

Ecclesiastical Law Society, Northern Province Lecture, 11 October 2018

Sir Philip Mawer on the role of Independent Reviewer

On Thursday 11 October 2018, the Ecclesiastical Law Society was delighted to welcome Sir Philip Mawer as guest speaker at the third in its series of Northern Province lectures. A transcript of Sir Philip's lecture on the office of Independent Reviewer under the Declaration on the Ministry of Bishops and Priests (Resolution of Disputes Procedure) Regulations 2014 is provided below.

The Role of the Independent Reviewer

When Mark Hill approached me at the start of this year with the invitation to deliver this, the third ELS lecture in the Northern Province, I confess to having been both surprised and flattered. Surprised because I had not thought that my reflections on the role of Independent Reviewer several months after I had left it would be of great interest to anyone. Flattered because I have always held the work of the ELS and its members in high regard and know how much you collectively contribute to the good governance and wellbeing of the Church. I confess that I was a little nervous too. So my first instinct was to decline. But Mark was insistent, and here, for better or worse, I am.

I have grouped these reflections – for that is what they are; anyone wanting to hear a rigorous academic treatment of the subject tonight is going to be disappointed – in four parts. First, I thought I should say a bit about how the role came into being and what expectations surrounded it. Second, I will identify some of the key features of my own approach to the role. Third, I will say something of the substance of the role during the time I occupied it, focussing on the various matters I was asked to examine. And finally, I will offer you some brief concluding reflections, derived from my experience.

Origins and Expectations

As veterans of the Synodical process which culminated in the passage of the Measure enabling the consecration of women as bishops in the Church of England will know, the office or role of Independent Reviewer was a product of the re-think which followed the failure of the first attempt at legislation. This re-think essentially paved the way for the successful passage of a much simplified Measure by introducing a package of largely non-statutory arrangements, centred on the House of Bishops' Declaration on the Ministry of Bishops and Priests. Together the various elements in the package which made up this 2014 Settlement set out how the Church would handle the pastoral and other consequences of consecrating women as bishops.

At the heart of the package and of the House of Bishops' Declaration are the 5 Guiding Principles, which I will not repeat tonight but which the Declaration emphasises *"need to be read one with the other and held together in tension, rather than being applied selectively."* Importantly too, the Declaration says that the outworking of these principles needs to be accompanied by the observance of three supporting principles – those of simplicity, reciprocity and mutuality – if the objective of the Declaration is to be achieved. Paragraph 4 of the Declaration identifies that objective as being to ensure that *"the welfare of the whole Church of England is sustained in all its theological depth and breadth"*.

The essential purpose of the whole package of arrangements therefore is to enable the Church of England to retain its unity in ministry and mission and to manage the stresses and strains which will inevitably arise from time to time, given the continuing division in the Church on the matter of women priests and bishops. The Declaration said that the House would make Regulations under Canon providing a procedure for the resolution of disputes that might arise from the arrangements made by the Declaration.

The development of this procedure was the responsibility of the Steering Committee which oversaw the Synodical handling of the Measure and the rest of the 2014 Settlement. The Committee subsequently reported that it regarded the preparation of the Regulations as *"the most innovative part of our work"*. In designing the disputes resolution procedure, it drew in particular on the knowledge of two of its members and one of its advisers who had particular experience of the development and operation of Ombudsman-type mechanisms.

The outcome was the establishment of the role of Independent Reviewer. Justifying its approach, the Steering Committee said:

"After considering various possible models we wish to recommend an Ombudsman-type scheme.....The advantage of such a scheme is that it can be procedurally simple, independent of those whose actions are being reviewed and expeditious. It does not need to involve the formality of a more tribunal- or panel-based process. But it can provide a trusted and authoritative way of determining whether proper processes have been followed."

The Committee continued:

"The success measure of such a scheme is not ultimately the number of cases it handles but the impact it has in acting as an incentive to all concerned to resolve disagreements by discussion between themselves. Where cases do need to go through the review process it is important that the outcome secures closure." (Steering Committee Report GS 1924, October 2013)

Other key considerations identified by the Steering Committee were:

- The Independent Reviewer would need to know and understand the Church of England but not hold current national or diocesan responsibilities.

- He or she would not necessarily need to have judicial experience but would need to be judicious.
- The Reviewer should not seek to second-guess decisions which were properly for a bishop or others to take. *“His or her role”*, the Committee said, *“is to check process and fairness”*; that is that the Principles and provisions in the House of Bishops’ Declaration have been equitably followed.

