



Ecclesiastical
Law
Society

The Report of the
Ecclesiastical Law Society
Working Party
on the
Seal of Confession

30 June 2023

This document has been produced by the members of the Working Party (see Section 12) for submission to the House of Bishops Working Party on the Seal of the Confessional. It does not necessarily represent the views of the trustees or membership of the Ecclesiastical Law Society.

Contents

Chair’s Summary	3
1. Introduction	5
2. The Doctrinal Position.....	6
3. The Canonical Position.....	7
4. The Pastoral Position	8
5. What do we know about the current practice of the Seal in relation to child abuse?	10
6. Conflicts of Conscience	12
7. Other Anglican Churches	13
8. Ecumenical Summary	14
9. History Summary	14
10. The Next Steps	14
11. Training Issues	17
12. Members of the Working Party	18
Appendix 1: The Unrepealed <i>Proviso</i> to Canon 113 of 1603/4	18
Appendix 2: Summarised history of public/private penance	24
Appendix 3: Anglican churches outside England	27
Appendix 4: Ecumenical Perspectives	30
Appendix 5: The Seal of Confession and the Law of Evidence.....	33
Appendix 6: Mandatory Reporting	36
Appendix 7: Paedophiles and Confession.....	40
Appendix 8: Training issues	41

Chair's Summary

In our *Introduction* we explain the origins of the Working Party in response to the House of Bishops own discussion about the seal of confession. We note that after beginning our work the Government announced it was to consult about legislation requiring mandatory reporting. We are concerned that any submission from the House of Bishops should be made after consultation with other relevant churches. We note our unanimous report reflects diversity within the Working Party on the question of reporting.

In Section 2, *The Doctrinal Position*, we remind the House of Bishops that in 1959, during discussion about the revision of the canons, an Act of Convocation was passed which reaffirmed the seal of confession as 'an essential principle of Church doctrine'.

In Section 3 we discuss *The Canonical Position*. Some of us believe the duty of absolute confidentiality in relation to confession is among those parts of the pre-Reformation Canon Law that remains in force. Others of us do not accept this beyond the deliberately unrepealed *Proviso* attached to Canon 113 of the Canons of 1603/4.

Section 4 examines *The Pastoral Position* in relation to the *Guidelines for the Professional Conduct of Clergy* and its exact status as an Act of Convocation in the light of the Safeguarding and Clergy Discipline Measure 2016. We note the House of Bishops Working Party was not able to reach an agreement as to whether there should be significant change in the traditional understanding of the inviolability of the Seal. We note the importance of a clear distinction between pastoral conversation and the seal of confession. The *Practice Guidelines* on safeguarding matters are also considered. We believe it very important that the issue of disclosure is dealt with in any future practice guidance.

In Section 5 we turn to the question of *What do we know about current practice of the Seal in relation to child abuse?* We look at the IICSA report and recommendations. We note evidence that perpetrators do not confess their crimes in the confessional. There is, however, evidence that those who have been abused often use the confessional as a safe place for disclosure. Roman Catholic evidence, national and wider, corroborates this. We consider the statement that there have been many informal examples of 'talking over the kitchen table' where abuse was not subsequently disclosed, but defended by claiming this was under the 'seal of the confessional'. These we believe were in fact pastoral conversations rather than formal confession where the Seal would apply. This leads us to note the problem of some pastoral situations where an older mentor or leader invites confidential conversation. We ask the House of Bishops to clarify the distinctive understanding of the ministry of reconciliation and that a clear distinction is drawn.

Conflicts of Conscience are considered in Section 6. A conflict of conscience arises when a priest feels the conflicting duties both of protecting a victim or survivor of abuse and also of maintaining the absolute confidentiality of the ministry of absolution. Whichever decision a priest makes in conscience they will find themselves conflicted. This will increase if mandatory reporting is introduced by law. Conflicts of conscience should be clearly addressed in training material.

Other Anglican Churches are considered in Section 7. Australia is carefully considered because it is the only Anglican Province which has changed its canon law and was particularly considered by the House of Bishops Working Party.

Section 8 is an *Ecumenical Summary* with evidence from Lutherans and Roman Catholics. Training issues are highlighted in terms of helping either an abuser or survivor to seek professional support and disclosure.

A *History Summary* at Section 9 reminds that the history of penance is complex with *public* penance (once only after baptism) in which there was no confidentiality giving way eventually to *private* (and regular) penance and absolute confidentiality.

With Section 10, *The Next Steps*, we come to our key recommendations. The House of Bishops needs to determine how the Code required by the Safeguarding and Discipline Measure of 2016 will relate to the seal of confession (as also revision of *Guidelines for the Professional Conduct of the Clergy*). More urgently the House will need to respond to the Government consultation on mandatory reporting (by 14 August). We are clear the House will need to reach a position on the current state of the seal of confession involving consideration of the 1603/4 Proviso, the 1959 Act of Convocation affirming the Seal and the question of whether not to revisit this. The scope of the Seal also requires clear delineation: is it as limited to the traditional ministry of reconciliation (as in *Common Worship* and the *Book of Common Prayer*) or to a wider category of confidential conversation. Some of us would urge the Church not to make a voluntary exception to the seal of confession, adhering to the 1959 Act of Convocation and the doctrinal principle the Church of England shares with other churches in which the ministry of reconciliation is practised. Those who take this view accept that if the Government impose a statutory duty of reporting this will legally over-ride the 1603/4 Proviso, as in fact the Terrorism Act 2000 already does. Others of us believe that the new Code of Practice needs to embody a carefully defined exception to the Seal, either permissive or mandatory, without clergy committing canonical disobedience or risking disciplinary action. Either in the case of the maintenance of absolute confidentiality or exceptional disclosure the difficulties of conflict of conscience are noted once again.

We are clear and unanimous that creating a canonical exception to the Seal either by qualifying the *Proviso* or replacing it with a new Canon would be divisive and time consuming. We recommend the retention of the *Proviso*, as in 1969, as a general commitment to the doctrine of the Seal, despite it being at least potentially in conflict with the modern law of evidence, noting that statute law (and any Code given statutory force) generally prevails over a canon.

We then move to Section 11, *Training Issues*. We are clear that safeguarding training requires to be set within a more holistic project of priestly formation including the ministry of absolution. This is a prime responsibility of the bishops.

Section 12 concludes the main report with a list of the members of the Working Party.

There follow 8 Appendices. These explain our work in more detail but they carry the signatures of their authors rather than the approbation of the whole Working Party. They comprise:

Appendix 1. The Unrepealed *Proviso* to Canon 113 of 1603/4

Appendix 2. Summarised history of public/private penance

Appendix 3. Anglican Churches outside England

Appendix 4. Ecumenical Perspectives

Appendix 5. The Seal of Confession and the Law of Evidence

Appendix 6. Mandatory Reporting

Appendix 7. Paedophiles and Confession

Appendix 8. Training Issues

While this is intended to be a fair summary of our work and recommendations it is important to read the whole text.

+Christopher Hill
Chair, ELS Working Party

1. Introduction

This submission to the House of Bishops working party on the seal of the confessional¹ is made against the background of the earlier *Report*² of the House of Bishops concerning the seal and the interim statement that arose from it. This earlier *Report*, published in 2018, was wide ranging and thorough and there is no need to rehearse its content here. We note that the House of Bishop's working party was unable to come to a common mind concerning the seal of the confessional and whether this should be retained, varied or abandoned.

The interim statement from the House of Bishops, published in 2019, accepted many of the working party's recommendations and said that further work was necessary to take them forward. In the following submission we respond to some of the reflections and recommendations of the original working party in a number of areas. However, we do not specifically cross reference these points.

When the House of Bishops established its own working party, the following were given as terms of reference:

- To assist the House of Bishops and the Archbishops' Council in responding to the recommendations of IICSA concerning the Seal of the Confessional, including considering legal options if these are recommended by IICSA
- To review the work on the Seal of the Confessional that led to the Interim Statement currently posted on the Church of England website, as well as the implementation of its recommendations
- To assist the House of Bishops and the Archbishops' Council in moving from an 'interim statement' to a settled position which can be appropriately set out through different communication channels

¹ We have adopted the term 'the seal of confession' in preference to 'the seal of the confessional'. We acknowledge that the House of Bishops' Working Party and IICSA use the term confessional and when we refer to either body we use that term. But contemporary canonical discussion, not least in the Roman Catholic Church, appears to be moving away from this usage as potentially too broad. The reason for this is that there is lively debate as to whether absolutely everything spoken by the penitent is subject to absolute confidentiality. Examples of where this is manifestly not the case without breaking the Seal are cited in Appendix 4. The usage we have adopted has the added advantage of not confusing what is confessed as sin with a confessional box; an item of furniture rarely found in Anglican churches.

² *Report of the Seal of the Confessional Working Party* (March 2018) available at <https://www.churchofengland.org/sites/default/files/2019-05/Seal%20of%20the%20Confessional%20-%20Full%20document%20-%20FINAL%20May%202019.pdf>

Our working party was established in response to the House of Bishops' invitation for contributions and comprises those listed in Section 12 of this report. It met on five occasions by Zoom and members undertook most of the work between meetings.

After we had begun our work, the government announced that it intended to introduce legislation requiring mandatory reporting of known or suspected child abuse or neglect. This caused us to pause and re-evaluate the scope of our work. Section 10 addresses mandatory reporting, including comments about the recently initiated government consultation.

We have a concern that any submission from the House of Bishops ought to be made after consultation with other churches that have the tradition of liturgies for the reconciliation of a penitent. We have a very strong sense that all those who receive this part of the historical tradition should if possible respond with a common voice.

The report which follows is the work of the whole group and has our unanimous agreement. Some sections reflect the diversity of opinion within the Working Party, agreed as a fair reflection by all. The appendices are attributed to particular members and are often a reworking of earlier work by those individuals. They are the opinion of their respective authors.

We have attempted to confine the report itself to a reasonable number of pages. We hope that the section headings are helpful and, with the appendices for additional clarification, this submission will assist the House of Bishops in its ongoing task.

2. The Doctrinal Position

One of the reasons why this subject is very difficult to address is that it is not simply a matter of law or regulation but impinges on Christian doctrine: that of the Seal of Confession (hereafter 'the Seal').

This doctrine, which the Church of England shares with the Roman Catholic Church, the Orthodox Church and Lutheran churches, was reaffirmed in resolutions passed without dissent by the Canterbury and York Convocations (provincial synods) in April 1959:

That this House [*York*, That this Synod) reaffirms as an essential principle of Church doctrine that if any person confess his secret and hidden sin to a priest for the unburdening of his conscience, and to receive spiritual consolation and absolution from him, such priest is strictly charged that he do not at any time reveal or make known to any person whatsoever any sin so committed to his trust and secrecy.

The Convocation of Canterbury's resolution was declared an Act of Convocation. An Act of Convocation does not have legal force but

expresses a decision in which the whole Synod concurs, and as such is the embodiment of the mind, will, and opinion of the Church in the Province, expressed through its duly accredited and authorized representatives, learned in theology.³

³ A. F. Smethurst, *Convocation of Canterbury: What it is, What it does, How it works* (London, 1949), p. 37. Canon Smethurst was Synodical Secretary of the Convocation of Canterbury from 1947 until his death in 1957. The judgment in *Bland v Archdeacon of Cheltenham* (1972) said that, while lacking the force of a statute, Acts of Convocation have 'great moral force as the considered judgment of the highest and ancient synod of the province' (1 All ER 1012 at 1018d). They were the forerunners of Acts of Synod, which the General Synod's Standing Orders define as 'the embodiment of the will or opinion of the Church of England as expressed by the whole body of the Synod' (SO 41).

3. The Canonical Position

The wording of the Act of Convocation is adapted from the Proviso to Canon 113 of the Canons of 1603/4, which remains unrepealed:

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 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.

As explained in Appendix 1, the Proviso was originally drafted merely to ensure that the terms of Canon 113 did not conflict with the Seal as embodied in the pre-Reformation canon law that continued in force. However, because of its presence in the 1603/4 Code, it very quickly came to be viewed (for example in episcopal visitation articles) as the substantive enactment of the Seal. The *Guidelines for the Professional Conduct of the Clergy* (2015), itself an Act of Convocation, summarises its legal effect in paragraph 3.5:

If a penitent makes a confession with the intention of receiving absolution the priest is forbidden (by the unrepealed *Proviso* to Canon 113 of the Code of 1603) to reveal or make known to any person what has been confessed.

The 1947 report that set in train the process leading to the replacement of the 1603/4 Code proposed to embody in a new canon the essential principles of the pre-Reformation canons and of the Proviso in relation to the Seal.⁴ Instead, a text based solely on the *Proviso* was included as a fifth paragraph in the draft of what is now Canon B 29. However, in 1958 both government and church lawyers advised that this draft paragraph, like the *Proviso*, conflicted with the modern English law of evidence. The Crown would therefore not give Royal Assent to it. For it to be pursued, parliamentary legislation would be required, which would attract strong opposition as inviting Roman Catholic priests, doctors and lawyers to demand similar exemptions.

The solution proposed was to remove the paragraph from the draft canon and instead leave the *Proviso* unrepealed. In order to make clear this did not betoken any resiling from the Seal, the Convocations passed the resolution quoted in Section 2, which embodied the text of the draft paragraph, without dissent. In the Convocation of Canterbury this was declared an Act of Convocation. By granting Royal Assent in 1969 to the canon that repealed the rest of the 1603/4 Code 'except the proviso to Canon 113', the Government acquiesced in the Church retaining in force a canonical provision that conflicts with modern English law (which, legally speaking, overrides it).

Section 38B of the Terrorism Act 2000 (as inserted by the Anti-Terrorism, Crime and Security Act 2001) introduced a requirement to disclose certain information connected to acts of terrorism. Again, the proviso was not amended or canonically qualified in response. Instead the Legal Advisory Commission updated its Legal Opinion on Confidentiality, stating that Section 38B 'considerably, if not entirely, restricts any right or duty to remain silent'.⁵

⁴ For further details of the process that led to the 1959 Act of Convocation and the *Proviso* being left unrepealed in 1969, see Appendix 1.

⁵ For further details, see Appendix 5.

As the Court of Arches recognized in 2009,⁶ pre-Reformation canon law continues in force if it has been ‘continued and uniformly recognized and acted upon by the bishops of the Anglican Church since the Reformation (which might have shown it to have been received and adopted as part of the law ecclesiastical recognized by the common law)’.⁷

Some of us agree with the 2018 Working Party that ‘the priest’s duty of absolute confidentiality in relation to auricular confession’ is among those parts of the pre-Reformation canon law that on this basis remained in force after the Reformation and continue in force today.⁸ On this understanding, the purpose of the *Proviso* to Canon 113 was not to offer a comprehensive treatment of the duty of absolute confidentiality in relation to confession, which continued to be required by the inherited pre-Reformation canon law, but to merely to ensure that the main body of Canon 113 did not conflict with that canonical duty. Consequently, to regard the *Proviso* as such a complete statement would be mistaken and simply repealing it without explicitly abrogating the underlying canonical duty of confidentiality in relation to confession would not remove that canonical duty.

