Bishop Peter Hancock
Diocese of Bath and Wells
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MandateNow

11th December 2019

Dear Bishop Hancock,

....'the church has some form of mandatory reporting' 14/7/19 - BBCr4 Sunday

Thank you for your email reply of 25/10/19 to my email enquiry of 18/7/19 in which you have provided the evidence on which you rely to underpin the claim 'the church has some form of mandatory reporting.' Forgive my delayed letter; I have been unwell for some time.

In keeping with the House of Bishops' safeguarding guidance, your reply does not evidence the existence of anything resembling MR.

Your email states:

> ***Section 5*** *of the Safeguarding and Clergy Discipline Measure 2016 imposes a legal obligation on bishops, archdeacons and other serving clergy (as well as on licensed lay ministers, churchwardens and parochial church councils) to "have due regard to guidance issued by the House of Bishops on matters relating to the safeguarding of children and vulnerable adults". The expression "have due regard" used in legislation has an established legal meaning which has been set out by the courts. It means that the person to whom the guidance is directed must follow it unless there are clear, logical and convincing reasons that would stand up in court for not doing so.*
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> *The most recent relevant House of Bishops guidance is Responding to Safeguarding Concerns or Allegations that relate to Children, Young People and Vulnerable Adults practice guidance (2018). This guidance sets out the procedure to be followed in relation to concerns or allegations that do not relate to church officers. Part 2 deals with the reporting of safeguarding concerns or allegations about children and young people. It states:*
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> > *This is the procedure that church officers and bodies* ***must*** *follow if they have a safeguarding concern or allegation about a child or young person.*
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> *The flow chart and the written text that follows it is emphatic that in all cases the concern or allegation must be reported to the nominated safeguarding officer (in the parish, cathedral etc.) and that the diocesan safeguarding officer (DSA) must be informed within 24 hours. If, the DSA advises that there are concerns they must be*

reported to children's social care and/or the police within 24 hours. Special provision is made for emergency cases.

Part 3 *of the guidance deals with the reporting of safeguarding concerns or allegations involving an adult. Again, a 'quick guide' flow chart is provided, followed by more detailed guidance. In all cases, the nominated safeguarding officer and the DSA must be informed.*

Equivalent provision is made in Practice Guidance: Responding to, assessing and managing safeguarding concerns or allegations against church officers (2017) in relation to concerns or allegations that relate to church officers. This requires safeguarding concerns or allegations relating to church officers to be reported to the DSA within 24 hours who must, among other things, report the matter on to the statutory authorities within 24 hours. Again, special provision is made for emergency cases.

As it is virtually impossible to conceive of any "clear, logical and convincing reasons" that would stand up in court for not following this guidance (see above), the result is, in effect, that the Church of England has a mandatory reporting regime.

A member of the clergy who failed to comply with the reporting requirement would, by virtue of section 8(1)(aa) of the Clergy Discipline Measure 2003 (as amended by the Safeguarding and Clergy Discipline Measure 2016) be guilty of misconduct and would be liable to a penalty.

Section 5 To 'have due regard' means that in making decisions, and in his/her other day-to-day activities, a person subject to the duty must consciously consider the need to do the things set out in the general duty. How much regard 'due' is given will depend on the circumstances and in particular on the relevance of the aims in the general duty to the decision or function in question. The greater the relevance and potential impact, the higher the regard required by the duty.

'Due regard' is not a mandate to report known or suspected abuse - it is merely an 'expectation.' It is similar to a professional expectation that applies in teaching or healthcare. Like both these professions, the church has an **apparent** sanction in the event a discretionary (but expected) referral is found to have not been made, usually years after the alleged crime has been committed. Such late discoveries litter the history of safeguarding in the Church of England. Furthermore, the CofE Section 5 expectation provides no protection to reporters who in good faith make a referral, which may, or may not, subsequently be supported by sufficient available evidence and/or be made out to amount to a criminal offence in law. Well-designed mandatory reporting provides immunity to those who make referrals in good faith.

Turning to the blue highlighted section. 'Guidance' supports law, but the CofE does not have mandatory reporting law. Having established there is no CofE mandate to report

known or suspected abuse the value of this 'guidance' is negligible. Furthermore, absent of (Mandatory Reporting) law the **'must'** that appears in this paragraph is merely ink on paper which is incapable of reliably delivering the hoped for outcome that the paragraph suggests.

