Safeguarding in Church and State over the last 50 years

or 'From Ball and Banks to Beech via Bell'

An expanded text based on an ELS Northern Province Lecture delivered by His Honour Peter Collier QC, Retired Senior Circuit Judge & Honorary Recorder of Leeds; Former Deputy High Court Judge (Family Division) on 29 January 2020 at Leeds Diocesan Offices

Introduction

My subtitle takes us immediately to the Diocese of Chichester. That will be no surprise to anyone who has followed Anglican safeguarding issues. The case of Peter Ball, once Bishop of Lewes (and subsequently of Gloucester), is well known. That of Terence Banks, once chief steward at Chichester Cathedral is less well known, at least less well known outside the diocese.

Both were convicted sex offenders who abused children and young people. Banks was convicted in 2000 after 29 years of abusing chorister children he met through his cathedral activities. Ball was convicted in 2015 for offences committed between 1977 and 1992, offences against young men who had come under his spiritual influence.

The impact on their victims as in all cases of the abuse of children is incalculable. The damage to children, made in God's image, is now recognised to be long lasting and in many case life-lasting. I cannot overemphasise at the start of this lecture how important the issues are that we are examining.

As for the extent of the problem, recent official figures released by the Office for National Statistics show that an estimated 3.1million adults aged 18-74 suffered child sexual abuse when they were under 16. If you widen the scope of the abuse to Include emotional and physical abuse and witnessing domestic violence or abuse it is 8.1 million.

As for the church, I was recently told by someone who does a lot of spiritual direction for people in positions of leadership in the church, that in their estimate 1 in 5 of the people they see have been affected by abuse as children.

I was called to the Bar in 1970, 50 years ago this year. During the first 25 years of practice there were relatively few changes in relation to child protection in the criminal jurisdiction. In the second 25 years there were many changes. 1995, the year that marked the half-way point in my career, was also the year when the Church of England introduced its first child protection policy.

Such changes as did take place in those first 25 years began in the world beyond the church.

Today very few people know or understand the attitudes, assumptions and practices that prevailed in 1970. Even some people who were around then have forgotten what it was like.

The first changes that took place were in the recognition of physical abuse of children. I would like to recommend to you a much fuller treatment of this subject in a lecture given by the President of the Family Division, Sir Andrew McFarlane on 22nd November 2019 – The Butler-Sloss Family Law Lecture 2019. It has the title *If only we had known then what we know now.*

In that lecture he traces the developing understanding about physical child abuse, beginning with the case of Mary Ellen Wilson in New York in the late 19th century, continuing through the work done in relation to bone fractures in children in America in the 1950s and 60s, particularly noting the work of the US paediatrician Henry Kempe. Kempe visited the UK in 1969/70 and the NSPCC gave substantial publicity to his findings. He had noted the high numbers of children admitted to hospital with unexplained injuries and the reluctance of doctors to think that parents could have attacked their children. The often-used phrase in such cases was "unexplained infant trauma syndrome". Kempe coined the very different phrase to describe these injuries; he spoke of "battered child syndrome". In 1973 in the UK the report[1] on the case of Maria Colwell led to a re-evaluating of approaches to children found to have significant physical injuries. That led to the setting up of Area Child Protection Committees (ACPCs).

An understanding that children might be sexually abused required an even bigger shaking of traditional assumptions. Again, much of the early work was done in America. The social purity

[1] Committee of Inquiry into the Care and Supervision Provided in Relation to Maria Colwell. London. HMSO 1974

movement attempted to protect women and children from abuse and exploitation in all forms. An interdepartmental committee was established by the Government in July 1924 to determine the prevalence of sexual offending against children and young people and to recommend necessary changes in the law and its administration. Their proposals, many of which we have introduced relatively recently, were strongly resisted by a substantially male legal profession which considered that they undermined such fundamentals of our system as the presumption of innocence and consequently the Government took no action. Things on that front went quiet for over 50 years, but in the 80s some work originating in the US was published here and began to affect the consciousness of the professionals dealing with cases that presented.

But then suddenly everything gained traction. In March 1986 Esther Rantzen invited viewers of the television programme *That's Life* to send her details of their personal experience of abuse and over 3,000 responded. She established the telephone helpline *Childline* in October 1986 and 50,000 calls were received within the first 24 hours of it opening.

On June 23rd 1987 the Daily Mail ran the headline 'Hand Over Your Children; Council Orders Parents of 200 Youngsters'. So attention became focussed on Cleveland. Two doctors here in Leeds, Jane Wynn and Christopher Hobbs had developed a technique for diagnosing, so they believed, that children had been anally abused. It was the "reflex relaxation and anal dilatation" test. Dr Marietta Higgs who had been taught this technique began to use it with another colleague Dr Geoffrey Wyatt in the South Tees Health District where they were working in 1987. The result was that in a period of 5 months, 125 children were diagnosed by them as having been sexually abused and were removed from their parents through wardship proceedings. That resulted in the Cleveland Inquiry conducted by Lord Justice Elizabeth Butler-Sloss which reported in June 1988.[2] Most of the diagnoses were found to have been incorrect and over 90 children were returned home.

The reason for referring to Cleveland is that it marked the beginning of many changes that were to take place within the justice system in relation to dealing with children when sexual abuse was suspected. The Children Act 1989 established the principle that the welfare of the child is the paramount consideration in any consideration the court gives with respect to the upbringing of a child. It also revolutionised the approach to child care in the civil courts bringing in a whole range of statutory procedures to replace in most cases the inherent wardship jurisdiction of the High Court. The Cleveland report had recommended that where there was an allegation that a child had been abused

[2] Report of the Inquiry into Child Abuse in Cleveland in 1987. HMSO. 1988

there should be a joint investigation by police and social services and the evidence of children in the course of such inquiries should be video recorded. I will return shortly to the 1986 and 1991 statutes that effected those and other criminal procedure changes.

Cleveland was also significant for the Church, as the first serious consideration by the Church of these matters was triggered by a private member's motion in General Synod in 1988 about child abuse and neglect. A report was prepared for the House of Bishops in relation to the issue. I will return to that in due course.

But what of other attitudes and assumptions? Returning to Ball and Banks – you may well be asking "how did they get away with it for so long?" And of course the 70s and the 80s was also the time when Whitsey, Dickenson, Cotton, Pritchard, Garth Moore and many others who have figured in reports and reviews in the last 20 years committed their offences.

It is important to understand what the law was that prevailed in 1970 in relation to criminal cases involving sexual allegations and cases in which children were potential witnesses.

My 50 years in criminal practice – achieving criminal justice for children

In 1970 the experience of children giving evidence was very different from how it is today. If you want a comprehensive account of how things changed over the years up to 1997 I would commend to you Amanda Wade's *The Child Witness and the Criminal Justice Process: a Case Study in Law Reform*. It was her Leeds University Ph D thesis of 1997. She takes us back to the 18th century when our Assize Court procedure was essentially inquisitorial rather than adversarial. It was not unusual in those days for child witnesses to give evidence. Rules about when they should be sworn and about the need for corroboration of unsworn evidence where patchy to say the least. Changes came with the development of the adversarial system and the crystallising of the rules of evidence.

By the middle of the 20th century it was considered inappropriate for very young children to give evidence. Back in the 1970s *Archbold* said that a child under 5 should not be called as a witness. In *R v Wallwork*[3] a man was charged with incest with his 5 year old daughter. She had been called into the witness box but had said nothing. On appeal the Lord Chief Justice, Lord Goddard said "I am surprised that the judge allowed her to be called. The jury could not attach any value to the evidence of a child

[3] (1958) 42 Cr App R 153

of five; it is ridiculous to suppose that they could." Even in 1990 the position had not changed; far from it. In *R v Wright* [4] Ognall J said "So far as this Court is aware, the validity of, and good sense behind that proposition has remained untrammelled in the practice of the criminal courts … in our view, it must require quite exceptional circumstances to justify the reception of this kind of evidence … The lesson of this trial lends especial force, in our judgment, to the observations of Lord Goddard C.J. in *Wallwork*. It will, in our view, be a bold tribunal hereafter that does not heed the lesson."

Apart from issues about the age and swearing of children, if they were called there was an immediate problem. Corroboration was required for allegations of sexual offences and it was also required for any child witness. That corroboration was not a statutory requirement if the child was sworn; juries could convict in its absence, but the requirement for it was described in *Archbold* as a Rule of Practice. By that rule juries had to be warned by the judge of the danger of convicting in the absence of corroboration and that they should only convict if they had taken note of that danger. The judge was required to explain to the jury what the danger was, using words along these lines - "experience has shown that sexual complainants/children have told false stories for various reasons and sometimes for no reason at all". If the judge did not give such a direction and explanation, then the conviction would be set aside by the Court of Appeal.

