

# LEGAL ADVICE NOTE ON CREATING INDEPENDENT SAFEGUARDING ARRANGEMENTS FOR THE CHURCH OF ENGLAND

19 February 2024



10 Queen Street Place, London EC4R 1BE

[bateswells.co.uk](https://www.bateswells.co.uk)

## CONTENTS

1.	Background .....	3
2.	Our instructions .....	5
3.	Summary .....	5
4.	Defining ‘safeguarding’ and the remit of Organisations A and B .....	6
5.	The merits of establishing Organisation A and Organisation B as registered charities..	8
6.	Legal structure for Organisations A and B .....	10
7.	Suggested governance structure of Organisations A and B assuming they are each set up as a charitable company limited by guarantee.....	11
8.	Contractual arrangements between Organisations A and B and the relevant body/ies of the Church of England.....	17
9.	Role of Organisation B as adjudicator and oversight body .....	20
10.	Enforcement and sanctions .....	21
11.	Data privacy .....	21
12.	Timeframe for implementation .....	21
	Appendix 1 – Chart showing how the new safeguarding regime could work .....	22
	Appendix 2 – Draft Church of England Safeguarding Measure .....	23
	Appendix 3 – Specimen Collaboration Agreement between (1) the relevant body/ies of the Church of England, (2) Organisation A and (3) Organisation B.....	25
	Appendix 4 – Brief outline of charity tax reliefs .....	30
	Appendix 5 – Summary guide to Companies Limited by Guarantee.....	31
	Appendix 6 – summary of the process for setting up a charitable company limited by guarantee .....	33

1. **Background**

- 1.1 Following the recommendations made to the Church of England as part of the Independent Inquiry into Child Sex Abuse on how safeguarding within the Church of England should be structured, Professor Alexis Jay has since been appointed by the Archbishop of Canterbury and the Archbishop of York in July 2023 to independently:
- 1.1.1 provide options and recommendations for how a new independent safeguarding and scrutiny body for the Church of England might be formed and how it should operate;
  - 1.1.2 make any recommendations for how further independence of safeguarding for the Church of England might be achieved; and
  - 1.1.3 make any other recommendations that are necessary or appropriate.
- 1.2 Following an exercise listening to key stakeholders around the country (including clergy, victims and survivors and diocesan safeguarding advisors), Professor Jay has made recommendations that are underpinned by the following principles:
- 1.2.1 independence;
  - 1.2.2 fairness;
  - 1.2.3 transparency; and
  - 1.2.4 impartiality.
- 1.3 Professor Jay has recommended that a complete change of safeguarding culture is necessary throughout the Church of England and that this can only be achieved by the creation of two fully independent bodies for the delivery and oversight of the safeguarding operations of the Church of England, whose advice and decisions should be final and not merely advisory.
- 1.4 With this in mind, Professor Jay's recommendation is for the General Synod to pass a Measure<sup>1</sup>, with parliamentary approval and royal assent, to provide that the safeguarding operations of the Church of England will be conducted by [Organisation A] under the supervision of [Organisation B] and shall be carried out entirely independently of the Church of England. The Measure will also create two overarching statutory safeguarding duties which will apply to every emanation of the Church of England (whether personal or institutional, ordained or lay, remunerated or voluntary). The duties will, in summary, comprise: (1) a duty to refer any complaint, concern or enquiry regarding safeguarding to the new independent body at the first available opportunity; and (2) a duty to implement all directions and recommendations made by either Organisation A or Organisation B (as appropriate) within the timescale specified. In respect of members of the clergy, failure to comply with these

---

<sup>1</sup> A Church of England "measure" is a law with the same force and effect as an Act of Parliament, but which relates to the administration and organisation of the Church. Measures are made by the General Synod and require the UK Parliament's approval to come into force.

statutory duties or to follow guidance issued by either Organisation A or Organisation B would constitute misconduct for the purposes of section 8 of the Clergy Discipline Measure 2003.

- 1.5 The Clergy Discipline Measure only applies to members of the clergy, so full consideration will need to be given in relation to enforcement of compliance with the statutory duties by non-clergy office holders in the Church of England, in particular those who are not employees (e.g. churchwardens and members of the parochial church councils (“PCCs”)). We have given some initial consideration to this and can provide a recommendation in a subsequent advice note.
- 1.6 The proposed new safeguarding arrangements envisage the following:
- 1.6.1 Organisations A and B would be funded centrally by the appropriate body (likely the Church Commissioners) of the Church of England, rather than by a levy imposed on the dioceses, PCCs and all other emanations of the Church of England. The arrangements would therefore need to ensure that both Organisations A and B are independent while at the same time have sufficient funding to exercise their functions properly.
- 1.6.2 **Organisation A**, the operational body, would be responsible for delivering the safeguarding operations of the Church of England. Its responsibilities would include:
- (a) providing safeguarding advice and training;
  - (b) issuing safeguarding guidance;
  - (c) receiving safeguarding referrals, enquiries and complaints from Church of England individuals, parishes, dioceses and other church bodies; conducting safeguarding investigations and making safeguarding directions and recommendations;
  - (d) providing victim and survivor care and support and also support and information for those against whom there are allegations.
- 1.6.3 **Organisation B** would provide oversight and scrutiny of Organisation A and its safeguarding functions. Its responsibilities would include:
- (a) setting national safeguarding standards for the Church of England,
  - (b) reviewing Organisation A’s decisions (for example in relation to safeguarding cases) where they have been escalated to Organisation B and adjudicating on them as necessary.
- 1.6.4 Both Organisations A and B would be established as registered charities.
- 1.6.5 Organisation A would employ safeguarding officers who would report to and be under the supervision of Organisation A, but who would be geographically based in the area (eg diocese) they were serving.
- 1.6.6 The remit of Organisations A and B should be to deal with safeguarding as provided for under the Care Act 2014 and the Children Act 2004, that is, focusing on abuse of children and vulnerable adults. Wider safeguarding issues, which would fall outside the remit of

Organisations A and B (for example, purely HR or pastoral support matters), should be referred back to the relevant person/Church body (eg diocese, PCC etc) to be dealt with by them in accordance with the appropriate procedure.

## 2. **Our instructions**

2.1 We have been instructed by Professor Jay to:

2.1.1 review, from a legal and governance perspective, her recommendations regarding the establishment of the new independent safeguarding arrangements, and

2.1.2 advise on how best to implement them while ensuring that the underpinning principles of independence, fairness, transparency and impartiality remain intact, in particular the principle that Organisations A and B are independent from the Church of England.

2.2 This note sets out our advice and opinion on these two points. This includes a chart in **Appendix 1** which sets out the structures and the inter-party arrangements/agreements that we consider should be in place to implement the independent safeguarding arrangements. This note is not intended to provide an exhaustive set of answers; rather it should be seen as providing a framework and starting point for discussion.

## 3. **Summary**

3.1 We agree that the proposed new independent safeguarding arrangements for the Church of England set out in paragraphs 1.4 and 1.6 are appropriate, not only so that the children and vulnerable adults are properly protected, but also to give confidence that such protections will be secured free from competing interests.

3.2 As the process for introducing and passing the Measure is likely to be lengthy, we considered whether the proposed new independent safeguarding regime could be achieved contractually. However, we concluded that it would not be practical to arrange for every emanation of the Church of England (of which there are thousands) to enter into a contract with Organisations A and B to agree to be bound by the new safeguarding regime and that a contractual safeguarding regime may inspire less public trust and confidence than a statutory one.

3.3 The following will be needed to implement the new safeguarding arrangements:

3.3.1 Introduction of a new Measure through the General Synod creating the new independent safeguarding arrangements. The Measure will need to set out clearly what the statutory safeguarding duties are, what 'safeguarding' means, who must comply with the duties (we suggest everyone working within every part of the Church of England), and what the consequences of non-compliance of such duties are (we suggest non-compliance by members of the clergy constitutes misconduct under the Clergy Discipline Measure 2003). The framework of a draft Measure is attached to this report at **Appendix 2** to serve as a starting point for discussion. We anticipate that consequential amendments may need to be made to other church law, notably the Clergy Discipline Measure 2003 and the (draft) Clergy Conduct Measure.