Part 3 – Forgive me repeating myself but 'guidance' supports (MR) law which the CofE does not have. Where MR law exists 'guidance' informs personnel how the law is to be delivered. Government has 'statutory guidance' which is in the place of (MR) law. Guidance states that known and suspected child abuse '**should**' be reported. In the absence of law 'statutory guidance' is an oxymoron. To report known or suspected abuse in the Church currently, or indeed in any other Regulated Activity, one has to be a 'whistleblower' without legal protection - PIDA (the Public Interest Disclosure Act) has almost no value. The same situation exists in the CofE, there is no law, but only 'guidance,' and a reporter is in the position of an unprotected whistleblower.

Practice '*guidance*' in the grey section: is more of the same. It is guidance grounded on little more than an expectation. The Church can attempt to introduce its own version of mandatory reporting, but it can't be credible. The Church is seen by many as centrally disingenuous as it has little control over dioceses. To have a 'one church approach' to safeguarding, which many would like to see, the Government needs to introduce well-designed MR to all Regulated Activities. It is unlikely that dioceses would dissent from the law in the MR model we propose and which we will shortly be updating. The introduction of MR would for the first time put all dioceses on the same safeguarding footing, which is an important and significant step. Functioning 'guidance' would accompany the law. The CofE desperately needs the security of MR to mend the harm clergy have inflicted on it. Are we alone thinking this? Here is the submission of the Diocese of Canterbury to the REPORTING AND ACTING ON CHILD ABUSE AND NEGLECT consultation. I received confirmation from the Chair - Canterbury Diocesan Safeguarding Advisory Panel that this was indeed its submission. The answer to Q7 is particularly enlightened. It was the only submission to come from the Church of England, and it's worth reading.

> *As it is virtually impossible to conceive of any "clear, logical and convincing reasons" that would stand up in court for not following this guidance (see above), the result is, in effect, that the Church of England has a mandatory reporting regime.*
>
> *A member of the clergy who failed to comply with the reporting requirement would, by virtue of section 8(1)(a) of the Clergy Discipline Measure 2003 (as amended by the Safeguarding and Clergy Discipline Measure 2016) be guilty of misconduct and would be liable to a penalty.*

The first paragraph above is incorrect for the reasons I explained earlier in this reply.

The second paragraph is an extravagant claim. Firstly a referral needs to be made in order for the CDM to be considered. A referral is entirely discretionary by each link in the long chain from the initial incident, to the Diocesan Safeguarding Adviser until it reaches the Bishop, whereupon once again it is a discretionary referral by the Bishop to the President of

Tribunals. It is the President of Tribunals who decides whether the referral can be considered. Any one of the links in this extended chain can fail. But there is an even more important consideration which suggests that this entire process, which is currently under review because it is considered dysfunctional, is enshrined in the legislation itself:

> Section 8. Misconduct
>
> (1)Disciplinary proceedings under this Measure ***may*** be instituted against any archbishop, bishop, priest or deacon alleging any of the following acts or omissions (***my emboldening***.)

It's discretionary. The Church of England has consistently failed to follow either its discretionary procedures or the DfE safeguarding statutory guidance which is also discretionary. This is evidenced by the repeated failures to refer alleged child abuse incidents to the local authority or the police.

A CDM does not provide a verdict like that of a jury in the Crown Court; rather it's designed to reach a sanction by consent, in the mode of civil proceedings. The CofE overstates the value and reliability of Clergy Disciplinary Measures.

As far as one can establish, in the last year only 4 CDM cases in relation to safeguarding went to tribunal. It is unclear how many were upheld because the Church has not published the information. May we have this information please?

The safeguarding statistics published in June 2019 covering the years 2016/17 indicate that 66% of 3,287 concerns which were reported to DSA's on a discretionary basis were handled internally. Only one third of cases were assessed by external statutory agencies that are independent of the institution. What confidence can we have that the 66% of concerns dealt with in-house were managed correctly?