Others of us do not find any evidence that any pre-Reformation canon on the Seal has been uniformly recognised and acted upon beyond the text of the *Proviso*. In particular, there do not seem to be any occasions on which bishops have sought to apply the disciplinary processes of the Church in force from time to time against priests alleged to have broken the Seal. On this understanding, the *Proviso*, given additional support by the 1959 Act of Convocation, forms the complete statement of the Church of England’s canon law in relation to the Seal.

4. The Pastoral Position

There are a number of documents that provide guidance to priests who practise what is known as the Sacrament of Reconciliation, in the course of which the Ministry of Absolution is exercised with its associated seal of confession. We will summarise each of those documents below and provide a link to the original document. We will review them in the order in which they were produced.

It is important to note the status of each of the documents. None of the documents are Measures. The *Guidelines for the Professional Conduct of the Clergy* are an Act of Convocation. Acts of Convocation have the same status as Acts of Synod. General Synod Standing Orders describe those as ‘the embodiment of the will or opinion of the Church of England’.⁹ Then there are policy documents or practice guidance documents issued by the House of Bishops (HoB). One of the problems about several of these that relate to safeguarding is that their status derives from a statement on the Church of England website page that lists them.¹⁰ It says,

All the policy and practice guidance on this page has been approved by the House of Bishops and must, where relevant, be followed by all Church Bodies and Church Officers.

That brings into play the Safeguarding and Clergy Discipline Measure 2016 which requires relevant persons (which includes ‘a clerk in holy orders who is authorised to officiate ...’) ‘to have due regard to guidance issued by the HoB on matters relating to the safeguarding of children and vulnerable adults’.

⁶ *In re St Peter’s, Draycott* [2009] Fam 93 at 43-45.

⁷ *Bishop of Exeter v Marshall* (1868) LR 3 HL 17, pp. 54,55.]

⁸ *Report of the Seal of the Confessional Working Party* (2018), para. 3.2.2.

⁹ Standing Orders of the General Synod, SO 41(2)

¹⁰ Available at <https://www.churchofengland.org/safeguarding/policy-and-practice-guidance>

The 2016 Measure was amended by the Safeguarding (Code of Practice) Measure 2021 so that it now requires the HoB to issue a statutory code, which may impose requirements on relevant persons, in which case they must comply with those requirements. The change from 'have due regard' to 'must comply' removes any ambiguity about the obligation on office-holders to adhere to the code. As of yet, no such statutory code has been produced which bears directly on the issues with which we have been concerned.

The *Guidelines for the Professional Conduct of the Clergy*¹¹ has the status of being an Act of Convocation. The *Guidelines* begins in section 3 by referring to the ministry of reconciliation and then proceed via the formal ministry of absolution to deal with the inviolability of the Seal. It sets out the restrictions upon which and where ministers may exercise the ministry, in accordance with Canon B 29. Before undertaking such ministry priests should receive appropriate training and be familiar with any episcopal guidelines. It draws the distinction between on the one hand pastoral conversations and on the other hand confessions in the context of this ministry. It states the absolute inviolability of the Seal even after the death of the penitent. It states that if a penitent discloses serious crime (such as abuse) the priest must require the penitent to report that conduct to the police or other statutory authority and if the penitent refuses to do so absolution should be withheld. It makes clear that any disclosure outside the confessional should be dealt with by following established procedures of reporting.

The *Guidelines* then refers to GS Misc 1085, which is included as Appendix 1 to the *Guidelines*. This was a document produced by the Archbishops' Council in October 2014 to assist the Convocations in their 2015 revision of the *Guidelines*. It recites the unrepealed *Proviso* to Canon 113 as being the current legal position. It then says that it recognises both the well-established place of this ministry in the life of the Church of England and also the responsibility of the Church to protect children and vulnerable adults from harm and the force of the argument that the legal framework of the Church should accordingly, in all respects, be such as to enable those who present a risk to children and vulnerable adults to be identified. And it refers to the commissioning of the Working Party to include in its work proposing amendments to the section on Reconciliation in the *Guidelines*.

However, as we know the Working Party was not able to reach any agreement about whether there should be any significant change in relation to the traditional understanding of the inviolability of the Seal. As a consequence the 2015 the *Guidelines* remains much as the 2003 version, although there is now an emphasis on the distinction between confession and pastoral conversations, the seal not applying to the latter.

However, in paragraph 3.8 it speaks of the importance of people being able to trust priests with the confidentiality of what they share with them knowing that it will not be disclosed. We consider that this risks blurring the clear distinction between what is said under the Seal and what is shared in pastoral conversations. Greater clarity is needed about that distinction. Finally, there is a note at the end saying that work is under way with a view to enabling the General Synod to decide whether it wishes to legislate to amend it.

The 2017 version of *Practice Guidance: Responding to, assessing and managing safeguarding concerns or allegations against church officers* has at section 2.6 a passage on the Seal in relation to safeguarding.

¹¹ 1st edition 2003; current edition 2015. The current edition is available at https://www.churchofengland.org/sites/default/files/2017-10/Clergy_Guidelines_2015.pdf.

It begins by setting as its context that failure to share information leads to failure to intervene quickly enough in protecting children and others, sometimes with serious consequences. It then draws the distinction between pastoral conversations and confessions in the context of the ministry of absolution, which distinction it says must be clearly identified and identifiable as such. And it repeats what is said in the *Guidelines* about requiring a disclosing penitent to report themselves to the authorities and withholding absolution where that is refused.

Footnotes refer to the Archbishops' Council's working party, which it says was due to finalise its report in late 2017, and also to the revised *Guidelines*.

It is understood that this *Practice Guidance* is being reviewed. It has been said to Synod that in the future there will be two documents one dealing with managing allegations and concerns about clergy who are alleged to be direct perpetrators of abuse and another one dealing with clergy who have not followed guidelines from the House of Bishops or who have made poor safeguarding judgements.

It is also understood that at the present time issues in relation to the Seal have not been addressed in either document, but as the Deputy Director of the NST is on the official working group this is something that may well be addressed in the future.

We consider that it will be very important that the issue of any disclosure provided during the ministry of absolution is dealt with in any future document about 'managing allegations and concerns'. However, we appreciate the difficulty of addressing this matter while so much is unknown both about any future changes in the secular law and also about any consequent changes that may be proposed to canon law and/or the duties of priests who learn (either in pastoral conversations or during the ministry of absolution) about the abuse or neglect of children.

5. What do we know about the current practice of the Seal in relation to child abuse?

In its final report (20 October 2022) IICSA recommended the introduction of mandatory reporting in relation to knowledge or suspicion of child sexual abuse (CSA). This had been presaged in their report into the Anglican Church where it had looked at the seal of the confessional and considered the representations they had received from survivors and others that mandatory reporting should be introduced by Government as the Church was very unlikely to introduce it itself.

The evidence presented to IICSA from those who had experience as confessors (**that is, those who hear confessions**) was that perpetrators of CSA do not confess their crimes in the confessional. On the other hand, there was a significant amount of evidence that those who have been abused have often used the confessional as a safe place for disclosure of the abuse they have suffered and have received significant help as a result of doing so.

That evidence came from a number of Roman Catholic priests during the course of the investigation into the Roman Catholic Church, namely Bishop Peter Doyle, Bishop Philip Egan, Monsignor Read, Father Smyth and Cardinal Nichols. Cardinal Nichols also told the Inquiry that, 'during some training he undertook with the Lucy Faithfull Foundation (a UK charity dedicated to preventing child sexual abuse), he was told: 'that an abuser of children does not believe they are doing something wrong ... and, therefore was very unlikely to confess it as a sin''. This is also the information we have received recently derived from a Seminar held by the relevant Vatican department (the Pontifical

Council for the Protection of Minors) where we were informed that there was strong evidence that abusers did not go to confession.¹²

Anglican witnesses with experience as confessors gave evidence to the same effect as the Roman Catholics. The Bishop of Chichester spoke of his considerable experience of hearing confessions when he was Priest Administrator of the Shrine at Walsingham and said he had never heard an admission of CSA by a perpetrator. But he also said in relation to survivors that it can be a source of ‘immense spiritual release and encouragement and comfort’ for survivors of abuse. ‘They are able to speak openly about their experiences, free from any fear that a member of the clergy will report such to the police or social services.’

In a submission to the original working party on the Seal, the current Bishop of Blackburn said

.... on countless occasions penitents have spoken of their experiences of being abused, often doing so for the first time ever. The secrecy of the confessional creates for them a safe space in which dark and difficult experiences can be shared. It also creates an environment in which a skilled confessor can explore the shame and guilt around being an abuse survivor, can offer counsel and point people on to those who can accompany them on a journey of healing.

This has enabled wise confessors to give comfort and help to the abused, and no doubt in some case with their consent have enabled them to talk with others also. However, it does not remove their dilemma if that consent is not forthcoming.

A number of witnesses spoke of what they would do if such a confession was made by a perpetrator, namely advise confession to the secular authorities and possibly the withholding of absolution until that had been done. However, no one said that that was what they had ever done, it was a hypothetical situation they were considering.

There was therefore no direct evidence of there being confessions by perpetrators that are not disclosed and so there being a need for mandatory reporting.

The voice to the contrary was from Alana Lawrence of MACSAS who told the Inquiry that “I have seen time and again examples from MACSAS where people were knowingly talking over the kitchen table with the bishop where the bishop has then said to the police, ‘I cannot tell you this because it is under the seal of the confessional’.

That was then included in the IICSA Report on the Anglican Church (October 2020) on p.75 in its section on the Seal where it is stated ‘MACSAS (Minister and Clergy Sexual Abuse Survivors) and other survivor groups have identified occasions where it is alleged that multiple allegations of child sexual abuse have not been passed to the authorities. That statement in the report suggested that specific details of particular instances had been provided by the witness, when they had not.

We have done our best to ascertain to what Ms Lawrence was referring and it seems to us that she is clearly talking about what might be regarded as confidential conversations between a believer and their pastor. We have had a very helpful email exchange with Andrew Graystone who is well versed in the practices at the evangelical end of the church spectrum. He said to us,

Amongst conservative evangelicals (including but not limited to the Iwerne network) intensive discipling relationships are known as ‘One to Ones’ or ‘Personal Work.’ Young men

¹² See Appendix 4.

and women meet alone and secretly with a mentor, who may be a much older man. There will always be Bible reading and extemporary prayer, and the mentor will ask the mentee intimate questions about their personal life, especially moral lapses or sexual relationships. There is a commitment from the older man that whatever is said will remain strictly confidential – the seal of the confessional in all but name.

We noted with concern how in spite of the observation of confidentiality to outsiders, the practices described by Graystone are reported to have sometimes led into spiritual abuse, with the mentor taking advantage of their private knowledge to control or manipulate the mentee. By contrast, the traditional seal of confession, properly observed, exists precisely as a rule of self-denial on the part of the priest to ever make use of the knowledge of others' secret sins to gain advantage over them, whether for personal gain or for the Church as a whole. It is this which protects and enables the free and full confession of the penitent. God's forgiveness is given, not earned. This makes clear the need for the House of Bishops to clarify the distinctive theological understanding of the sacramental nature of the ministry of reconciliation.

In our judgement it is very important that in any discussion about these issues or in any policy making that clear distinction is drawn.

We should add a postscript in relation to other abuses of the confessional. IICSA referred to the case of Robert Waddington, a former Dean of Manchester, and subject of the Cahill Report, who had abused the Seal by telling his victim – falsely – that he could not disclose the abuse, as Waddington had been 'absolved of sinful child abuse in the context of the sacramental ministry of reconciliation'. Given his lie about the effect of confession, we have no reason to believe he was speaking the truth in saying he had confessed at all. However, we are aware that in that respect and in other respects such as the forming of a close spiritual bond with a younger person, confessor priests have sometimes been able to commence and or continue abuse of their victims. None of that has anything to do with the true ministry of reconciliation.

6. Conflicts of Conscience

In the very unlikely event of a person admitting in sacramental confession to abusing a child or vulnerable adult the priest (or bishop) hearing such a confession will, in the words of Bishop Rowan Williams, find themselves 'very conflicted'.¹³ The confessor's conscience will properly be deeply concerned with the duty of protecting a victim or survivor of abuse. Irrespective of the contemporary force or otherwise of the unrepealed Proviso to Canon 119 of 1603/4, the confessor's conscience will also be deeply concerned with the conflicting duty of maintaining the absolute confidentiality of the ministry of absolution as 'an essential principle of Church doctrine' expressed for example in the Act of Convocation of 1959. The confessor will further be deeply concerned at the conflicting duty of giving evidence in a court of law.

A further confliction is likely to arise concerning the recently announced intention to introduce mandatory reporting which is likely to impose further legal obligation to report in terms of the confessor's duty to the State. Once the detailed content and extent of these new provisions are published further representation might need to be made. For further discussion of mandatory reporting, see section 10 below.

¹³ IICSA, p.145.

For the reasons set out in the previous section these conflicting claims on conscience are much more likely to arise in the event of a victim or survivor speaking (in the ‘safe place’ of a sacramental confession) of being subject to abuse. In addition, such conflict could also arise in a ‘third party’ confession where there is mention of abuse by another person.

In these cases there may be a reluctance to go to the appropriate authorities or authorise the confessor so to do. While the confessor must do *everything in their power* to encourage a perpetrator, a victim or a third party to go to the authorities or give permission for the confessor so to do, in the event of refusal on the part of the penitent the confessor’s dilemma of conscience will remain. They must in the end make their decision after balancing all these aspects of their seriously conflicted duties. It is likely however that the vast majority of those who regularly hear confessions will feel themselves bound by the long-standing doctrine and practice of keeping what is called the Seal.

We think that the circumstances surrounding a potential difference between the law of the land and this long-standing doctrine, together with the conflicts of conscience referred to above should be clearly addressed in training material (see Appendix 8).

7. Other Anglican Churches

The Anglican Church of Australia

The experience of the Anglican Church in Australia is significant for two reasons: first it is the only Anglican province that has, as yet, amended its canon law in circumstances similar to those we currently face, and second it was the subject of extensive coverage and criticism in the House of Bishops’ Working Group report. We have included as Appendix 3, a survey of why and how it amended its canon law and why there are a number of reasons for questioning the conclusions drawn by the Working Group about the impracticality of that Australian approach.

In summary, Australia was, like us facing a Commission of Inquiry into institutional responses to sexual abuse and the Church was heavily criticised in the course of that Inquiry for its failures. It therefore amended its canon law in relation to the Seal by a ‘permissive amendment’ which said that if a priest in good faith and on reasonable grounds disclosed a confession made to them of a grave offence of child sexual abuse, then that good faith and reasonable grounds would be a defence to any charge of breach of discipline in disclosing it. Provision was also made for providing priests with advice to assist their decision making.

