

## CHANGES IN JERSEY ECCLESIASTICAL LAW

**Gregory White**

*The customary law of Jersey governed matters in the sacramental life of the twelve parishes of Jersey in line with the universal Canon law. The development of a distinct body of ecclesiastical law for Jersey began with the Island's attachment to the episcopal See of Winchester under Queen Elizabeth I followed by the promulgation of Jersey's own Canons under James I. The States Assembly legislated in the late 19th century and new forms of ecclesiastical legislation were developed in response to rapid changes in the church's ministry and synodical government. 2012 saw the achievement of the first new set of Jersey Canons since 1623 but a constitutional crisis the following year led to the more substantive revision which occurred very recently with Jersey's attachment to the Diocese of Salisbury and the promulgation of new Canons in September 2022 at the very end of the second Elizabethan age.*

1 There was for many years, in fact for a couple of centuries, very little new ecclesiastical law on the Jersey statute book. Rather, the customary law of Jersey had developed in line with the Canon law of the universal church in the West.

2 The key dates fell in the 1560s.<sup>1</sup> By a letter of June 1568 and a confirmatory Order in Council of 11 March 1569 the Bailiwicks of Jersey and Guernsey were perpetually annexed to the episcopal see of Winchester in England.<sup>2</sup> This was to be in place of the see of Coutances in Normandy to which the islands seemingly had belonged since the 11th century. Pope Alexander VI (Rodrigo de Borja) at the request of Henry VII had reportedly transferred them to the diocese of Salisbury by a bull of 28 October 1496. This did not however take effect. A further purported bull (it is not to be found in the registers of the Vatican) of 20 January 1500 then sought to place the islands under the authority of the Bishop of Winchester.<sup>3</sup> Neither did this take effect, or at least not

---

<sup>1</sup> Dates in this paragraph are Old Style adjusted to a year beginning 1 January.

<sup>2</sup> G.E. Lee (ed.), "Documents concerning the transfer of the ecclesiastical jurisdiction over the Channel Islands from the see of Coutances to those of Salisbury and Winchester, with comments thereon" *Annual Bulletin of the Société Jersiaise* (1904), pp. 251–265.

<sup>3</sup> *Ibid.*, pp. 251–253.

until these actions of the 1560s. In the meantime, the islanders remained within the diocese of Coutances.

3. Calvinist influence prevailed from the 1560s in Jersey until the restoration of episcopacy during the reign of James I with the swearing in of Dean Bandinel on 15 April 1620 and the adoption of Anglican Canons in 1623. The process of arrival at these Canons has previously been recounted in this *Review*<sup>4</sup> and by the Société Jersiaise in its *Bulletin*.<sup>5</sup> Jersey was marked out as a distinctive place having *Canons de l'Eglise d'Angleterre* separate from those in the Realm of England. These Canons reflected the reality of church governance in Jersey. Bishops did not visit the Island for the next 250 years and even then, episcopal visits did not occur with any regularity. The Canons empowered the Dean, his Chapter of Rectors, and the Ecclesiastical Court throughout the twelve parishes of Jersey.

4 In the 19th century, when increases in and concentration of population in certain areas of the Island led to the building of new churches and chapels of the Church of England, particularly in St Helier, the Queen in Council created districts in which these churches or chapels would minister. At that time, some of the clergy and the faithful in Jersey acted as though Church legislation passed by the United Kingdom Parliament applied directly in Jersey whereas in fact statutes like the Church Buildings Act 1845<sup>6</sup> had never been transmitted to Jersey through the “official channel” and had never, therefore, been considered for registration by the Royal Court as required under the Code of Laws of 1771. Recognition of this error led eventually to the States Assembly enacting the *Loi (1899) réglant l'application de certains Actes de Parlement aux Districts Ecclésiastiques*. However, by the close of the 19th century it had become too late to discern what the precise effects of the laws thereby *mise à exécution* would have in relation to matters several years or decades earlier, when land was acquired for the building of daughter and district churches and when such churches and chapels were consecrated.