> *I think the key phrase in relation to the question you have asked me is in the penultimate paragraph above where Alex says 'in effect' the Church has a mandatory reporting regime. And I think that is an important distinction, which needs to be understood.*

The Church does not have a mandatory reporting regime and you have not provided the evidence of it in this communication. It would help if you looked at examples of mandatory reporting legislation from common law jurisdictions, you might then recognise how misguided the claim is that you are making. Incidentally are you making this claim as lead Bishop for Safeguarding or personally – I ask because of your assertion later in your reply? Here is our proposed draft legislation for mandatory reporting in England and Wales. The only reason we list the Regulated Activities to which it will apply, which we had no desire to do, is because the 'RA' definition is so poorly drafted in the SAFEGUARDING VULNERABLE GROUPS ACT 2006.

> *Your transcription of dialogue between*

E Stourton and

Donna Birrell.

The transcript is correct. I have audio – the key line which has prompted this exchange is here.

> *What I believe I said to Donna Birrell (in response to a conversation which we had after she had recorded the interview) was that the church had something which might be viewed as being 'akin' to mandatory reporting. That is not the same as saying 'the church already has some form of mandatory reporting'.*

The dictionary definition of 'akin' is: ESSENTIALLY SIMILAR, RELATED, OR COMPATIBLE.

Donna Birrell is quite correct in what she said. If you had reason to object to her report, as you seem to be now informing me, did you take this up with the BBC at the time? If not, why not? I presume throughout the interview, and as Lead Bishop for Safeguarding, you were expressing the position of the Church of England? If not, was it personal opinion either in part or in whole?

> *You have also, I think somewhat unfairly publicly accused me, of going back on the Church's position on mandatory reporting. I am not sure where you get that information from and would be grateful if you could provide me the source and evidence of that. I would be very pleased to receive it.*

In this article I **asserted** you undertook a 'U' turn on CofE support of the introduction of MR and stated clearly why. **The article is dated May 2nd 2017** and I tagged you on a number of tweets, here is an example from 28/9/2017. As Lead Bishop for Safeguarding your current position on statutory MR is one of avoidance, you exclusively talk about alleged Church MR. The church does not have MR, yet you assert the Church *has some form of mandatory reporting*. The Church has merely applied a counterfeit mandatory reporting sticker to an 'expectation' on clerics to report abuse. Have you read the data on the positive effect of MR in Regulated Activities which was presented by Professor Ben Mathews at IICSA MR Seminar #2 in April this year? Non-support for MR in Regulated Activities is similar to denying climate change in the face of all the scientific evidence. MR is a vital component of functioning safeguarding and you, and the Church, appear to be hiding behind a pillar. Singleton and Tilby both dodged the MR question when Scolding put it to them during the Anglican hearing. Quite why she was so ineffectual no one knows – this was an interesting exchange with Archbishop Welby.

> *..... the Bishop Of Durham had spoken about Mandatory Reporting in the House of Lords, he was speaking in his personal capacity, not representing the official position of the Church of England. Indeed the Church has not yet, as far as I know, got an 'official position' on it.*

This suggestion is certainly of the moment. Are you in your email speaking as the Lead Bishop for Safeguarding or personally? or perhaps in part personally and other parts as Lead Bishop? How does one tell? Where do the boundaries fall? Is the objective of your assertion plausible deniability or more accurately implausible deniability?

In the next few paragraphs let me demonstrate how mistaken your assertion is that Durham was speaking for himself in his HoL speech. Ref 1072 3.30pm (highlighted in the link) This is Paul Butler's speech when as Lead Bishop for Safeguarding he spoke in support of Baroness Walmsley's amendment for the introduction of Mandatory Reporting during the Serious Crimes Bill on 28th October 2014. This was the second time Durham supported this amendment, the previous debate was truncated. Mandate Now drafted the amendment for Walmsley. Mandate Now's current draft proposal differs from Walmsley's amendment in a number of ways as mentioned earlier.