- 3.3.2 Establishment of Organisation A and Organisation each as a registered charity. Being a registered charity, under the supervision of the Charity Commission, can help engender public trust and confidence. Paragraphs 5 and 6 set out the merits of setting up a registered charity.
- 3.3.3 To be recognised as independent of the Church of England, Organisations A and B must have a majority of their trustees (and members) who are independent of the Church of England. We have set out in paragraph 7.6.1 a working definition of “independent of the Church of England”. We recommend an independent appointment panel be established to select and appoint trustees (or at least the first board of trustees), and we expect this would give greater confidence in the appointment process to stakeholders such as victims and survivors. Paragraph 7 sets out our other suggestions for the governance of Organisations A and B.
- 3.3.4 Clarity about the respective roles and responsibilities of the Church of England, and Organisations A and B, and how they will work together. While one option would be to include some of this detail in the Measure, it would be simpler to include it instead in a legally binding collaboration agreement between the relevant parties. The framework of a draft collaboration agreement is attached to this report at **Appendix 3** to serve as a starting point for discussion.
- 3.3.5 Organisations A and B will need to need to put in place a suite of documents such as a safeguarding code of practice, guidance note and policies and procedures.
- 3.3.6 Organisations A and B will need sufficient funding to carry out their safeguarding functions and this should be provided centrally by the Church of England. Separate from the collaboration agreement, two grant agreements should be put in place: one between each of Organisations A and B and the relevant Church of England funding body. Each grant agreement will need to be clear about how the levels of funding are to be calculated and reviewed, particularly in the initial period where it may be difficult to estimate accurately what the caseload of Organisations A and B is likely to be (due to paucity of data) and therefore how much funding will be needed to carry out their functions properly.
- 3.3.7 It will be necessary to define 'safeguarding', in particular in relation to adult safeguarding, so that it is clear what safeguarding matters Organisations A and B will have remit over, and what wider safeguarding matters fall outside their remit and remain with the relevant Church body (e.g. diocese / PCC etc) (e.g. purely HR or pastoral matters). In paragraph 4, we have made proposals relating to the safeguarding remit based on the Care Act 2014 and we recommend that Organisation A issues guidance on this.
4. **Defining 'safeguarding' and the remit of Organisations A and B**
- 4.1 Professor Jay's recommendation is that safeguarding issues that are more aligned to statutory safeguarding under the Children Act 2004 and the Care Act 2014, that is, focusing on abuse of children and vulnerable adults, should fall under the remit of Organisations A and B.

- 4.2 For the purposes of the Children Act 2004 and the statutory guidance, Working Together to Safeguard Children<sup>2</sup>, safeguarding children means:
- 4.2.1 Protecting children from maltreatment;
  - 4.2.2 Preventing impairment of children’s mental and physical health or development;
  - 4.2.3 Ensuring that children grow up in circumstances consistent with the provision of safe and effective care;
  - 4.2.4 Taking action to enable all children to have the best outcomes.
- 4.3 As noted in the Church of England safeguarding e-manual<sup>3</sup>, ‘child protection’ refers to the “acute end of the safeguarding continuum”, focusing on protecting individual children identified or likely to suffer from significant harm.
- 4.4 Under the Care Act 2014, ‘adult safeguarding’ “is working with adults with care and support needs to keep them safe from abuse or neglect”. Safeguarding duties under the Care Act 2014 apply to ‘an adult at risk’, defined as:
- “an adult who:*
- (a) has needs for care and support (whether or not the authority is meeting any of those needs), and*
  - (b) is experiencing, or is at risk of, abuse or neglect, and*
  - (c) as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.”*
- 4.5 Under the Care Act 2014, therefore, adult safeguarding is for people who, because of issues such as dementia, learning disability, mental ill-health or substance abuse, have care and support needs that may make them more vulnerable to abuse or neglect.
- 4.6 The care and support statutory guidance (pursuant to the Care Act 2014) identifies ten types of abuse, namely: physical abuse; domestic violence or abuse; sexual abuse, psychological or emotional abuse; financial or material abuse; modern slavery; discriminatory abuse; organisational or institutional abuse; neglect or acts of omission; and self-neglect.
- 4.7 The Church of England recognises that there are limitations to using the Care Act 2014 definition of ‘adult at risk’, in respect of whom the safeguarding duties apply, which could adversely impact on the realities of safeguarding in the Church context. Therefore, the Church of England has its own, slightly wider, definition of ‘vulnerable adult’:
- “a person aged 18 or over whose ability to protect himself or herself from violence, abuse or exploitation is significantly impaired through physical or mental disability or illness, old age,*

---

<sup>2</sup> [Working together to safeguard children - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

<sup>3</sup> Paragraph 1.2.2, Church of England Safeguarding e-manual

*emotional fragility or distress, or otherwise; and for that purpose, the reference to being impaired is to being temporarily or indefinitely impaired.”<sup>4</sup>*

- 4.8 This definition recognises that people may move in and out of being vulnerable at various points in their life or when the context changes, and that the important starting point when dealing with any situation is to ask the question, “*Is this is a safeguarding situation – is there evidence of abuse as set out in this guidance?*”<sup>5</sup>.
- 4.9 We agree the Care Act 2014 definition of ‘adult of at risk’ is too limiting for these purposes, and that it is more appropriate to apply the Church of England’s own definition of ‘vulnerable adult’.<sup>6</sup> We also agree that the important starting point is to ask if there is evidence of abuse of a child or vulnerable adult (with particular reference to Working Together to Safeguard Children and the care and support statutory guidance).
- 4.10 The exact safeguarding remit of Organisations A and B will need to be agreed so there is clarity about the circumstances in which safeguarding referrals must be made to Organisation A, in accordance with the new statutory duty under the Measure. We recommend that Organisation A issues safeguarding referrals guidance, which includes advice and guidance on what falls outside the remit of Organisation A or B and will remain under the remit of the diocese/church body to be dealt with, for example under the Clergy Discipline Measure or some other appropriate procedure. An examples table containing scenarios will be helpful, though we recognise that there will be some grey areas where it is not clear cut or there may be some overlap (for example a case of bullying where there is a safeguarding element).
- 4.11 We recommend that Organisation A be responsible for deciding whether a matter should be referred to it should there be any dispute about this.

## 5. **The merits of establishing Organisation A and Organisation B as registered charities**

We recommend that Organisations A and B are set up as incorporated registered charities. The benefits of charitable status include the following:

### 5.1 **Public confidence and support**

- 5.1.1 Charities in England and Wales must be established and operate for exclusively charitable purposes for the public benefit.
- 5.1.2 It is vital that the new safeguarding operations are seen to be sufficiently independent of the Church of England. Charity trustees are subject to a range of duties under charity law, the most important of which is to advance their charity’s purposes and act in the best interests of their charity. Other duties include acting reasonably and prudently, protecting the charity’s assets, taking independent decisions and avoiding conflicts of interest, and these duties are overseen by a statutory regulator – the Charity Commission. This all serves to enhance public trust and confidence in charities.

---

<sup>4</sup> As set out in s.6 of the Safeguarding and Clergy Discipline Measure 2016.

<sup>5</sup> Para 1.2.4, Church of England Safeguarding e-manual.

<sup>6</sup> In our experience, many non-Church organisations (including charities) also prefer to define “vulnerable adult” more widely than the Care Act 2014.



## 5.2 **Duty to avoid conflicts of interest**

5.2.1 The trustees of charitable companies must avoid situations in which they have a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the charity unless the conflict is authorised or the situation cannot reasonably be regarded as likely to give rise to a conflict. This duty extends to the interests of people or organisations with which a trustee is connected, and people or organisations to which they owe other duties.

### **Limitations on member and trustee benefits**

5.2.2 Trustees cannot usually be paid for being trustees. Charity law is very strict about the benefits which trustees are able to receive from their charity. Trustees are, however, entitled to reimbursement for reasonable out of pocket expenses.