The House of Lords in *DPP v Hester* [5]had established that the unsworn evidence of one witness could not corroborate the unsworn evidence of another. But what of sworn evidence? Also in 1973 the House of Lords dealt with the case of *DPP v Kilbourne*[6]. In that case, which had been tried at Leeds Crown Court, they had to decide the extent to which the sworn evidence of one boy who said that the appellant had committed a sexual offence against him could corroborate the sworn evidence of another boy who said that a similar offence had been committed against him. They decided that that was possible if there was similarity between the offences and that the evidence was being used not to suggest propensity but to rebut a defence such as innocent association.

A year later the House of Lords had to decide the case of *Boardman v DPP*[7]. In that case again involving complaints made by boys of sexual offences, this time against their boarding school headmaster, their Lordships decided that any such evidence of similar facts in relation to one complaint must bear a

[4] (1990) 90 Cr App R 91

[5] [1973] AC 296; (1973) 57 Cr App R 212

[6] [1973] 729; (1973) 57 Cr App R 381

[7] [1975] AC 421; (1974) 60 Cr App R 165

striking similarity to complaints made by a different complainant before being admissible. Even if there was a striking similarity the judge must decide whether it was sufficiently probative or whether it should not be admitted as similar fact evidence. If it was not to be admitted as such there would then be an argument that there should be separate trials in relation to each complainant. I can remember running or resisting those arguments in several cases I was involved in.

Such an approach made it difficult, although not of course impossible, to prosecute cases involving multiple complainants.

In 1986 the first steps were taken to address some of these issues. The Home Secretary, Douglas Hurd, introduce a Criminal Justice Bill which included proposals to allow children to give evidence over a video link. The Bill was controversial and fell with the calling of a General Election. It was reintroduced in the next parliament and then also included proposals to abolish the need for corroboration. Again the proposals were considered controversial and there were various proposed amendments. However an Act was eventually passed which resulted in children under 14 in cases involving sexual or violent allegations being able to give evidence over a video link. Additionally that Act abolished the need for corroboration of the unsworn evidence of children and also the need to give a warning of the danger of convicting on the uncorroborated evidence of children.

Towards the end of the passage of the Bill through Parliament the government disclosed that they had invited the Common Serjeant, HHJ Thomas Pigot, to head an advisory committee to report more broadly on how the courts could assist children and other vulnerable witnesses to give evidence. It was probably as a result of his discussions in the committee about these matters that in 1987 he allowed 5 child witnesses to give evidence from behind a 7 foot high screen shielding them from their attackers.

His committee's recommendations led to the Criminal Justice Act 1991 which provided amongst other things that the evidence of children under 14 should be unsworn, also defendants were barred from personally cross examining children, and the evidence of children under 17 in sexual cases and under 14 in violence cases could be pre-recorded under the Achieving Best Evidence procedure. A *Memorandum of Good Practice* was produced which outlined that procedure. Video recording had been a recommendation in The Cleveland Report.

In due course the Youth Justice and Criminal Evidence Act 1999 provided other 'special measures' to enable witnesses to give their best accounts. Some were implemented quite quickly, such as screening witnesses from defendants, and permitting judges and advocates not to wear wigs or robes. It took

much longer for some of those newly permitted matters to be introduced and some are still not fully implemented.

Although the 1988 Act had removed the issues raised in relation to corroboration itself, it left the issue of similar fact as a live issue in many cases, particularly those with multiple complainants. The House of Lords revisited this issue in 1991 in *DPP v P*[8] and then again in 1995 in the case of *R v H*[9]

In *P* the opinion of the House was delivered by the then Lord Chancellor Lord MacKay of Clashfern. In H there were separate opinions from the five members of the House who sat on the appeal (including Lord Lloyd of Berwick who has subsequently been criticised for his support of Lord Carey in relation to Bishop Ball).

In *P* the decision was that to be admissible similar fact evidence did not have to be strikingly similar, that there was an infinite range of circumstances that would arise in such cases and the question was "whether there is material upon which the jury would be entitled to conclude that evidence of one victim, about what occurred to that victim, is so related to the evidence given by another victim, about what happened to that other victim, that the evidence of the first victim provides strong enough support for the evidence of the second victim to make it just to admit it, notwithstanding the prejudicial effect of admitting the evidence".

In 1994 the requirement for corroboration in sex cases was also abolished[10].

In *R v H* the decision was that the question of whether collusion had been ruled out was not usually for the judge to decide as a preliminary matter, and that the judge should base any ruling on admissibility on the assumption that the evidence was true and leave it to the jury to determine whether they were satisfied that there had been no collusion.

One of the matters that had concerned judges prior to *H* was the question of criminal injuries compensation monies that might be payable to victims of sexual crime. Several cases had not been able to proceed as a result of the habit of some police forces and some social service departments, when they had a complaint in relation to a schoolteacher or a care worker in a children's home, approaching others who had attended the school or been in the care home and asking if anything had

[8] (1991) 93 Cr App R 267

[9] (1995) 2 Cr App R 437

[10] Criminal Justice and Public Order Act 1994 ss.32 and 33

happened to them and in that approach informing them of the possibility of obtaining compensation. Professor Adrian Keane in a submission to the Home Affairs Select Committee in February 2002 said "In some cases there is a real risk of collusion between victims or contamination of their evidence. This risk arises where there is evidence to suggest that the complainants have deliberately concocted false evidence by conspiracy or collaboration and also, which is probably much more common, where their evidence has been innocently contaminated, i.e. influenced by knowledge of the account of another victim, whether acquired from direct discussion with another victim, indirectly through a third party, e.g. a social services department seeking potential complainants, or from media publicity. The problem is compounded, of course, if there is a prospect of compensation or some other motive for giving false evidence. Until *R v H* the preponderance of authority favoured the judicial exclusion of such tainted evidence."

These two statutes and two decisions made the task of prosecuting multiple complainant cases much easier. And they coincided with the increasing number of such cases that were being prosecuted.

In 2003 two more statutes transformed the prosecution of sexual offences. They were first the Sexual Offences Act 2003 which brought in a range of new offences in relation to sexual offences against children and second the Criminal Justice Act 2003 which transformed the approach to similar fact evidence, now known as bad character evidence. That Act specifically identified 'propensity to commit offences of the type charged' as a potentially relevant issue in a broad range of cases.

We have already seen that some of the Pigot recommendations took a long time to implement. In particular for child witnesses the provisions of s.28 of the YJCEA 1999 were not piloted until 2014 when they commenced in 3 Crown Courts, including Leeds. s.28 enables child witnesses to have their cross examination recorded in advance of the trial. That has made it much more realistic for very young children to be able to give evidence. Further, the judge plays a significant role in ensuring that such cross examination is appropriate to the child through the approval of the content of the cross examination in advance at a Ground Rules Hearing.[11] The s.28 procedure is now being rolled out nationally for child witnesses and is being piloted in the original three pilot courts for adult complainant witnesses in cases involving sexual complaints. This is over 30 years since first being proposed by Pigot, and 20 years since being enabled by legislation. Complainants are also now usually provided with support by ISVAs (Independent Sexual Violence Advisers).

[11] Criminal Practice Direction Part V 18E

Further steps have been taken in relation to the prosecution of sexual assault cases. Courts have begun to address directly the false presuppositions that many people still have about rape and sexual assault. In the case of *R v Miller*[12] the CACD said "In recent years, the courts have increasingly been prepared to acknowledge the need for a direction that deals with what might be described as stereotypical assumptions about issues such as delay in reporting allegations of sexual crime and distress". Further examples are given in the Crown Court Bench Book at Chapter 20 in relation to how judges should address other "rape myths".

Finally in about 2013 the CPS began to adopt an approach that was more "evidence based" and did not place much weight on the fact that a jury, influenced by stereotypical assumptions, might not readily accept the complainant's account, when they were considering whether there was a realistic prospect of conviction under the Full Code Test and so should advise charging the suspect. There have been some suggestions that there has been a little rowing back from that in recent months,

All these changes made the prosecution of sexual offences, especially those involving child witnesses, unrecognisable when compared with the atmosphere which prevailed 50 years ago when I started in practice. We really had done a U turn from the doctrines and practices of the 1970s which militated against the prosecution of sexual offences particularly those involving child witnesses. It could be said that whereas judges used to encourage rape myths with their warnings about the dangers of conviction, they now do their best to counter such myths and in other ways to enable complainants to give their best accounts.

I have spent a long time on that, partly because it is a world that I know well, but also because it is a backdrop against which we can also measure a more widespread slowly increasing recognition of the reality and extent of child abuse, the difficulties for victims in disclosing and being believed, and how very slowly the establishment in the very widest sense (meaning much of organised society – including police, prosecutors and judges) came to recognise its own short comings in how it was dealing with these issues.

What I want to do next is to look quite quickly decade by decade at how both in our wider society and in the church that recognition developed and how policies and practices were slowly put in place in relation to handling the victims and the perpetrators of abuse.