The Working Group was very critical of where that left priests on the basis of how difficult it would be to know whether what was being confessed fell within the criteria and that it was not appropriate to seek advice. The response we have had from an Australian ecclesiastical lawyer who was involved in the process is that the criteria are straightforward and clear and that this sort of advice is exactly what lawyers are there to provide and are experienced at providing. There has been no suggestion that the difficulties anticipated in the Working Group’s Report have in fact materialised; although we do not know whether any confessions that might have fallen within the criteria have in fact been made, or how many priests (if any) have sought advice about, or reported, such confessions.

Other Anglican Churches

The other Anglican Churches within the United Kingdom have similar issues in relation to safeguarding and disclosure. In Wales the *Proviso* to Canon 113 of 1603/4 is still understood to have

force nevertheless, guidelines note there may be an exceptional over-riding need to disclose. In Scotland the Seal is absolute but the person disclosing is to be directed to a provincial Officer. In Ireland safeguarding concerns outweigh confidentiality. Within the wider Anglican Communion the Seal is inviolable but the extent to which a priest is regarded as privileged or not in respect of disclosure depends on the appropriate civil law. This is set out in more detail in Appendix 3.

8. Ecumenical Summary

The Working Party consulted some ecumenical partners where the practice of private confession and absolution is found: specifically Lutheran Churches in Europe and the Roman Catholic Church. In Germany while there is a criminal law duty to report *planned* crimes an exception is made for those engaged in pastoral care. In the Nordic and Baltic Churches there are similarities with the Church of England. Denmark has an older law imposing secrecy but also a modern law duty to report. In Finland there is a duty to encourage self-reporting and (as in Germany) a duty to alert the authorities of potential future crimes yet maintaining confidentiality. For the Roman Catholic Church, having a universal Canon Law, no Bishops' Conference has the authority to change the absolute seal of confession. Nevertheless, there are continuing official discussions in the Vatican covering all aspects of safeguarding questions and the sacrament of reconciliation. These include the necessity of far more effective training of priests, especially on the question of how to help either a penitent or victim/survivor to move from the confidentiality of their confession to God to seeking professional help and disclosure to the authorities where appropriate.¹⁴

9. History Summary

The history of the ministry of absolution is in conformity with the teaching of Christ and the practice of the apostolic Church. It is not however a straightforward development. Confession of sin is both Scriptural and apostolic and in the early Church there emerged a discipline of public penance which could only be offered once after baptism and was not secret. Penitents belonged to a recognised order in the Church and were excluded from Communion until the completion of their penance and absolution given (normally) by the bishop. Private confession developed later alongside continuing public penance. This developed particularly from the spiritual counselling of individuals in monasticism and the Celtic Church. The practice of regular or devotional confession and absolute confidentiality was confirmed and codified by the 13th century. This was accepted by the pre-Reformation *Ecclesia Anglicana* and continued in the post-Reformation Canons of the Church of England.¹⁵

10. The Next Steps

At the time of writing there are two presenting issues, one internal and one external, which press the need for specific decisions on the House of Bishops

Internally, the Safeguarding and Clergy Discipline Measure 2016, as amended by the Safeguarding (Code of Practice) Measure 2021, requires the House of Bishops to issue a code of practice for relevant persons on safeguarding children and vulnerable adults. It places 'relevant persons'

¹⁴ See Appendix 4 for more details.

¹⁵ See Appendices 1 and 2

(including all clergy authorised to officiate) under a duty to comply with any requirement imposed by the code. The House of Bishops, therefore, needs to determine how this code will reflect the Seal in its directions about confidentiality. It would also be logical for this to be matched in any revision of the *Guidance for the Professional Conduct of the Clergy*.

Externally, and more urgently, the House will need to decide how to respond to the Government consultation on mandatory reporting, which closes on 14 August 2023. The background to Mandatory Reporting, especially in IICSA, and the detail of the consultation are set out in Appendix 6. It is not clear at the time of writing what, if any, thought has been given by HM Government to the consideration of religious matters of confidentiality including the Seal, nor what the timescale for legislation may be. However, wider decisions about the Seal are needed to guide any response that may be made on behalf of the Church of England.

It seems to us that the House will need first of all to reach a position on the current status of the seal of confession and the 1603/4 *Proviso* in relation to the Church's doctrine. Do they wish to reaffirm the commitment made by the 1959 Act of Convocation that the Seal is 'an essential principle of Church doctrine', or revisit it? If the latter, it seems to us that the proper route would be for the Bishops to lay any such proposal before General Synod, as the successor to the Convocations in declaring the mind of the Church, for debate and resolution. And what is the scope of the Seal? Does it apply only to the traditional liturgical ministry of the Reconciliation of a Penitent (as titled in *Common Worship*, or its equivalent using the text from the *Book of Common Prayer*) or to a wider category of confidential conversation where assurance of forgiveness is given?

There is a difference of view among members of our working party about this, as set out below, but we believe it is critical to resolve these issues in order to securely undergird the response to the Government consultation on mandatory reporting, the Safeguarding Code of Practice, and the revision of the Guidelines.

Some of us believe that the Church should not voluntarily make provision for any exception to the seal of confession. Those who hold this view continue to regard adherence to this doctrinal and canonical principle, which the Church of England has inherited and shares with other churches, and which is reflected in the *Proviso* and reaffirmed in the 1959 Act of Convocation as 'an essential principle of Church doctrine', as an absolute obligation. Furthermore, in their view any qualification of the Seal nullifies it. If people cannot have confidence that nothing that they disclose in confession will be communicated to others without their consent, it is even less likely than it is already that those who have committed abuse of children or vulnerable adults will place themselves under the influence of a priest by confessing it. And the confessional will cease to be a 'safe space' in which those who have experienced such abuse can share their grief and receive spiritual comfort with confidence that to do so might have unwelcome consequences – with the result that some who might have been helped will not be.

Those who take this view recognize that if the Government imposes a statutory duty of reporting that does not make an exception for information gained by a priest during confession, this will, legally speaking, override the terms of the *Proviso* and the Act of Convocation, just as the Terrorism Act 2000 already does. They also recognize that, whether or not such a statutory duty is imposed by the general law, some priests will feel in conscience that they cannot uphold the Seal in the circumstances described.

On the other hand, some of us believe that the new Code of Practice needs to embody a carefully-defined exception to the Seal. Some of this second group would favour a permissive exception. This

would give priests who felt obliged either by statute law or by their own consciences to break the Seal in cases relating to abuse confidence that in doing so they were not being disobedient to their church or risking disciplinary action. It would also be an acknowledgement of public concern. Others within this second group believe that the only response that the Church can credibly make to the provisional conclusions of IICSA is to embody a commitment to mandatory reporting in its own code of practice, rather than relying on a new law on mandatory reporting to impose such a duty.

Those who believe that the new Code of Practice should embody an exception to the Seal, whether permissive or mandatory, are influenced variously by several factors. The fact that the *Proviso* itself contains an exception; the question as to whether the *Proviso* and 1959 Act of Convocation require secrecy in respect of matters revealed in confession other than as a crime or sin committed by the penitent; the law of evidence; the provisional conclusions of IICSA; and the expectation of a new law on mandatory reporting. In addition, there is the theological principle of reconciliation being to the whole Church. That is to say, a contemporary understanding of the sacrament of reconciliation that the penitent is reconciled not only to God in Christ but also to the whole people of God, the Body of Christ. It is not only a matter of reconciliation between the penitent and God but a corporate reconciliation with the Church. Such reconciliation involves a proper concern for a victim or survivor of abuse, who may be a wounded member of the Church. This, where possible, may call for appropriate forms of restitution and even reparation.

It is important to recognize that the question of what to do in the circumstances described will, for all priests who are faced with them, be a question of conscience. As we have explained in section 6 above many priests will feel pulled in different directions by conflicting claims of conscience. All these priests are members of the body of Christ, and therefore the Church as a whole experiences these conflicting claims: as St Paul writes, 'If one member suffers, all suffer together with it' (1 Cor. 12.26).

The majority of us do not believe that any priest who takes a conscientious decision in relation to the Seal and the sexual abuse of children and vulnerable adults – whether to break the Seal or to keep the Seal – should face disciplinary consequences for obeying the dictates of their conscience in this matter. The majority of us therefore do not support the imposition of a statutory duty of disclosure by the new code of practice.

It is accepted that, if a statutory duty is imposed by the general law, then a priest who in conscience could not comply with that duty and who refused to answer questions about it in court could be found to be in contempt of court, and could even face a prison sentence for such contempt. A finding of contempt of court is not however a criminal conviction and so the provisions of ss.30 and 31 of the CDM 2003 would not apply. However, if Government goes further than simply imposing a duty to report and additionally makes such failure a criminal offence the conviction for such an offence would bring those sections into play and make the priest or bishop 'liable without further proceedings to a penalty of removal from office or prohibition (whether for life or limited) or both'.

Whatever decision the House of Bishops takes with regard to the contents of the Code of Practice, all of the members of our Working Party agree that this need not, and should not, result in a decision either to embody an exception to the Seal in the Canons or to amend the *Proviso*. We are concerned that legislation by canon to amend the *Proviso* would be divisive and could be time-consuming. (We are also uncertain whether a Measure would be required in order to authorize the Synod to legislate by canon in relation to the Seal – if it were concluded, even just for the avoidance of doubt, that a Measure should be passed, that would add further complication.) The outcome of such a legislative process and its longer-term consequences would be unpredictable. Might it, for example, lead to the

imposition of a duty where a permission was originally intended, or – sooner or later – to the seal of confession being qualified in relation to other matters than those initially envisaged?

The Proviso was retained in 1969 as an historic and symbolic statement of the Church's general commitment to the doctrine of the Seal. Since the 1950s it has been accepted that the *Proviso* at least potentially conflicted with the modern law of evidence, and since 2000 it has been accepted that, legally speaking, it is overridden by the Terrorism Act 2000. A statutory duty of reporting in relation to the abuse of children and vulnerable adults would constitute another (we believe in practice, rare) exception to its provisions. We note that the rubrics of another seventeenth-century text, the Book of Common Prayer, have similarly been overridden by changes in statute law without it having been thought necessary for them to be amended in consequence. The unrepealed *Proviso* would thus stand as an historic statement of doctrinal and canonical principle rather than purporting to offer a complete statement of the law. In law, where there is a tension between canon law and statute law (as there is already in relation to the Seal) and between canon law and a statutory code of practice, it is statute law and any statutory code that prevails.

We continue to believe that it is very unlikely that in practice a statutory duty to report would ever be invoked in the context of disclosure in confession of the abuse of children or vulnerable adults.

11. Training Issues

The 'Guidelines for Training' in the 2018 *Report of the Seal of the Confessional Working Party* focussed primarily on specific training for the exercise of a Sacramental Ministry of Reconciliation of a Penitent, largely seen through the narrow lens of safeguarding practice,¹⁶ envisaging Diocesan Safeguarding Advisors¹⁷ delivering training alongside a priest appointed by their bishop as Advisor in the Sacramental Ministry of Reconciliation.

Diocesan Safeguarding Officers are ordinarily qualified and experienced social care practitioners or ex-police officers. As with all activities related to pastoral care and the administration of sacraments, the ministry of confession involves an inherent risk of abuse, either due to wilful misconduct or negligent transgression of boundaries. It is therefore essential to take appropriate steps to mitigate these risks by ensuring that those exercising these ministries are suitably prepared and vigilant.

However, this safeguarding-orientated element of preparation must be set within a wider, more holistic project of priestly formation¹⁸ and embedded in theological education and training, to avoid being largely reduced to a functional 'how to' exercise about a transaction between two individuals. This ministry of reconciliation can *only* be understood, and good practice formed within a wider theological landscape and within the corporate life of the Church as the Body of Christ¹⁹ and his

¹⁶ A key recommendation is that: '...training about the sacramental ministry of reconciliation be integrated with mandatory core safeguarding training during IME Phase Two and refreshed as an obligatory element of Continuing Ministerial Development'. See 7.3.7.

¹⁷ Now known as Diocesan Safeguarding Officers.

¹⁸ Canon C 7 Of examination for holy orders says: 'No bishop shall admit any person into holy orders, except such person on careful and diligent examination, wherein the bishop shall have called to his assistance the archdeacons and other ministers appointed for this purpose, be found to possess a sufficient knowledge of Holy Scripture and of the doctrine, discipline, and worship of the Church of England as set forth in the Thirty-nine Articles of Religion, The Book of Common Prayer, and the Ordinal.'

¹⁹ Romans 10.8-10: 'But God proves his love for us in that while we still were sinners Christ died for us. Much more surely then, now that we have been justified by his blood, will we be saved through him from the wrath of God. For if while we were enemies, we were reconciled to God through the death of his Son, much more surely, having been reconciled, will we be saved by his life.'

salvific work. Just as the *Guidelines for the Professional Conduct of the Clergy* grounds every section in a phrase from the Ordinal about the ‘privilege and responsibility entailed in their particular ministry’²⁰, so theological training for the ministry of confession must be grounded in the high standards of ministerial conduct set out in the Guidelines.

Whilst the 2018 working party envisaged each diocese having a priest appointed as Advisor in the Sacramental Ministry of Reconciliation who could be involved in the delivery of training, it should be noted that primary responsibility for this within a diocese belongs to the bishop.

Appendix 8 provides a detailed consideration of the issues, timing and content of training for this ministry.

12. Members of the Working Party

The Rt Revd Christopher Hill, chair

The Rt Revd John Ford, secretary

HH Canon Peter Collier KC

Dr Helen Costigane SHCJ

The Revd Russell Dewhurst

Christopher Grout

The Revd Dr Helen Hall

The Revd Neil Patterson

Dr Colin Podmore

The Revd Canon Rebecca Swyer

Appendix 1: The Unrepealed *Provisio* to Canon 113 of 1603/4

The Origins of the Provisio

Various pre-Reformation canons, based ultimately on Canon 21 of the Fourth Lateran Council (1215), provide for the Seal of confession (though not usually under that name), including one found among Lyndwood’s famous collection of English provincial canons.²¹ This canon received statutory recognition at the reformation.²²

²⁰ Foreword to the *Guidelines for the Professional Conduct of the Clergy*.

²¹ *Item nullus Sacerdos ira, odio, metu etiam mortis audeat detegere quovismodo alicuius Confessionem signo, nutu vel verbo generaliter vel specialiter. Et si super hoc convictus fuerit, sine spe reconciliationis, non immerito debet degradari.* {Likewise, no priest (whether through anger, hatred or even fear of death) should dare to reveal someone’s confession in whatever manner, by sign, nod, or word, generally or specifically. And if he is convicted on this point, he should, without hope of reconciliation, not undeservedly be degraded.} Lyndwood Provinciale Angliae (Oxford, 1679) pp. 334-5.

²² Submission of the Clergy Act 1533 s 7. See R. Helmholz, *Roman Canon Law in Reformation England* (Cambridge, 1990): ‘... the abolition of papal jurisdiction in itself had remarkably little effect on the substantive law applied in the courts’ (p. 38).

As detailed in Appendix 2, after the reformation more emphasis was placed on public penance, and less on the private forum.