The Church's decision to support MR in the Serious Crimes Bill debate was of no surprise to a cadre of people who had been discussing these matters with senior members of the Church hierarchy. For example almost a year earlier (**November 2013**) BBC Panorama broadcast a programme about child abuse in Regulated Activities. Stemming from the wholesale safeguarding failures in both the Catholic Church and the Church of England, the programme spoke to Danny Sullivan (now retired) and The Lord Bishop of Durham: the extract below is taken from 0.51" onwards of this sound file

> **Interviewer:** The Church of England has also had its share of scandals. (extract from BBC News report about abuse in the Diocese of Chichester) What happened in Chichester and across Sussex was covered up by the Church of England for decades. After the police were called in, a Bishop was arrested and five priests have been convicted.
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> **Durham clip**: "We cannot do anything other than own up to our failures. We were wrong."
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> **Interviewer:** The Church of England also thinks there has to be a change in the law.
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> **Durham**: We think that it would be a good idea to introduce mandatory reporting for institutions certainly across the country. There is a whole range of reasons why people haven't been doing it. They worry about how they will be viewed, they are concerned that they will be misunderstood, or they simple think 'I don't want to get involved; I'm worried if I get involved.' But we have to think of the child first, not ourselves, not the institution, what's best for the child.

In the unlikely event that Durham was using the third person to refer to himself, he is clearly speaking as Lead Bishop for Safeguarding in the Church of England. No subsequent complaint was received by the BBC from Durham suggesting he or the Church had been misrepresented.

Where did the Church of England 'U' turn on its public support for the introduction of well-designed mandatory reporting occur? A: on your appointment as Lead Bishop of Safeguarding.

You arrived in post and like most to this role with a very limited appreciation of safeguarding. You were and remain reliant on employees for advice and those who are members of the Church who have been in safeguarding for some years and wear a metaphoric badge that proclaims 'expert.'

Early in your appointment there was a meeting of the National Safeguarding Panel at Lambeth Palace on the 8th October 2016. This meeting is referred to in the 'U' turn article on the Mandate Now website which was published on 2/5/17 to which you have belatedly objected. Here is an extract from it:

> On 8th October the National Safeguarding Panel for the Church of England met at Lambeth Palace. It was at this meeting that the Church's mandatory reporting volte-face (*on its previously stated position to mandatory reporting*) became apparent. Members of the Lucy Faithfull Foundation were present including Baroness Howarth. The Government's Consultation was on the agenda but only just, it was left to the very last minute of the meeting. Mr Tilby, the National Safeguarding Adviser gave Baroness Howarth the floor and with metronomic predictability she delivered her unevidenced diatribe against mandatory reporting. Asked whether the Church was making a submission to the Consultation, Mr Tilby said it was not (despite it sponsoring Amendment 43), and that should the Government move towards Mandatory Reporting, the Church would become involved at the committee stage.
>
> With that the Church's commitment to mandatory reporting evaporated and the meeting was closed almost immediately, denying other attendees the time and opportunity to contribute or debate on the subject. Hancock and Tilby had disappeared a Church policy, 'just like that.' Throughout the meeting not much was said by Peter Hancock. He seems to go wherever Mr. Tilby indicates.

Howarth, the only Peer who spoke against MR in the Amendment 43 debate, is a social worker. Tilby is a social worker. Donald Findlater, although not a social worker – is slavishly subscribed to social work practice on all matters. All are unknowingly enthusiastic proponents of the misapplication of the statutory framework (discretionary reporting dressed up as legally binding) to Regulated Activities. Social work practice dominates 'statutory guidance.' It is driven almost exclusively by neglect in the family. MR law cannot work behind closed household doors and neither do we want it there, but it is a vital component of functioning safeguarding in Regulated Activities in which children are in the care of adults other than their parents. Social workers rarely have anything to do with the design and delivery of safeguarding in Regulated Activities. They therefore know little about these complex and strategically important settings. So concerned was I by this 'one size fits all' mindset to safeguarding that so dominates the Department for Education that I sent this

loosely assembled email to Professor Ben Mathews expressing my concern. I received this informative reply. Here is the bio for Mathews.

Social workers who are closely involved in the design and delivery of safeguarding in Regulated Activities are very few in number. I can name only a handful. But that handful wants statutory mandatory reporting as we have seen from their evidence sessions at IICSA. I was particularly impressed by Jane Dzaidulewicz formerly of the Catholic Diocese of Bristol.