- (a) As charitable companies, Organisations A and B would have to submit annual accounts and reports to Companies House and the Charity Commission and these will be publicly available. The trustees will also have to report any serious incidents (including in relation to safeguarding) in accordance with the Charity Commission's serious incident reporting guidance.<sup>7</sup> See paragraph 8.4.3 and footnote 10 for more information about serious incident reporting.
- (b) The Charity Commission has considerable regulatory powers to investigate the acts and omissions of a charity and its trustees, leading to greater public confidence in the independence and effectiveness of the proposed safeguarding arrangements.
- (c) We note that in early discussions with the Charity Commission about these proposals, the Charity Commission expressed its preference that Organisations A and B be set up as registered charities. One of the reasons for this is that many PCCs are themselves registered charities and so Charity Commission oversight over PCCs' safeguarding operations would continue, in part through their oversight of Organisations A and B.

## 5.3 **Tax reliefs**

One of the most significant advantages of charitable status is the range of tax exemptions and reliefs available to charities. We have set out a brief outline of the tax breaks that are available to registered charities – see **Appendix 4**.

## 5.4 **Grant funding**

While we expect the Church of England (likely the Church Commissioners) will be the sole funder of Organisations A and B (at the outset at least), it is worth noting that if in the future the possibility of external funding is to be considered, then some funders, including grant making foundations and public bodies, prefer to support charities. It seems unlikely that Organisations A and B would seek funds from individuals or companies but, if they did, the donors and Organisations A and B could benefit from gift aid relief.

---

<sup>7</sup> [How to report a serious incident in your charity - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/how-to-report-a-serious-incident-in-your-charity)

## 6. Legal structure for Organisations A and B

- 6.1 We recommend that Organisations A and B each be set up as an incorporated charity so that they are independent legal entities with limited liability status. This means they will be separate legal persons with their own liabilities, as distinct from, for example, trusts, which are not separate legal persons and where the liabilities rest with the trustees personally (subject to a right of reimbursement out of the trust assets)
- 6.2 There are several incorporated charity legal structure options, the main ones being the charitable company limited by guarantee ('**CLG**') and the charitable incorporated organisation ('**CIO**').
- 6.3 We recommend that Organisations A and B each be set up a CLG. See **Appendix 5** for a summary guide on CLGs including some key advantages and disadvantages. A CIO may be easier to run on a long-term basis (as it will only be registered with the Charity Commission and so will have fewer filing/disclosure obligations) but the transparency and filing obligations that come with being a company<sup>8</sup> may help to support trust and confidence in the two new charities and, consequently, the new safeguarding regime.
- 6.4 See **Appendix 6** for a summary of the charity registration process for a CLG.

## Charitable objects of Organisations A and B



- 6.5 An English charity must exist to further purposes that are exclusively charitable under English law. A charity's purposes are the parameters within which the charity must act – everything it does must be for and within those charitable purposes.
- 6.6 We suggest the following charitable purposes for both Organisation A and Organisations B:
- "The objects of the [Charity] are, for the public benefit, to protect children and vulnerable adults from physical or mental harm and to relieve the needs of children and vulnerable adults who suffer harm."*
- 6.7 We have not suggested that the objects specifically mention the Church of England or the furtherance of the Christian religion for two reasons: (1) any perception that this might be part of their functions could cause a loss of confidence in their independence; and (2) it may be unwise to limit the possible remit of the organisations to the Church of England, as their remit could at some point grow to carry out such work with other institutions.
- 6.8 Nor have we suggested specifying how the charitable objects will be fulfilled (for example by carrying out investigations). We recommend instead that the powers set out in the articles of association refer to their roles in advising, investigating, adjudicating and overseeing in relation to the Church of England and, in the case of Organisation B, overseeing Organisation A.

---

<sup>8</sup> The following are examples of information available to view from Companies House: the governing document (otherwise known as the articles of articles of association), and up-to-date information about trustees/directors and Persons with Significant Control.

7. **Suggested governance structure of Organisations A and B assuming they are each set up as a charitable company limited by guarantee**

**Overview of the roles of members and trustees in a charitable company limited by guarantee**

Explainer: who's who	
<p><b>Members</b></p> <p>Every CLG has “members”. In a company limited by shares, they are also called shareholders. In a company limited by guarantee, which does not have shares, they are simply referred to as members.</p> <p>A charitable company’s members have powers to remove trustees, to call a general meeting and to change the governing document (called the articles of association) and to wind the CLG up. The members can be individuals or organisations.</p> <p>The members can be the same people as the <b>trustees</b> – this is sometimes called a “foundation” structure. Or they can be a wider group, that includes other <b>supporters</b> or <b>stakeholders</b> (such as, in this case, individuals who are representatives of the Church of England or of victims and survivors groups). There can even be a sole member.</p>	
	<p><b>Trustees</b></p> <p>The charity trustees in a CLG are its directors and have all the duties of company directors. They are responsible for the strategic direction and day-to-day management of the charity, though often such day-to-day management is delegated to paid staff.</p>

7.1 **Company Membership**

7.1.1 The members of charitable company could be:

- (a) only the trustees from time to time (making the governance structure a so-called ‘foundation’ model);
- (b) individuals who are representatives of the Church of England or of victims and survivors and/or independent individuals (not also being trustees);
- (c) one or more corporate entities; or
- (d) a combination of the above.

7.1.2 Members will have the right by special resolution (75% majority vote) to:

- (a) Change the articles of association;

- (b) Change the name;
- (c) Wind up the company;

and they will have the right by ordinary resolution (simple majority vote) to:

- (d) Appoint and remove trustees;
- (e) Absolve trustees from certain breaches of duty.

7.1.3 It is also possible to give members different rights, which can assist in preserving desired balances within the organisation, for example by giving certain members weighted voting rights.

## 7.2 **Representing the interests of the Church of England**

7.2.1 Control of, or significant governance influence over, either Organisation A or Organisation B by or on behalf of the Church of England would undoubtedly call into question the independence of Organisation A and Organisation B and so we recommend that a foundation model be adopted for each, with the trustees being the only members. The trustees should be appointed by way of a fair and open procedure as described below.

## 7.3 **Appointment panel**

7.3.1 We recommend an initial appointment panel to start the process of appointing trustees. This could be led, for example, by a prominent person independent of the Church of England with experience in such matters and include a further two to four people. A minority of those people (and at least one) should be a Church of England representative and all of them should be acceptable to the chosen chair of the panel. A representative of victims and survivors could also be included on this panel.

7.4 Once the panel has appointed the first board of trustees, subsequent trustee appointments can be made by the trustees themselves, who will be best placed to know what skills, attributes and experience are needed on the board at any time, and whether the trustees are likely to be able to work effectively with new appointees. Alternatively, the trustees could establish a permanent independent appointment panel, which might have the advantage of giving greater confidence to stakeholders such as victims and survivors that the appointment process is scrupulously independent.

## 7.5 **Chair**

7.5.1 We recommend that the chair be appointed in the same way as the other independent trustees and hold office for the same period.

7.5.2 We recommend that the chair has a casting vote at board meetings. Note that under the Companies Act 2006, the chair will not be able to have a casting vote at members' meetings, although such meetings are likely to be rare.

7.6 **Trustees**

7.6.1 To be recognised as independent, Organisations A and B will need to have a majority of trustees who are independent of and so not connected with the Church of England. A decision on the following will need to be made:

- (a) How should 'independent of the Church of England' be defined? Here is a working definition for discussion:

*"For the purposes of these articles of association, an individual is independent of the Church of the England if:*

*(1) they are not a past or present member of the clergy of the Church of England;*

*(2) they do not currently hold office in any emanation of the Church of England, nor have they held such office within the last five years;*

*(3) they do not have as their function (or as part of their function) to act as agent for any emanation of the Church of England, nor have they within the last five years; or*

*(4) they are not serving as a director (or equivalent) or senior manager of any body corporate either controlled by the Church of England or in which the Church of England has a substantial interest.*

*For the purpose of this definition:*

*it is irrelevant whether any of the posts/offices described above are paid or unpaid;*

*"controlled" and "substantial interest" have the meanings given to them in the Charities Act 2011, sections 351-352."*

[*"Controlled"* - a person controls an institution if the person is able to secure that the affairs of the institution are conducted in accordance with the person's wishes.

