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5 August 2022

Dear Ms Earner

Archbishops' Council and the Independent Safeguarding Board

1 I have previously written to you expressing concern at the failure at both the national and diocesan levels of the Church of England, the Established Church, in relation to the most basic of individual and corporate trustee duties, that of identifying the need for, and thereafter, submitting a serious incident report to the Charity Commission in the familiar case of Dr Percy, a case that plainly required one on receipt of Dr Percy's clear letter of complaint.

2 What is especially concerning is that in the formal answer to a question raised at General Synod on the subject in July, there was no recognition of error, nor even an attempt to suggest that such a report was not necessary, because the Commission already knew of the problems. Neither was it resisted upon the basis that this was simply an administrative oversight: what we had was a plain failure to recognise that there has been a clear breach of the requirement of charity law and trustee duty by Archbishops' Council and its members.

3 I indicated in my earlier letter that there was a further area of concern about the failure of the Church to exercise due diligence in the processes which have established an "Independent Safeguarding Board" (ISB), which is being revealed within the "test case" of Dr Martyn Percy.

4 Since I wrote that short letter there have been further developments, including the stepping back of the Chair of the ISB yesterday, but even before that, a number of people had made contact with me, both directly and indirectly, underlining that even after the evidence at IICSA, and assurances to the Charity Commission and to IICSA, the handling of complaints remain highly unsatisfactory, both acutely and chronically. Such continuing correspondence makes clear to me that the measures being undertaken to address the concerns raised during the IICSA processes are inadequate: I will address those matters fully hereunder.

5 The processes of rectification are being managed with the same familiar problems: presentation appears to be prioritised over substance, and for all the time and money expended on reform, the competence in the Church of England has not advanced when dealing with the higher levels of Church clergy. There is over confidence and under delivery, and this cannot continue.

6 You will have already seen the two letters which I and others have sent to the Archbishops' Council concerning the development of the ISB, which have only received a minimal reply to date. Dr Percy's lawyers have more recently sent to the ISB a lengthy, and in my view entirely accurate, critique of the utter failure of due process and basic competence in the establishment of the Church's response to the institutional bullying of Dr Percy. I understand that you have this letter also. It bears re-reading after yesterday's important stepping aside by the ISB Chair.

7 Although the Percy case, as the first to be referred to and considered by the ISB,¹ is the yardstick by which we are able to measure the current incompetence of the Church's response to such problem areas, it is by no means unique. A recently established website called "House of Survivors"² chronicles much material that is well worth a regulator's attention of what the survivor experience looks like. It is, in my view, both accurate and responsible. I offer, additionally, three representative examples.

8 First, a 5 year delayed "learned lessons review" into the complaints of Fr Matt Ineson is not functional because the original complainant refuses to co-operate with a review that he regards as further bullying, its terms having been imposed upon him rather than mutually agreed with the abuse victim without sensitivity, and also because, like all such reviews, it does not attempt to grapple with the primary issue of bad practice by the (former) Archbishop of York and several bishops, including the current Bishop of Oxford, who is involved also in the Percy case. Each bishop has thus escaped comprehensive and independent inquiry or censure, the Bishop of Oxford now twice.

9 Second, the Makin Review into the abuse by the late John Smyth QC is now 795 days overdue, has cost the best part of £1m, and is unlikely to report for many further months. It has not been well project-managed, and despite many names of those who knew but ignored/covered up the scandal, being known and reported to the National Safeguarding Team (NST), not a single member of complicit clergy has been suspended, as promised by the Archbishop of Canterbury to victims.

¹ See <https://www.churchofengland.org/safeguarding/safeguarding-news-releases/christ-church-safeguarding-review>.

² <https://houseofsurvivors.org>

10 That scandal was first reported to Lambeth Palace in 2013. Some senior clergy who plainly knew of the risks Smyth presented, after he moved to Africa where he continued to abuse, have already been given immunity from disciplinary action, even before the inquiry has been concluded and the full facts have become known.

11 That decision may or may not be correct, but the evidence ought to have been comprehensively and independently compiled before such immunity was conferred. The decision appears to have been made at the level of the acting National Director of the NST. It is at least questionable whether such a decision was made at the appropriate level of responsibility.