[12] [2010] EWCA Crim 1578

The same 50 years – decade by decade – in the world and the church

The 1970s

This was when people were beginning to become aware of issues of physical child abuse. Maria Colwell led to a real rethink. There were a number of other serious case reviews and in 1982 a Department of Health report entitled *Child Abuse*[13] looked at the 18 such Inquiries that had taken place in the period 1973-1981. It examined common themes and looked at lessons that could be drawn. This is the time when many of our non-recent cases of sexual abuse which have been or are now being 'reviewed' were taking place. People such as Banks, Ball, Whitsey, Dickenson, Cotton, Pritchard, Garth Moore and John Smyth were actively abusing children and young people at this time.

The 1980s

A further Department of Health Report a decade on in 1991[14] reported on 19 cases of abuse in the period 1980-1989. In the introduction it said: "The mid-1980s saw an increase in the reporting of child abuse. It is not known whether or not the actual incidence of abuse has increased. Public awareness of child abuse increased and critical in this was the emergence of child sexual abuse as a problem which shocked, but possibly not surprised the public. Among other things the emergence of child sexual abuse has led to increased recognition of power and gender as factors inherent in the abuse of children."

It is in the 1980s that we find churches and schools becoming aware of abuse taking place. In 1982 we are led to believe that there was an internal inquiry into the activities of John Smyth. Winchester College barred him. The Iwerne Trust persuaded him to leave the country and to settle in South Africa. The Carmi report into Banks reveals that in this period because of concerns about him he was banned from the school; she also speaks of several school teachers at other local schools who were identified as having abused children. Very often the outcome was that they were moved on and only occasionally was there a prosecution.

[13] Child Abuse: A study of Inquiry Reports 1973-1981. HMSO. 1982

[14] Child Abuse: A study of Inquiry Reports 1980-1989. HMSO. 1991

Undoubtedly there were several issues that caused that particular response – anxiety about reputational damage of course, but also in relation to schools there was very often a reluctance by parents to allow their children to become involved in criminal prosecutions.

Other things were happening in the public arena in the 1980s. They include in 1982 the Thames Valley Police fly on the wall documentary series called simply *"Police".* It was made by Roger Graef. Episode 3 was entitled *"A complaint of rape".* In it a woman who said she had been raped by 3 men was treated harshly and dismissively by 3 male detectives who interviewed her. It resulted in questions in parliament about the police conduct. The broadcast was only a week after the reporting of a Norfolk court case where a judge sentenced a man convicted of rape to 2 years imprisonment saying that the girl had brought it on herself hitching a lift home from a pub wearing a short skirt.

Also the 80s saw a number of Inquiries into several Children's Homes in North Wales. Alison Taylor, a residential care worker in a home in North Wales, began to hear stories from children coming into her home about abuse they had suffered in other places. She began to ask questions and raise concerns with no response; when she went to the police she was suspended by her employer and then dismissed. She took proceedings in the Industrial Tribunal and a settlement was reached.

Also in the 80s Peter Ball was getting significant public exposure particularly it would seem as a result of his strong personality – he appeared on Wogan and was the subject of a BBC documentary.

Robert Waddington was Dean of Manchester from 1984 and was abusing children whom he came to know through the cathedral there; it was the disclosure of such a complaint in 2003, that led to the Cahill report in 2013. Complaints of abuse by him begin in the 1960s and relate to his time in Australia and then in the UK from 1971.

Amanda Wade[15] says: "However, despite a relatively consistent number of cases coming to official attention up to the 1980s, sexual abuse effectively disappeared as a subject of public concern after about 1925 and its re-emergence some 60 years later was regarded by many professionals and members of the public as evidence of a new, and disturbing, social problem. The child psychiatrist, Eileen Vizard, and the senior civil servant responsible for childcare policy at the Department of Health, Rupert Hughes, have described the response of professionals in the following terms:

> … even the most sophisticated practitioners were taken by surprise with the emergence of an apparently new phenomenon in the early 1980s - child sexual abuse. Most shocking of all was

[15] Ibid p86

> the fact that this was yet another sort of secret abuse inflicted upon children within their own families. As the 1980s progressed, child sexual abuse victims of ever younger ages and both sexes started to come forward with evermore complex stories of mostly, intra-familial abuse."[16]

We have already noted the advent of *Childline* and the Cleveland Inquiry. And that triggered the first question in General Synod about abuse. But it was a few more years before there was any significant discussion about the issue at a formal level within the Church of England.

The 1990s

From 1990 the World Wide Web was being developed leading to the launch of the Internet in 1993.

There had been no confidentiality clause in Alison Taylor's settlement in North Wales and she continued her campaign in the early 1990s and eventually the police did take action. During the 1990s about 300 incidents of abuse in children's homes in North Wales were reported to the CPS resulting in 8 people being prosecuted of whom 6 were convicted. Additionally there were a number of Inquiries that took place. Notably in 1994 the Jillings Report was commissioned, but never published as the Clwyd Council feared they might be sued. Most copies of the report were destroyed. Subsequently in 1996 William Hague commissioned the Waterhouse Public Inquiry into allegations of hundreds of cases of child abuse in care homes in the former County Council areas of Clwyd and Gwynedd between 1974 and 1990. The findings were published in 2000, the Report being entitled *Lost in Care*. It shows the extent of the problem that had existed in the 70s and 80s and the many successful efforts by abusers and others to cover up what had gone on. All that was happening in North Wales and being exposed to the wider public throughout the 1990s.

In 1992 – Peter Ball became Bishop of Gloucester. The Catford memo to the PM, which was disclosed by the Cabinet Office to IICSA, recommended him, the second name on the CNC list, in preference to the first name. The memo clearly showed what a charismatic and dominant character he was seen to be although now of course being recognised as thoroughly manipulative as so many of these abusers were and are.

[16] Vizard, E. And Hughes, R. (1995) 'Introductory Comments for Children in the Crossfire Conference, 4th and 5th April 1995.' In: The Michael Sieff Foundation Children in the Crossfire Conference Handbook. The Michael Sieff Foundation: Surbiton, Surrey.

In 1992 he was arrested and then cautioned in 1993, no doubt in part as a result of the many representations made on his behalf, including from Lord Lloyd of Berwick (one of the judges in *R v H* in 1995).

In January 1993 a joint meeting of the Anglican Consultative Council and the Primates of the Anglican Communion passed a resolution which urged all Provinces to work to end the sexual abuse and exploitation of women and children throughout the Anglican Church, and expressed shame at the evidence of sexual abuse within the Anglican Church. There were also calls on congregations to provide pastoral care to victims of sexual abuse.

It was later in 1993 that that the Home Office published a document entitled *"Safe from Harm"*. It was subtitled "*A Code of Practice for Safeguarding the Welfare of Children in Voluntary Organisations in England and Wales"*. In it 13 guidelines were set out in relation to having a policy to keep children safe, recruitment procedures (this was before the days of DBS and even pre CRB), what to do when abuse was alleged or suspected, and having a designated person as a point of contact/reference.

In the months that followed, through a process of reports and discussion, the Church of England produced its own *"Policy on Child Abuse"*. The Board of Social Responsibility held the brief in this area at that time. The policy consisted of 15 pages containing 44 paragraphs. It clearly had regard to the Children Act 1995 and it reflected those 1993 Home Office guidelines. Those 13 guidelines were incorporated in an appendix with a paragraph below each head stating what the church would do to implement that particular guideline.

The key features of this first policy document were

a. Recommendations on the implementation of the policy;

b. Definitions of abuse;

c. Recommendation that each diocesan bishop should appoint a representative to advise and support him in his dealing with child abuse issues, and to ensure "that good practice is observed throughout his diocese, and to advise the Bishop on procedures to be followed when cases of child abuse arise";

d. Principles of good practice on the recruitment of people to work with children;

e. Details of procedures and best practice in dealing with any allegations of abuse, with an emphasis on the need for extreme caution when dealing with people affected by abuse; and

f. Information and training were to be provided by the Bishops' representatives in consultation with diocesan officers.

The Church very much took its lead from the secular authorities in all of this and stated that it would collaborate fully with the statutory and voluntary agencies concerned with child abuse. That pattern of following the lead set by secular authorities was followed in the subsequent amendments and additions to that policy document, and has continued up to the present day.

It is worth noting that there was no statutory obligation at that time to pass on reports of abuse to the police or social services. Also there was then no CRB/DBS system. So self-certification was required of candidates for ministry and those taking up new posts. As part of that self-certification volunteers were also required to declare any involvement in relevant criminal or civil proceedings.

In due course the Police Act 1997 would provide for what were described as 'enhanced criminal record certificates', but that part of the Act was not introduced immediately after being given Royal Assent.

Meanwhile in the background the church was chewing over the various implications and applications of introducing the 1995 policy. Papers were produced by legal officials about what to do if a priest were to be convicted of an offence listed in Schedule 1 of the CYPA 1933 – which of course is quite wide in its scope. Should there be a presumption of deposition from Holy Orders in such a case? Also what should be done if a priest admitted an offence but the victim's family wanted to preserve confidentiality? And what about offences committed many years previously? And then from another angle – how do you deal with an offender who has served time and been released and wants to join a church. A paper was produced on that by Julia Flack the wife of the then Bishop of Huntington and former Archdeacon of Pontefract. Some of these questions remain part of the debate more than 20 years later.