Like other ombudsmen, the Independent Reviewer was given no powers to impose penalties as a result of his or her findings. The Steering Committee believed that the publication of reports critical of actions taken would in practice have significant impact. It confined the right to bring a grievance about the handling of a specific matter to the PCC of the parish concerned. But it also provided that anyone should be able to register concerns about the operation of the House of Bishops’ Declaration with the Independent Reviewer, following which the Reviewer could, at his or her discretion, undertake an inquiry into the subject matter of the concern. And, the Committee said, the Independent Reviewer should be obliged to report annually to both Archbishops on his or her work.

All of these proposals by the Steering Committee were reflected in the Regulations – the Declaration on the Ministry of Bishops and Priests (Resolution of Disputes Procedure) Regulations – which the House made in 2014. The Regulations summed up the approach the Reviewer was expected to take by providing in Regulation 7 that he or she must:

“a) act impartially and fairly; and

“b) have regard to the ‘five guiding principles’ referred to in paragraph 5 of the House of Bishops’ Declaration.”

The procedure to be followed by the Reviewer when examining grievances from a PCC or inquiring into concerns under Regulation 27 is outlined in the Regulations and I see no point in repeating it tonight. As Independent Reviewer, I sought to fill out this brief description by producing, after consultation, a set of guidance notes on how the procedure would work in practice. I intended these to help those who were either bringing a grievance or concern, or were the subject of one, to know how I would approach my task. I had done a similar thing early on in my six year stint as the Parliamentary Commissioner for Standards and in other similar roles. Of course, I have been careful to say that the notes are simply a guide and not a set of rigid rules. Inevitably, how the Independent Reviewer decides to proceed will depend a good deal on the circumstances of each particular case and will evolve as more experience is gained over time.

My Approach to the Role

The success or failure of any ombudsman depends on his or her ability to build trust and confidence. Trust and confidence do not come through writing reports that please

everyone. In the nature of these roles, that is impossible. Trust and confidence develop through demonstrating competence, consistency of approach, fairness and impartiality.

I learned much of the approach I have taken to all the regulatory roles I have filled when I was Secretary to Lord Scarman's inquiry into the Brixton Disturbances of 1981.

Transparency and openness about process; confidentiality during the course of an inquiry; courtesy in handling all witnesses, however trying you may find them; rooting everything you say in your report in the evidence you have received; holding yourself accountable to others for the way you undertake the role – these are among the lessons I learned from that most distinguished judge. You will be able to decide for yourselves whether or not I proved an apt pupil.

I also learned one other thing of great importance. That is that the role of any judge or ombudsman is, at the end of the day, to build up rather than to tear down. In such a role, you carry a heavy burden of responsibility, not just for individual reputations but for social (or in the case of the Church, ecclesial) cohesion. A Reviewer must certainly be fearless in calling out personal or institutional failings. However, when doing so, your job is ultimately to help the individuals or institutions concerned to learn from their failings and to emerge the better for it. In so doing, you help them to avoid problems arising in the first place rather than waiting until they escalate to the level of a complaint or grievance.

That is why – in my three Annual Reports as Independent Reviewer to the two Archbishops as well in my reports on individual cases – I sought to identify good practice and always to suggest ways in which the Church might address the various problems I identified.

The Work of the Independent Reviewer

Of course, proceeding in this way does not guarantee that your reports will escape mixed reviews. Indeed, mixed reviews are inevitable where the issues examined are as divisive as that of women bishops has proved to be in the Church.

The first expression of a concern I examined as Reviewer exposed fully the depth of the divisions within the Church which continue to mark this issue. In April 2015, the then Chair of WATCH (Women and the Church) wrote to me expressing concern about the number of **Chrism Masses** that were to be held that year, as in former years, at which bishops of The Society of St Wilfrid and St Hilda were to preside. She argued that such Masses were inconsistent with the Five Guiding Principles and the call to promote mutual flourishing in the House of Bishops' Declaration.

Whilst understanding the concern expressed by WATCH, I did not find the Masses in themselves a breach of the Principles. However, in concluding my report, I emphasised the importance of finding suitable opportunities from time to time to demonstrate publicly the continued unity of a diocese in terms of both jurisdiction and mission. I also drew attention to a suggestion by Ms Cotton that a forum was needed in which those of differing

convictions on the ordination of women as bishops and priests could together discuss what, for example, mutual flourishing means for each of them and for the Church.