12 Third, the recently published Robson Review into the death of Fr Alan Griffin is important reading. The review³ appears to have been well conducted, partly thanks to the role of an external experienced steering group overseeing its work, to which the reviewer specifically draws attention and pays tribute in the report.

13 In marked contrast, the novice members of the ISB undertaking the designing and execution of their very first review, have entirely overlooked the value of such a body to ensure quality assurance, and the value of adopting a collegiate approach to shaping the Christ Church/Percy review. They are undertaking this complex inquiry having never set one up before. The technical deficiencies are set out in the letter of Dr Percy's lawyers which are herein adopted and affirmed.

14 Major areas of the Percy scandal have been left entirely out of consideration by the ISB under their wholly inadequate, self-devised Terms of Reference, and the Archbishops' Council has failed to even attempt to address those aspects which have been declined by the ISB under its restricted self-selected remit. Lack of effective episcopal accountability thus continues to be hard-wired into both the current system and the embryonic new one; structurally, culturally and philosophically.

15 The Archbishops' Council was asked for a comprehensive response to the highly detailed, complex and serious allegations reported by Dr Percy. Instead, it has assented to a partial inquiry of some of the issues voluntarily offered as being within their capacity, by three part-time members of a body evolving its understanding of its role. The capacity to deliver a proper response is now compromised by the stepping back at the request of

³ <https://255urd2mucke1vdd43282odd-wpengine.netdna-ssl.com/wp-content/uploads/2022/07/AG-report-Final-Report.pdf>

Archbishops' Council of the Board's most experienced member. The ISB still has other work to do to complete its brief. It is now even more seriously underpowered in its capacity to do what is required of it. More on this anon.

16 Whether by design or accident, this anaemic “Learned Lessons Review” serves as a firewall for those commissioning it (the Archbishops' Council and the Bishop and Diocese of Oxford), insulating both institutions—and indeed the Cathedral Authorities—from the more detailed and necessary scrutiny that the Percy case requires if it is to serve any useful purpose. The Church (i.e., those commissioning the report) is deliberately not matching the Charity Commission assiduity in its own examination of the role of the Christ Church College governing body.

17 It is accordingly likely that Dr Percy will neither co-operate by offering submissions or making relevant paperwork available. In such circumstances the reviews of both the Ineson and Percy cases cannot be other than incomplete and unsatisfactory. Put simply and frankly, such processes function as “cover-ups” and cannot carry confidence. It does not have to be like this. A proper alternative that will engage confidence and competence can exist if proper responsibility is exercised.

18 As a result of drawing such issues to public attention in various fora, I have personally been repeatedly approached, previously by survivors and latterly by and on behalf of priests who have suffered bullying in the Church in similar ways to that suffered by Dr Percy. Some have similarly suffered health consequences. Some feel unable to speak whilst remaining in clerical post, whilst others have been gagged within their settlement/exit terms by the unregulated use of Non-Disclosure Agreements (NDAs). I must acknowledge that both Archbishops have publicly deprecated the use of such legal methods of silencing dissent. They may be being currently assured that NDAs are no longer used, but this may be because they are currently rebranded as “confidentially clauses”. Such sleight of hand is not unfamiliar to others who complain.

19 Because of my public role as an open critic at General Synod of the Church of England's inadequacies in these areas, I receive regular unsolicited correspondence detailing parallel stories of Church incompetence and worse. The stories show dots that need to be connected, but they rarely are, neither can they be, for a variety of reasons. Many correspondents have been silenced by legal or practical circumstances, and/or cannot or do not trust the Church.

20 In some cases there is a legal “Catch 22”. They would like to tell or engage the Archbishops even though both will deny effective executive control of

their bishops. We are told, contrary to popular understanding, that the bishops are autonomous and beyond the Archbishops' formal control. Yet there is another twist.

21 The Archbishops remain part of the internal judicial processes, not least judging each other in the event of complaint about them. Sometimes the complaints relate to matters within procedures of the Clergy Discipline Measure which are confidential. Thus, information is siloed, dispersed and silenced within the system. Even the Archbishops cannot be told how bad things are for a variety of "legal reasons". This is very convenient in delivering "plausible deniability" of power and knowledge.