5 In the inter-war years of the 20th century, there was established by Act of Parliament a National Assembly of the Church of England.<sup>7</sup> It was given the power to legislate by Measure. Parliament retained the power to consider those Measures and determine whether or not they

---

<sup>4</sup> WJ Bailhache, “1623 Revisited” (2012) 16 *Jersey & Guernsey Law Review* 272.

<sup>5</sup> “Jersey Canon Law—its ‘peculiar’ history”, *Annual Bulletin of the Société Jersiaise*, (1998), p. 257.

<sup>6</sup> 8 & 9 Vic, ch 70.

<sup>7</sup> The Church of England Assembly (Powers) Act 1919.

should be presented to the Sovereign for the Royal Assent, but Parliament could not amend them. Representation of Jersey and Guernsey in the National Assembly did not occur until 1931 when a decanal conference was created in each Bailiwick, each able to send a representative to the Church Assembly.<sup>8</sup> In that same year another Measure<sup>9</sup> was passed under which a scheme could be prepared by the diocesan bishop, having consulted with the decanal conference in the relevant Bailiwick or both, to implement in Jersey and/or Guernsey law a Measure of the Church of England with modifications pertinent to the local situation. After consideration by the States Assembly, the scheme would be presented to the Sovereign in Council for an Order sanctioning it which would, in turn, be transmitted for registration by the Royal Court.

6 At the end of the Second World War, modifications were finally made to the Jersey Canons of 1623 to permit clergy who were not of Jersey origin or not born in the Island to become Rectors, and those who were then *Ministres Desservants*<sup>10</sup> were elevated to the status of *Recteurs*. That the newly substituted Canon 14 simply removed the previous preferment of Jersey-born Clergy but was otherwise enacted in substantially the same terms as its predecessor Canon reinforced the important point of principle that has been preserved in Canon law in Jersey ever since, viz. that no-one should hold two Jersey rectories together. The amendments promulgated to the Canons under King George VI<sup>11</sup> included altering the “*Table des Droicts appartenants au Doyen, et à ses Officiers, pour toutes Causes Ecclésiastiques*” to reflect the fact that jurisdiction over probate was taken away from the Ecclesiastical Court by a Law sanctioned by King in Council in 1949.<sup>12</sup> Provision was also made that year for clergy pensions by extending by Order in Council<sup>13</sup> a Measure passed in 1948.<sup>14</sup> Indeed, the most consistent use of the 1931 legislation has been to extend amendments made in relation to clergy pensions.

7 The Synodical Government Measure of 1969 replaced the National Assembly with a General Synod and the diocesan and decanal conferences with Diocesan and Deanery Synods. This Measure was

---

<sup>8</sup> Channel Islands (Representation) Measure 1931.

<sup>9</sup> Channel Islands (Church Legislation) Measure 1931.

<sup>10</sup> A clergyman appointed *pro tem* following the vacancy of a benefice.

<sup>11</sup> Canons and Constitutions Ecclesiastical (Jersey Order in Council 10/1949).

<sup>12</sup> Probate (Jersey) Law 1949.

<sup>13</sup> Clergy Pensions (Channel Islands) Order 1978.

<sup>14</sup> Clergy Pensions Measure 1948.

applied to Jersey and Guernsey by Order in Council in 1970<sup>15</sup> using a scheme under the 1931 legislation. The 1931 legislation was amended slightly, and the Jersey decanal conference became the Jersey Deanery Synod that we have today.

8 In the 1990s, the Church of England decided to ordain women to the priesthood. This was effected by a Measure<sup>16</sup> which made it lawful for General Synod to make provision by Canon for enabling a woman to be ordained to the office of priest if she otherwise satisfied the requirements of Canon law as to the persons who may be ordained as priests. There was a proviso that nothing in this Measure would make it lawful for a woman to be consecrated to the office of bishop. That measure also allowed Parochial Church Councils in England to resolve that they would not accept a woman as the minister who presides at or celebrates the Holy Communion or pronounces the Absolution in the parish (known as “Resolution A”) and/or as the incumbent of the benefice (known as “Resolution B”). A second Measure<sup>17</sup> provided for the relief of hardship of those who resigned from ecclesiastical service in the Church of England by reason of their opposition to the ordination of women as priests. These Measures were given effect under a scheme in both Bailiwicks under the Women Priests (Channel Islands) Order 1999 which allowed any such enabling Canon to extend to the Islands. Whether the actual new English Canon (Canon C4B) was itself transmitted to Jersey is not known but the scheme was given effect and women priests were appointed as priests in both Bailiwicks and Resolutions A and B could be passed by benefices in the Island through a congregational meeting, meaning those on the relevant Deanery electoral roll in respect of the particular benefice.