Some dioceses were producing their own statements of policy, but not all.

1995, the year of the first church policy, was also the year when the first complaint about the late Bishop Bell was made by 'Carol'. It is alleged that the then Bishop of Chichester took no action on it at all.

I have already referred to the Waterhouse Inquiry which commenced in 1996.

In 1999 the church produced its revised policy document, this time entitled *Policy on Child Protection*[17]. There had still been no decision by the police on when to bring in enhanced certificates of conviction, so that aspect of checking could not be dealt with. However there was significant new detail in the 1999 policy about the voluntary declarations and what to do if someone declined to provide the information required or if the information they did provide revealed a potential risk to children. Other things were introduced including the automatic deposition from Holy Orders for Schedule 1 offenders. Quite a lot more detail was added about good practice in relation to recruitment and what to do if allegations of abuse were made. It also said that if the Bishops' representative did not have expertise in child protection then they too should receive training.

In the wider world in 1999 the Department of Health produced *Working Together to Safeguard Children*,[18] subtitled *A guide to inter-agency working to safeguard and promote the welfare of children*. This shows an appreciation of the numbers of different agencies involved with children and the need for communication, information sharing and 'working together'. The limited mention of the church is in para 3.87 – "Statutory agencies can also help services run by community, religious and other voluntary groups, through providing advice and training on how to provide a safe service to children." That is a document which has been updated on several occasions since then, notably in 2010 following the Laming Review after the death of Victoria Climbié (2003) and his follow up Report (2009) following the death of Baby Peter in 2007. Jumping ahead for completeness in relation to secular reviews, the Munro Review of Child Protection was published in 2011.

The new Millennium – the 2000s

In 2000 Terence Banks was convicted and sentenced to 16 years imprisonment. In 2001 – the case of Banks was reviewed by Edina Carmi under the guidance of a multi-disciplinary panel which I had the privilege of chairing. So far as I am aware this was the first of many "Lessons Learned" and other types of Inquiry into child abuse cases within the church. The Report was completed and delivered to the Bishop of Chichester in 2004 but surprisingly not published until 2014.

[17] There seems to be no online version of this available

[18] *Working Together to Safeguard Children* London. The Stationery Office Ltd. 1999

In 2002 The Church Central Safeguarding Liaison Group was created. The newly-appointed Lead Bishop for Safeguarding took over as Chair. Janet Hind, the wife of the Bishop of Chichester, was appointed as the Church's first National Child Protection Officer. Also in 2002 Churches Together in Britain and Ireland (CTBI) produced a book entitled *The Courage to Tell*[19] based on work with survivors of abuse. It was to play a significant part in the development of future policy in relation to offering better support to those who have been abused and to create an environment where abuse is clearly unacceptable and far less likely to occur.

The other significant event in 2002 was that in August Holly Wells and Jessica Chapman were murdered in Soham.

In 2003 a verbal complaint was made to the diocese of Manchester about Robert Waddington, the former Dean of Manchester.

In 2003 *Guidelines for the Professional Conduct of Clergy* was published. It provided in para 2.13 that every ordained person should have training in child protection; in para 3.14 that a child or vulnerable adult who discloses abuse is to be taken seriously and referred to appropriate agencies; and in para 7.2 it emphasised the seal of the confessional but in 7.3 it provides that "where abuse of children or vulnerable adults is admitted in the context of confession, the priest should urge the person to report his or her behaviour to the police or social services, and should also make this a condition of absolution, or withhold absolution until this evidence of repentance has been demonstrated."

In February 2004 the third overall policy document was issued. This was entitled *"Protecting All God's Children"*. This document had a greater status than the previous policies as all dioceses and parishes were required to accept it as their key policy, although they could add to it. This document was over 50 pages in length. It begins with definitions of abuse (including spiritual abuse) and then sets out the clear responsibilities falling separately on the Church of England, the House of Bishops, the Diocese and the Parish. Then in a series of appendices it descends into practical details about such things as recognising abuse, reporting abuse including a section on disclosing what has been said in confidence, a list of relevant legislation and a model diocesan practice for managing child protection in a diocese. It then has a series of practical procedures including particularly how to respond to concerns about possible abuse, ministering to those who might pose a risk to children, and recruitment including the use of the CRB which had come into operation in 2002. A key person in many of these matters was to

[19] There seems to be no online version of this available

be the diocesan child protection advisor who would be expected to be someone who was professionally qualified in the practice of child protection.

The Bichard Inquiry was established the day following Ian Huntley's conviction for the Soham murders in December 2003. Its remit was "to inquire into child protection measures, record keeping, vetting and information sharing in Humberside Police and Cambridgeshire Constabulary". The Report was published on 22nd June 2004. It found that there had been clear failures in the vetting procedure and the sharing of information by the police across force borders. It made a number of recommendations including: a registration scheme for everyone working with children or vulnerable adults, which employers can access and which would show if there was a reason why someone should not work with children; all applications for positions in schools should be subject to a requirement for enhanced disclosure criminal checks; training for headteachers and school governors to ensure interview panels are aware of the importance of safeguarding children; a national code of practice for all police forces on the creation and upkeep of records to ensure consistency; and various other matters to do with police IT, including a proposal for a national IT system.

In November 2006 a policy document was produced entitled *Promoting a Safe Church* which dealt for the first time with safeguarding adults.

In 2007 Peter Halliday, a choirmaster in Guildford was convicted of offences committed between 1985-90 in Farnborough. He disclosed that in 1990 he had admitted to abuse but just been required to leave his then post and told not to work again with children. No report was made to the police. He did subsequently lead a choir including children. However by 2007 when these matters came to light the Church had a significant concern about how it had responded in the past to child protection cases. Consequently a Past Cases Review was instituted and in December a Protocol for that work was published by the House of Bishops; the intention being that the work would be completed by June 2009.

Much attention has been focussed on this Past Cases Review and its inadequacy. It is perhaps important to set that in the context of secular reviews that took place in relation to secular institutions. I will simply ask the question whether the fact that they don't seem to have fared much better tells us more about the nature of the problem such reviews confronted rather than about problems in either the church or for example social service departments in North Wales. Holding to account powerful, controlling, and manipulative men who have abused and damaged children who were often particularly vulnerable is a very difficult task.

In February 2010 a statistical summary of the Past Cases Review was published. That review was itself reviewed in 2018.

In October 2010 a further edition of *Protecting All God's Children* was published. This was policy document number 4. It incorporated the most recent secular legislation and guidance such as the Children Act 2004 and *Working Together to Safeguard Children 2010*. It also referred to the church adult safeguarding policies. There was new material about vetting and safer recruitment. The word harm was now used rather abuse. The length has gone up to over 70 pages.

In para 1.9 it said "Justice is part of the outworking of love. The Church must hold in tension concerns for both justice and compassion. Nevertheless, those who have suffered child abuse have sometimes found an unsympathetic hearing. They may be disbelieved, discouraged and damaged further. Some people may side with the alleged perpetrator. This occurs in all parts of society, but it is particularly hurtful when it occurs within the Church. Such actions compound the sense of injustice that many feel. In answer to the question 'What does God require of us?' the need to act justly is set alongside the need to love mercy and to walk humbly with God (Micah 6.8)." The section (6) on responding to concerns was substantially rewritten.

In late 2010 more work was being done on recruitment. Following Bichard there had been a plan for a far reaching and extensive Independent Safeguarding Authority (ISA) to be set up. Theresa May the Home Secretary in the new the coalition government in 2010 scaled back those plans significantly. In due course in 2012 the Disclosure and Barring Service (DBS) was introduced taking over the roles of the CRB and the ISA. The church kept pace with those developments.

The last 10 years

This is the decade of reports and reports on reports. The church has become awash with varying degrees of angst as it has reviewed its history of abusing children through some of its senior clergy. It has begun to acknowledge how it has failed to respond to those who have survived (and as we know not all have) and eventually found the courage to disclose what happened to them. It has also begun to recognise the huge damage done to those who were abused. Many of the survivors still doubt the extent to which the church is willing to confront the manipulative perpetrators and to recognise how

they have also been groomed by them into believing that their behaviour was not that bad and that they were basically decent priests who could continue to minister.

In the last 10 years two very significant things happened outside the church. First, on 5th January 2011 Andrew Norfolk, who learned his journalism trade here in the north east, revealed the extent of the grooming gangs which had been operating for years in plain sight in Yorkshire, Lancashire, Greater Manchester and some Midlands counties. Police and social workers had failed to come to grips with this extensive abuse. That has come back into the headlines very recently with the revelation of how the Greater Manchester Police force which set up Operation Augusta to address this issue after 2011 subsequently abandoned it. Other forces did better and many cases continue to arrive in Crown Courts across the country and many such gangs have now been convicted.

Second, on 26th October 2012 BBC Panorama screened the programme showing the outcome of their investigation into Jimmy Savile's child abuse and asked what the BBC knew in the past and also examined the events surrounding the dropping of the BBC's own Newsnight investigation into the subject. The impact of that programme is recognised as having led to an unprecedented increase in disclosures of sexual abuse and assault both recent and non-recent. The courts from 2013 onwards have had to cope with an exponential rise in cases of abuse and sexual assault. Fortunately as we have seen they have become much better at handling these cases in recent years.