22 One correspondent usefully described the Church culture as one of evolved beneficial helplessness which protects the institution from having honestly to face its failings when it comes to the senior levels, not least the episcopacy.

23 My correspondents turn to me because they trust me to receive and hold confidentiality. They ask me to do something about it, but it is, in my view, impossible within the Church's current structures of accountability. I believe that now is the right time and occasion for me to help you to understand their stories and urge the Commission to intervene. Let me illustrate.

24 There are two cases which have been brought to my attention of critics being threatened with ruinous defamation action by Church lawyers for daring to call out bad practice in the Church. This is discreditable institutional bullying (i.e., Lawfare).

25 The Fr Alan Griffin report has a plain but unavoidable sub-text as I read it. Prevented (as always) by the terms of reference drawn by the Church, the reviewer is forbidden to name names, allocate blame, or hold anyone to account. This is in a Church that nominally proclaims the virtue of transparency and accountability but routinely fails to practise it in these areas.

26 It is impossible, in my view, to read the Griffin Report and avoid the sub-text that the reviewer, Chris Robson, is highlighting, namely the importance of accountability: I sense a palpable impatience and frustration that he cannot say more.

27 The Robson review does not "name names" but recognises that it is impossible to hide the identity of the principal persons whose involvement

significantly contributed to the tragic death. One is the Archdeacon of London, Luke Miller.

28 Shortly before the report was published, and with the electorate largely ignorant of his role in Fr Griffin's death, Archdeacon Miller was elected by the House of Clergy of the General Synod to be their Prolocutor, a significant role to speak on behalf of that entire body. It is likely that many have still not made a connection; some may have voted differently had they known of that skeleton in the closet. This is not an optimal situation in public life. One doubts a politician would be similarly shielded from accountability to their electorate.

29 In contrast, clergy who have been cleared of malicious allegations by bullying third party complainants are told that they are not permitted to share the written decision in order to clear their names in their parishes. Thus, those spreading gossip may continue unconstrained to assert that "there is no smoke without fire," whilst the document that refutes it is denied circulation by the victim of the bullying on pain of further disciplinary action. This is unfair and abusive.

30 In the Percy CDM case, the Bishop of Oxford declined to publish the entire, but appropriately redacted, Decision of the President of Tribunals, Dame Sarah Asplin, which clarified both the limited and specific character of the allegation and the judicial outcome. Bishop Croft had power to do so and thereby scotch some of the more lurid gossip in circulation. He refused, and the Diocese published a partial (in both senses of the word) account on its website. There is a pattern of such behaviour within the Church of England: the guilty are protected and the innocent silenced.

31 To conclude this section I make this observation. The Church routinely hides its failures by bishops and senior clergy both under unmonitored and unregulated NDAs and within anodyne 'Learned Lessons Reviews'. The Griffin review states this plainly. "It is clear that the London Diocese should consider wholesale change in its approach to accountability". What is true at a local level is equally true nationally. The Charity Commission can help us to achieve that by insisting on a comprehensive, competent, and truly independent review of the Percy case in which all issues of bad process are considered and all appropriate lessons are learned. If the implications of the Percy case are faced, many other cases will have their issues addressed and some measure of justice secured.

32 This is the appropriate point to make an important statement: there is no surer guarantee of future bad practice than fortifying the certainty amongst

those guilty of bad practice that they will never be held meaningfully to account for it. That is where we are currently within the established Church.

33 I have initiated a Private Members Motion (PMM) at Synod to debate this issue.⁴ If the Charity Commission could consider investigating such matters it would greatly assist these internal efforts to make transparency and accountability meaningful. With 60% of its members new to General Synod, there is considerable education to be done. It will be, at best, a very slow process to make advances through internal mechanism alone, not least within the structures within which we currently operate. Given the competing priorities of General Synod members it may actually be impossible. The Charity Commission can sharpen minds, re-order priorities, and make this happen quicker by intervention now. The current structures constraining the exercise of due diligence mean that these problems will not be solved without regulator intervention.