My second report, also in 2015, followed an expression of concern by the Director of Forward in Faith about the licensing of a woman as an Associate Priest in the **North Cheltenham team** despite the fact that the team benefice included the parish of All Saints where, by virtue of paragraph 43 of the House of Bishops' Declaration, the PCC was to be treated as having passed a resolution requesting, on grounds of theological conviction, that arrangements for Episcopal oversight should be made for the parish in accordance with the Declaration. I found that, by failing to set out the precise scope of the intended ministry of the priest (and of another woman priest in the team operating under a similar licence), the bishop responsible had failed to make the appropriate pastoral and sacramental provision for the parish under the terms of the Declaration. I went on to recommend that appropriate consultation and subsequent clarification of the intended role of such priests should be undertaken in similar cases in future.

This report led to some further correspondence with the Director of Forward in Faith in which, following legal advice, I was able to clarify that it is possible for a licence issued to a member of a team ministry other than the Team Rector to qualify as well as amplify the scope of that member's ministry in the team. Similarly, following correspondence with the Team Rector of North Cheltenham, I set out my understanding of the legal and canonical status of the three Provincial Episcopal Visitors, as they were formerly known, following the House of Bishops' Declaration. In both cases, I published the relevant correspondence in my Annual Report to the Archbishops, thereby making it widely available.

Certainly the most demanding inquiry I conducted was that last year into the failure of the nomination of the Bishop of Burnley as diocesan Bishop of **Sheffield**. This inquiry, made at the request of the two Archbishops, proved to be both exhaustive and exhausting. Running to 206 paragraphs plus 24 appendices, the report is certainly not a quick read, although I hope it is an easy and an interesting one. Altogether, in addition to the written submissions I received, I took oral evidence from 76 different people in 40 separate meetings in Sheffield, York, Oxford and London. From start to finish, the inquiry lasted some 6 months.

You will not, I hope, expect me to summarise such an exercise although I shall be very happy to answer questions about it. I will simply say that the way I conducted the inquiry and my report are, I believe, consistent with what I said earlier about my approach to the role of the Independent Reviewer. Following my report's publication, it was subjected, inevitably, to a variety of criticisms. One focussed on my decision not to publish evidence given to me in confidence by a considerable number of people in the Diocese of Sheffield and those involved in the work of the Crown Nominations Commission leading up to the nomination. I make no apology for that decision. I simply would not have received the evidence in the first place if I had not been able to give those who were reluctant to speak to me on the record an assurance of anonymity.

One or two others expressed concern about some passages in the report which they felt were critical and which they argued I should have shared in advance with those mentioned in the passages. Let me make clear. I am well aware of the requirements of justice and was careful to share with those concerned the draft sections of my report in which I set out my findings of fact based on the evidence I had received. But disclosing every part of a draft report in advance can so slow down the pace of an inquiry as substantially to reduce its utility, as the story of the Chilcot Report arguably shows. At the end of the day, I believe this has to be a matter for the judgement of the Reviewer, who has to balance the conflicting considerations as they arise in the context of the particular case.

Inevitably, yet others criticised my theology: when has a report on a church matter ever been written without attracting some criticism of this sort? Usually this criticism indicated that the person concerned felt I had not sided with their particular theological opinion. Underlying much of this criticism, however, was a deeper disagreement by my critics with the Five Guiding Principles in the House of Bishops' Declaration. I set out my own approach briefly in paragraphs 205-206, the concluding paragraphs of my report. The Five Guiding Principles and the 2014 Settlement which enabled the consecration of women as bishops are a package.

"If there are tensions," I wrote in paragraph 205, "If there are tensions (some argue, inconsistencies) within it, that is because the Settlement sought to answer the question how those of differing views on the issue of women's ordination could continue to live together within the Church of England for the sake of the Gospel. At heart, the Five Guiding Principles are about relationship, about how relationships (and with and through them mutual trust) can be sustained in the face of fundamental differences of theological understanding on the issue of women's ordination."

I have mentioned these three grounds of criticism in the interests of honesty and openness. Nonetheless, it would be right to add that the response to the Sheffield Report has been overwhelmingly positive, even on the part of some who expressed criticism of some aspects of it. Even when they disagreed with my analysis, no one believed that what happened and the issues it raised had simply been glossed over. The four recommendations I made at the end of the report have all been accepted and followed through. In the Diocese of Sheffield itself, the report is said not only to have stimulated mutually respectful debate but to have contributed to the ongoing process of healing in the diocese.