*"Substantial interest"* - substantial interest in a body corporate means where a person—

- (a) is interested in shares comprised in the equity share capital of that body of a nominal value of more than one-fifth of that share capital, or
- (b) is entitled to exercise, or control the exercise of, more than one-fifth of the voting power at any general meeting of that body."]

Applying this definition, no past or present member of the clergy would be independent (under category (1) above). Serving Church of England office holders (such as PCC members or paid staff) (under category (2) above) would also not be independent nor would they be if they had held office within the previous five years. However, a member of the church congregation is not, on that ground alone, to be considered not independent.

- (a) How many trustees are required? If there are too many, governance becomes unwieldy so we would suggest between eight and twelve, always aiming to create a good mix of skills, attributes and experience.
  - (b) What proportion must be independent of the Church of England? We suggest 80%, so a board of ten would comprise at least 8 independent trustees and no more than two representatives from the Church of England.
  - (c) If Organisations A and B are to be regarded as independent, the appointment process should be outside the control of the Church of England, although the Church of England will be able to input into the process through its chosen minority Church of England representatives on the board of trustees. That is, subject to the initial appointment of the chair of the first trustee appointment panel.
- 7.6.2 The independent trustees would be sought in accordance with the public appointment principles, namely:
- (a) Merit – The overriding principle is selection on merit. This means providing the selection panel with a choice of high quality candidates, drawn from a strong and diverse field, whose skills, experience and qualities have been judged to best meet the needs of the public body in question.
  - (b) Fairness – Selection processes must be objective, impartial and applied consistently to all candidates. Each candidate must be assessed against the same published criteria.
  - (c) Openness – Information about the requirements of the post and the selection process must be publicly available. Public appointments must be advertised publicly in a way that is designed to attract a strong and diverse field of suitable candidates.
- 7.6.3 Should those principles to apply also to Church of England trustees?
- 7.6.4 If there is to be no appointment panel after the first round of appointments, we recommend that the independent trustees would then be appointed by the existing trustees (including the Church of England representative trustees).
- 7.6.5 The process for appointing Church of England trustees would need to be agreed by the Church of England. Options could include appointment by the Archbishops' Council or by the House of Bishops.
- 7.6.6 Should there be any qualification requirements in relation to Church of England representative trustees? For example, as to years of experience? These matters can be prescribed or can be left to the discretion of those appointing them. Leaving it to the discretion of those appointing them is, of course, easier to draft but more difficult to control.
- 7.6.7 All trustees will be bound to act in the interests of Organisation A / Organisation B (as appropriate) and should be obliged to comply with the Nolan principles on standards in public life, namely:
- (a) Selflessness – holders of public office should act solely in terms of the public interest.

- (b) Integrity – holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- (c) Objectivity – holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- (d) Accountability – holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- (e) Openness – holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
- (f) Honesty – holders of public office should be truthful.
- (g) Leadership – holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

## 7.7 Terms of office

- 7.7.1 Trustees should not serve perpetually. We recommend that they serve for either three or four year terms and that they may serve a maximum of two or three terms, so that the maximum term of office is eight or nine years. Note the Charity Governance Code<sup>9</sup> (which many charities voluntarily sign up to) recommends that charity trustees should not usually serve for more than nine consecutive years without particularly good reason.
- 7.7.2 We recommend that the first trustees should be appointed for first terms ranging from two to four years to ensure continuity and to avoid all the first trustees ending their terms of office at the same time. We find that having fixed terms, rather than requiring a third or a quarter of the trustees to retire each year (the standard retirement by rotation arrangement), is a clearer and more certain way of achieving the necessary rotation on the board, with each trustee knowing that they will be able to serve for a full term. If a set proportion must retire (by rotation) each year, the arrangements can be thrown out by, for example, a resignation or increasing the overall size of the board.

## 7.8 Terms and conditions of appointment including payment of trustees

- 7.8.1 One question is whether any of the trustees should be paid. Charity trustees may not be paid for acting as a trustee unless this is authorised by the governing document of the charity, the Charity Commission or the Court. We think it would be appropriate for the independent trustees to be remunerated, although this will need to be explained to the Charity Commission on registration, which tends to dislike the remuneration of trustees and especially the majority of trustees. Nevertheless, payment of such remuneration would not prevent registration and

---

<sup>9</sup> [Home — Charity Governance Code](#).

we would not expect the Commission to object if the remuneration had to be (and was) approved by a body independent of the trustees. An early decision will be needed as to the level of board remuneration as this will need to be advertised when seeking external appointments. One option would be for only the chair to be paid. If other / additional trustees are to be paid, will the chair's remuneration be greater? Presumably so, as they will have a good deal more work to undertake.

7.8.2 Each trustee should be required to agree fairly standard terms and conditions of appointment setting out minimum requirements as to the functions they will perform, the expectation of how many meetings they will attend, observance of the Nolan principles, duties of confidentiality, termination arrangements (linked to provisions of the articles of association) and so on.

7.8.3 As to termination, we recommend that a trustee could be removed by a simple majority vote of the other trustees, which would be the unchangeable default under the Companies Act 2006 if the trustees are the only members.

7.8.4 If a trustee wished to resign, we recommend that they be required to give at least three months' notice as Organisation A / Organisation B would wish to restore the proportion of independent to Church of England trustees as soon as possible and a new appointment could take some months.

7.8.5 Trustees would wish to be covered by the company's trustees' and officers' liability insurance policy.

## 7.9 **Representing the interests of the Church of England more widely**

7.9.1 As the Church of England would be choosing to submit to this new safeguarding regime, it will no doubt want sufficient control over:

7.9.2 Budgets and budget variations, so that it has some certainty about the cost of the new safeguarding arrangements;

7.9.3 Appointment of Church of England trustees (though not the ability to veto the appointment of independent trustees);

7.9.4 Changes to the scope of safeguarding arrangements / regulatory regime. The overarching statutory safeguarding duties will be set out in the Measure and any changes to those duties will need to be passed by the General Synod. Separately, there will need to be agreements in place concerning funding (and review of funding) of Organisations A and B, and how the parties will work together, and there will be scope for the Church of England to feed into any changes, subject to recognising the importance of Organisations A and Org B being (and being seen to be) independent of the Church of England. This is discussed in paragraph 8.

## 7.10 **Voting**

7.10.1 We would expect each trustee to have one vote, noting that that the Church of England trustees will always be in the minority. We would expect the same to be the case when voting at membership level.



7.11 **Staffing**

- 7.11.1 What level of staffing will be required for Organisation A and Organisation B and what will their roles be? We expect that there will be more staff within Organisation A given it will be taking on the day-to-day safeguarding operations of every component of the Church of England (including the 42 dioceses and other Church of England church bodies).
- 7.11.2 We understand that if Professor Jay's recommendations are accepted, it is likely that Organisation A, as a national organisation, will employ some of the safeguarding staff currently employed by each of the 42 dioceses; i.e. they will report to Organisation A, as their employer, but that they will be geographically based in a diocese. Consideration will also need to be given to whether any of these current diocesan employees or other safeguarding staff within the Church of England (for example in the National Safeguarding Team) should be employed by Organisation B. The Transfer of Undertakings (Protection of Employment) Regulations 2006 are likely to apply to any staff whose actual duties are transferring to Organisation A or B.
- 7.11.3 Given many of Organisation A's employees will be geographically based in the dioceses (or other church bodies), albeit reporting to Organisation A, it will be important to ensure that their work arrangements are impermeable to undue influence (for example by members of the clergy) and the confidentiality of their work can be protected. For example, they should not be using the same computer network as diocesan staff (clergy or non-clergy), and we also recommend putting a code of conduct in place for Organisation A staff, breach of which would be a disciplinary offence. The appropriate legal agreement between Organisation A and the Church of England should also set out the consequences of anyone within the Church of England attempting to interfere with the work of an Organisation A employee.
- 7.11.4 Similar safeguards will need to be put in place in respect of Organisation B staff.
- 7.11.5 Any transfer of staff, assets, contracts and property etc. from a diocese to Organisation A or Organisation B will need to be documented by way of an asset transfer agreement.

