Dr Ian Paul
The Revd Tim Goode
Dr Rachel Jepson
Mr James Carey
Mr Alan Smith
Mr John Spence
Mrs Maureen Cole
Mr Mark Sheard
Mr Matthew Frost
The Revd Charlotte Cook
Mr Joseph Diwakar

cc Ms Jenny Jacobs – Administrative Secretary
Mr William Nye – Secretary-General of the Archbishops' Council
Dr Maggie Atkinson – Chair of the Independent Safeguarding Board
The Charity Commission
The Editor, *Church Times*
The Editor, *Church of England Newspaper*
Mr Aleem Maqbool – BBC Religion Editor

13 June 2022

Dear members of the Archbishops' Council

Independent Safeguarding Board (ISB) Review: Christ Church Oxford

As concerned members of General Synod, we write with regard to the above review, the Terms of Reference for which were published on the C of E website on 25 May 2022. We are seriously concerned about the authority and capacity of the ISB as concurrently configured to carry out and deliver a comprehensive review of all the outstanding issues around Christ Church that would carry the confidence of all parties and the Church and public generally.

The long-standing difficulties within the Christ Church Foundation and the Diocese of Oxford have resulted in a number of formal inquiries which have not attracted

controversy relating to their independent character composition and ambit. They carry public confidence.

The College has appointed the Ineqe organisation to review its safeguarding and complaint handling regime; the Charity Commission is currently undertaking its own investigation into the conduct of the College dons, using its longstanding experience, protocols and competent staff ; and the Solicitors Regulation Authority has received complaints about the professional conduct of the advising lawyers, including issues of conflict of interest management, and the provision of the required costs information to their respective clients. Breaches of its professional code of conduct by one of the members of the Christ Church Governing Body has not only been considered by the Royal College of Physicians: the complaint has already been investigated and upheld.

The single exception arising out of the response to the Christ Church complexities lies with the Church of England, which has been no stranger historically to poor practice within its reviews, engendering a widespread cynicism, lack of trust and confidence, and doubts as to the very integrity of its structures of Governance.

Dr Martyn Percy has been the subject of multiple complaints within the context of the determination of some of the dons to oust him from office as the Dean of Christ Church. Due process has been accorded to each and every complainant and the respondent himself, by the Smith Tribunal in August 2019, the NST in September 2020, the police in response to the ‘hairgate’ allegation, the Clergy Discipline Measure process in May 2021 in respect of the same allegation, and the Employment Tribunal. No determination of fault or misconduct has ever resulted, and the College has reached a settlement of Dr Percy’s claims against it.

Dr Percy has throughout asserted that he has been the subject of bullying and “mobbing,” resulting in his suffering persistent stress and serious health consequences, not least a nervous breakdown after four years of litigation harassment. A significant number of those against whom those allegations of bullying and harassment are made are members of clergy, not one of whom has yet been held to account: indeed, there is compelling evidence that the Church of England never seeks to hold senior clergy to account. That is certainly the pattern to date, in the cases of Trevor Devamanikkam, John Smyth, Jonathan Fletcher and suicide victim Fr Alan Griffin.

Dr Percy was not only the premier priest in the Oxford Diocese, but he is a theologian of world renown. His identification of a serious problem of bullying within our Church is by no means unique: in July 2021 the senior Coroner of London

issued a “Prevention of Future Deaths report” under the Coroners (Investigations) Regulations 2013 following the tragedy of death by suicide of Fr Alan Griffin after he had suffered institutional bullying. There are many, many anonymous victims, some whose grievances have been characterised as “resolved” by bishops who have simply silenced further debate through the imposition of Non-Disclosure Agreements (NDAs) as part of their exit settlements.

Bullying is defined by ACAS as behaviour which is

- offensive, intimidating, malicious or insulting
- an abuse or misuse of power that undermines, humiliates, or causes physical or emotional harm to someone.

Few accusations are more offensive, intimidating, humiliating or calculated to cause emotional harm than a persistent characterisation of alleged behaviour as presenting a serious sexual risk, which allegation was continued by College and Church alike well after the President of Tribunals, Dame Sarah Asplin, determined in her written Decision of 28 May 2021 and after a full investigation, that the single act complained of (and consistently denied) was not capable in law of constituting “serious misconduct”. The “proportionality principle” was also invoked by the President.