9 A further decision in England stemming from the ordination of women enabled what was termed “extended episcopal care” to those congregations who were unable to accept the ministry of women priests and who could thereby place themselves under “Provincial Episcopal Visitors” who were dubbed “flying bishops”. This change was achieved by an “Act of Synod”,<sup>18</sup> a legislative instrument that was unknown to the framers of the 1931 legislation in relation to the Channel Islands and, therefore, something that appeared not capable of extension in law to Jersey and Guernsey.

10 The late former Lord Bishop of Winchester Michael Scott-Joynt indicated that he was prepared to consider allowing a benefice in Jersey

---

<sup>15</sup> Synodical Government (Channel Islands) Order 1970.

<sup>16</sup> Priests (Ordination of Women) Measure 1993.

<sup>17</sup> Ordination of Women (Financial Provisions) Measure 1993.

<sup>18</sup> Episcopal Ministry Act of Synod 1993.

to be under extended episcopal care. However, he wished to determine the process to be followed in terms of the wording of the resolution, the notice to be given and the necessary majority. No benefice has ever availed itself of that option although the ministry of the Provincial Episcopal Visitors was itself welcomed.

11 In 2011, under the direction of Bishop Scott-Joynt and Dean Bob Key, revised Canons of the Church of England in Jersey were submitted for approbation by Her Majesty, having first been approved by the Deanery Synod in Jersey, the Ecclesiastical Court and the States Assembly. The process of revision of Canon law, beginning in the 1990s, is explained in William Bailhache's article in this Review entitled "1623 Revisited"<sup>19</sup> and in an article in the *Bulletin* of the *Société Jersiaise* by the late Canon Lawrence Hibbs.<sup>20</sup> Her Majesty's approval was transmitted by an Order in Council of 14 March 2012 which was registered by the Royal Court on 23 March 2012.

12 Having peacefully achieved the first substantial rewriting of Canon law in Jersey since 1623, the next decade proved more turbulent.

13 On 8 March 2013, a constitutional crisis unfolded following the actions of the new Lord Bishop of Winchester, Timothy Dakin, who had been consecrated in 2012 and elevated directly to a senior bishopric.

14 Contrary to guidance given by Jersey's Crown Officers as to how matters ought to be handled to respect Jersey's constitutional position, Bishop Dakin withdrew his Episcopal Commission from Dean Key in relation to a safeguarding issue and stated that the Dean was "effectively suspended". The Bishop purported to appoint an Acting Dean in his stead (notwithstanding that the power to choose a *Doyen Substitut* belongs to the Assessors in the Ecclesiastical Court). The "appointed" Canon, Geoff Houghton, tactfully described himself as Vice Dean and Commissary. The then Deputy Bailiff advised the States Assembly that the Bishop had no power to suspend the Dean who could therefore continue to attend the Assembly unless and until the Letters Patent issued by the Queen were withdrawn.<sup>21</sup> There were, it is submitted, serious failures of due process in the purported suspension of the Dean.

15 Although eventually the Dean was restored as the Bishop's Commissary, this was not without much criticism of the 2012 Canons. The Bishop was intent on using a disciplinary measure "outside the

---

<sup>19</sup> (2012) 16 *Jersey & Guernsey Law Review* 272.

<sup>20</sup> *Ann. Bull. Soc. Jersiaise*, 1998, 27(2).

<sup>21</sup> Oral questions, Hansard, 19 March 2013.

Canons” (should any disciplinary charges be recommended by an independent report from Dame Heather Steel which he had commissioned).<sup>22</sup> He also made much of the 1931 legislation which only required “consultation of” the Jersey Deanery Synod rather than its agreement to English Measures, and in so doing ignored the existence of Article 31 of the States of Jersey Law 2005 by which the Royal Court would be unlikely to register a Measure if the States Assembly had not approved it, particularly if the relevant Jersey bodies had been bypassed.