I don't propose to go into any real detail in relation to the reviews the church established during this decade. But let me mention the key ones now and there are online links in the online version of this lecture on the ELS website to the reports if you want to look at the details of their findings.

In 2011 Dame Butler-Sloss was asked to review the cases of Cotton and Pritchard. She reported in May 2011 (with an addendum in January 2012). In December the Archbishop of Canterbury appointed Bishop John Gladwin and HH Rupert Bursell QC as commissaries to undertake a visitation of the Diocese of Chichester as to how safeguarding had operated (or not operated) in the Diocese. They produced an interim report in August 2012 and a final report[20] in May 2013. In January 2012 there was a further review of the cases of Cotton and Pritchard by Roger Meekings. In July 2014 the Archbishop of York commissioned the Cahill inquiry. HHJ Cahill QC (with an Independent Social Work Consultant as an assessor) was asked to report on the church's handling of reports about abuse carried out by Robert Waddington, the former Dean of Manchester. She reported in October with 8

[20] This final report does not appear to be currently available online

recommendations[21]. In 2015 the Church appointed SCIE (Social Care Institute for Excellence) to carry out independent quality assurance audits of each diocese. In October 2015 the Churches Child Protection Advisory Service (CCPAS) was appointed to carry out a lessons learned review in relation to allegations of sexual abuse committed by "Rev A" on "Survivor B" otherwise identified as Joe. "Rev A" was in fact Garth Moore a leading canon lawyer and diocesan chancellor. Ian Elliott was engaged by CCPAS to do that work. His 'findings' were published in March 2016.

I will say something further about the Elliott review as a particular issue from that was ventilated at the IICSA hearings in July 2019 when the advice that Ecclesiastical Insurance Group (EIG) gave about withdrawing pastoral support became controversial and the EIG director had to return at the end of the two week period and review his account in the light of documents and evidence the tribunal had heard. The focus of the Elliott review however had been on the lack of record keeping and alleged lack of memory by senior clergy, including some bishops, not named by Elliott, but subsequently named by the victim. As a result the House of Bishops determined to improve training particularly about receiving disclosures and record keeping and also ensuring that advice about compensation issues is never at the expense of pastoral support for survivors.

As an aside I was very interested to learn from the EIG evidence to IICSA that 56 per cent of the sums paid out by Ecclesiastical Insurance Office (EIO) went to claimants; 30 per cent went to claimant lawyers; and 14 per cent went to EIO's lawyers. That does for me raise some questions about the aggressive attitude adopted by some of the claimants' lawyers in the ICCSA hearings and elsewhere.

In Feb 2016 Dame Moira Gibb, a social worker was appointed to chair a review of the Peter Ball case.

Although it had apparently begun on social media in 2006, in 2017 we saw the rise of the "Me Too" movement following the exposure of the widespread allegations of sexual abuse against Harvey Weinstein. That also led to a higher level of reporting of sexual crime.

In October 2017 the Bishop of Chester and the Archbishop of York published a statement following the conclusion of the police Operation Coverage which had investigated allegations made against the former Bishop of Chester – Hubert Victor Whitsey. It appears from the police statement that there had been 13 witnesses (5 male and 8 female) who made statements and if he had still been alive the police would have required him to answer their questions about 10 of the 13. In May 2019 HH David Pearl was appointed to carry out the lessons learned review in his case.

[21] This report has never been available online

The Whitsey case had a spin off. In the course of the police inquiry allegations were made about the Revd Charles Gordon Dickenson. He was still alive in March 2019. He was then prosecuted and at the age of 88 he pleaded guilty to 8 counts of sexual assault and was sentenced to 27 months imprisonment, for offences committed in 1974-76. In the course of his applying for PTO after his retirement in 2009 he had self-disclosed that he had been accused of indecently assaulting a boy, but that he had promised Bishop Whitsey he would never do it again. The Bishop who dealt with the PTO application was Bishop Peter Forster, the recently retired Bishop of Chester, who did not reveal that matter to his Diocesan Safeguarding Advisor. Peter Forster is currently the subject of a CDM complaint in relation to that.

In January 2018 the Church suffered another blow with the receipt of the Singleton Report. This was very critical of the Past Cases Review 2007-2009.

In March 2018 IICSA held its public hearings into the Diocese of Chichester. And in July into the case of Peter Ball.

A lessons learned review has been announced into the case of John Smyth (Reviewer: Keith Makin). In the case of Rev Jonathan Fletcher, Emmanuel Church Wimbledon has appointed Thirtyone:eight, the specialist safeguarding agency formerly known as CCPAS, to conduct a review. The Church of England has also instituted a review into the case of the Revd Trevor Devamanikkam. He was accused of abusing the Revd Matt Ineson between March 1984 and April 1985. The night before he was due in Bradford Magistrates' Court in June 2017 to face those charges he took his own life. The review is to be conducted by Jane Humphries an independent senior social care consultant. A rather remarkable attack on this process was launched by Ineson – who has declined to be involved in the review. He set up the *Sunday* programme with an interview with Kate Blackwell QC about independent inquiries and that this failed to qualify as such. She compares it to the two James Jones Inquiries into Hillsborough and the Gosport War Memorial Hospital in Portsmouth, which were completely different creatures from a Lessons Learned Inquiry by an independent safeguarding expert – of which there have been many and from which it appears to an me as an outsider (apart from my involvement in the very first – the Carmi review) a great deal has been learned.

To Beech via Bell

But something else happened in the midst of this decade away from the church. I have referred to the number of people who came forward as a result of the BBC programme about Savile, many on the

basis that they sensed they were more likely to be believed than they had previously thought possible. The Metropolitan Police set up Operation Yewtree to receive complaints about Savile in particular.

Carl Beech who was initially known as “Nick” approached the officers in Operation Yewtree during 2012 and alleged he had been sexually abused by Jimmy Savile. Subsequently in 2014 he began to make a series of allegations that he and others had been the victims of sexual abuse by a "VIP ring" in the late 1970s and early 1980s, and that he had witnessed three child murders by members of the same group. He did this initially in an online blog; that was picked up by the online news website called Exaro News who sold it to the Sunday People. In 2014 Operation Midland was launched by the police to investigate these matters and unfortunately the police turned many of their accepted practises in such investigations on their head. Amongst their most obvious failures they publicly commended “Nick”’s accounts as “credible and true”; they did not carry out basic investigations such as examining his digital devices; they did not have regard to inconsistencies in his developing accounts and finally they assisted him to obtain compensation from the Criminal Injuries Compensation Board. Sir Richard Henriques has carried out an investigation into Operation Midland and set out in his report are a number of trenchant criticisms of the Metropolitan Police’s approach to their investigation. Subsequently last year Beech was convicted of perverting the course of justice and other offences and sentenced to 18 years imprisonment. It is a cautionary tale.

In 2013 ‘Carol’ renewed her complaint about Bishop Bell. This time to the Archbishop of Canterbury. There was an internal inquiry by a Core Group which resulted in October 2015 in the diocese of Chichester paying compensation to ‘Carol’ and the current bishop issued an apology to her for the abuse she had alleged had been perpetrated on her as a child by Bishop Bell in the 1940s or 50s. The disclosure that this payment had been made and apology given created a backlash and many of the great and good demanded a review. In June 2016 it was announced there would be a review and in November 2016 Lord Carlile was appointed to carry out that review.

In December 2017 the Carlile report was published. It was very critical of the way the church had approached the case. Carlile found that "there was a rush to judgment: The church, feeling it should be both supportive of the complainant and transparent in its dealings, failed to engage in a process which would also give proper consideration to the rights of the bishop." The report also found that the available evidence did not suggest there would have been “a realistic prospect of conviction” in court, the standard that prosecutors in England and Wales use in deciding whether to pursue a case.

Following the publication of the Carlile Report the church had received further allegations about Bell. The Vicar-General for Canterbury – Timothy Briden Esq – was appointed to look into these. He

concluded that the allegations presented to him were unfounded. That outcome was made public in January 2019.

The current policies and practices

Apart from all these inquiries and further disclosures the church was getting on with seeking to ensure that adequate policies were in place, that training was delivered and that the necessary change in culture was taking place.

I have already referred to the October 2010 version of *Protecting All God's Children*. In July 2011 *Responding Well to those who have been sexually abused* provided even more detail on how to respond to those who had been abused.

One of the outcomes of the Chichester Visitation report was some proposals in relation CDM reform. The Archbishops' Council responded to the report with the release of money to support its commitment to try and bring about the deeper cultural changes that were clearly necessary.

The church committed itself to implement the eight Cahill recommendations of 2014, and so far as I can judge has just about completed that task.

In late 2014 draft guidance was produced on *Responding to Serious Safeguarding Situations* and also *Risk Assessments* on which work continued into 2015 as did work in relation to national safeguarding training. Consideration of the Safe Spaces project and also the Seal of the Confessional was undertaken.