8. **Contractual arrangements between Organisations A and B and the relevant body/ies of the Church of England**

- 8.1 In addition to the Measure, which sets out the overarching statutory duties, there will need to be agreement on various matters such as budgets and funding and how the arrangements will work in practice. To this end, we recommend that the following agreements be put in place:
- 8.1.1 a grant agreement between Organisation A and the relevant Church of England funding body (which we expect is likely to be the Church Commissioners) setting out the terms and levels of funding to be given to Organisation A, and the funding review process;
- 8.1.2 a similar grant agreement between Organisation B and the relevant Church of England funding body; and

- 8.1.3 a multi-party, legally binding, collaboration agreement between Organisation A, Organisation B and the relevant Church of England body/ies setting out their respective roles and responsibilities and how they will work together.
- 8.2 There may also need to be a separate collaboration agreement between Organisations A and B setting out in further details their day-to-day working relationship.
- 8.3 **Budgets and funding and the two grant agreements**
- 8.3.1 Organisations A and B will each need security of funding from the Church of England over a reasonable planning period, for their work to be effective. To this end, funding should come centrally from the Church of England rather than from Organisations A and B collecting levies from dioceses, PCCs, etc. We recommend that the funding agreement for each of Organisations A and B be structured as a grant (see further discussion of this in paragraph 8.3.6 below).
- 8.3.2 The Church of England will of course need to know what their approximate running costs will be and to have some control over that cost over a reasonable period (say, three years, renewable for successive terms). Organisations A and B, working with the Church of England, will therefore each need to put together an initial budget and the documents will need to provide for approval of revisions to that budget and approval of budgets in future years. Funding formulae will therefore need to be agreed, as well as a mechanism for formally reviewing the arrangements every three years (following the first funding cycle).
- 8.3.3 We understand there is a paucity of data around safeguarding case load and related safeguarding spend within the Church of England which makes the task of budget-setting extremely challenging.
- 8.3.4 Accordingly, the grant agreements will need to provide that the parties will act in good faith with a view to ensuring that Organisation A and Organisation B (as applicable) have the resources needed to fulfil their functions effectively, and that the Church of England funding body particularly notes the difficulty of estimating accurately, in the initial period at least, the funds that will be needed by Organisations A and B. In the first funding cycle, there may need to be a mechanism, say at least six-monthly reviews in the first three years, for review of the budget if it looks as though either Organisation A or Organisation B needs more funding or allow for the possibility, at least, of less.
- 8.3.5 Consideration would need to be given to what the consequences of an inspection finding by Organisation B that Organisation A was under-performing. Would there be a link to the regular funding review?
- 8.3.6 We recommend the funding agreements between the Church of England and each of Organisation A and Organisation B be structured as grants (rather than as contracts for the supply of services, which would be subject to VAT). A grant that is not made in consideration for the supply of services will not be subject to VAT and this is likely to be advantageous to the Church of England, which we expect is unlikely to be able to recover much of the VAT that is charged to it. Specialist tax advice should be sought on this.

#### 8.4 **Collaboration Agreement between Organisation A, Organisation B and the relevant Church of England body/ies**

8.4.1 There will also need to be a legal binding collaboration agreement entered into between Organisations A and B and the relevant Church of England body/ies to set out how they will work together (while ensuring the independence of Organisations A and B) and record their respective roles and responsibilities. While one option would be to include some of this detail in the Measure, we think that it is likely to be more straightforward to agree this as part of a collaboration agreement, which would be pursuant to the Measure. The framework of a draft collaboration agreement is attached to this report at **Appendix 3**, and includes reference, for example, to:

8.4.2 The term and processing for reviewing and amending the collaboration agreement;

8.4.3 The role and responsibilities of Organisation A, which will include:

- (a) providing safeguarding advice and training;
- (b) receiving referrals, concerns and enquiries in relation to safeguarding matters;
- (c) conducting safeguarding investigations into the conduct of any person or institution being a member of, or holding a position within, the Church of England (whether remunerated or on a voluntary basis), and making directions and/or recommendations (which may include: a direction to remove a person from having unsupervised contact with children/vulnerable adults, making a serious incident report to the Charity Commission<sup>10</sup> or making a referral to the Disclosure and Barring Service). When making directions or recommendations, there will need to be sensitive handling and consideration of the complex employment law issues in the new safeguarding regime, particularly given the and the different employment status of clergy and non-clergy;
- (d) All parties accept that Organisation A's investigations are the sole fact-finding investigations into safeguarding matters, except in exceptional circumstances (though consideration will need to be given to when there is overlap with, say, clergy discipline which also has a fact-finding function);
- (e) Organisation A will produce a report of its findings and provide a draft copy of it (or salient excerpts) to all the interested parties, to allow them to comment on factual accuracy and proposed criticisms;

---

<sup>10</sup> We recommend that there be a discussion with the Charity Commission to determine what expectations it has in relation to serious incident reporting of safeguarding issues that have been referred to Organisations A and/or B. We recommend that Organisation A should **not** have responsibility for making SIRs to the Commission on behalf of the relevant Church bodies/office holders whom the SIR concerns otherwise this could become unwieldy. This responsibility should remain with the relevant Church body/officer holder. The current Church of England guidance on safeguarding serious incident reporting can be found here: [Safeguarding Serious Incident Reporting to the Charity Commission | The Church of England](#).

- (f) providing victims and survivors with care and support and also providing support and information to those against whom allegations are made;
- (g) issuing guidance in relation to safeguarding operations, including an escalation process to ensure that all safeguarding matters are dealt with appropriately. This shall cover (non-exhaustively): (1) the procedure for making referrals concerning safeguarding operations to Organisation A; (2) the procedures for Organisation A conducting safeguarding investigations, publishing reports and making directions and recommendations; and (3) the procedure for escalation of safeguarding matters to Organisation B;
- (h) issuing an annual Church safeguarding accountability report.

8.4.4 The role and responsibilities of Organisation B, which will include:

- (a) issuing a safeguarding code of practice / safeguarding standards;
- (b) providing oversight and scrutiny of the operations of Organisation A, including: (1) reviewing decisions of Organisation A where decisions have been escalated to Organisation B and adjudicating on them as necessary;
- (c) issuing an inspection / review framework document and any related advice and guidance documents, for example an inspection code of conduct;
- (d) publishing Organisation A inspection reports.

## 9. **Role of Organisation B as adjudicator and oversight body**

9.1 It is not currently clear whether Organisation A's investigatory and direction / recommendation functions or Organisation B's adjudicatory function will be amenable to judicial review and thus subject to the application of public law principles (e.g. rationality, procedural fairness); and/or the Human Rights Act 1998 (as a body exercising functions of a public nature) and thus subject to, for example, the fair trial provisions of Article 6 of the European Convention on Human Rights. The tests for amenability to judicial review and being a public authority subject to the HRA are largely the same. Relevant matters would include whether A or B receive public funding, whether they exercise statutory powers, whether they take the place of a government function, and whether they provide a public service. The judgment of the House of Lords in *Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Wallbank* [2004] 1 AC 546<sup>11</sup> suggests neither would be subject to judicial review nor be public authorities under the HRA.

9.2 However, in cases of clear unfairness the courts may still want to find a way of intervening, whether by finding A or B to be a hybrid public authority (ie. amenable to judicial review / HRA in respect of some of their functions- again unlikely we think), or by importing a contractual relationship, or by finding some other common law cause of action (eg. defamation). It is in any event good practice to comply with the rules of natural justice (eg. the individual in

---

<sup>11</sup> <https://publications.parliament.uk/pa/ld200203/ldjudgmt/id030626/aston-1.htm>. See for example Lord Hobhouse at paras 86-88. The Parochial Church Councils and chancel repairs were not subject to the HRA, even though both were creatures of measures/legislation.

question should know the case they have to meet and be given an adequate opportunity to state their case, the adjudicator should be free from bias and have regard only to relevant considerations, etc). It might be sensible to seek counsel's written opinion on the issue, once the structure, powers and jurisdiction of A and B are clear.