None the less in the Visitation of the Sick in the 1549 and 1559 Book of Common Prayer the sick person was to make a special confession of their sins;²³ and there is an Exhortation at Holy Communion that also encouraged parishioners with an unquiet conscience to come to the priest for confession.²⁴

The Church of England's code of canons of 1604 covered new legislative ground, but also confirmed old canonical principles, including the seal of confession.

Among the canons of 1604, Canons 109-111 laid a duty upon the churchwardens, questmen, and sidemen to present to the ordinary (i.e. usually to the diocesan ecclesiastical court) those who had offended against canonical norms of public morality, schismatics, and disturbers of divine service. As Canon 113 explained, the lay officers sometimes did not make the presentments required. For this reason, the Canon 113 went on to provide that clergy may themselves present crimes to their ordinaries. Had that canon done no more, there might have been some doubt as to whether the 'crimes' which the parson 'may' present to the ordinary included those which he knew about only because they were told him in confession.

Canon 113 therefore continued with a Proviso which makes clear that this new canon does not authorize a priest to break the Seal:

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 any way bind the said Minister by this our Constitution, but do straitly charge and admonish him [quin potius stricte ille praecipimus], 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)²⁵ under pain of Irregularity.

In short, the *Proviso* makes clear that the Minister is not free to reveal crimes or offences to the Ordinary if he knows them because of a confession of 'secret and hidden sins'. In fact, he must not 'at any time reveal and make known to any person whatsoever' such offences. The *Proviso* thus confirms and retains the canonical seal of confession.

Is the *Proviso* really talking about the seal of the confessional?

In most recent texts on the law of the Church of England, as in the paragraphs above, the unrepealed *Proviso* to Canon 113 of 1604 is given as the legal basis for the seal of confession. For example, in the *Guidelines for the Professional Conduct of the Clergy* (2015), an Act of Convocation, paragraph 3.5 states:

A clear distinction must be made between pastoral conversations and a confession that is made in the context of the ministry of absolution. Where such a confession is to be made

²³ In the 1662 BCP, the sick person is to be 'moved' to make a special confession.

²⁴ In a twentieth-century case, *Capel St Mary, Suffolk v Packard* [1927] P. 289-308 at 301, the Dean of the Arches speaks of a 'duty to hear confessions under the circumstances stated in the Prayer Book.'

²⁵ The *Proviso* does introduce an exception to the strict requirement of 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)'. In fact, since 1604 there have been no such crimes, so the exception has never been operative. But the implication seems to be that if the priest is to be fined or imprisoned (rather than executed) for concealing a crime he has learned about in confession, he must nonetheless keep the seal: the exception would only apply if the priest were in danger of execution.

both the priest and the penitent should be clear that that is the case. If a penitent makes a confession with the intention of receiving absolution the priest is forbidden (by the unrepealed *Proviso* to Canon 113 of the Code of 1603) to reveal or make known to any person what has been confessed. This requirement of absolute confidentiality applies even after the death of the penitent.²⁶

However, the question has been raised, by Andrew Atherstone²⁷ and others, as to whether the *Proviso* actually contemplate this ‘clear distinction’? Is the *Proviso* concerned with the formal ministry of absolution at all? To support the interpretation of this Appendix, and of the *Guidelines*, four points can be made.

1. No mention of absolution in the Proviso. The *Report of the Seal of the Confessional Working Party* (2018) notes that, because the *Proviso* doesn’t mention absolution explicitly, there is a possible interpretation that it extends its application beyond the context of the ‘sacramental ministry of reconciliation’:

it seems to be capable of application not only to auricular confession of the traditional Catholic variety but equally to any case in which ‘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’.²⁸

Atherstone takes this further, and proposes that if someone confesses sins outside of the formal context of absolution, in a general pastoral conversation (i.e. not requesting absolution but only advice) the minister would still be bound by the *Proviso* not to reveal any crimes or offences. If this were so, the *Proviso* would seem incompatible with the ‘clear distinction’ in *Guidelines* 3.5 quoted above.

However, to the contrary, in looking for use of the word ‘absolution’ as a test to indicate whether or not we are talking about confession, we are applying a modern test that was not in the minds of the 17th century Convocations. The pre-Reformation provincial canon which provides for the seal does not use the word absolution either.²⁹

2. Text of the Proviso: The legally binding text of the Canons of 1604, and hence the *Proviso*, was the Latin text, and it is instructive to compare the Latin text of the *Proviso* with the Latin Book of Common Prayer. The authorized Latin BCP in 1603 was the 1560 version³⁰, which Elizabeth I had commended to the clergy for private devotions and for use in the Convocations. Examining the exhortation and the Visitation of the Sick, it is striking how much the *Proviso* adopts the same vocabulary. In particular, the *Proviso* uses exactly the same words to describe the circumstances with which it is concerned as the 1560 Visitation to the Sick: ‘privatim confiteatur’ {confess privately}.

3. Context before 1604: Atherstone seems to doubt that auricular confession was practised around 1604, and argues that it is therefore unlikely that the *Proviso* would be referring to the practice.

²⁶ Although the *Guidelines* cite the *Proviso*, the *Proviso* does not forbid the priest from making known ‘what has been confessed’. That is a correct statement of what the seal of the confessional requires – but it goes beyond what the *Proviso* (which merely reflects rather than fully embodying the seal) states.

²⁷ Atherstone (2019) ‘Is the “seal of the confessional” Anglican?’, <https://www.psephizo.com/life-ministry/is-the-seal-of-the-confessional-anglican/> accessed 29 March 2023.

²⁸ *Report*, para 3.5.5.

²⁹ See Lyndwood quotation *supra*.

³⁰ This was not universally popular and other translations were used – we have not yet found any evidence as to which version was in use at the relevant Convocations.

Further study in this area is needed, but one example is offered here: at a sermon in 1600 at Whitehall, Bishop Lancelot Andrewes goes into some detail in his description of private confession in which the priest provides counsel and has discretion in offering absolution.³¹

4. Context after 1604. In several Stuart Visitation articles, bishops connect the *Proviso* to the two occasions for confession mentioned in the Prayer book. The first of these is Bishop Overall of Norwich in 1617 (who was almost certainly present when the Convocation of Canterbury agreed the 1604 canons).³² In these Articles, the question about the use of the exhortation leads into the question about the *Proviso* (and the sick are also contemplated). There does therefore seem to be an implication here that the provisions of the *Proviso* deal with the occasions for confession arising out of these parts of the Prayer book.

Further historical and legal analysis remains to be done. Nevertheless, taking these points together, the evidence seems to support the commonly received understanding that the *Proviso* applies in the circumstances of what the *Report* (using language of the 20th rather than 17th century) calls the ‘sacramental ministry of reconciliation’.

Why was the *Proviso* left unrepealed in 1969?

The process of canon law revision that began in 1947 and was completed in 1969 left the *Proviso* to Canon 113 unrepealed, but that was not the original intention. One of the draft canons recommended in the 1947 report of the Archbishops’ Commission on Canon Law would have re-enacted the seal of confession in a fuller form (drawing on Canon 21 of the Fourth Lateran Council, Lyndwood’s *Provinciale* and the *Proviso*).

When the Upper House of the Convocation of Canterbury considered this draft canon in May 1951, the evangelical Bishop of Rochester, Christopher Chavasse, proposed instead a text that followed the *Proviso* much more closely, but without the redundant reference to peril to the priest’s life or the ‘secular’ word ‘crime’:

If any person confess his secret and hidden sin to a Priest for the unburdening of his conscience, and to receive spiritual consolation and absolution from him: such Priest is hereby straightly charged and admonished that he do not at any time reveal and make known to any person whatsoever any sin so committed to his trust and secrecy.

After some debate on the wisdom of enacting or alternatively of omitting such a reference to the seal, the bishops approved the Bishop of Rochester’s draft. It was duly recommended by the Steering Committee in *The Revised Canons of the Church of England Further Considered* (1954).

In May 1954 the York Convocation approved the draft canon that included this clause (with three votes against in the Lower House). There was some criticism of the fact that the wording regarding the seal was now more restrained: the response on behalf of the Steering Committee implied that they thought there was more chance of getting Crown approval if this clause did not go beyond the

³¹ Lancelot Andrewes (1841), *Ninety-Six Sermons*, Volume Five sermon iv..

³² ‘Whether doth your Minister before the severall times of the administration of the Lords Supper, admonish and exhort his Parishioners, if they have their consciences troubled and disquieted, to resort unto him, or some other learned Minister, and open his grief, that he may receive such ghostly counsell and comfort, as his conscience may be relieved, and by the minister he may receive the benefit of absolution, to the quiet of his conscience, and avoiding of the scruple, and if any man confesse his secret and hidden sinnes beeing sicke or whole to the minister, for the unburthening of his conscience, and receiving such spirituall consolation, doth or hath the said minister at any time revealed and made knowne to any person whatsoever, any crime or offence so committed to his trust and secrecy contrarie to the 113 canon.’ Article 4.21 in K. Fincham, *Visitation Articles and Injunctions of the Early Stuart Church* (Church of England Record Society, Vol. 1, 1993), 164.

terms of the *Proviso*. By October 1956 the text had been approved by each house of both Convocations.

In January 1958 the Steering Committee proposed adding the provision regarding the seal to what is now Canon B 29 as clause 5. A note by Archbishop Fisher in his copy of *The Revised Canons of the Church of England Further Considered* says that Sir Thomas Barnes (who, having retired as Treasury Solicitor in 1953, took a leading part in the canon law revision project) had wanted to add 'unless compelled to do so by the laws of this Realm': plainly the Steering Committee could not support such a qualification. The draft canon was approved (at stage 1) by both Convocations in January 1958 without any debate (other than a quibble from one York member about the phrase 'secret and hidden sin' in clause 5).

In October 1958, however, Canon Eric Kemp (Secretary of the Steering Committee) reported that both government and ecclesiastical lawyers advised that the Crown would not grant Royal Assent to a canon that did not accord with the present law of England:

English law did not recognize... the seal of confession as being in any way absolute. It was the practice of Her Majesty's judges, and had been for some time, that they did not press this, and that when the matter arose they did not in fact require a priest to reveal what he knew in confession; but... the law was that they had the power to do so if they wished, and therefore, if it were desired to go ahead with this Clause, there would have to be legislation in Parliament on this matter.

The government lawyers had added 'political advice' that 'there would be the very strongest opposition in Parliament to any attempt to get the law changed in this respect', since others (e.g. Roman Catholic priests, doctors and lawyers) could be expected to demand a similar legal exemption. They had indicated that if the words 'subject to the Law of England' were added, that would remove any objection. The Steering Committee had unanimously rejected that possibility: it would 'qualify the obligation of the seal', which would attract 'the strongest opposition from very large numbers of people – including... members of the Upper House'. Instead, they proposed deleting clause and instead leaving Canon 113 unrepealed.

The York Convocation rejected this proposal. In the Convocation of Canterbury, concern was expressed at the possibility of the Church deferring, on a matter of doctrine, to Parliament. The Revd George Timms (later Archdeacon of Hackney), commented:

If they dropped Clause 5... and did nothing else, then they would come perilously close to picking up their pinch of incense and offering it to the imperial image, performing an act which they knew in their hearts was absolutely disloyal to their ministry and therefore disloyal to their Lord from whom they had received their commission.

He suggested that the Convocations should first pass a resolution upholding the seal as absolute, a proposal supported by Archbishop Fisher and later agreed by both houses.

In April 1959 therefore both Convocations passed without dissent a resolution embodying the text of Clause 5 of the draft Canon:

That this House [*York*, That this Synod) reaffirms as an essential principle of Church doctrine that if any person confess his secret and hidden sin to a priest for the unburdening of his conscience, and to receive spiritual consolation and absolution from him, such priest is strictly charged that he do not at any time reveal or make known to any person whatsoever any sin so committed to his trust and secrecy.

In the Canterbury Convocation it had been explained that, if the resolution were passed, the Archbishop would declare it an Act of Convocation, which he duly did.

Securing agreement to delete clause 5 of the draft Canon was more difficult, however. In York, Archbishop Ramsey pleaded that prolonged discussion should be avoided:

The reports of such discussion may suggest quite wrongly that there is any [*sic*] weakening or doubt or novelty in a principle which from time immemorial we have practised in conscience towards God.

However, there was only one speech in favour of deleting clause 5, and while the Upper House voted 7 to 4 to do so, the Lower House voted 48 to 29 against. In the Canterbury Upper House, the Bishops of Rochester (Chavasse), Exeter (Robert Mortimer), Leicester (Ronald Williams), and Lincoln (Kenneth Riches) all spoke against deleting clause 5. Only Fisher (at length, repeatedly, and apparently with increasing exasperation) spoke in favour. At one point he interjected,

We have not given up the principle. We have just reaffirmed it. We are prepared to say to our priests in the last resort 'If a Judge were to try to compel you and said that you must answer, you must still refuse.' That is a perfectly good position to be in.

Eventually both houses resolved to postpone further consideration.

Not until October 1966 was the matter raised again. Moving the deletion of clause 5 in a rare Joint Synod of the two Convocations, the Bishop of Chester, Gerald Ellison, said:

Every priest was aware of the absolute obligation to observe silence in regard to anything he might learn through hearing a confession, and no priest would reveal to anyone information he had received in the course of hearing a confession. To minimize that absolute security in the minutest detail would be to vitiate the confidence which must always exist between the priest and the penitent. The question was therefore academic in the sense that should a priest ever be placed in the position of being directed to reveal the confidence of the confessional, he would have to take the consequences of refusal rather than to obey such a directive.

Canon Kemp seconded the resolution. Three priests spoke against, but Bishop Mortimer of Exeter now spoke in favour. The resolution to delete paragraph 5 was carried in all four houses. Only then was the canon referred to the House of Laity of the Church Assembly.

In October 1968 the Convocations approved the petition to the Crown for licence to promulge the remaining new canons of the new code, together with a 'Canon repealing the Code of 1603 and re-naming a section of the Revised Code'. This began:

1. The following Canons are hereby repealed:—

(a) all Canons of the Code of 1603 so far as unrepealed, except the proviso to Canon 113.

It would have been possible for the Crown to refuse a licence for this Canon unless it also repealed the *Proviso*, but that would probably still have provoked a clash between Church and state. Thus, the Church compromised by not embodying the seal in a new canon (albeit having embodied its proposed wording in an Act of Convocation), but the state also compromised in allowing the *Proviso* that reflected the seal to be left unrepealed. The new canons and the repealing canon were duly promulgated in May 1969.

The Retention of the *Proviso* after the Terrorism Act 2000

Section 38B of the Terrorism Act 2000 (as inserted by the Anti-Terrorism, Crime and Security Act 2001) introduced a requirement to disclose certain information connected to acts of terrorism. This requirement would appear to be in conflict with the *Proviso*'s stricture not to 'make known or reveal' offences if acts of terrorism were confessed to a priest in confession.