The arguments presented by Howarth in her Amendment 43 speech were extraordinary – and vehemently against MR. To write the speech, she ignored empirical evidence on the benefits not only to children when MR is introduced but also to social work and the police. Here are extracts from a very important article from **1989** which centered on MR being extended to teaching in the State of NSW in 1987. (The Impact of Mandatory Reporting Legislation on Reporting Behaviour – David Andrew Peter Lamond 1989). Here is data from the State at that time. Let's not forget, a professional 'expectation' existed that teachers 'should' report known or suspected abuse. Before the introduction of MR to teaching in the State, safeguarding was modeled on the disastrous discretionary reporting framework authored in Whitehall and which we still have. Other countries which have conducted public inquiries into institutional abuse including Australia and Canada and other jurisdictions, have since come to their senses and introduced some form of MR. Whenever MR is introduced to a Regulated Activity, the same uplift in reports and substantiations has been seen.

> *One of the suggestions which has come though from the NSPCC and also the Office of the Children's Commissioner is perhaps to make it a statutory offence if someone did not report; now that is not the same as mandatory reporting but I know it is something which is certainly being talked about and I imagine therefore being considered as becoming statutory through legislation.*

You are correct, this was said. It's an example of subject illiteracy by two statutory bodies vulcanised to Government and dominated by social work practice and narrative. As you understand they also wear badges that proclaim 'expert,' but certainly not in mandatory reporting. For your information, Government promulgated this idea in the consultation and applied the counterfeit label 'Duty to Act' to it which fooled so many. Those making submissions probably thought Government was making a proposal that had a chance of working. For your information – The Home Office and the Department of Education dropped the proposal because it's unworkable, it is highly doubtful it would ever pass the office of Parliamentary Counsel to be presented as an amendment. That did not stop the National Police Chief's Council supporting it in its consultation submission, but it doesn't want MR for a host of other reasons that have nothing to do with safeguarding. The Police Superintendants Association, in its submission, pointed out it couldn't work. We wrote this detailed and withering assessment of it dated 2.10.16 just three weeks after the consultation closed. It's a counterfeit label applied to a bottomless bucket.

Pleasingly – I am close to concluding.

Your closing paragraph says:

> *I think Richard Scorer made a helpful comment on the Radio programme when he said:*
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> *The policy in the Church of England says that they should report but it doesn't say that they must. If Justin Welby wants the church to have mandatory reporting then he has to eliminate the wriggle room, he has to change the policy so that it says that people must report, that's the change that needs to happen.*
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> *That picks up the distinction between 'should' and 'must' and I am pleased that the Church's Legal Office are already looking at ways to ensure there is less ambiguity in language about that and to look at again at the phrase 'due regard' to strengthen that*.

To repeat my earlier comments, no institution can credibly institute functioning MR itself. MR needs statutory legislation. Unless a policy 'must' is underpinned by well-designed statutory legislation, it is merely ink on paper which can have no reliance placed upon it. When law exists the Church will be able to substantially pare the House of Bishops Policy on which we commented in our review, or indeed may well be able to do away with it. MR delivers clarity for example this document is given to staff in a financial services company in order to comply with s.330 of the PROCEEDS OF CRIME ACT 2002. It could not be clearer. It is accompanied by training (incidentally, there is no accreditation for safeguarding training or for safeguarding trainers in England / Wales or Scotland and as a result delivery is inconsistent – here is an example). MR delivers clarity, in stark contrast to the thicket of safeguarding guidance promulgated the Church of England.

I spoke to Scorer who confirms he has consistently argued for a statutory mandatory reporting obligation and that his criticisms of Church of England language in no way detracts from that; he says that whilst a new law is required in any event, in making the comments to which you refer, he was criticising the current woolliness and lack of clarity of internal church safeguarding documents. He also emphasised that a statute would require reporting in any event, irrespective of church language. Before a statute is implemented, it is incumbent on all responsible organisations to ensure that their language is as clear and directive as possible, and leaves no room for ambiguity.

The Church through your leadership of safeguarding is putting out the misleading assertion that it has a form of mandatory reporting. In reality it resembles a flat pack with missing components, verbose assembly guidance absent of any clear instruction, accompanied by porous health and safety enforcement.

Our pressure group is keen to know when the Church is going to reinstate its full throated support for the introduction of well-designed statutory Mandatory Reporting grounded on the draft legislation presented by Baroness Walmsley in Amendment 43? Walmsley's proposal, which was authored by Mandate Now, has been updated using precedent from common law jurisdictions, which also now addresses the unclear definition of Regulated Activity in Safeguarding Vulnerable Groups Act 2006.

I look forward to receiving your reply.

Sincerely,

Tom Perry
Founder
Mandate Now