## 10. **Enforcement and sanctions**

10.1 As described above, in respect of members of the clergy, the proposed Measure provides that failure to comply with the two overarching statutory safeguarding duties (to refer safeguarding matters to Organisation A and to implement the recommendations and directions of Organisations A and B), and failure to comply with any code of practice issued by Organisations A and B will constitute misconduct under section 8 of the Clergy Discipline Measure 2003. For the new safeguarding regime to be effective, there will need to be commitment from the Church of England to institute misconduct proceedings against clergy in cases of non-compliance.

10.1.1 As the Clergy Discipline Measure only applies to the clergy, consideration will need to be given as to how to enforce compliance with the statutory duties by non-clergy officers, in particular those who are not employees (e.g. churchwardens and members of PCCs). We have given some initial consideration to this and can provide a recommendation in a subsequent advice note.

## 11. **Data privacy**

11.1 There will of course be a need for the sharing of personal data (including special category data) between the relevant Church of England church bodies, Organisation A and Organisation B in order for these new safeguarding arrangements to work. We expect that ongoing cases will be transferred to Organisation A (and as appropriate, Organisation B). There are also data privacy considerations around conducting safeguarding investigations and preparing reports (both by Organisation A and Organisation B).

11.2 Regard should be had to the ICO's Data Controllers Code of Practice<sup>12</sup>. The data protection arrangements will likely need to sit in separate documents (for example data sharing agreements with a protocol setting out the legal basis for data sharing) outside of the other contractual arrangements. There will need to be privacy notices setting out the purposes of processing and the process. And a DP impact assessment would be wise, to ensure that any data sharing is proportionate and no more extensive than necessary, given the interference with ECHR Article 8 privacy rights.

## 12. **Timeframe for implementation**

12.1 It is difficult at this stage to map out a timeframe for implementation but we can advise on that in due course, taking into account that the Church of England will need to consult with stakeholders on the implementation proposals.

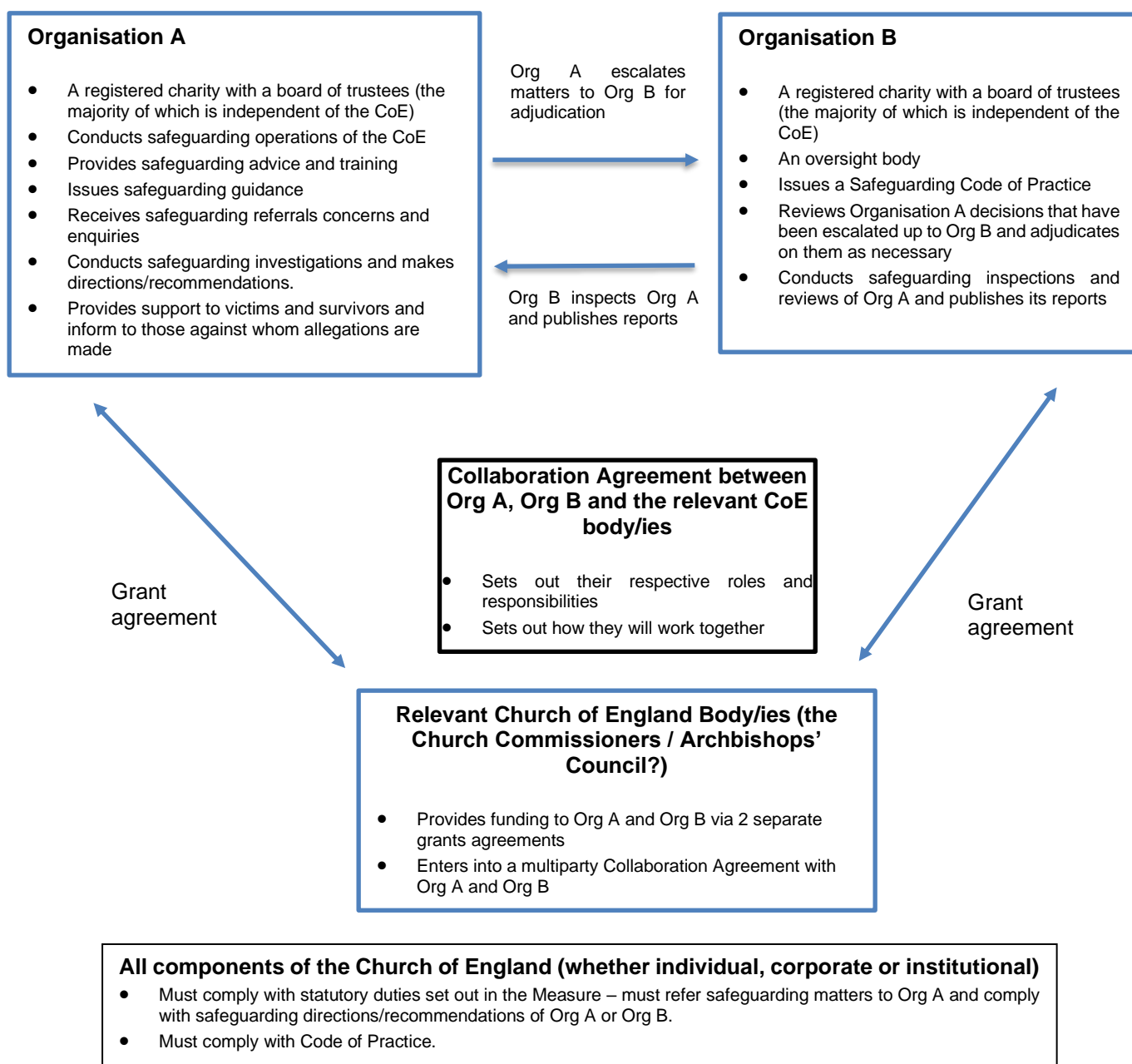
---

<sup>12</sup> <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/data-sharing/data-sharing-a-code-of-practice/about-this-code/#:~:text=This%20is%20a%20statutory%20code,share%20data%20fairly%20and%20proportionately.>

## Appendix 1 – Chart showing how the new safeguarding regime could work

### Church of England Safeguarding Measure 2024

- CoE safeguarding to be conducted by Org A under the supervision of Org B, independently of the CoE
- 2 new statutory duties: (1) to make safeguarding referrals to Org A; and (2) to implement the safeguarding direction/recommendation of Org A/Org B within the prescribed timescales. Safeguarding duties may include prohibiting a person from participating in regulated activity either pending investigation, or for a prescribed period, or permanently
- Duties applies to every component of the Church of England (whether individual, corporate or institutional including clergy/non-clergy, lay/ordained, paid/unpaid)
- Non-compliance by clergy with these duties constitutes misconduct under s.8 of the Clergy Discipline Measure 2003, as does failure to comply with Code of Practice issued by either Org A/Org B



## **Appendix 2 – Draft Church of England Safeguarding Measure**

### **1. Independent safeguarding**

- 1.1 The safeguarding operations of the Church of England shall henceforth be conducted by [Organisation A] under the supervision of [Organisation B] and shall be carried out entirely independently of the Church of England.

### **2. Duties with regard to safeguarding**

- 2.1 any complaint, concern or enquiry regarding safeguarding shall be referred to [Organisation A] at the first available opportunity;
- 2.2 Any safeguarding direction or recommendation made by [Organisation A] or [Organisation B] shall be implemented and carried into effect by the person or body to whom it is directed within the timescale prescribed.
- 2.3 For the avoidance of doubt, such safeguarding directions may include prohibiting an individual from participating in a regulated activity, either pending investigation, or for a prescribed period, or permanently.