In response to this legislation, it was not felt necessary to amend or repeal the *Proviso*. Instead, discussion of the possible conflict – which must be an exceptionally rare occurrence – was added to a revised version of the *Legal Opinion* on Confidentiality published by the Legal Advisory Commission of the General Synod. The Opinion, as revised in 2003, in its discussion of Section 38B of the 2000 Act, now states:

The section provides a defence of 'reasonable excuse', and it is possible (although in the circumstances of terrorism unlikely) that some judges might be persuaded that the failure to divulge confessional secrets would fall within that defence. Subject to that, there is no doubt but that the section considerably, if not entirely, restricts any right or duty to remain silent.

This method for handling an apparent conflict between the *Proviso* and a statutory duty to report – discussion in a *Legal Opinion* – seems to have been accepted without controversy. It provides a useful precedent.

Russell Dewhurst and Colin Podmore

Appendix 2: Summarised history of public/private penance

1. The Early Church

The theological basis for the forgiveness of sins can already be found in the Old Testament eg. Psalm 103 or Micah 7:19. God severs our sins from us; he casts Israel's sins into the depth of the sea. In the Gospels Christ's healing of the sick and forgiveness go together eg Mark 2: 1 – 12. Jesus asks the Scribes which is easier, to tell a paralytic that his sins are forgiven or to rise, take up his pallet and walk. There is also the Lord's Prayer itself. God's forgiveness in Christ has a human instrumentality. Paul not only teaches disciplinary exclusion from the Church eg II Thessalonians 3:14 and I Corinthians 5:11 but also restoration eg II Corinthians 2:5 – 10. The classical basis for confession and absolution is found in James where again healing and forgiveness are linked:

the prayer of faith will save the sick man, and the Lord will raise him up; and if he has committed sins he will be forgiven. Therefore confess your sins to one another, that you may be healed. (5:15-18).

By the time of the Apostolic Fathers confession of sins was already a normal part of prayer eg Clement to the Corinthians 51:3. Yet even within the New Testament Canon there can be discerned a tension between a rigorist and more open attitude to post-baptismal sin and the possibility of repentance after baptism. Contrast, for example Hebrews 10:26 where there is no more sacrifice for sin after baptism with the Johannine Epistles, eg I John 5: 16-17 where a distinction is drawn between mortal and other sins. In the NT and immediate period following where sins were indeed confessed and forgiven we should nevertheless be cautious about anachronistically presupposing the modern catholic discipline of confession and absolution. As in the Epistle of James, we have a 'communitarian' confession in the context of the relatively small house churches. The closest modern analogy is the communal chapter of faults of some religious communities. In this primitive

period nothing is said either in favour or against confidentiality. Because of the 'communitarian' nature of any such confession confidentiality can hardly have arisen within the Church itself, though it could be presumed in relation to those outside the community of believers.

2. Public Penance

After this early and relatively undocumented period there emerges a clear development of practice in the 2nd century. First, there was a debate about 'Second Repentance', continuing the NT debate between the rigorist and more open discussion about post-baptismal repentance. Clement of Alexandria and Tertullian (before he succumbed to Montanism) argued for absolution after baptism (reticently and only once!). They both describe public penance or *exomologesis*. This can mean the acceptance of a sentence, the admission of wrong and/or the admission to the roll of penitents. Against a minimalist interpretation is the actual description of what happened at an *exomologesis*. Sins had to be confessed to the ecclesiastical court, the presbytery. On Sundays the penitents were dressed in sackcloth in the Atrium of the Church (the Vestibule). They were to fast and were to ask for the prayers of the presbyters, confessors and laity. We also have a parody of this by the pagan philosopher Celsus (later refuted by Origen) which is indicative of the public nature of the *exomologesis*. Because the Church and probably even the wider populace were aware of who were penitents their sins would be known – and no doubt discussed. Among them would be idolatry and sacrilege – handing over Scriptures and sacred vessels – and apostasy in time of persecution as well as the professions of gladiator, brothel-keeper and concubine! These sins would be generally known and could not be secret. Moreover, by the time of the 4th/5th century Augustine, (Replies to Diverse Questions) informs us that the penitent at the end of their period of *exomologesis* before restoration made an explicit (though not detailed) confession within the liturgy. For this very reason, Augustine explains, public penance was being given up because penitents might be in peril from the Imperial Police. A little earlier Basil the Great had advised against women confessing adultery in public penance because they might be stoned to death. Public Penance therefore did not know 'the seal of the confessional'. Nevertheless, the origins of such confidentiality are to be found precisely in the problems Augustine and Basil described. It is important to note that where there was a confession of sin to the Church, followed by public penance and absolution, this was available only once. This follows the teaching of Hermas (c. 140) and is attested by Jerome, Ambrose, Augustine, Pacian, Leo and Gregory the Great. Further, during the entire Patristic period there was no 'confession of devotion' or private confession as practised in later ages. Moreover, so-called venial sins were not subject matter for public penance, the 'second penitence', that is once only after baptism, was meant for serious sins only and was always ritualised in a public way.

3. Confession of lesser sins

Alongside public or canonical penance there also existed another form of penitence. Cyprian speaks of public penance for private sins, calling this *confessio* rather than *exomologesis*. As doing penance was public it would have still amounted to a violation of what is now called the seal. Pope Leo the Great, however, criticised episcopal demands that penitents read a detailed list of their sins but nevertheless commended public confession (of private sins) in certain cases.³³

³³ For this very condensed summary see the older works by R. C. Mortimer, *The Origins of Private Penance*; W. Telfer, *The Forgiveness of Sins*; J. Gunstone, *The Liturgy of Penance*; K. E. Kirk, *The Ministry of Absolution*. For more recent studies see: J. Halliburton, A Godly Discipline in Dudley and Rowell (eds) *Confession and Absolution*, SPCK, 1990 and especially K. B. Osborn's full survey of RC studies: *Reconciliation and Justification: The Sacrament and its Theology*, New York, 1990. This is extensively quoted by Vimal Tirimanna, CSSR in his submission to a seminar on the seal of the confession and

4. Devotional Confession

After time there emerged a different kind of confession with different origins. The different forms of confession must be carefully distinguished. Celtic Christianity introduced the concept of the 'spiritual father' through the abbot/bishop, though this is also found earlier in Cassian. This spiritual discipline was for private sins such as anger, intemperance, petty dishonesty as opposed to public crimes. From the Celtic Church confidential devotional confession spread throughout the Latin Church, eventually being enjoined at least once a year by Canon 21 of Lateran IV (1215) as part of the renewal the Council was encouraging. It decreed deposition and perpetual penance to any priest who revealed a sin disclosed to him by word or sign. The scholastics were well aware of the two kinds of confession even though public penance had become increasingly obsolete, being 'killed off' so to speak, by private confession. Their distinction is of interest: public penance for public faults; private penance for private faults. It should be noted that the first reference to penitential ritual being called a sacrament comes from Alger of Luttich (c.1121).

5. Anglican history and law

The double history of Penance, public and private is indicative that absolute confidentiality can only be predicated of the latter. Public Penance could never have been absolutely confidential. Nevertheless, 'modern' confession has been absolutely confidential in intention since Lateran IV. The current canonical position of the Church of England is discussed in Section 3 of the Report. It is accepted that this is likely to be in conflict with the modern law of evidence, the reason it was un-repealed and an original draft Canon LXVI proposed in 1947 was not (eventually) taken further.

Public penance through the Ecclesiastical Courts continued and even increased in the Church of England after the Reformation. This has been well documented. After the end of the 17th century and the beginning of Toleration the practice of the Ecclesiastical Courts slowly declined but as late as the 1840s there were still occasional cases of court sentences for public penance in Church. Alongside this must be set the provision of private confession and absolution for the sick or dying or for those whose consciences were troubled in the Book of Common Prayer. This is clear for the (first) Exhortation in the Service of Holy Communion. Similarly, in the order for the Visitation of the Sick there is provision for confession and absolution with an indicative form of absolution: 'I absolve thee from all thy sins'. This provision was also made in the previous editions of the Book of Common Prayer. The first Prayer Book of 1549 had the additional rubric that 'the same forme of absolution shall be used in all pryvate confessions.' The Caroline Divines taught the utility of such private confession in the 17th century³⁴ and there is evidence of its continuous practice in the 18th century.³⁵ It was more widely adopted by the Tractarians in the Catholic revival of the 19th century.

6. An Orthodox Appendix

This summary has included Patristic reference both East and West but not from Eastern Orthodoxy (or Oriental Orthodox Churches) after the Great Schism of 1054. This paragraph does not attempt such a summary for four reasons. First, I am not aware of a systematic study of penance in the Orthodox tradition available in English, still less in the Oriental Orthodox tradition. Second, though Orthodoxy does have canons of ancient Councils prescribing public penance for various sins and crimes these are largely theoretical today. Third, it is said that confession is not practised frequently

contemporary safeguarding questions organised by the Pontifical Commission for the Protection of Minors, Rome, 2019 *A Brief History and Theology of the Sacrament of Reconciliation, A Study with References to the Seal of the Confession*.

³⁴ Lancelot Andrewes was explicit that the Church of England 'willingly retain the doctrine of Confession', see Andrewes, *Apos. Sacra*, Vol. 11, p. 155.

³⁵ R. M. Mackley, Unpublished PhD thesis, University of Cambridge.

in some Orthodox churches, though in the Romanian and Slav traditions there is a practice, despite the dangers of political pressure during Communist times, the Greek tradition offers much less evidence of regular practice. Finally, and most importantly, although there is a definite tradition of confidentiality on the part of the confessor, Eastern Christianity never accepted the Western General Councils from 1054, specifically for our purposes not Lateran IV with its binding canon on secrecy.

In addition to this the Orthodox spiritual tradition embodies dynamic tension between the strict letter of the law (ακριβεια) and its pastoral application in particular circumstances (οικονομια), literally 'household management'. This means in given particular circumstances a decision can be made which conflicts with the letter of the law.

+Christopher Hill

Appendix 3: Anglican churches outside England

PART A: Australia

The Anglican Church of Australia

The experience of the Anglican Church in Australia is significant for two reasons: first it is the only Anglican province that has, as yet, amended its canon law in circumstances similar to those we currently face, and second it was the subject of extensive coverage and criticism in the original House of Bishops' Working Group report.

Background to the Commission

Our understanding from contact with several people who have experience of the Australian situation is that it appears that the Anglican Church in Australia has an even worse reputation than the Church of England in relation to child sexual abuse by its clergy and its failure to deal appropriately with such matters as they were or became aware of. Garth Blake SC in an email to us said 'I cannot understate the erosion of public trust in Australia in churches including the Anglican Church as a result of the Royal Commission... The seal of the confessional is widely seen as a means to cover up child sexual abuse by the church and there can be no justification for absolute confidentiality where children are placed at the risk of harm.'

The Royal Commission

The Australian Royal Commission Investigation into Institutional Responses to Child Sexual Abuse appears to have been much more proactive than IICSA. To the extent that The Hon Justice Peter McClellan, the Chair of the Commission, addressed the House of Bishops, in the words of one who was there, 'like naughty children, who had little understanding'. It published an interim report in 2014 with its final report in 2017. Furthermore, the latter part of the church's responding to the Report was played out against the additional background of the charging, trial and conviction of Cardinal George Pell (who was eventually acquitted on appeal in 2020).

Changes in Canon Law

The church was under significant pressure to respond and did so by amending its canons, initially in 2014. Prior to that amendment of the canons the position was that if someone confessed their sin to a minister "for the unburdening of conscience and to receive spiritual consolation and ease of mind" then that should never be revealed without the penitent's consent. The 2014 amendment was to the effect that if someone confessed a grave offence which involved child abuse, the Seal continued if

the minister was reasonably satisfied that they had reported it to the police; but the minister could reveal the nature of the confession to the person nominated by the bishop to advise on whether the facts may have constituted a grave offence. If the minister then disclosed the confession to the appropriate authorities believing in good faith and on reasonable grounds that it may have constituted a grave offence that would be a defence to any charge of breach of discipline in revealing the confession. The proviso to Canon 113 was decreed no longer to have operation or effect in the Anglican Church of Australia.

There was some concern that the procedure by which the new canons were introduced had not been the correct procedure, so in 2017 the matter came back to the General Synod when the 2014 amendments were unpicked, but effectively reintroduced through an undoubtedly correct procedure. Further amendments were also introduced to provide for wider exceptions to the Seal – vulnerable persons were added and also the conduct capable of being reported was extended to ‘conduct which gives the ordained minister reasonable grounds to believe that a vulnerable person is at risk of significant harm’. Provision was made as previously by which the minister could seek advice, and a reasonable belief in what you were doing remained a defence to disciplinary proceedings.

Each diocese then had to decide whether to introduce the new canons and if so which of the options that were available ie just child abuse or abuse of both children and vulnerable persons. Most dioceses have introduced one or both canons and have set up systems for providing advice when it is required.

Discussion about the current Australian position as a model for the Church of England

This Australian position was not to move to requiring mandatory reporting, but to give permission to priests to whom confessions of abuse were made to disclose that confession to the authorities. Since the Royal Commission reported, a number of states have introduced mandatory reporting. Also most dioceses now have in their terms of service / professional standards a requirement that any knowledge of child abuse is reported as required by law and they have set up appropriate structures for advising clergy about that if and when it should arise. In those circumstances priests are freed from the previous requirement to maintain silence, to the extent that they wish to be. It is understood that a number of priests who practise in this ministry have said that they will continue to keep the seal inviolate.

What of course is not known is how many, if any, of those who act as confessors ever heard confessions of abuse prior to 2014, or how many, and again if any, have heard a confession of abuse and broken the secular law in their state by maintaining the confidentiality of the seal since 2014.

We are aware that the original Working Group was very critical of the Australian position saying how difficult it would be to know whether what was being confessed fell within the criteria and that it was not appropriate to seek advice. The response we have had from Australia is that the criteria are straightforward and clear and that this sort of advice is exactly what lawyers are there to provide and are experienced at providing. There has been no suggestion that the difficulties anticipated in the Working Group’s Report have in fact materialised. There are therefore reasons to question the Working Group’s conclusions regarding the Australian experience.

It is to be noted that the Australian Anglican Church is heavily dominated by the conservative evangelical diocese of Sydney. Also, it has been pointed out to us that the number of priests exercising this type of ministry in Australia is proportionately much lower than in England.

PART B: Other Anglican Churches outside England

Alongside the Church of England, the territories of three other Anglican churches are found in the United Kingdom. The Church of England itself has chaplaincies in many European countries, as part of the Diocese of Gibraltar in Europe. Furthermore, there are in total over forty Anglican churches across the world. The current legal status of the seal of the confessional in these contexts appears to be as follows:

1. Church in Wales

The unrepealed Proviso to Canon 113 of 1604 is understood as part of the pre-1920 ecclesiastical law which, according to the church's Constitution, continues to be binding on members.