I end this tour of the matters I dealt with during my three year term as Independent Reviewer by referring to the fact that a number of issues put to me never reached the status of a concern requiring formal examination under Regulation 27. (You will have noticed that all the cases on which I reported were handled under Regulation 27; none were the result of a grievance brought to me by a PCC.) There is an intermittent flow of correspondence reaching the Reviewer's office: where this raised wider questions I always referred to it in my Annual Report. An example of this is the letter I received last year from a member of a

PCC in the Diocese of Chichester who was concerned about the appointment to his parish, which had not passed a motion requesting that arrangements be made for it under the House of Bishops' Declaration, of a priest who could not accept the ministry of women. I could not examine his concern because it did not arise from the arrangements for which the House of Bishops' Declaration makes provision. Nevertheless I recommended to the Archbishops that the issue of pastoral practice raised by what had happened – in essence, whether or not a PCC should have a right to express a view in advance on whether or not the parish would be willing to accept the appointment of such a priest - should be further examined.

This case also raised a wider question about the scope of the Independent Reviewer's remit. The House of Bishops' Declaration essentially makes arrangements for those who, on theological grounds, cannot accept the ministry of women as bishops and priests, rather than for those who can. However the Five Guiding Principles - and the three supporting principles of simplicity, reciprocity and mutuality (or mutual flourishing) - are supposed to be reflected in the conduct of everyone in the Church, whatever view they take on the issue. As I said in my final Annual Report, *"I am uneasy about the Independent Reviewer becoming seen solely or very largely as a channel of potential redress for those who on theological grounds cannot accept women's ministry as bishops and priests as opposed to a channel through whom the application of the Five Guiding Principles may be considered whatever the circumstances in which they are relevant"*. Accordingly I recommended that this matter of the scope of the Independent Reviewer's remit should be further considered by the Archbishops and the House of Bishops.

Concluding Reflections

So what are my concluding reflections on the role of the Independent Reviewer? Conscious that further refreshment awaits you soon, I will keep them brief. The Independent Reviewer cannot be expected to resolve a debate which has caused deep disagreement in the Church for many decades. It is not for the Reviewer to adopt one or other theological position on this issue. If, in the end, the 2014 Settlement proves incapable of being sustained, it will no doubt be for the Reviewer to say so (although I suspect that will already have become apparent to all). Unless and until we reach that position, the Reviewer's role is precisely that laid down in the House of Bishops' Regulations – to operate the disputes resolution procedure which the Steering Committee responsible for the Synodical handling of the package rightly saw as an essential component in the Settlement.

The key word of course is 'package'. As I said in my Sheffield Report:

- (a) *"The 2014 Settlement was the conclusion of a legal and political process. It was not the conclusion of a theological debate....."*
- (b) *"It was a package, the various different elements in which were critical to securing the 'settlement'. Try to unpick the package and the basis for the settlement is immediately called into question."*

- (c) *“The critical contribution which the House of Bishops’ Declaration and the Five Guiding Principles made to the Settlement was that they attempted to answer the question how those of differing views on the issue of women’s ordination could continue to live together for the sake of the Gospel. At heart, they are about relationship, about how relationships (and with and through them, mutual trust) can be sustained in the face of fundamental differences of theological understanding on the issue.”*

The Reviewer’s role is honestly to confront those situations in which relationships break down; to criticise where justified; and to do what he or she can to promote the restoration and continuation of healthy Christian relationships. I hope that in the various ways I have described, I managed as Independent Reviewer to contribute towards attaining that objective. In due course no doubt, comprehensive information on the implementation of the Settlement will be obtained. For the present we may take some comfort from this assessment made by the Archdeacon of Berkshire to a colloquium in Oxford almost a year ago, an assessment based on information supplied by archdeacons from 22 dioceses of the Church of England:

“On the whole it appears that the Five Guiding Principles are being used with common sense and courtesy, generosity and good will. There are about twelve thousand, six hundred parishes in the Church of England. Only about five hundred (less than four percent) of these have written letters of request [under paragraph 20 of the House of Bishops’ Declaration]. How many more will come remains to be seen, but so far, this “Settlement” appears to have had the intended effect of enabling the Church of England to stay together as a family.”

I can only express the hope that it will long continue to do so.