In 2015 the Guidelines for the Professional Conduct of Clergy were revised.

In October 2016 the National Safeguarding Steering Group (NSSG) met for the first time. It tweaked a number of the current policies. By the end of the year the House of Bishops had delegated practice guidance issues to the NSSG.

In 2017 the 5th version of the overarching policy in relation to safeguarding was published – *"Promoting a Safer Church"*. The policy was supported by more detailed practice guidance and reference documents.

In April the Diocesan Safeguarding Advisors (Amendment) Regulations 2016 were proposed to clarify that a Diocesan Safeguarding Advisor could notify the police where an allegation that a child or

vulnerable adult has suffered abuse is made against a bishop or other church officer, even if the bishop disagrees with the DSA's advice that police should be notified.

In June The Gibb Report into Peter Ball – *An Abuse of Faith* – was published. A series of responses followed - The House of Bishops introduced new guidance entitled *Key Roles and Responsibilities of Church Office Holders and Bodies Practice Guidance*. The guidance was underpinned by the Children Act 2004 (section 11); the Care Act 2014, the Church's safeguarding policy statement, *Promoting a Safer Church*, and ecclesiastical law. This law includes the Safeguarding Clergy Discipline Measure 2016, Safeguarding (Clergy Risk Assessment) Regulations 2016, the Diocesan Safeguarding Advisors Regulations 2016, and the Diocesan Safeguarding Advisors (Amendment) Regulations 2017. Also published was the final version of Practice Guidance: Safer Recruitment, with FAQs on DBS checks and other safer recruitment issues in February 2017. Quite an amount of the new material resulted from a consultation that had been carried out in relation to the production of the 2017 Policy – *Promoting a Safer Church*. New sections were introduced on the roles and responsibilities of specific institutions (e.g. Worshipping Communities operating under the Bishops Missions Orders, Cathedrals, and TEIs); and a new section was introduced in relation to the *Religious Community Practice Guidance May 2015*.

In October *"Practice Guidance: Responding to, assessing and managing safeguarding concerns or allegations against church officers"* was published.

During this period most of the current practice documents were produced and published. NSSG had delegated authority from the House of Bishops so when it published something it came into effect immediately.

In July 2018 there was a debate in General Synod on safeguarding and an event took place after one evening session when SCIE and MACSAS (Ministers and Clergy Survivors of Sexual Abuse) introduced a number of survivors who told their stories.

In August 2018 the *Parish Safeguarding Handbook* was published. With that most if not all of the current policies and practices were put in place. We have come a long way from the single document of 1995. I must confess that for a black letter lawyer, finding your way round the current documentation, particularly if you try to do so on line, is not necessarily an easy task as there doesn't appear to be a 'catalogue' or overall 'menu' anywhere that I could find. And also I much prefer to see a clear continuous text rather than lots of pictures and images with text here and there. I hope that listing them all in the last few paragraphs might assist. It is not only black letter lawyers who struggle; I understand that there have been requests from the grass roots for a set of policies and guidance that

is easier to navigate than the current documents. I believe that there is an intention this year to simplify and consolidate the code. If that is the intention, then it is to be commended.

In September Meg Munn was announced as the first independent chair of the National Safeguarding Panel. In 2019 – Sir Roger Singleton took on the role of interim National Director of Safeguarding. During 2019 there were further discussions about improving training and policies; Melissa Caslake was appointed as the first permanent National Director of Safeguarding; and the need for a second Past Cases review was recognised and planned. The purpose of that review is that "By the end of the PCR 2 process, independent review work will have been carried out in every diocese and church institution within both the letter and the spirit of the protocol and practice guidance. Any file that could contain information regarding a concern, allegation or conviction in relation to abusive behaviour by a living member of the clergy or church officer, (whether still in that position or not) will have been identified, read and analysed by independent safeguarding professionals. At the completion of the review process it will be possible to state that: all known safeguarding cases have been appropriately managed and reported to statutory agencies or the police where appropriate; that the needs of any known victims have been considered and that sources of support have been identified and offered where this is appropriate; that all identified risks have been assessed and mitigated as far as is reasonably possible".

It was a very active decade so far as safeguarding in the church was concerned and of course it was much dominated towards the end by the IICSA hearings into the Anglican Church.

IICSA

The Inquiry's definition of scope for this investigation identified the following themes:

"*2.1. the prevalence of child sexual abuse within the Anglican Church;*

2.2. the adequacy of the Anglican Church's policies and practices in relation to safeguarding and child protection, including considerations of governance, training, recruitment, leadership, reporting and investigation of child sexual abuse, disciplinary procedures, information sharing with outside agencies, and approach to reparations;

2.3. the extent to which the culture within the Church inhibits or inhibited the proper investigation, exposure and prevention of child sexual abuse; and

2.4. the adequacy of the Church of England's 2007/09 'Past Cases Review', and the Church in Wales's 2009/10 'Historic Cases Review'."

Two case studies were selected by the Inquiry for the purpose of investigating these themes:

"**3.1.** The Diocese of Chichester, where there had been a number of convictions of clerics and others involved with the Diocese for child sexual abuse. There have also been a number of internal reviews exploring the institutional response within the Diocese, which raised questions about the Church of England more widely.

3.2. The response to allegations against Peter Ball, a high-profile figure within the Church of England. Allegations against him were first investigated by the police in 1992, before he was cautioned in 1993 for an offence involving one complainant. In 2015, Peter Ball pleaded guilty to a significantly broader pattern of offending. The purpose of this case study was to investigate whether his status, or that of persons of public prominence with whom he had a relationship, influenced the response to those allegations."

The Inquiry heard evidence about the Diocese over 3 weeks in March 2018 and about Peter Ball over one week in July 2018.

In May 2019 IICSA published its Reports into Chichester and Ball.

The Church's response expressed by the House of Bishops was that "*The Church has failed survivors and the report is very clear that the Church should have been a place which protected all children and supported victims and survivors. We are ashamed of our past failures, have been working for change but recognise the deep cultural change needed takes longer than we would like to achieve. We welcome the recommendations ... It is absolutely right that the Church at all levels should learn lessons from the issues raised in this report and act upon them"*

The final public hearing took place over 2 weeks in July 2019. We await the report on the Church as a whole.

And now …

There is a level of tension about things that is not helpful. Some people feel that the church has become obsessed with safeguarding and talks more about that than about the gospel; others continue to criticise the church over past failures and question whether any real change has taken place or

indeed can take place whilst some of those they accuse of past failures remain in senior positions. My own perception is that there is on the part of a very few survivors an antagonistic attitude towards the Church as represented by anyone in authority. I think I can understand why they feel that given the way that many reports and reviews have identified the serial failings of the Church historically particularly its leaders. But it does not help in establishing the way forward.

My judgment is that the policies and practices now in place are of a high standard. I sense a determination to ensure thorough training of all who have any level of responsibility in the Church. There are clear systems in place for dealing with any concerns that arise. There is also a clear line of reporting which will lead to reporting to the police/social service/LADO as appropriate.

I am very grateful to Melissa Caslake, the National Director of Safeguarding, who has seen a draft copy of this lecture for sharing some of her thoughts about it with me. I am aware that she feels that there is still work to do to get to an overall consistency of good standards of safeguarding in the Church e.g. ensuring clarity and transparency of decision making about safeguarding, and making sure that all senior clergy are following procedures. When there are disagreements between clergy and safeguarding advisors these are often not easily resolved because there is not a clear escalation process or clarity about lines of accountability for decision making.

It did strike me as odd that the amendment to the Diocesan Safeguarding Adviser Regulations in 2016 which enabled the adviser to bypass a bishop who was unwilling to accept advice to refer a matter to the statutory authorities missed the point. Why is it not required of bishops that they must pay due regard to the advice given? That would mean that they could only act against it if they had cogent reasons for doing so. I would have thought in those circumstances it would be a foolish bishop who did not seek legal advice if minded not to follow the DSA's advice, and an even more foolish one who carried on if advised by their legal adviser that their supposed reasons for not following the advice were not cogent when set against the reasoned advice of the DSA. It is possible that the legal advice would give a basis for not acting as advised, but that would show a fair and balanced system that was working well.

We are all very familiar with the government response to a high profile crime, which is to bring in an act to ban one thing and double the sentence for something else, announcing that they will thereby solve the problem and make everyone safe. Equally in relation to the many enquiries into the abuse and killing of children, promises to change procedures or provide resources have the implied message that "we will stop this happening". No one is ever prepared to say "we will do our best and make things better, but some children will still die". We must recognise that even when we have in place as

good a system as is possible and one that is operated faithfully by all concerned, there will still be cases when children and vulnerable adults will be abused in churches. The church is a place and should be a place which attracts broken and damaged people and is engaged in the healing business. But the consequence of that is that some of those people will themselves cause harm to others around them and there will be some who will come in intentionally to take advantage of the fact that there are vulnerable people amongst us. The need for alertness and safe systems which are rigorously enforced will never go away. There will always be a need for lessons learned reviews.