The *Professional Ministerial Guidelines*³⁶ state that 'there should be no disclosure of what is revealed when a person confesses to God in the presence of a priest – "the seal of the confessional"' (7.2). There are directions to urge a person admitting abuse of children or vulnerable adult to report his or her behaviour to the police or social services (7.3). The Guidelines continue, 'It should be noted that at law there is no absolute duty of confidentiality. A Court or the police may require disclosure. In exceptional circumstances there may also be an over-riding duty to break confidence, especially where the safety of children, or of vulnerable adults, is involved, or, more rarely, where the well-being of the person who is sharing confidence is at risk. Should a priest believe that there is a possibility that such information will be disclosed, it should be made clear to the penitent in advance, that disclosure may be necessary' (7.4).

2. Scottish Episcopal Church

Canon 29.2 states 'A priest may not divulge anything that has been revealed in Confession, nor refer subsequently to such matter without leave of the penitent. The seal is absolute and is not abrogated on the death of the penitent.'

Guidance from the College of Bishops³⁷ confirms that the seal is absolute, and provides that a person disclosing abuse should be directed to make contact with the Provincial Officer 'so that matters may be properly dealt with' (s8).

3. Church of Ireland

Chapter XVI of the *Constitution of the Church of Ireland* makes *Safeguarding Trust*, the Church of Ireland's child protection policy binding for clergy and lay members of the Church. Part 6 of Safeguarding Trust, Sharing Information and Record Keeping, makes it clear that child protection concerns outweigh the need for confidentiality, with no deviation for information obtained in connection with confession: 'Therefore, bishops, clergy, staff and volunteers working with children should make it clear to children and their parents/guardians that they cannot give undertakings regarding confidentiality or secrecy'.³⁸

4. Diocese of Gibraltar in Europe

³⁶ <https://www.churchinwales.org.uk/en/clergy-and-members/clergy-handbook/professional-ministerial-guidelines/>

³⁷ College of Bishop, *Guidance on the Pastoral Care for Survivors of Sexual Abuse both Past and Present*, 2015 at <https://www.scotland.anglican.org/wp-content/uploads/2015/04/Guidance-on-the-Pastoral-Care-for-Survivors-of-Sexual-Abuse.pdf>

³⁸ This information was provided by the Ecclesiastical Law Society Church of Ireland reading group in 2021 during the project to revise of the *Principles of Canon Law Common to the Churches of the Anglican Communion*.

The Diocese in Europe is part of the Church of England, and its *Diocesan Policies and Guidelines*,³⁹ at B26, repeats in full the Proviso to Canon 113 of the canons of 1604. The canon is presumably considered to be an internal church matter by the various European states in which chaplaincies are active, and the degree to which the seal would be respected in the courts of those states will vary from place to place.

5. Wider Anglican Communion

Each of the churches of the Anglican Communion has its own canonical system. There is however a great deal of commonality between these churches' laws, as described in *The Principles of Canon Law Common to the Churches of the Anglican Communion*.⁴⁰ Whereas the 2008 edition had stated 'The seal of the confessional is inviolable' (77.1), evidence received from the Church of Ireland and the Anglican Church of Australia during the revision process for the 2022 edition necessitated an amendment to the wording of this principle. Principle 77 now states:

Principle 77: The seal of the confessional

1. The seal of the confessional is inviolable save when the law of the church expressly provides for disclosure despite the seal.
2. The extent to which the seal of the confessional is protected and priest-penitent communications are privileged in civil courts is a matter of civil law.
3. A priest who violates the seal of the confessional may be subject to judicial or other disciplinary proceedings carried out in accordance with church law.

Note that the methodology of the *Principles* entails that the above words are not found in the law of any particular Church, nor are they necessarily an expression of the doctrine of any particular Church. They are, however, an accurate statement of legal commonalities.

Russell Dewhurst

Appendix 4: Ecumenical Perspectives

Ecumenical opinion was sought from Churches in which the practice of private confession and absolution is found. Namely the Evangelische Kirche in Deutschland (with which we have the Meissen Agreement); the Nordic and Baltic Lutheran Churches (with which we have the Porvoo Agreement) and the Roman Catholic Church (by reason of the long-standing and partly received agreements of the Anglican-Roman Catholic International Commission). The German, Nordic and Baltic Churches are either Lutheran or include the Lutheran tradition in which, following Luther himself who sometimes referred to penance as a third sacrament, confession and absolution is occasionally practiced.

1. Germany

It is reported that there is currently no political pressure for restricting confidentiality in pastoral care or refusal of testimony in court with regard to safeguarding questions, either in the (national) Federal Government or in relation to the several federal (state) laws. A factor here may be the

³⁹ Available at <https://europe.anglican.org/diocesan-policies-and-guidelines/diocesan-policies-and-guidelines>

⁴⁰ Anglican Consultative Council, *The Principles of Canon Law Common to the Churches of the Anglican Communion*, 2nd edition (London, 2022).

binding concordat with the Vatican. German criminal law does not recognise a fundamental duty to report safeguarding crimes. There is only a duty to report *planned* crimes which are a danger to the public, even here an exception is made for 'pastoral workers'. The EKD has issued its own directive which contains an explicit obligation to report to church authorities when violence is discerned. However, this obligation does not affect the secrecy of pastoral care.

2. Denmark

Two examples have been received from the Nordic and Baltic Churches. From Denmark there is a very interesting parallel with the Canon Law of the Church of England. In the Danish Law of 1683 there is a mention of a 'duty of secrecy' for pastors where confidentiality is unbreakable except in regard to treason or disaster. This apparently means a future crime which could be prevented by the pastor; in which case the pastor must report. This was reviewed in 2020 but not with changes in mind. It is considered that the 1683 law is judicially a lot older and comparisons with the 1603 Proviso to Canon 113 are inevitable. Both the Church of England and the Danish Church after the Reformation continued the pre-Reformation tradition, with the exception of treason. More contemporary Danish law of 1998 covers the duty of notification. Further, in 2010 pastors were subjected to enhanced requirements in the case of children (under 18 years old). The pastor, like other 'public employees', has a duty to notify social services. The Danish Church would appear therefore to be similar to the Church of England in that older law follows the pre-Reformation tradition while modern law would be in conflict with absolute secrecy, although as yet the nature of proposed mandatory reporting in the UK is far from clear.

3. Finland

Finland also offers a parallel of a different kind. Church Law 5:2 speaks of issues trusted to the priest in private confession or otherwise in pastoral counselling as not allowed to be disclosed, nor the person making a confession. When a priest is a witness in court they are not permitted to disclose matters from a confession. But where in confession or pastoral counselling a future crime is spoken of the priest has the duty to urge them to inform the authorities or another person threatened. If the penitent does not consent to do this the priest must lay the matter in a timely way to the authorities. Nevertheless, this is to be done in a way that does not directly or indirectly implicate the penitent. The obvious difficulties in doing this were examined in the recent past but in the end the discussions was taken no further and the Church law remains as above. The Finnish discussion illustrates the inherent tension between a deep ecclesial insight as to the importance of absolute confidentiality involving both confession (and, interestingly, pastoral counselling) and the desire to protect either individuals or the community.

4. The Roman Catholic Church

The Code of Canon Law of the Latin Catholic Church is universal. A senior bishop of the RC Church in England and Wales was clear that the Conference of Catholic Bishops of England and Wales had no authority to change the universal law. Accordingly, Canons 983 and 984 strictly prohibit disclosure. RC clergy in England and Wales have been reminded by letter of this discipline while at the same time being told of the response a confessor should make if abuse of children is confessed. Directives of the Catholic Safeguarding Standards Agency are indicated. Should the confessor be contacted (presumably being encouraged so to do) outside the confessional though the seal still applies to what was said in the confession it no longer applies to a later pastoral conversation. The confessor must explain he has a responsibility to take all reasonable steps to protect children or adults who may be at risk of abuse. Where criminal abuse is disclosed the penitent should be directed to lay the

matter before the authorities and that the Diocesan Safeguarding Officer can assist them in this. Survivors and victims should be encouraged to seek help outside the sacrament of penance and to pass on information to an appropriate person, the Diocesan Safeguarding Officer assisting. Priests are not to engage in counselling in the confessional, even if qualified, as this would confuse his role and lead to a conflict of interest. Penitents should be encouraged to take full responsibility for their actions.

In addition there have been significant conversations with a canonist who in 2019 organised a Seminar⁴¹ on behalf of the Pontifical Council for the Protection of Minors and a second Seminar in the Spring of 2023. Further conversations took place with a moral theologian who presented a paper on the history of the seal of the confession at the 2021 Seminar. These conversations indicate that while Vatican statements sound absolute, the matter is more complicated than such statements might indicate. Present at the Seminar were distinguished canonists and others from the Congregation of the Doctrine of the Faith (Disciplinary Section) and the Roman Penitentiary (the Holy See body responsible for penitential discipline and the confessional). There was representation from Australia and other countries where there were serious issues relating to safeguarding. Questions arose as to what 'the seal' covered. Was it everything said in a confession? There was confusion between 'the seal of the confession' and 'the seal of the confessional'. If a penitent disclosed, say, a seriously ill spouse desiring Holy Communion a priest would *not* wait for this request until a suitable extra-confessional pastoral conversation. Nor would he hesitate if a penitent fell seriously ill and an ambulance needed to be called and the identity of the penitent revealed. Not everything said in a confession was therefore under the seal. There was strong evidence that abusers did *not* come to confession, as against a popular belief that they do so to cover-up their abuse. There was however some increasing evidence of the use of pornography and spiritual abuse by confessors using their knowledge for purposes of power or sexual gratification. These included priests grooming teenagers and abuse in religious communities, especially new religious movements. (These cases sound to be very similar to the spiritual abuse now coming to light among some evangelical groups in the Church of England). Also flagged was the difficulty for secular jurisdiction to categorise those who would have a duty to report. If ministers of religion, which ones? Much discussion in these seminars concerned how to train priests to help penitents, especially survivors or victims, to move from what is called the 'internal forum' to the 'external forum'. The 'internal forum' is the penitents' conscience before God which though the priest 'hears' is essentially understood as a binary conversation. The 'external forum' is where the wider community of the Church can also be part of this conversation. Priests had little experience and less training as to how to help penitents to speak of their actions and take responsibility for them. For victims and survivors this was also highly relevant so that suitable psychological intervention can be provided.

A final conversation with a theologian who had been present for the seminars indicated their opinion that not all canonists, especially those who had been involved with safeguarding cases, were absolutely against some mechanism for preventing further abuse and so calling in question the absoluteness of the seal itself.

+Christopher Hill

⁴¹ For the papers presented to this Seminar see *Periodica* 109 (2020) 401 - 674

Appendix 5: The Seal of Confession and the Law of Evidence

The purpose of this short appendix is to identify the issues which arise when considering the seal of confession in the context of the law of evidence as well as general principles relating to privilege and confidentiality.⁴² The seal of confession is often described as ‘inviolable’ and is to be found in the unrepealed proviso to Canon 113 of the Code of 1603. Unlike in some other jurisdictions, such as the United States of America, in England and Wales there is no primary legislation which clearly and coherently deals with the question of the admissibility of matters said in private confession before courts and tribunals. Conversely, some jurisdictions, such as Australia, have introduced mandatory reporting requirements. What, then, is the position in this jurisdiction likely to be?

As a general proposition of law, it is generally uncontroversial that the Canon Law of the Church of England forms part of the law of the land,⁴³ with the caveat that where a canon (of the Church of England) contradicts a statute, the latter will prevail.⁴⁴ The Church of England is in a unique position in this regard.

As Article 3.5 of the *Guidelines for the Professional Conduct of the Clergy* makes clear:

A clear distinction must be made between pastoral conversations and a confession that is made in the context of the ministry of absolution. Where such a confession is to be made both the priest and the penitent should be clear that that is the case. If a penitent makes a confession with the intention of receiving absolution the priest is forbidden (by the unrepealed Proviso to Canon 113 of the Code of 1603) to reveal or make known to any person what has been confessed. This requirement of absolute confidentiality applies even after the death of the penitent.

The *Guidelines* are explicit that in circumstances where the penitent has disclosed a serious crime, the obligation on the priest is to require the penitent to report his or her conduct to the police or other statutory authority. If the penitent refuses, the priest ‘should’ withhold absolution.⁴⁵ Breaking the seal is not an available option. Notwithstanding this position, the *Report of the Seal of the Confessional Working Party* recognised the argument that,

...whilst that privilege [between penitent and priest] might have existed in the past, the modern law of evidence had evolved without reference to it, and that it was, at the least, doubtful whether the privilege existed under the civil (as opposed to ecclesiastical) law.⁴⁶

As to the law of evidence, the starting point must be that, in criminal proceedings in England and Wales, subject to certain statutory exceptions, all persons are competent to give evidence.⁴⁷ Again, subject to certain specified exceptions, a witness who is competent to give evidence is also compellable. The Crown Court has coercive powers to ensure a witness attends proceedings to give

⁴² For a fuller treatment of the issues see, for example, M. Hill QC and A. Thompson (Editors), *Religious Confession and Evidential Privilege in the 21st Century*, Shepherd Street Press, Australia, 2021 and C. Grout, ‘The Seal of the Confession and the Criminal Law of England and Wales’, (2020) 22 *Ecclesiastical Law Journal* 138-155

⁴³ For a full discussion of the meaning and effects of establishment, see M. Hill QC, *Ecclesiastical Law* (4th edition, 2018), chapters 1 and 2

⁴⁴ *R v Dibdin* [1910] P 57 at 120. See also *Calvert v Gardiner and Others* [2002] EWHC 1394 (QB).