34 I am sharing this letter with some aggrieved parties and think you will see the full extent of the problem when those who have written to me share their stories with you on a private and confidential basis. I am inviting them to do so, so that you can better understand the widespread and deep malaise of which Archbishops' Council has long been aware, but as yet has been indecisive or evasive in its response. Its current nostrum, the ISB, is not currently fit for the purpose of addressing these concerns.

35 I turn now to that issue of the ISB.

36 My former General Synod colleague, David Lamming, and I were the draftsmen of what came to be known as the "Micah 6.8 letter," which was sent to you in May 2020. In that, letter we, and multiple signatories, flagged up many problems which helped initiate the ongoing debate within the Church on poor safeguarding process. We are aware that in response to the letter you have had discussions with Archbishops' Council. The proposed consequent solution is, frankly, unlikely to win consumer confidence, as shall be explained hereunder.

37 The purported solution offered by the Archbishops' Council is the Independent Safeguarding Board. We think there is a number of significant problems outstanding in relation to the creation of the ISB, its oversight, and its core competence. The Martyn Percy case happens to be the yardstick by which we measure the inadequacies, but the problems are deeper and much more extensive.

⁴ 'Independent Commission on Accountability' See: <https://www.churchofengland.org/about/leadership-and-governance/general-synod/private-members-motions>.

38 You will know that the Percy Case has engendered multiple high-level inquiries. There is the Christ Church ‘Safeguarding Review’ by the truly independent safeguarding charity, Ineqe. The Charity Commission has its own inhouse inquiries into the Christ Church Foundation, and the recently-established Dominic Grieve review of Christ Church College governance is plainly independent and of the highest calibre. The Solicitors Regulation Authority are inquiring into the role of Winckworth Sherwood and conflicts of interests representing various parties within the Church, the outcome of which I have been told by the SRA will not be available before October at the earliest. I am one of the complainants and have their consent to share that fact.

39 I have personally made a complaint about professional misconduct by a Christ Church trustee and don to the Royal College of Physicians, which has already investigated and upheld the complaint. I am a careful and responsible critic, and I and my colleagues are content with the probity of each of these other processes. If the ISB were remotely comparable in terms of quality and effectiveness, I and those I speak for would be happy to let them undertake their work unremarked. We cannot in good conscience do this.

40 It seems that at present, the investigation into the problems of Christ Church from the C of E point of view is simultaneously “too small and too big” for proper oversight, if the Charity Commission declines to become formally involved.

41 It is too small to warrant a statutory inquiry under the 2005 Inquiries Act, yet this ISB review falls woefully short of what is required if it is to address all the outstanding issues; it has specifically refused to attempt to do so. Not only will nobody be held accountable, but it has already been made quite clear that serious and important issues will be ignored by the ISB. There is no process currently proposed by Archbishops’ Council to address them elsewhere. They will not be covered within what is a narrow, under-powered, “Learned Lessons Review” of less than assured independence and quality assurance.

42 The result, therefore, is looking potentially and significantly asymmetrical; the dons within the Christ Church Foundation held effectively to account by the Charity Commission, but equally culpable clergy escaping investigation by ineffective process. Confidence in the regulatory process cannot survive such an unbalanced outcome.

43 How can it be otherwise when the Church process is commissioned by those specifically accused of malpractices? It will inevitably deliver an

inadequate product for, as Dr Percy's lawyers astutely observe, it will only receive evidence from those defending themselves: enjoying inadequate scrutiny and presenting only such evidence as they choose and withholding inconvenient truths.

44 This too, is cover-up. It will be announced that the "Independent" Safeguarding Board has reported, and that we should all "move on." That will settle nothing: neither should it.

45 The other separate reviews will probably be concluded after the ISB Christ Church review has been rushed through as currently planned, and there are ongoing and related processes under the Clergy Discipline Measure, which may also reference material that cannot currently be placed before the ISB for "reasons of confidentiality".

46 There emerge five themes from the recent history leading to this letter:

- i. Lack of transparency and effectiveness concerning the process in constituting the ISB.
- ii. A confusion as to what the ISB actually "is" as a matter of law.
- iii. Plain and evidenced lack of competence for the task.
- iv. A complete failure to exercise "due diligence" by both Archbishops' Council and General Synod as a scrutinising body in the creation of this body.
- v. A growing picture of "cover-up" as people noting our concerns in these areas are coming forward. Several are not able for good reason to "go public" at this stage, but might feel able to write to you initially on a private and confidential basis to share their stories. These tell me that they might be emboldened to speak out if convinced that they will be heard in a wholly independent forum, but do not regard the ISB in its emergent form and culture as suitable or trustworthy.