### **3. Compliance with independent safeguarding**

- 3.1 The following matters shall be deemed to constitute misconduct for the purposes of section 8 of the Clergy Discipline Measure 2003
- 3.1.1 Failure or delay in referring any complaint, concern or enquiry to [Organisation A] under section 2(a) of this Measure;
- 3.1.2 Failure to follow any safeguarding direction or recommendation made by [Organisation A] or [Organisation B] under section 2(b) of this Measure;
- 3.1.3 Failure to comply with the provisions of any Code of Practice issued by [Organisation A] or [Organisation B];

### **4. Scope and extent**

- 4.1 This Measure shall apply to every component of the Church of England, whether individual, corporate or institutional, including but not limited to:
- 4.1.1 All clergy;
- 4.1.2 Members of any council, synod or body comprising or including one or more members of the Church of England, whether lay or ordained, whether remunerated or voluntary;
- 4.1.3 The holders of any office, ordained or lay, or any voluntary position within the Church of England.

### **5. Definitions**

5.1 The following terms within this Measure shall be interpreted as follows:

Church of England	[definition]
Clergy	[definition]
Laity	[definition]
Regulated activity	[in relation to children or adults, has the same meaning as set out in the Safeguarding Vulnerable Groups Act 2006 (as amended)]
Remunerated	[definition]
Safeguarding operations	[definition]

---



**Appendix 3 – Specimen Collaboration Agreement between (1) the relevant body/ies of the Church of England, (2) Organisation A and (3) Organisation B**

**Church of England**

**Independent safeguarding regime**

**COLLABORATION AGREEMENT BETWEEN**

**[Relevant body/ies of the Church of England]**

and

**Organisation A**

and

**Organisation B**

**1. Parties**

[Relevant body/ies of the Church of England – the Church Commissioners and the Archbishops' Council?];

**Organisation A**, a company limited by guarantee (registered number xx) and a registered charity (no. X) whose registered office is at [X]; and

**Organisation B**, a company limited by guarantee (registered number xx) and a registered charity (no. X) whose registered office is at [X];

together, “**the Parties**”.

**2. Purpose of this Collaboration Agreement**

2.1 This Collaboration Agreement has been made further to the Church of England Safeguarding Measure 2024 (“**the Measure**”) under which the safeguarding operations of the Church of England are to be conducted by Organisation A under the oversight of Organisation B, and shall be carried out entirely independently of the Church of England

2.2 The Measure creates two statutory duties which apply to every component of the Church of England, namely:

(a) Any complaint, concern or enquiry regarding safeguarding shall be referred to Organisation A at the first available opportunity; and

- (b) Any safeguarding direction or recommendation by Organisation A or Organisation B shall be implemented and carried into effect by the person or body to whom it is directed within the timescale prescribed.
- 2.3 To assist Organisation A and Organisation B in the execution of their duties, [the Church commissioners] have entered into a separate Grant Agreement dated on or around the date of this Collaboration Agreement with each of Organisation A (“**Organisation A Grant Agreement**”) and Organisation B (“**Organisation B Grant Agreement**”) that provides for the payment of a grant by [insert name of CoE funding body] to Organisation A and Organisation B respectively until [insert date – we suggest at least 5-10 years] and sets out the grant review procedures.
- 2.4 This collaboration Agreement is intended to give further effect to the Measure, together with the Organisation A Grant Agreement and the Organisation B Grant Agreement, and sets out:
- (a) The roles and responsibilities of Organisation A, Organisation B and the Church of England, and how they intend their relationship to work, including how they intend to facilitate and manage communication and dialogue; and
- (b) The parameters they intend to apply to the exercise of any available discretion in the performance, management and enforcement of their respective rights or obligations arising under the Measure, the Organisation A Grant Agreement and Organisation B Grant Agreement (as appropriate), for example in relation to increase in funding,
- while at all times preserving the independence of Organisation A and Organisation B as bodies separate from the Church of England.
3. **Legal Status of this Collaboration Agreement and Independence of Organisation A and of Organisation B**
- 3.1 This Collaboration Agreement is legally binding on the parties.
- 3.2 The [Relevant CoE Body/ies] recognises the obligations applicable to Organisation A and Organisation B always to act in furtherance of their respective charitable purposes for the public benefit.
- 3.3 The [Relevant CoE Body/ies] also recognises the vital importance of Organisation A and Organisation B being (and being seen to be) independent of the Church of England and shall use its best endeavours to ensure that it does not do or cause anything to happen (including by use of financial means) that will or could compromise the independence or the perception of the independence of either Organisation A or Organisation B, or their ability to carry out their functions properly and effectively. Insofar as the [Relevant CoE Body/ies] is reasonably able, it shall ensure that all other components of the Church of England also take no actions that will or could compromise the independence or the perception of independence of either Organisation A or Organisation B, nor their ability to carry out their functions properly and effectively.
4. **Term, review and amendment of this Collaboration Agreement**

- 4.1 This collaboration Agreement is intended to apply to the relationship between the parties for so long as the Measure, Organisation A Grant Agreement and Organisation B Grant Agreement (or any replacement or adaptation of them) remain in force.

#### **Review and amendments**

- 4.2 The parties will review this Collaboration Agreement after its first year of operation and as necessary thereafter and in particular when the possibility of grant funding for either Organisation A or Organisation B beyond [insert expiry date of the Grant Agreements] is reviewed in [insert date] as provided for in [clause X] of the Organisation A Grant Agreement and [clause X] of the Organisation B Grant Agreement. Amendments to this Collaboration Agreement may be proposed at any time but shall not apply unless accepted by all parties in writing.

#### **Review of the Organisation A Grant Agreement and Organisation B Grant Agreement**

- 4.3 The Organisation A Grant Agreement and the Organisation B Grant Agreement each set out a detailed grant review procedure.
- 4.4 In relation to the review of those agreements and of the funding to be provided under them, the parties agree to act in good faith with a view to ensuring that Organisation A and Organisation B have the resources needed to fulfil their functions effectively, and [Relevant CoE Body] particularly notes the difficulty of estimating accurately at the outset of these arrangements the funds that will be needed by Organisations A and B to carry out their functions.

#### **5. Working together**

- 5.1 The parties shall deal with each other in good faith with the intention of ensuring:
- 5.1.1 High standards of safeguarding practice;
  - 5.1.2 The effective protection of children and vulnerable adults;
  - 5.1.3 The efficient and effective application of resources;
  - 5.1.4 Adherence to the terms of the organisation a grant agreement and the Organisation B Grant Agreement (as applicable); and
  - 5.1.5 The independence of Organisation A and Organisation B from the Church of England;
  - 5.1.6 And to that end, and in seeking to overcome any differences between them or difficulties in the achievement of the high standards of safeguarding practice, they shall engage each other in open, trust-based dialogue.

#### **6. Role and responsibilities of Organisation A**

- 6.1 Organisation A's responsibilities will include:
- 6.2 Providing safeguarding advice and training;

- 6.2.1 Receiving referrals, concerns and enquiries in relation to safeguarding matters;
- 6.2.2 Conducting safeguarding investigations into the conduct of any person or institution being a member of, or holding a position within, the Church of England (whether remunerated or on a voluntary basis), and making directions and/or recommendations. All parties accept that Organisation A's investigations are the sole fact-finding investigations into safeguarding matters, except in exceptional circumstances;<sup>13</sup>
- 6.2.3 Providing victims and survivors with care and support and also providing support and information to those against whom allegations are made;
- 6.3 Issuing guidance in relation to safeguarding operations (as defined in the Measure), including guidance in relation to;
  - (a) An escalation process to ensure that all safeguarding matters are dealt with appropriately. This shall cover (non-exhaustively):
    - (i) The procedure for making referrals concerning safeguarding operations to Organisation A;
    - (ii) The procedures for Organisation A conducting safeguarding investigations, publishing reports and making directions and recommendations.<sup>14</sup>
    - (iii) The procedure for escalation of safeguarding matters to Organisation B.
- 6.4 Issuing an annual Church safeguarding accountability report.
- 7. **Role and responsibilities of Organisation B**
- 7.1 Organisation B's responsibilities will include:
  - 7.1.1 Issuing a Safeguarding Code of Practice/Safeguarding Standards;
  - 7.1.2 Providing oversight and scrutiny of the operations of Organisation A, including:
    - (a) Reviewing decisions of Organisation A where decisions have been escalated to Organisation B and adjudicating on them as necessary.
    - (b) Conducting inspections and reviews of Organisation A.
- 7.2 Issuing an inspection/review framework document and any related advice and guidance documents, for example an inspection code of conduct.