⁴⁵ Guideline 3.6

⁴⁶ *Report of the Seal of the Confessional Working Party* (March 2018) available at <https://www.churchofengland.org/sites/default/files/2019-05/Seal%20of%20the%20Confessional%20-%20Full%20document%20-%20FINAL%20May%202019.pdf>, at para. 3.10.4

⁴⁷ Section 53(1) of the Youth Justice and Criminal Evidence Act 1999

evidence.⁴⁸ A person who, without just excuse, disobeys a witness summons is guilty of contempt of court and may be punished accordingly.⁴⁹

There exists a statutory framework for the exclusion of evidence.⁵⁰ The most often used provision is s.78(1) of the Police and Criminal Evidence Act 1984 which gives the court a discretionary power to exclude evidence where the admission of it would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

Privilege and confidentiality are two important, but different, concepts which also impact the law of evidence.⁵¹ The importance of privilege over confidentiality, for present purposes, is that communications which attract the protection of privilege can not be deployed in court unless the privilege is waived. The only privilege which the case law consistently recognises as existing is that which exists between lawyer and client.⁵²

As for the priest-penitent relationship, there are mixed judicial observations on the subject, but it appears to be agreed that the relationship is not viewed as a privileged one akin to that of lawyer and client.⁵³ The most authoritative of those observations, which appears to accurately sum up the position, are those of Lord Denning in *Attorney General v Mulholland*:

The only profession that I know which is given a privilege from disclosing information to a court of law is the legal profession and then it is not the privilege of the lawyer, but of the client. Take the clergyman, the banker or the medical man. None of these is entitled to refuse to answer when directed to by a judge. Let me not be mistaken. The judge will respect the confidences which each member of these honourable professions receives in the course of it, and will not direct him to answer unless not only it is relevant but also it is a proper and, indeed, necessary question in the course of justice to be put and answered. A judge is the person entrusted, on behalf of the community, to weigh these conflicting interests - to weigh on the one hand the respect due to confidence in the profession and on the other hand the ultimate interest of the community in justice being done.⁵⁴

It is, however, right to also draw attention to the observations of the Court of Appeal in *X Limited v Morgan-Grampian (Publishers) Limited*⁵⁵ where Lord Donaldson MR remarked that,

It is sometimes said that the relationship between journalist and source is somehow akin to that between priest and penitent. Nothing could be further from the truth. The penitent comes to the priest for spiritual advice and guidance within a framework of a different and divine law. If the penitent is breaking confidences, he does so in circumstances in which he

⁴⁸ Criminal Procedure (Attendance of Witnesses) Act 1965, s.2: The Crown Court has the power to issue a witness summons where it is satisfied that (a) a person is likely to be able to give evidence likely to be material evidence, or produce any document or thing likely to be material evidence, for the purpose of any criminal proceedings before the Crown Court, and (b) it is in the interests of justice to issue a summons under this section to secure the attendance of that person to give evidence or to produce the document or thing

⁴⁹ Ibid, s.3. See also *R v Harish Popat* [2008] EWCA Crim 1921. As the learned authors of *Blackstone's Criminal Practice* observe: 'The existence of "just excuse" will not be lightly inferred. Witnesses are required to submit even to very substantial inconvenience in their business and private lives': *Blackstone's Criminal Practice 2023* at 2139

⁵⁰ The key provisions are to be found within the Police and Criminal Evidence Act 1984, specifically ss. 76, 78 and 82(3)

⁵¹ As to the distinction, see M. Bartlet, 'Mediation secrets "in the shadow of the law"' (2015) *Civil Justice Quarterly* 112

⁵² *Three Rivers DC v Bank of England (No6)* [2005] 1 AC 610 at 646 (per Lord Scott of Foscote). See also *R v Derby Magistrates Court Ex parte P* [1996] 1 AC 487

⁵³ For a review of historic cases on the subject, see R. Bursell QC, 'The Seal of the Confessional' (1990) *Ecclesiastical Law Journal* 84-109

⁵⁴ [1963] 1 All ER 767, at 771

⁵⁵ [1990] 2 W.L.R. 421

knows that the priest will make no use of that breached confidence and that there will be no further publication. This is the antithesis of a “confession” to a journalist which is made with the express or implied intention that there should be wider publicity than the source can himself achieve. If any secular relationship is analogous to that between priest and penitent, it is that between lawyer and client. That is sanctioned, both expressly and impliedly by Parliament, in the public interest of enabling every citizen to obtain advice as to his legal rights, obligations and liabilities without fear of the consequences. For my part, I do not doubt that Parliament would, if necessary, confer the same immunity upon priests, albeit for different reasons, but that is unnecessary because the judges traditionally do not require priests to break the seal of the confessional.⁵⁶

Human rights considerations ought also to be noted. Article 6 of the European Convention on Human Rights provides for the right to a fair trial. Any decision to admit or exclude evidence will need to be taken with Article 6 considerations in mind. Article 9 of the ECHR provides for freedom of thought, conscience and religion. A decision to compel a priest to give evidence as to what was imparted during confession will likely engage the Article 9 rights of the penitent, the priest and (where applicable) the Church of England.⁵⁷ Article 9 is, however, a qualified right. As Lieven J observed in *Lancashire County Council v E & F and Others*, ‘it could not be more obvious that a freedom to manifest ones [sic] religious beliefs must give way to the need to protect a child from sexual abuse.’⁵⁸ Finally, s.13(1) of the Human Rights Act 1998 provides that,

If a court’s determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right.

By way of concluding summary, it appears from the caselaw that the status of privilege does not apply to the priest-penitent relationship, albeit that there has, in the past, been an understanding that the courts will not generally compel a priest to reveal things said during confession. It is also right to note that any decision to compel a priest to reveal things imparted to him or her during confession would engage ECHR considerations. However, in light, in particular, of the very real issues relating to the protection and safeguarding of vulnerable people, including the need to protect children from abuse as well as holding those who do abuse to account, it is suggested that the observations of Lieven J as quoted above are likely to reflect the modern-day judicial approach to the issue, i.e., an approach in favour of requiring such evidence, where it is relevant, to be given.

Christopher Grout

⁵⁶ *Ibid* at 430-431. See also the brief observations of the Court of Appeal (Criminal Division) in *R v Warner* [2020] EWCA Crim 499 para 24: ‘There was here no question of public interest immunity or of legal professional privilege or of journalistic privilege. 19th century case law suggests that a priest cannot strictly claim a privilege not to answer questions about what is said to him in the confessional, but should not be required to do so. It is not necessary for us to explore that point in detail. It suffices to say that we agree with Mr Little’s submission that the circumstances here are very different from those of a religious confession.’

⁵⁷ See M. Hill QC and C. Grout, ‘The seal of the confessional, the Church of England, and English law’ in *Religious Confession and Evidential Privilege in the 21st Century* (Shepherd Street Press, Australia, 2021), at 153 *et seq.*

⁵⁸ [2020] EWHC 182 Fam, para. 39.

Appendix 6: Mandatory Reporting

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 to report. Until very recently this had been resisted by the UK Government. They held a consultation in 2016. Following that consultation, the UK Government's position⁵⁹ was that there was widespread support for allowing the existing programme of child protection reforms time to take hold, and that the case for mandatory reporting had 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;⁶⁰ however, at the present time that applies to 'relevant partners' such as police, probation and health boards and trusts and does not include voluntary agencies or churches.

Any introduction of mandatory reporting is far from straightforward as it is necessary 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 require a report?) and to whom are they to report. Different jurisdictions have answered these questions in different ways. This problem is also noted by ecumenical partners.⁶¹

IICSA in its final report (October 2022) recommended that mandatory reporting be introduced. They set out in some detail why they regarded the Government's position as flawed and argued that mandatory reporting could only be good from the point of view of improving child protection. At section F6 of their Final Report, paragraph 86 sets out Recommendation 13 where it is said:

The Inquiry recommends that the UK Government and Welsh Government introduce legislation which places certain individuals – mandated reporters – under a statutory duty to report child sexual abuse where they:

- receive a disclosure of child sexual abuse from a child or perpetrator; or
- witness a child being sexually abused; or
- observe recognised indicators of child sexual abuse.

and it provided definitions as to who the "mandated reporters" should be:

- any person working in regulated activity in relation to children (under the Safeguarding and Vulnerable Groups Act 2006, as amended)
- any person working in a position of trust (as defined by the Sexual Offences Act 2003, as amended); and
- police officers.

⁵⁹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685465/Reporting_and_acting_on_child_abuse_and_neglect_-_response_to_consultati...pdf

⁶⁰ Section 130 of the Social Services and Well-being (Wales) Act 2014

⁶¹ See Appendix 4

The definition of ‘working in a position of trust’ contained in the Sexual Offences Act 2003 was changed in 2022 by the addition of section 22A, which says that the person (A) is in a position of trust in relation to another person (B) if

- (a) A coaches, teaches, trains, supervises or instructs B, on a regular basis, in a sport or a religion, and
- (b) A knows that they coach, teach, train, supervise or instruct B, on a regular basis, in that sport or religion.

Such a definition would not include a priest hearing a confession from an adult penitent about the abuse of a child, as all the references in s.16 to s.22 are to the person B being under the age of 18. Furthermore, it would only apply to ‘confessions’ by persons under 18 to A if A was instructing B on a regular basis. So, it would probably apply if B was regularly attending confession, or some other activity in the church where A ministered and heard the ‘confession’. Whether it would apply on the basis that B attended services at the church regularly is a more moot point. I would doubt that it would include someone attending Walsingham and making their confession to a priest there.

They also proposed that:

It should be a criminal offence for mandated reporters to fail to report child sexual abuse were they:

- are in receipt of a disclosure of child sexual abuse from a child or perpetrator; or
- witness a child being sexually abused.

It is to be noted that that did not include prosecution for failing to report any ‘observation of recognised indicators of child sexual abuse’. That absence is a matter of great concern to many survivors and to the organisation Mandate Now who take the view that it is essential that reasonable suspicion should be reported.

In a volte face the UK Government announced on 2 April that it is now committed to introducing mandatory reporting. The Government website said that:

The first step to introducing the duty is a call for evidence which will be open to professionals, volunteers, parents, victims and survivors, and the wider public. It will be the start of extensive consultation to ensure everyone’s views are represented ahead of implementing the new duty...

...The call for evidence will be published alongside the government’s full response to the (IICSA) Inquiry shortly.

That ‘full response to the inquiry’⁶² and the Call for Evidence⁶³ were published on 22 May 2023 and are available online.

In short, the response is to say that Government is already driving system-wide improvements in professional practice and that a strategy published in February ‘sets out our transformative reform

⁶²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1158298/Government_Response_to_IICSA_FINAL.pdf

⁶³ <https://www.gov.uk/government/consultations/mandatory-reporting-of-child-sexual-abuse/mandatory-reporting-of-child-sexual-abuse-call-for-evidence>

programme to ensure that children are better safeguarded and protected from all types of harm.’ It then says:

98. We agree that implementing a new mandatory reporting duty could improve the protection and safeguarding of children, as well as holding to account those who fail in their responsibilities. A successful reporting regime will ensure that the individuals and organisations with a responsibility to safeguard children provide a robust and consistent response to abuse, putting the needs of children first.

99. However, we know that the introduction of a new duty to report would impact a range of individuals, organisations and workforces, and that implementation will need to be carefully managed. To understand how best to implement a duty which will put the needs of children first and ensure that perpetrators are held to justice, we are committed to working closely with potentially affected sectors.

The call for evidence is addressed to 15 groups of people, including persons working in a position of trust (as defined by the Sexual Offences Act 2003). The consultation will last until 14 August (12 weeks) which may be thought to be a very short space of time for organisations to address the quite complex issues posed in the paper.

It says that the call for evidence is particularly aimed at those working with children and young people in regulated activity or positions of trust. It says they want to collect responses from as broad a spectrum as possible so they can accurately assess how best to implement mandatory reporting, including what support and resources may be needed and what the potential implications might be.

They encourage interested organisations to provide detailed information on any considerations specific to their sectors, as well as views on whether mandatory reporting duties should cover only known incidents or also include suspected abuse. They would also like to understand the potential impact on children and young people who may seek to make disclosures, as well as organisations involved in supporting victims and survivors.

They also welcome views on any circumstances in which it may be necessary to disapply the duty.

There are specific questions they pose. Amongst those, of relevance to us are:

- Whether mandatory reporting should be at individual or organisational level or both;
- Views about the level and manner of sanctions applicable to any breach of the duty;
- The protections to be provided for mandated reporters – whistleblowing protections for individuals when reports are made in good faith might include the removal of liability for civil proceedings or breaches of professional conduct.

There are 32 specific questions covering these and other matters. Question 1 asks about the capacity in which somebody is responding. There are 16 categories available to tick (the last being “other”), but interestingly although there is one specifically for the sport sector there is none for the religious sector. The word ‘religion’ and the words ‘priest’/‘minister’ do not occur at all in either of the documents which might be thought rather remarkable given the high profile of religion in relation to mandatory reporting in the IICSA report. And of course, there is no reference at all to religious confessions of any sort.

Hopefully someone within the Church of England will be getting hold of this and responding. We understand that, up to this point in time, the Legal Office has had no involvement at all in the current work going on in relation to the Seal.

An interesting political matter for Government may be whether they want to get into a confrontation with the Roman Catholic Church if it can possibly avoid it. The key question being whether they would want to impose a duty on Roman Catholics which they knew the Catholic priests would never comply with. Q.28 asks 'would your organisation need to make any changes in order to ensure the successful implementation of a mandatory reporting duty?'

There is then the issue of whether the duty would be absolute or would accommodate any exceptions. There is no suggestion in the IICSA proposal of making the duty to report subject to an exception of having a reasonable cause not to report. However the Call for Evidence at Q.21 asks 'do you think there should be any other exceptions to the duty which means sanctions should not be applied?' Q.30 asks 'Are there any concerns, including the need for additional support, that you would like to flag for your sector?'

There is no suggestion in the papers that a reasonable excuse would be allowed as an exception. That may be deliberate or it may be an oversight at this stage as, IICSA not having suggested it, no one else has either as yet.

On the issue of reasonable excuse Northern Ireland has wide ranging duties imposed by s.5 of the Criminal Law Act (Northern Ireland) 1967. They relate to 'relevant offences', which are defined in s.4 as offences for which the sentence is fixed by law, or for which a person of 21 years or over (not previously convicted) may be sentenced to imprisonment for a term of five years (or might be so sentenced but for the restrictions imposed by Article 46(4) of the Magistrates' Courts (Northern Ireland) Order 1981).

The s.5 offence of failing to comply with the duty to provide information you have about such offences is only an offence if done 'without reasonable excuse'.

The Attorney-General for Northern Ireland has issued Guidance to police and prosecutors about the application of s.5 of the 1967 Act 'to victims of serious sexual offences and those to whom they make disclosures'.

That position in Northern Ireland should be contrasted with a failure to comply with the duty to disclose information you may have about a terrorism offence (past or future) under s.38B of the Terrorism Act. In that case it is a defence for a person to prove that they had a reasonable excuse for not making the disclosure.

The significant difference between the two jurisdictions is that in Northern Ireland the prosecution have to establish that there was no reasonable excuse, whereas in England and Wales in relation to terrorism the defendant has to establish that they had a reasonable excuse. So in Northern Ireland the AG has provided guidance about all the various circumstances that need to be taken into account in balancing the 'general interest of society (including the interest in protecting persons against future serious harm) information about the serious sexual offence being disclosed to the police and the interests and rights of the person who failed to disclose the information, as well as those of the victim.' Interestingly, there is no reference to the seal of the confessional, when one might have expected that in a community that has a significant Roman Catholic population.

We would hope that any legislation in relation to mandatory reporting, insofar as it made any failure to report a criminal offence, would have provision for a reasonable excuse, but would follow the

terrorism pattern of putting the burden on the defendant to establish their reasonable excuse. Unless the statute spelled out in some way what might or might not be reasonable, it would be for a judge to direct a jury as to whether what was put forward was capable of being a reasonable excuse. We have no confidence that the modern generation of judges would allow the Seal to be advanced as a reasonable excuse.

Peter Collier

Appendix 7: Paedophiles and Confession

There is much conflicting information about paedophilic disorder and its relationship to child sexual abuse. Mental health professionals make use of *The Diagnostic and Statistical Manual of Mental Disorders*, fifth edition (DSM-5) which assigns a diagnosis of Paedophilic Disorder to adults (defined as age 16 and up) who have sexual desire for prepubescent children. The individual may have acted out these sexual desires, or experience significant distress or difficulty as a result of these desires. The DSM-V states that disorder is highly treatment resistant, is not amenable to psychotherapy, and rates of recidivism have been estimated to be 25%-50%. The disorder has the potential to have an impact on many areas of functioning, and those with it typically lead dual lives, maintaining secrecy and often presenting a picture of respectability and responsibility.