47 As the letters already sent to Archbishops' Council and shared with you indicate, I and other General Synod members are by no means clear by what constitutional process the ISB has been created and freed from accountability to either Archbishops' Council or General Synod. We have asked for clarification but never been given the audit trail for scrutinising authority being lawfully surrendered. That transfer of authority seems to us to be a *sine qua non* of a truly independent body. The various professional bodies such as the Solicitors Regulation Authority (SRA), General Medical Council (GMC), and Bar Standards Board (BSB) come to mind. It has been acknowledged on behalf of Archbishops' Council that there has been no Measure or other legislative process to empower the ISB to act free from accountability to

General Synod, neither has any proper process within Archbishops' Council been identified.

48 We would therefore urge you to press the Archbishops' Council urgently to make available to you both the internal processes, e.g. formal motions, background briefing papers, minutes of debates (including time spent thereon), by which they say that the ISB has been brought into being as a stand-alone fully autonomous body, together with the videos of each of the presentations and formal debates at General Synod by which Archbishops' Council asserts that there has been comprehensive due diligence in presenting the new body for full and thorough scrutiny responsibly and comprehensively exercised both within General Synod and beyond.

49 I believe you will be shocked at how "thin" that consideration has been and how little debate and scrutiny has been permitted. That is a key point. General Synod has been soothed and managed; it has not been encouraged to engage thoroughly and intellectually with its duties in this important field. There are presentations followed by a few questions. Opponents are offered neither time nor audience to explain the deficiencies now presented to you. This is not good governance on such a key matter for the Church.

50 Those taking these constitutional matters seriously are concerned that there has been no lawful process to establish this board with the independence claimed for it, and our questions remain unanswered. We accordingly call on you as the charity regulator to investigate this serious issue.

51 We have sought to resolve the matter by internal correspondence, but meanwhile the ISB is ploughing on with the Christ Church/Percy review without that fundamental question of constitutional due process resolved. We believe that the Charity Commission alone is equipped to ascertain the authority (if any) for ISB independence. If it is not independent, that, of course, raises equally problematic and important separate issues. Will you please consider and determine the degree to which this body can properly be described as "independent"?

52 At the July 2022 General Synod, I specifically asked the Chair of the ISB to clarify which is the legal entity to be sued in the event of serious mistake; her answer, available on the YouTube channel of the Church of England General Synod, was worryingly instructive. It began with reference to the Archbishops' Council, then veered to the need to take legal advice and concluded with reference to an insurance cover. Yet it was not made clear whether the cover was that of the individual members of the ISB in their

several independent contractor roles, or perhaps a separate stand-alone ISB joint policy . The plain answer for a properly independent body would not have been so equivocal but a plain statement “the buck stops here.” The equivocation was not reassuring.

53 Subsequently, I understand that Dr Percy has indeed sued the ISB, which has raised the defence that it is not a legal constituted “person” in law; this does not sit easily with the enthusiastic assertions to General Synod that it is a fully independent entity. Even more significantly, Dr Atkinson reported to Synod (and this is all available on YouTube) that those attending the immediately preceding fringe meeting had been invited to contribute to the process of conceptualising what the ISB should become. The ideas considered (and I was present) included that of Regulator, Inspectorate, Ombudsman and “ACAS with Ombudsman.” General Synod Members were invited to write in “if you have notions of what this should look like”.

54 What is surely crystal clear from this is that the ISB, at present , has no clearly established identity, contrary to all the “hype” around its independent status. A body in such a non-specific amoebic form is no fit entity to undertake the specific investigation of the most complex case to arise in the C of E for years, neither is it currently offering any help to those who are approaching me at present with equally important issues.

55 Archbishops’ Council is currently hiding behind the legal fiction that these are now all matters for the ISB, when it is plain that there is actually no “body” to whom the buck can be lawfully passed for competent resolution.