The 4th October 2020 incident was but one of a long line of accusations, all investigated and dismissed, some of which also alleged bad practice relating to safeguarding disclosures, and those false allegations were also made by senior clergy in Oxford diocese. Some of the same clergy were implicated in the escalation of the 4th October allegation, together with multiple separate, vexatious unsuccessful complaints, against other clergy known to be supportive to the Dean.

Members of the Cathedral staff sympathetic to the Dean found their jobs disappeared in Cathedral “re-organisations” and were silenced by NDAs. The Oxford clergy responsible for these actions are accused of “mobbing,” which has been defined as “conduct by which a group of people target a co-worker to harass, humiliate, or isolate them.” Dr Percy was undoubtedly isolated under the terms of the 2020 risk assessments of disputed competence and provenance.

Dr Percy has summarised his complaints as:

“corruption, partiality, incompetence, conflicts of interest, cover-ups, misconduct and malfeasance riddling the oversight and practice of safeguarding in the Diocese of Oxford and NST.” In particular, the Dean cited the deliberate and clearly evidenced

'*weaponization of safeguarding*'. Such a complaint is of the highest order of magnitude.

Those of whom he complains include the Bishop of Oxford, members of Oxford Cathedral staff and Chapter, Oxford Diocesan staff and office holders, including their legal and PR advisors, together with advisors of the national Church and specifically the NST.

There is currently no single authority within the Church with remit and authority to encompass that degree of breadth of grievance across so many parts of the Church and its associated advisors. To understand the dynamics of such a complaint within one of the Church of England's anomalous "Peculiar" is not straightforward and may require advice and explanation in relation College and Cathedral Governance, issues of safeguarding law and of CofE safeguarding practice and procedure, the CDM process, and potentially complicating aspects of issues relating to visa conditions, DBS assessment, and University harassment and employment protocols.

The case context is lengthy, requiring a careful assessment; it cannot be glibly glossed over in pursuit of a swift, superficial, and early overview and assessment. It requires skilled meticulous expert legal analysis.

At the February 2020 General Synod, the current role of the Independent Safeguarding Board was explained by the ISB Chair, Maggie Atkinson, speaking to Synod members for the first time. Her report had raised questions from members who highlighted that the original concept of the ISB had been presented and approved by the preceding Synod in terms of a body constituted to have a role in addressing perceived injustices or irregularities with executive powers to enable it to act with an outside regulatory capacity.

Between Synods that regulatory role had been neutered, and although a 'following motion' sought to express the Synod's disapproval of the truncated powers of the ISB, that motion was opposed. In her presentation that preceded the motion, the ISB Chair was plainly keen to lower expectations and emphasise that the new body was only a part-time body, ill-equipped to carry out the kind of investigation with which it has now been charged. Dr Atkinson sought patience and clemency "Please forgive us if you feel that we are not going as quickly as you would have liked us to, at this point."

Dr Atkinson emphasised that the ISB was in what she described as "Phase One"—a listening and learning period—and she plainly set out that if the ISB saw the need

to acquire further powers, the Board members would ask for them. All doubt about the Board's current constitutional limitations were dispelled by Dr Atkinson: "You will know, from paragraph 6 of our report [Annex one to GS 2244], that we do not have a re-investigative, reviewing, instigating, insisting, sanctioning or directing role."

What was described there is more akin to a consultancy for the preparation of an Independent Safeguarding Board, rather than the presence now of such a fully formed ISB. The members were recruited in good faith for one task, resisted having a different one imposed upon them, but now appear to be asked to conduct an investigative role for the purposes of crisis management for Archbishops' Council. This is not fair on them, but their acceptance of that unwanted role must now be forensically scrutinised.

Not only was the attempt to endow the ISB with greater power declined by the newly-elected Synod, but via a procedural "wrecking" motion, the opportunity for General Synod subsequently to endow the ISB with such powers was made more difficult within the remaining four years' lifetime of this quinquennium. Synod has not met since. There has been no legislative change to the status or powers of the ISB through General Synod.

Given the clarity of Dr Atkinson's understanding of what she was and was not authorised and competent to do, as expressed in her address, and given the deliberate intent to constrain a future extension of that role as approved by a counted vote of Synod, the current purported willingness and accepted authority to undertake an extended role in the complex Percy case is extraordinary. (Though it is to be noted that both Archbishops voted against the procedural 'next business' motion.)

The ISB declared itself not suited to do such work and General Synod accepted that advice just three short months ago. The *volte face* raises a number of clear governance questions that ought to be answered by Archbishops' Council without delay. These are as follows.

- a) Has the ISB been constituted as a separate legal body from Archbishops' Council with independence of action, self-determination, insurance, legal liability, working capacity to alter its own constitution, working methods, and finance, without reference back to its originating parent body?