Further research has been done to consider why people have paedophilic tendencies, and the contribution of genetic, environmental and relational elements. One such study notes the need to differentiate between those who abuse children because they have such tendencies, and those who abuse for other reasons because they are in positions of power and control and as such have the opportunity to abuse. Among these may be those who lack the necessary social skills to develop and maintain emotional and sexual relationships with age-appropriate peers and look to children as 'surrogates'.⁶⁴

At the same time, one individual who has experienced sexual urges towards children, but has never acted on them, was treated successfully for his urges through therapeutic intervention which recognised and dealt with his own sexual abuse by his mother. This treatment led him to be able to form appropriate adult relationships. He notes that paedophilia itself is not synonymous with child sexual abuse, and that the individual has two warring drives within them, namely, the urge to offend and the urge to be normal.⁶⁵ This bears out an observation that a person with paedophilic tendencies can be either 'fixated' or 'regressed', where the former is attracted only to children in a specific age range, while the latter can function emotionally or sexually at his or her biological age, but at a particular time relates emotionally as a child or adolescent.⁶⁶ Further, in a 2014 documentary on Channel 4, an individual with paedophilic tendencies notes the need for those in this situation to be able to come forward, admit that they have a problem, and to seek support before they might give in to their tendencies.⁶⁷

⁶⁴ G. Tenbergen et al, 'The neurobiology and psychology of pedophilia: recent advances and challenges', 24 June 2015, <https://www.frontiersin.org/articles/10.3389/fnhum.2015.00344/full> (accessed 28 April 2023).

⁶⁵ 'Paedophiles need help, not condemnation – I should know', 11 September 2020, <https://www.bbc.co.uk/bbcthree/article/3216b48d-3195-4f67-8149-54586689ae3c> (accessed 28 April 2023).

⁶⁶ T. Robinson et al, 'Victims and perpetrators in the parish: the struggle to accept terrible truths', in *Sexual Issues: Understanding and Advising in a Christian Context*, ed J.M. Greer and B. Geary (Suffolk, Kevin Mayhew, 2010), pp. 243-274.

⁶⁷ 'Channel 4 film features paedophile confessing attracting to children', The Guardian online, 2014, <https://www.theguardian.com/media/2014/nov/24/channel-4-documentary-paedophile> (accessed 28 April 2023).

Therefore, there are complex issues in relation to paedophiles confessing to priests. Some driven by secrecy may never come forward. Others who have acted out may come out of shame or remorse, and seeking amendment of life. Those who have paedophilic tendencies but who have never acted out may come to confession as a means of support to help them not to offend.

Helen Costigane

Appendix 8: Training issues

The Common Worship Ordinal is clear that the bishop is the 'guardian' and 'principal minister of word and sacrament' and 'chief pastor' who must:

...seek out those who are lost and lead them home with rejoicing, declaring the absolution and forgiveness of sins to those who turn to Christ.⁶⁸

Due consideration should therefore be given as to how (s)he will demonstrate this through leadership of training within their diocese. A Bishops teaching document agreed in the House of Bishops would provide detailed content and encouraged parity in training across the Church of England.

For a priest in the Church of England to be able to exercise this ministry effectively, they must have a nuanced understanding of several theological disciplines. In IME 1, this means that all ordinands should gain knowledge and understanding of soteriology, moral theology, sacramental theology, ecclesiology, Christian spirituality and pastoralia, which are all particularly significant in relation to confession. These must not merely be looked at as stand-alone subject areas, but in an integrated way.

Soteriology

Fundamentally, what happens in Confession is not a mere transaction between priest and penitent, but the renewal of baptismal grace and joyful celebration of the freedom and release that comes from a sharing in the salvific work of Jesus Christ. The danger of focussing so heavily on the possibility of the few who *might* come to confession having committed serious sins and are not truly repentant, can distract from the many who *will* experience through this sacramental ministry the reality of forgiveness and reconciliation.

Diverse perspectives on the exact nature of salvation, sin, justification, and atonement are reflected in the theological traditions encompassed within the broad ecclesiology of the Church of England. Without a deep understanding of soteriology (linked with moral theology), it would be impossible to understand what is meant by repentance, metanoia and reconciliation in confession.

Sacramental Theology

Although a number of theological positions exist on confession within the breadth of Anglicanism, there is a mainstream tradition within which any understanding must be compatible, in order for it to be properly described as within Anglican orthodoxy. Whether or not a given interpretation comes within the Anglican fold is an important consideration in terms of the treatment of practices and teaching flowing from it for a number of purposes: training, clergy terms of service, discipline, liability in secular law and insurance coverage.

⁶⁸ Common Worship, Ordination of a Bishop, Declarations

Anglican theology on confession is often encapsulated in the phrase 'all may, none must, some should'. While different streams of Christianity have adopted a variety of stances on the manner in which confession should take place, the articulation of brokenness and affirmation of God's healing and forgiveness is common to all. Figures such as Martin Luther valued confession, and although practices evolved in England and Wales as elsewhere during the period of European Reformations, there was an unbroken tradition of confession as a recognised and revered element of practice and doctrine. General confession within a liturgical context and priestly absolution became the standard mode. Nevertheless, the significance of priestly absolution in this context should not be underestimated, neither should the encouragement of individual penitents in certain circumstances, particularly for the dying or criminals condemned to execution.

It is fair to observe that the revival of more routine, private confession, and reassertion of its sacramental character, by the Oxford Movement in the 19th century was controversial. At the same time, it is interesting to observe that when the arguments being made are examined, it is striking that the overwhelming concerns relate to the control of women (fear of wives and daughters disclosing family secrets, especially of a sexual nature, to male confessors), rather than the intrinsically problematic nature of individual confession, as the latter argument could not be coherently made.

The core position remains that individual confession and the pronouncement of priestly absolution should be available to all members of the Body of Christ, but not required of any person (and certainly not as a perquisite for any Sacrament or Occasional Office). Individual confession usually takes place within a ritual time and space, marked by liturgy and often the wearing of a stole by the priest. Nevertheless, it should be noted that there are occasions when this will not be the case (e.g. a priest visiting a parishioner who is suddenly in a critical condition and dying or believes themselves to be dying).

Ecclesiology

Four significant developments can be identified in post-Vatican II Roman Catholic liturgical reforms in the sacramental ministry of confession. First, a move from talking about penance and absolution for an individual to identifying reconciliation as a fundamental dimension of the corporate identity of the Church (a return to earlier practice). Second, the priest is not so much a judge, but rather a doctor of souls. Third, an attempt to make penance more than saying something by rote, but rather a prayer relating to their Christian life. Fourth, an infusion of scripture. All four developments move away from a functional, transactional view of confession to a deeper understanding of the nature of sin and of God's reconciling love revealed in Jesus Christ, which is experienced within his body, the Church. The link with baptism is significant in that through this sacrament, all Christians are called to be agents of Christ's healing and mercy in the world. Reconciliation is at the heart of a Church that is One, Holy, Catholic, and Apostolic.

This theology is also evident in the rites and doctrine of the Church of England, but there is perhaps less clarity in how the specific ministry of confession for an individual relates to the ministry, mission and very nature of the Church as the Body of Christ. Most Church of England services would include some expression of penitence and assurance of forgiveness or absolution. In both the Book of Common Prayer and Common Worship rites, liturgical resources for the sacramental ministry of reconciliation are set firmly within the ministry to the sick and those close to death, though the Common Worship Wholeness and Healing rites include material for services of corporate penitence in addition to material for the reconciliation of an individual penitent. The Book of Common Prayer

has a general stress on the weightiness of human sin, but also on the gift of forgiveness and amendment of life.⁶⁹

The ministry of reconciliation is clearly bestowed on the priest at the point of ordination, evidenced in the ordination prayers of both the Book of Common Prayer and Common Worship rites. In the Book of Common Prayer Ordering of Priests the bishop says:

Receive the Holy Ghost for the office and work of a Priest in the Church of God, now committed unto thee by the imposition of our hands. Whose sins thou dost forgive, they are forgiven; and whose sins thou dost retain, they are retained. And be thou a faithful dispenser of the Word of God, and of his holy Sacraments.

In the Common Worship rite the bishop says:

In union with their fellow servants in Christ may they reconcile what is divided, heal what is wounded and restore what is lost...may they proclaim Christ's victory over the powers of darkness, and absolve in Christ's name those who turn to him in faith.

Whilst it is appropriate and reasonable to expect a priest to undertake appropriate training in Confession and to wait until they have sufficient experience and growth into holy orders before *exercising* the ministry, it is clear that within the Church of England the *capacity* to undertake the ministry is given at ordination. Any suggestion of making this an optional dimension of the exercise of priestly ministry past the stage of IME therefore challenges the nature of priestly ministry as the Church of England has received it.

When the bishop commits the licence to the candidate at an induction they say: '*Receive this cure of souls which is both yours and mine.*' The concept of the cure of souls is embedded in the parish system of the Church of England and envelopes the whole parish and not just those who attend church or are Christian. This impacts on ecclesiology, resulting in a 'broad' church. The term 'cure' is about more than care, rather about the ministry of reconciliation through the saving actions of Jesus Christ, which includes reconciliation between an individual and God and reconciliation between people and communities. Common parlance is to talk about those in IME 2 as 'curates' and their duties or office as a 'curacy', terms which derive from the concept of the cure of souls.

The *Guidelines for the Professional Conduct of the Clergy* state that:

The ministry of absolution may only be exercised by the minister who has the cure of souls of the place in question or by another priest with that minister's permission, or by a priest who is authorized by law to exercise ministry in that place without being subject to the control of the minister who has the cure of souls (e.g. a priest who is licensed to exercise ministry under the Extra-Parochial Ministry Measure 1967). This rule is subject to an exception that permits a priest to exercise the ministry of absolution anywhere in respect of a person who is in danger of death or if there is "some urgent or weighty cause" (See Canon B 29.4).⁷⁰

⁶⁹ Article XV: '*He came to be the Lamb without spot, who, by sacrifice of himself once made, should take away the sins of the world, and sin, as Saint John saith, was not in him. But all we the rest, although baptized, and born again in Christ, yet offend in many things; and if we say we have no sin, we deceive ourselves, and the truth is not in us.*'

Article XVI: '*After we have received the Holy Ghost, we may depart from grace given, and fall into sin, and by the grace of God we may arise again, and amend our lives. And therefore they are to be condemned, which say, they can no more sin as long as they live here, or deny the place of forgiveness to such as truly repent.*'

⁷⁰ *Guidelines* 3.3

Christian spirituality

Whilst there are many in wider society who would describe themselves as ‘spiritual, but not religious’ there can be a limited understanding even amongst Christians about prayer and the spiritual life. Ordinands are taught basic Christian spirituality during IME 1, but rarely reach the point of ordination with a deep understanding of such things as the ‘ways’ or ‘stages’ of the journey of the Christian spiritual life. This is significant in relation to the readiness of a priest to exercise the ministry of Confession because they need to be able to recognise and discern what is really going on in the spiritual life of the penitent, e.g., whether a penitent is losing their faith or entering the dark night of the soul, which – despite common incorrect usage of the term – can actually indicate growth in the spiritual life. Paradoxically, someone might feel a long way from God when they are moving closer to him.

Health and Pastoral Care

It is important to emphasise that the ministry of reconciliation needs to be set within the wider context of health, healing and pastoral care. Those hearing confessions need to engage with the practice against this wider background and have an appreciation of “sin” and a feeling of distance from God as being something more nuanced and complex than a formulaic breaking of rules, or deliberate misconduct. There is a balance to be struck between on the one hand avoiding an abnegation of personal responsibility and agency, justified by a reassuring wiping of the slate clean, and on the other fuelling a sense of unworthiness, inappropriate guilt and anxiety that personal struggles are a punishment and the consequence of unconfessed or unforgiven sin. Those hearing confessions need to be prepared for a wide spectrum of circumstances, perspectives, needs and disclosures, and be equipped to respond appropriately. Even situations which could not be properly classified as coming within the remit of safeguarding, may raise questions about the dynamics of interpersonal relationships, or understanding of painful events in the past.

The ministry of confession is not counselling, and lines should not become blurred. Equally, it is vital that those offering this are ordinarily able to provide it within a wider context of pastoral care, and alert to sign-posting other forms of help where appropriate. In addition, priests must be able to process their experiences of confession through theological reflection (within the bounds of the seal), and where appropriate, support and enable penitents to do the same.

IME and CMD

IME 2 has an emphasis on inhabiting or growing into holy orders and on theological reflection and reflective practice; knowledge and understanding should become embedded in ministerial practice. Therefore, training in confession is best placed towards the end of the curacy. Training should ensure curates understand the theological underpinnings of the ministry and requirements of canon law in relation to the seal of the confessional, supported by ritual, sign and symbol. In addition, training should instil good practice in relation to pastoral conversations and clarity about when this moves to the arena of the confessional⁷¹. Curates also require training in spiritual counsel to ensure they can advise the penitent appropriately and give apposite forms of penance.

However, the necessity for appropriate ministerial formation to undertake the sacramental ministry of Confession means most curates are highly unlikely to have the necessary experience in spiritual counsel and discernment to have regular penitents, but only when someone is in danger of death or

⁷¹ Drawing on *Guidelines for the Professional Conduct of the Clergy*, Section 3.

if there is 'some urgent or weighty cause'⁷² or perhaps hearing occasional confessions as part of priestly ministry in the parish, if it is the tradition of the parish, e.g., before Easter.

The recommendation in the 2018 report was that there should be obligatory 'refresher' training in the sacramental ministry of reconciliation during CMD. Such training would be particularly pertinent for those undertaking the role of training incumbent. However, it should be noted that in many cases this would be remedial and not merely refresher training, recognising that many clergy in the CMD stage might never have received specific training in the sacramental ministry of reconciliation. As with training offered during IME, training during CMD should not merely be functional, but be embedded in theological knowledge and understanding. Training might also be given in relation to encouraging and enabling wider teaching about the ministry of reconciliation, alongside the sacramental ministry of confession in particular.

Training must also allow for ongoing discernment of calling; a charism for hearing confessions might emerge or develop some years into active priestly ministry. Priests with regular penitents should always themselves be penitents. This is necessary to ensure they are equipped to 'bear the weight'⁷³ of this element of their calling and echoing the final words spoken by the confessor in the Common Worship rite of the Reconciliation of a Penitent reinforcing that it is Christ's ministry in which the priest shares and God who forgives: '*Go in peace, and pray for me, a sinner*'.

Any theological or formation training given in the sacramental ministry of confession must sit alongside exemplary safeguarding practice.

Helen Hall and Rebecca Swyer

⁷² Canon B29.

⁷³ Common Worship, Ordination of a Priest, Declarations..