In a number of the reviews it has been acknowledged that it does take time for culture in institutions to change. My own experience is that at grass roots level that is happening. My own experience of undergoing training as a Church Officer (a Reader) is that of having attended C3 training in 2014 and 2017 and S3 domestic abuse training in 2019. It struck me in my last training session in November that there was now across the board a real grasp of the issues involved which was not there in 2014 and not even in 2017 when a number of people responding to a 'scenario' were of the view that nothing could be done as 'it was just her word against his'.

It is also the case that in the House of Bishops there are some men who have disclosed that they themselves are to an extent survivors. One speaks of being 'abused' by Smyth and another of being 'manipulated' by Ball. And of course there are now a number of women bishops in the House of Bishops and more in the College of Bishops. I was struck in the recent BBC programme *Exposed: The Church's Darkest Secret* that it has often been women who have been most active in really getting to grips with these issues. It was the woman housekeeper who heard and believe Neil Todd's first disclosure and informed Bishops Yates and Walsh of what he had said and it was women safeguarding officers who finally insisted that further steps could and should be taken which led to further action against Ball.

So I have a significant degree of optimism that when we have received the IICSA report with whatever recommendations it makes we should be in a position to move on. There will be issues to address, some of which may not be addressed by IICSA and I will turn to some practicalities about some of those in a moment.

Before doing so, I want to share a pastoral rather than a legal thought. David Bentley Taylor, was a former missionary to China. I remember as a teenager attending a youth meeting held in Church House Westminster at which he spoke. I have never forgotten something he said that night; it was this – "Sampson was the strongest man in the Bible, Solomon was the wisest man in the Bible and King David is described in the Bible as a man after God's own heart – but each of them failed sexually". Although

they did not abuse children their pursuit of sexual gratification relied on power, position and personality as does so much abuse of any kind. On that occasion we were urged to have these 'heroes' in our minds as we grew up and as we learned to address in our own lives issues to do with power, sex and money. It seems to me that too often in the events we have been reviewing that there has not been in people's minds whether addressing their own human frailty and likelihood of failing to live lives of sexual integrity, or when as leaders they have been considering those for whom they have oversight and who seem to be successful the likelihood that the people who in many areas impressed them might also be failing significantly in their sexual lives. The Bible does speak about forgiveness, but it also makes it clear that choices and actions have consequences.

It seems to me that the current Church leadership does now get that.

One little postscript, before moving onto issues ahead of us - one of the interesting things that has come out recently is the suggestion that in part the Church's inability to address the issues of child abuse in earlier years was its confusion and dishonesty about sexuality. A recent post on the Surviving Church website referred to the Osborne Report to the House of Bishops in 1989 on homosexuality. The post draws attention to how the report demonstrates 'positional privilege', it refers to the report as being "a careful analysis of the attitudes within the Church to the issues of homosexuality. There is no sense in which abuse or safeguarding is a principal or a main consideration. There is, however, a short section which touches on the response to pastoral problems and failings around sexual misbehaviour" (which is then quoted).

That reminded me of a passage in the evidence of Edi Carmi to IICSA on 20th March 2018 (the Chichester Diocese Inquiry) when she spoke of how in the course of the Banks Review she went to meet the Cathedral Chapter and when she explained the purpose of the review (looking at child abuse), members of Chapter responded "But we are talking about homosexuality here. You know, why are you talking about child abuse?", She then described how concerned the Chapter had been to establish the ages of the children and said that they didn't see it as child abuse if the children were 14 or 15, and they saw this as actually people exercising their own sexuality. She went on "sometimes when you talk to somebody, you have a kind of Eureka moment, and this felt like this. This was a senior member of the cathedral that I was speaking to, and he was very reflective. He felt bad. He felt that actually he should have identified that what he was seeing was child sexual abuse. And what he explained was that because of his theological beliefs, he is totally against homosexuality. …. So when he, in hindsight, was able to see what was actually Terence Banks grooming and what he suspected, what he could see now was the likely evidence that he was abusing these children, he just put it in a

box where he didn't allow himself to think, because that was the homosexual box where you mustn't think about it, you mustn't recognise it. … That for me was really profound."

So there is perhaps another thread of what led people in the past to fail to recognise and/or be honest about what was really happening. In that respect also there is a different understanding in the Church today.

Some unresolved issues:

Finally I want to turn to some of the unresolved issues that lie ahead.

Much of the criticism of the church and those in senior positions in it has been because they have not disclosed what they knew about an allegation of abuse, and even in some cases admissions of abuse, to the secular authorities whether the police or the local statutory agencies.

So it is argued there should be **mandatory reporting** with criminal sanctions for failure. This has so far been resisted by the UK Government. They held a consultation in 2016. Following that consultation, the UK Government's position is that there is widespread support for allowing the existing programme of child protection reforms time to take hold, and that the case for mandatory reporting has not been made. In contrast the Welsh Government did introduce a legislative duty to report child abuse and neglect in 2016, having passed the necessary legislation in 2014[22]; however that applies to 'relevant partners' such as police, probation and health boards and trust and does not include voluntary agencies or churches.

The issues are not straightforward as you have to define on whom the duty falls (does it include volunteers in the organisation?) and what are they under a duty to report (what forms of abuse and what level of suspicion requires a report?) and to whom are they to report. Different jurisdictions have answered these questions in different ways.

The two archbishops have spoken in favour of mandatory reporting, but I am unclear what exactly they are saying on each of those issues. It's a bit like "Brexit means Brexit". In reality the church, like most organisations that work with children, already has clear rules requiring reporting and as we have seen the DSA can override the bishop in relation to reporting.

[22] Section 130 of the Social Services and Well-being (Wales) Act 2014

However there is a very strong lobby from survivors' groups to introduce mandatory reporting. We must wait to see what if anything IICSA has to say about it, and if it recommends it, what the Government response will be.

However mandatory reporting raises a much more difficult question for the church namely that of the **seal of the confessional.** This goes back to the very roots of Canon Law. Gratian in his Decretals in 1151 said "Let the priest who dares to make known the sins of his penitent be deposed."[23] He added: "the violator of this law should be made a lifelong, ignominious wanderer."

Canon 21 of the 4th Lateral Council in 1215 decreed "He who dares to reveal a sin confided to him in the tribunal of penance, we decree that he be not only deposed from the sacerdotal office but also relegated to a monastery of strict observance to do penance for the remainder of his life."

In the Church of England Canon B29 deals with the ministry of absolution and has an asterisk below it which says "see also the unrepealed proviso to Canon 113 of the Code of 1603" which states "Provided always, that if any man confess his secret and hidden sins to the minister, for the unburdening of his conscience, and to receive spiritual consolation and ease of mind from him; we do not in any way bind the said minister by this our Constitution, but do straitly charge and admonish him, that he do not at any time reveal and make known to any person whatsoever any crime or offence so committed to his trust and secrecy (except they be such crimes as by the laws of this realm his own life may be called into question for concealing the same), under pain of irregularity."

The parenthetical exception was a significant break with the canon law prevailing prior to the Reformation. As part of the Elizabethan settlement s.3 of the Submission of Clergy Act 1533 which defined the effect of the break with Rome said in its heading "No Cannons, &c. shall be enforced contrary to the King's Prerogative". But the words of the section then say "Provided alway that no canons constitucions or ordynance shalbe made or put in execucion within this Realme by auorytie of the convocacion of the clergie, which shalbe contraryaunt or repugnant to the Kynges prerogatyve Royall or the customes lawes or statutes of this Realme; any thyng conteyned in this acte to the contrarye herof notwithstondyng."

That is saying that the Royal Prerogative, or the customs, laws or statutes of the realm override the absolute nature of the canons. There were no statutes in 1533 that did put someone's life in peril for

[23] Decretum, *Secunda pars*, dist. VI, c. II

failing to report a particular crime, in which case the Act is presumably envisaging that there may be such in the future.

The 2015 Guidelines for the Professional Conduct of the Clergy Guidelines for Clergy now deal in section 3 with absolution. When comparing the amended with the earlier version it is noteworthy that the requirement that "the priest should urge the person to report his or her behaviour to the police or social services, or withhold absolution until this evidence of repentance has been demonstrated" has become "the priest must require the penitent to report his or her conduct to the police or other statutory authority. If the penitent refuses to do so the priest should withhold absolution." Further the 2003 wording in relation to the Church's understanding of the 'seal of the confessional' and the strength of the relevant provision in the Canons of 1604 (Canon 113) has been significantly softened.

In Australia the Royal Commission recommended (Recommendation 7) that mandatory reporting be introduced by States, that the mandatory reporters should include people in religious ministry and that "Laws concerning mandatory reporting to child protection authorities should not exempt persons in religious ministry from being required to report knowledge or suspicions formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession." The state of Victoria has introduced mandatory reporting laws in that form and included the clergy as mandatory reporters. Other Australian states are currently considering following Victoria.