56 The amorphous character of the ISB is illustrated by the fact that the initial Terms of Reference have had a new fifth area of activity (the conduct of reviews) introduced into it by uncertain process. The role of the ISB had left General Synod in February as essentially a scoping exercise only. Where investigatory powers came from is unclear; if from Archbishops’ Council then it plainly retains a controlling power and the ISB remains its creature rather than “independent” as claimed.

57 The letters to Archbishops’ Council which you have already been sent by Synod members and Dr Percy’s lawyers, cover points ii & iii above adequately. There is massive evidence of lack of due diligence. A competently scrutinised and executed process does not result in so many failures and omissions of basic requirements.

58 Equally, there is a number of people asserting that the Church is engaged in cover up over the Martyn Percy matter, but of no less seriousness are the

other cases which are coming forward. I am inviting those hesitant persons to write to you directly on a private and confidential basis so that you may hear directly the character of stories that are routinely brought to me at present. Whether by threats of defamation action, by sidelining CDM proceedings against bishops indefinitely, by NDA use, or by fixing the terms of reference of learned lessons reviews to prevent proper accountability, there are multiple strategies employed whereby senior Church figures are being shielded from proper accountability. The ISB is touching none of this.

59 Dr Percy's story is important, but it is increasingly becoming clear that this is but the tip of the iceberg. A recent conference on bullying in the Church received the statistic that one in ten priests encounters bullying behaviour on a weekly basis, not infrequently by senior colleagues.

60 If that is remotely true, we need to understand the extent of it and, more importantly, whether the ISB as currently constructed is part of the cure or an obfuscating part of the problem. The answer is nowhere near as self-evident as one might suppose it to be.

61 Yesterday we learned that the Chair of the ISB, Maggie Atkinson, has been required to step aside following a finding by the Information Commissioner of a confidentiality and data breach. Dr Percy and others had already expressed concern that the ISB and NST remained enmeshed and that the protocols for data handling were inadequate. I understand that there are other complaints of similar character. This throws the ISB into crisis:

62 First, the announcement was posted on the C of E website; the Bishop of Rochester, the lead bishop on safeguarding, the Rt Reverend Jonathan Gibbs, stressed "the rights of individuals to protect their data and our duty to use that data properly in any aspect of our work is paramount".⁵

63 Second, as appears from Bishop Gibbs's statement, a Serious Incident Report has been made to the Charity Commission by Archbishops' Council, yet surely if the ISB is "fully independent" as was presented to General Synod, the responsibility and response lay with the ISB.

64 Third, it appears that the Church was taking responsibility for asking the Chair of the ISB to step back while awaiting a response from the ICO. This seems to confirm the critics' view that the parent body, Archbishops' Council, retains the ultimate responsibility for disciplinary matters. This is unsatisfactory, given that the Archbishops' Council and its NST were

⁵ <https://www.churchofengland.org/safeguarding/safeguarding-governance/statement-isb-lead-safeguarding-bishop>.

necessarily the subject of Dr Percy's initial complaint considered by the ISB and written out of its terms of reference.

65 Fourth, we have just learned that the ISB's legal costs are met directly by Archbishops' Council.

66 It is very hard to see how such an ill-conceived and patently flawed body can continue to carry responsibility either for the complex Percy Review or to properly consider those of similar and equal importance brought by others. What hope can they have of justice in any reasonable time frame? Do they have to wait ten years like the Smyth victims?

67 I should be grateful to hear from you in due course that the Commission will urgently resolve to scrutinise the ISB, the Archbishops' Council and the Bishop and Diocese of Oxford, with the same degree of thoroughness which I understand that you have brought to bear on the Christ Church Foundation.

68 These Church bodies are no less problematic, and even more opaque in the ways they function, as the difficulty we have encountering in getting straight answers to straight questions has already illustrated.

69 We have reached a point of crisis and reputational humiliation in these matters, and early intervention by the Charity Commission is, in my submission, essential. The Percy Review needs to be removed from the ISB and replaced by the same kind of fully independent and fully resourced lawyer-led review that the BBC has just announced in the Tim Westwood case. The ISB must be sent "back to the drawing board" according to the principle "when you are in a hole - stop digging".

Yours sincerely,

Martin Sewell
Member of the General Synod