- b) If so, where can the terms of the vesting of authority and that independent constitution be found, and what evidence is there of complete severance of chain of command and direction?
- c) If not, does the ISB remain a creature of the Archbishops' Council under its direction, and subject to its wishes and authority, including reconstitution, dependent finance, re-definition of role, and abolition?
- d) Does General Synod have any direct constitutional role in shaping the future character of the ISB? If so, please describe the extent and limitations thereof.
- e) If General Synod has a role in shaping or directing the ISB, did it not endorse the limited ambit described in the report to General Synod in February 2022 and, if so, on what authority has that definition and limitation of role been subsequently changed and by whom? Please set out plainly the constitutional processes thereof.
- f) Did the Archbishops' Council know of and approve the ISB Chair's description of its role and limitations in advance of the February Synod? Did any part of her description of her understanding of the ISB role require correction or comment by Church House lawyers?
- g) Under what circumstances did the Archbishops' Council determine that the role described at Synod needed to be revisited and revised? Please disclose the terms of the resolution presented to Archbishops' Council to alter those terms, together with the briefing paper and the minutes of discussion before the decision was taken. How long did that item on the agenda take to be discussed and passed? Was it advanced by way of a 'take note' paper or was full discussion of a resolution undertaken, with the pros and cons of an alternative judge or QC led inquiry offered to Archbishops' Council members? We contend that such an inquiry is required in this complex case, and we note that paragraph 2.1 of the Terms of Reference record that "The ISB is not a judicial or quasi-judicial body"
- h) Is the Percy case the only case to be referred for special treatment? If not, where are the Terms of Reference for any additional inquiry/s? What are the criteria for such additional case/s to be loaded onto this part-time body, and can any Diocese or aggrieved party seek such 'special treatment' for their case to be so reviewed? If not, why not? What is the channel for such work to be delivered? Can the ISB refuse? Pastorally how are members to be supported to

avoid them being bullied or cajoled into undertaking work beyond their capacity and competence?

- i) Was there any budgetary discussion by the Archbishops' Council in terms of either additionally resourcing the ISB, or contrasting and/or considering the comparative costs of a fully independent lawyer-led review before asking the ISB to undertake the Percy casework? Is there a financial limit imposed by Archbishops' Council on what can be spent by the ISB upon this review and if so, what is it?
- j) Why is it necessary to have the ISB, which evidently 'reports to the NST,' report on why a single brief incident, characterised initially by the Oxford DSA as possibly a matter contrary to harassment policy, was treated as a safeguarding matter at all? Both Miss Jeune and Dr Percy are in full agreement that she is a highly-educated, competent adult without vulnerability, who has given an interview to the *Daily Telegraph* (on 14 May 2022) in which she expresses resentment: she declares that she was insulted at being considered incapable of making such an allegation herself. Given the above, is it not self-evident that safeguarding was indeed 'weaponised' by third parties for ulterior motive? Is it not incumbent upon the NST to 'cut out the middleman' and explain to Archbishops' Council and all parties publicly how Church procedure came to be manipulated? Only the NST and the manipulators know the facts. Does the NST not owe a duty of transparency and accountability to all members of Archbishops' Council direct?
- k) Given that virtually all these matters have been foreseeable agenda items for many months, why were the terms of reference necessary for a 'Phase Two'—presumably including that of greater engagement with case engagement for the ISB—not prepared well in advance and presented for approval by General Synod in February? On what basis does Archbishops' Council believe that the part-time ISB has developed the necessary skills and experience in the short period since Dr Percy delivered his critique of the Church's shortcomings after leaving Christ Church at the end of April? (It is to be noted that the statement on the CofE website on 24 January 2022, announcing the appointment of the third member of the ISB, Steve Reeves, said: "Members work two to three days a week for the ISB. All three have other commitments in the safeguarding world.")
- l) The Church has habitually resorted to 'Learned Lessons Reviews' and the current ISB inquiry appears to be little different in character: was the attention of Archbishops' Council specifically drawn to the critique of the defects within

this traditional approach re the Devamanikkam Review as articulated by public inquiry specialist Kate Blackwood QC on the BBC 'Sunday' programme on 4 August 2019? Listen here from 43:50 mins:

<https://www.bbc.co.uk/sounds/play/m0007b3r>

- m) IICSA criticised the Church for prioritising reputation management in its responses to complaints against itself. Does Archbishops' Council understand the concern that the ISB has selected as its principal advisor, a lawyer whose expertise is presented on his firm's website as *"representing high profile individuals, charities and organisations facing sensitive allegations often of a sexual or physical nature. In this discrete area of practice, he manages adverse publicity for individuals and companies facing sensitive allegations of abuse and/or negligence providing strategic guidance on handling issues as well as managing reputational risk."* What message do Archbishops' Council members think this conveys to neutral observers?
- n) The Devamanikkam Review, the Makin Review, and the Fr Alan Griffin Review all relate to relatively simply stated issues and are nevertheless all significantly overdue. In contrast, the Percy case presents multiple issues of law, a large number of prospective future respondents, and a currently unknown quantity of relevant documentation; it will require knowledge of Church structures, jurisdictions, and powers. Furthermore, Christ Church is an anomalous 'Peculiar' with its own idiosyncrasies, not obvious to outsider. The three ISB members are drawn from outside the CofE culture and institutions, which are so complex that the Secretary General's thorough explanation thereof for IICSA ran to 47 pages. Has Archbishops' Council undertaken a serious consideration of whether the ISB's current confidence in delivering its report in accordance with its timetable represents commendable brisk efficiency or a naive and superficial understanding of the complexity of the task?
- o) What is the fastest period to date that any CofE review has passed through the process of 'Maxwellisation'? Does the current ISB assessment, that its lengthy and detailed work involving potentially dozens of participants can pass through the complex process of Maxwellisation within 24 hours, lead Archbishops' Council to review its confidence that those devising, approving, and adopting the Terms of Reference have any realistic experience of the processes involved?

- p) The ISB lawyer, Andrew Caplan of Plexus Law, has confirmed to Dr Percy, whose story and complaint this is, that he played no role in devising the Terms of Reference and that Dr Percy is not being treated as the complainant within this review. Who then, is the ‘complainant’ referred to anonymously in paragraph 4.2 of the Terms of Reference? When and how does Archbishops’ Council propose to address the specific complaints of Dr Percy? If it is the Council’s intention to ignore Dr Percy’s allegations of bullying which are plainly in the public domain, will Archbishops’ Council please say so unequivocally.
- q) Dr Percy has passed his concerns to members of Archbishops’ Council on various occasions during the currency of the dispute, not least complaining of the same lawyers and PR firms acting simultaneously for his litigation opponents and the Church which was managing and judging the disputes. Does Archbishops’ Council regard this as a satisfactory state of affairs, consistent with ethical behaviour, natural justice, Nolan principles, and the terms of the Human Rights Act?
- r) Given the seriousness of the allegations, which have self-evidently spurred urgent reaction by the Church once placed in the public domain, did any trustee at Oxford Diocese or the Archbishops’ Council file a serious incident report with the Charity Commission, concerning Dr Percy’s complaint, in accordance with their trustee duties?

Given the issues raised herein, we are bound to ask and require Archbishops’ Council to pause this review immediately and consider carefully whether its decision to proceed in this manner can properly be said to have taken into account all that it ought to have taken into account, or taken into account aspects that it ought not to have taken into account - not least expediency and short term public relations presentation.

In short, we believe that no reasonable body, taking into account the law and the facts (especially the constitutional enmeshments of the ISB as a creature of the Archbishops’ Council) could reasonably have come to the conclusion that the current arrangements for addressing Dr Percy’s serious allegations against the Church, are better placed to settle widespread concerns inside and outside the Established Church, than a proper, unambiguously independent, inquiry, chaired by a senior lawyer, suitably resourced, timetabled, and advised.

The significance of these concerns is not limited to the details of the Percy affair: it raises serious issues of how the Church institutionally handles, mishandles or covers-up, allegations of bullying by or against its clergy. Addressing these

concerns through the case study of the Percy case requires a review of both safeguarding and disciplinary structures, not least to inform the ongoing review of the CDM process.

Such matters of grave importance are beyond a new body currently inexperienced in devising, structuring, and managing any inquiry, let alone one of such complexity. Three short months ago the ISB publicly denied that it had this competence. For Archbishops' Council to assert that it now has that capacity is not publicly credible and to proceed with this review, under this body and the current Terms of Reference, would be a dereliction of its duties of good Governance.

Following the IICSA hearings, the world beyond the Church is watching. The Percy case is likely to be a very public case study of whether the Church of England can be trusted to deal with complex safeguarding cases and related matters. It is unlikely that authorities beyond the Church will tolerate another sub-standard investigation.

Yours sincerely,