Of course, the very nature of the issue means that it difficult to know the extent of the problem. Are those who insist on keeping the absolute nature of the seal doing so because they know from experience that they would be facing a crisis of conscience on a regular basis, or is it because they fear that it just might one day happen to them?

Next I turn to **Risk Assessments.** These are currently carried out under the Safeguarding (Clergy Risk Assessment) Regulations 2016. One of the problems that struck me when I considered these regulations was the approach which is currently set out in Reg 5(2) which provides that "Where a risk assessment has involved consideration of a matter certain facts of which are in dispute, the written assessment— (a) must set out the matter and the nature and extent of the dispute, but b) may not make a finding on any fact which is in dispute."

So how do things proceed? There is a dispute about the facts or some of the facts which have given rise to the assessment taking place. There has been no resolution of those issues either by admission or by a finding of fact. On what basis does the assessor proceed? I understand that often phrases are

used such as "if the allegations and concerns about X's past behaviour are deemed to be true…". But that begs the underlying and fundamental question as to the nature of the risk.

It seems to me that that involves "mental gymnastics of Olympian proportions", and also causes problems about enforceability.

In the family courts there is usually a finding of fact hearing before the psychologists and others set about assessing the risk of future harm and the way, if at all, that it can be managed. After all past behaviour has always been said to be the best predictor of future behaviour.

I have some understanding of the problems in this area from my experience both at the bar and on the bench in family cases. Indeed I was an advocate in the case of *Re CB and JB*[24], something of a landmark case at its time. In the course of argument much reference was made to the earlier case of *Re M and R*[25] in which it had been decided that the risk of future harm could not be said to exist if harm in the past had not been established. In *Re CB and JB* the judge was satisfied that harm had taken place even though he couldn't say which of the two parents had caused it. As they were planning to stay together he was able to say there was a future risk from one or other of them. But the bottom line was that the assessment of risk had to be based in findings about what had happened in the past. The issue of the proper basis for assessing risk has been thus established in the family courts for many years now. I believe that there are lessons there for us to learn from as we look at assessing safeguarding risks.

If you are satisfied that something has happened then you are entitled to take quite a firm approach in any conditions you impose on people to ensure there is no repetition and no harm to others in the future. On the other hand if it is less likely to have happened then a much lighter touch approach may be acceptable.

I have raised an eyebrow at an earlier stage in relation to payments to lawyers, but it seems to me that you cannot keep them out of these processes. One of the reasons that things went wrong, as Lord Carlile judged that they had, was because of the absence of a criminal lawyer throughout the process and particularly when decisions were being made.

[24] [1998] EWHC Fam 2000; [1998] 2FCR 313

[25] [1996] EWCA Civ 1317; 2 FCR 617

So I want to suggest that the Church should consider implementing a process I will describe in a moment for fact finding which would result in a determination with a narrative account as to what had and sometimes what had not happened and on that basis the risk assessors could sensibly address the issues of risk and how it could be managed in the future.

So I turn to fact finding. The **Clergy Discipline Measure** was enacted in 2003, the same year as the Sexual Offences Act and Criminal Justice Act. That was before the 3rd version of the church's policy and before the wave of non-recent disclosures swept over the church.

It is widely accepted that the CDM is not appropriate for dealing with issues related to allegations of sexual abuse, particularly non-recent ones. There are various reasons for that. They include the time taken to bring proceedings to a conclusion, the way complainants are treated during the process, and its being unrelated to any risk analysis. One of the major issues that is raised by survivors is that it is not appropriate for a bishop to have such a key role, certainly in the initial phases of the current process. It is also argued on behalf of respondent clerics that they too are seriously disadvantaged by the current procedures. The Sheldon Hub is looking at ways to improve support for respondents and case-handling, and ultimately make recommendations to repair or replace the Measure. It is also becoming apparent that little thought was given to the real prospect of the process dealing with complaints against bishops and archbishops. Recent instances involving the Bishops of Lincoln and Chester have revealed some lacunae.

There have been some specific changes to attempt to address some of these issues. The time limit of 12 months no longer applies to cases alleging sexual misconduct towards a child or a vulnerable adult. The process is still drawn out with the preliminary scrutiny phase, before any bishop-directed investigation commences. The resources are extremely limited being one solitary designated officer who is expected to report to the President of Tribunals within 3 months of being instructed to investigate, although that can be extended. The President then has 28 days to decide whether the matter should be referred to a Tribunal. If that is done there is no time limit within which the hearing must take place. The five panel members are selected and a date then chosen that they and all parties can accommodate. When the hearing does take place it is not, so far as I am aware, customary to consider whether a witness would benefit from special measures.

But there are other issues in the background. There is the whole question of the relationship of any CDM process to any criminal investigation and/or prosecution. It is customary to wait until the conclusion of those, on the basis that if there is a conviction and imprisonment then matters can proceed at pace thereafter under s.30 of the CDM. It is also suggested that it is not fair to a respondent

to expect them to answer proceedings in a civil jurisdiction whilst criminal charges are pending before a criminal court. in my judgement there is no real rationale for that that withstands any scrutiny.

The current problems besetting the criminal justice system and which are resulting in outrageous delays before cases come to trial cry out to us to find a better way forward. Not least the police practice of RUI (release under investigation) which has removed any urgency from completing enquiries expeditiously coupled with the recent reduction in Crown Court sitting days which means that after charge there will then be a very lengthy wait of over a year before a trial date is reached, are further reasons for the Church moving to act more expeditiously. There is no reason in law, and in my view there are good reasons in practice for not continuing this wait and see approach.

If there is no prosecution or if there is a prosecution but no conviction then the matter will start or revive after a lengthy delay which cannot be in anyone's interest. And at that stage there will need to be a risk assessment.

So what might be done? What I suggest is simply my own thinking about what might be possible, would avoid the delays, and lead to a much speedier process and one that would enable a risk assessment if that were appropriate.

It will of course require more resource, but more resource is necessary to fix what is essentially broken in any event.

My proposal in very broad terms is that first, many matters that currently trouble the CDM process could be dealt with by diocesan complaints policies. There really is no need for disagreements between an incumbent and choirmaster about music to find its way into the complexities of the CDM. Diocesan complaints policies currently vary widely in their scope and procedure. Work could be done to harmonise these along the lines of some of the better processes. But second, and it is this that I want to develop, if there is a serious allegation made of a sexual nature (and it could perhaps be extended to other serious matters) and a diocesan official (lay or cleric) becomes aware of it, then it should be recorded at the Diocesan Office and arrangements immediately made for someone to take a statement from the complainant. I accept that there are complications with any ongoing police investigation and we could perhaps look at trying to persuade them to share any evidence they have gathered with us. This statement taking by the church might be done by the Archdeacon, although there are other possibilities. That should be done as an urgent priority and within 7 days of the making of the complaint.

Once that statement has been obtained a central office which would need to be established to deal with these matters nationally would appoint a legally qualified chair (LQC) who will ultimately preside at any hearing and who will also effectively preside over the process from that point onwards.

There will then be a tight timetable for collecting evidence and formulating the 'charge' and then requiring a response from the respondent – perhaps 28 days in each case. Any deviation from that timetable would require the LQC's consent. Any case management hearings would be dealt with online by an internet connection (e.g. using Google Hangouts).

The date for the final hearing would have been fixed as early as possible when the LQC and the prosecutor and defence solicitor have been identified – perhaps 2 or 3 dates could be identified. Such interim hearings would also deal with matters such as special measures – screens for witnesses at the very least. I do not know why they are not used regularly now. (I did ensure a complainant was screened when I acted as commissary for a visitor dealing with a sexual complaint in 2004). I would like to think it might be possible to obtain support for complainant witnesses from ISVAs.

The final hearing would be by a panel of three. HH John Bullimore reminded us when this lecture was first given that the need for a panel of five was a requirement General Synod insisted on when the Measure was being enacted to safeguard clerics for whom a great deal might be at stake. However I do not understand that five is any better than three. Apart from the LQC the other two should be one lay and one ordained member and the panel shall consist of at least one man and at least one woman.

Something like Doodlepoll should be used to identify panel members who can manage the identified date, rather than trying to find a date to suit 3 people and the advocates whose identity by then has been set in stone.

The hearing should take place no more than 6 months after the making of the complaint.

The hearing would result in a narrative verdict setting out whether the complaint is upheld or not and setting out the events found to have taken place on a balance of probabilities.

That narrative verdict would then be used in any risk assessment that would follow.

If there is any merit in any of these proposals then they will need much more work to refine them. I am conscious of some objections that can be raised about some aspects of my proposal. But I want trigger thinking and discussion to find a better way forward. I am aware that there is a CDM Working Group looking at these matters and I commend these proposals for them to add into their considerations.

My own experience as a Judge involved in devising and then establishing changed procedures was that a multi-disciplinary working party of practitioners sitting down round a table and doing “process mapping” can generate new working practices much more efficiently than something imposed from on high or devised by managers who are now too far removed from the day by day doing of the work.

I simply offer this outline of an idea as a different way of approaching issues that many regard as not working at all well as they are currently being addressed.