---

<sup>13</sup> There will be need to consider the possible overlap with clergy discipline which also has a fact-finding function. The procedure for this will likely need to be agreed and set out in guidance.

<sup>14</sup> These could include, for example a direction or recommendation to remove an individual from engaging in regulated activity with children or adults (as defined by the Safeguarding Vulnerable Groups Act 2006 (as amended)), or unsupervised contact with a child/vulnerable adult (where the 'regulated activity' test is not met), to refer an individual to the Disclosure and Barring Service or any other statutory/supervisory body, or to make a serious incident report to the Charity Commission (where applicable).

7.3 Issuing Organisation A inspection/review reports.

8. **Liaison in the development of Organisation A or Organisation B policy**

8.1 Insofar as is possible within the context of their overarching responsibilities and the need to be independent and seen to be independent of the Church of England, Organisation A and Organisation B (as appropriate) will provide advance warning of evolving issues in or expected to enter the public domain (whether or not by public announcement) that may be of interest to the Church of England as being relevant to its safeguarding functions.

9. **Contact details**

9.1 [insert names of representatives of each party and their relevant contact details.]

**Definitions**

["Organisation A Grant Agreement"]

["Organisation B Grant Agreement"]

["Safeguarding Measure"]

[safeguarding]

**[Insert execution blocks for each party]**

#### Appendix 4 – Brief outline of charity tax reliefs

Type of tax	Detail
Corporation and income tax	<p>There are some significant exemptions for charities, including:</p> <ul style="list-style-type: none"> <li>- An exemption from tax on income from investments</li> <li>- An exemption from tax on interest on deposits</li> <li>- An exemption from tax on rent</li> <li>- An exemption from tax on the profits from so-called “primary purpose” trading. This is essentially trading activity which directly furthers the charity’s purposes. There is a similar exemption on ancillary trading activity which supports the primary purpose trading.</li> </ul>
Gift Aid and similar reliefs	Charities are eligible to take advantage of the Gift Aid regime on donations received from UK taxpayers.
Inheritance tax	When an individual makes a gift, whether during their lifetime or on their death, there can be inheritance tax consequences, but gifts to charity are generally exempt from inheritance tax.
Capital gains	Donations by individuals to charities are free from capital gains tax. Charities do not pay tax on capital gains.
Rate relief	Charities which occupy premises wholly or mainly for charitable purposes are entitled to 80% relief from business rates, and the local authority has discretion to grant relief on the remaining 20%.
Social Investment Tax Relief	Charities and some other social enterprises are eligible for tax relief on certain types of investment and investors also receive tax relief. Restrictions apply.
Stamp Duty Land Tax	Charities are eligible for certain reliefs from stamp duty land tax when they buy land.

Charitable tax reliefs and exemptions are subject to various conditions. For example, if the charity should be registered with HMRC, the tax breaks will only be available if the charity is in fact registered.

## Appendix 5 – Summary guide to Companies Limited by Guarantee

### 1. Companies Limited by Guarantee (CLG)

#### 1.1 Summary of Key Features

1.1.1 Companies come in two main forms: companies limited by shares and companies limited by guarantee. A CLG does not have a share capital, but has members, who promise that if the company is wound up, they will contribute a specified sum (usually £1) to the assets of the company.

1.1.2 CLGs are widely used in the charity sector. Its purposes must be exclusively charitable and be for the public benefit. The test for whether the purposes are charitable and for the public benefit is established under charity law.

1.1.3 A CLG has a two-tier governance structure: the directors (who are the charity trustees) and the members (also known as company law members). The trustees are the people who manage the charitable company and are responsible for its day-to-day running. The directors and members can be the same. Where they are the same, it is referred to as a “foundation CLG”. Where there is a wider membership it is referred to as an “association CLG”.

1.1.4 The governing document of a CLG is called the articles of association. The articles of association set out the rules for the running and regulation of the internal affairs of the charitable company, including for example how the trustees will be appointed and removed.

1.1.5 Company law sets out a fairly rigid default framework of members’ rights. Many of these rights will apply unless and to the extent they are varied in the governing document (the articles of association). The statutory rights comprise both individual and collective rights.

1.1.6 There are two very important collective rights that are protected under company law. The first is that the members will have the right to collectively change the articles of association (by special resolution). The second is the right of the members to remove trustees from office (by ordinary resolution).

1.1.7 Members make decisions in general meetings of the members or by written resolutions. Ordinary resolutions require over 50% in favour. Special resolutions require 75% or more in favour.

#### 1.2 Some advantages of CLGs

1.2.1 **Separate legal personality:** A CLG will have a separate legal personality enabling it to enter into contracts in its own name, employ staff, lease property and have its own. This means the CLG would have its own obligations and rights to third parties, and these would not have to be taken on by its trustees personally. If the CLG cannot meet its obligations to third parties, it will become insolvent and its trustees are shielded from personal liability except in the most extreme circumstances.

1.2.2 **Limited liability:** The potential liability of a company’s members for its debts is also limited as each member would give a guarantee to cover the company’s liabilities, usually limited to a nominal amount of £1.

- 1.2.3 **Earlier legal existence:** A CLG exists from the moment of registration with Companies House, which can be done in a matter of days. This means that the entity can be up and running (for example, opening a bank account, appointing new trustees, entering into agreements) prior to registration with the Charity Commission. This may be particularly desirable in this case.
- 1.2.4 **Continued legal existence:** If a CLG ceases to have registered charity status, it will still continue to exist as an entity. This is in comparison to a CIO which ceases to exist at the point of ceasing to have registered charity status.
- 1.2.5 **Membership rights protected by legislation:** The rights of company law members are protected under company law. The CLG structure is commonly used by membership charities and organisations for this reason because it is a democratic structure that respects and enshrines the individual rights of members, not least the right of each and every member (under company law) to attend and vote at general meetings of the company or to appoint a proxy to attend and vote in his or her place.
- 1.2.6 **Tried and tested legal structure:** A CLG involves formalisation of governance structures, re-enforced by company law, and usually means a clear ownership structure and governance.
- 1.2.7 **More transparent:** A CLG has regulation and disclosure requirements which help to increase public accountability and confidence in the organisation. Greater transparency is likely to be attractive in this case to give greater confidence to certain stakeholders such as victims and survivors.
- 1.3 **Some disadvantages of CLGs**
- 1.3.1 **Two regulators:** The CLGs will need to be registered with both Companies House and the Charity Commission, and therefore subject to the filing requirements of both, which some charities find onerous. However, company administration will be easier if routine Companies House registration and filing requirements are understood. Being regulated by two regulators also carries some additional, albeit, fairly small fees. These include annual charges and an incorporation fee to Companies House.
- 1.3.2 **Dual role of trustees:** Trustees of charitable companies have a dual role as charity trustees and company directors, which some trustees find confusing.



## **Appendix 6 – summary of the process for setting up a charitable company limited by guarantee**

This essentially involves the incorporation of a company limited by guarantee at Companies House (CLG), followed by that CLG making a charity registration application with the Charity Commission.

Bespoke articles of association (the governing document) for each of Organisation A and Organisation B would need to be prepared, and we anticipate these would need some stakeholder consultation before they could be finalised and each entity incorporated at Companies House. The names and details of directors and members for each of Organisation A and Organisation B would also be needed for incorporation.

Once Organisation A and Organisation B each exists as a company, they will then need to prepare a lengthy charity registration application form and submit it to the Charity Commission. While the application process is ongoing, Organisation A and Organisation B will be able to operate and carry out activities including opening a bank account, employing staff and entering into contracts (in this case, for example, a Collaboration Agreement and grant agreement).

Each charity registration application will need to set out detailed information about what its charitable objects and activities will be, and how Organisations A and B will work with each other and the Church of England, including how conflicts of interest will be managed. It is likely that the Charity Commission will respond in the first instance with queries and so you should be prepared for a period of engagement with a caseworker before the application is approved.