16 In early 2014, the Archbishop of Canterbury agreed<sup>23</sup> that there should be interim episcopal care of the Channel Islands through a different bishop. Bishop Trevor Willmott, then the Bishop of Dover and Bishop in Canterbury (effectively presiding over the Diocese of Canterbury in place of the archbishop who is the actual diocesan bishop) agreed to be made an assistant bishop in the Diocese of Winchester. This enabled the drawing up of what was named the “Lady Day Agreement” to which the Lord Archbishop Justin Welby, the Lord Bishop of Winchester, Bishop Willmott and Dean Key of Jersey and Dean Paul Mellor of Guernsey were signatories. In that instrument the Bishop of Winchester delegated to Bishop Willmott all that it meant to be bishop in and for the Bailiwicks of Jersey and Guernsey. This arrangement relied upon the position of Bishop Willmott as assistant bishop in the Diocese of Winchester. This was not underpinned by any other legislation than that which allowed in England for assistant bishops to be appointed. This meant that Jersey and Guernsey representatives could attend the Canterbury Diocesan Synod, at which their bishop presided, as visitors rather than members. It was recognised that the Queen in Council would be needed to transfer episcopacy permanently as a matter of law, just as the Dukes of Normandy had transferred the Islands from Dol de Bretagne to Coutances, and just as Elizabeth I had transferred them subsequently to Winchester. Nonetheless Bishop Willmott provided much needed interim episcopal oversight for the Islands and devoted much time to the relationship with the Islands. After Dean Key retired in early 2017, the Ecclesiastical Court of Jersey chose Canon Paul Brooks as the *Doyen Substitut* to act as Dean for the interregnum in accordance with customary law. When the Very Reverend Mike Keirle was made Dean of Jersey in September of that year his Letters Patent under the Queen’s Sign Manual were addressed by Her Majesty to, among others, “Our right trusty and well

---

<sup>22</sup> Dame Heather later advised that the Dean had acted properly and that no charges were appropriate; the Bishop accepted that advice.

<sup>23</sup> Statement from Lambeth Palace, 22 January 2014.

beloved Trevor ... exercising for the time being by agreement episcopal oversight over our Isle of Jersey.”

17 The Archbishop had also announced in 2014 that he would appoint a Commission to report on the longer-term relationship between the Channel Islands and the wider Church of England. The appointment of the Commission was a long time in gestation. When it was eventually appointed in 2018<sup>24</sup> it was led by Lord Chartres, the former Lord Bishop of London, assisted by the life peer and former UK Minister Baroness Wilcox and by Sir Christopher Clarke, a former Lord Justice of Appeal and Judge of the Courts of Appeal in Jersey and Guernsey. The Commission had consultants representing both Bailiwicks in Sir Vic de Carey, former Bailiff of Guernsey, and Mark Temple QC, at the time HM Solicitor General for Jersey, now HM Attorney General for Jersey. The Commission visited Guernsey and Jersey and held interviews in England and then reported in the autumn of 2019.<sup>25</sup>

18 In its report to the Archbishop, the Commission made a number of recommendations and central to these was that Jersey and Guernsey should relate to the Diocese of Salisbury in place of the Diocese of Winchester. This change, and some of the other recommendations, would require legislation. It is these legislative changes for Jersey that were approved by the States Assembly on 1 March 2022 and given Royal Approbation by Queen in Council on 19 July 2022, and then registered by the Royal Court at its sitting on 2 September 2022. From that time Jersey has been attached formally to the Diocese of Salisbury, and new Canons are in force, reflecting that the Bishop of Salisbury is the new Diocesan Bishop of Jersey.

19 The first legislative instrument registered on 2 September 2022 was the Attachment of Jersey to the Diocese of Salisbury Order 2022<sup>26</sup> which attached Jersey to Salisbury whilst preserving what had lawfully been done by the Bishops of Winchester over the course of four and a half centuries. This Order in Council relied upon two *vires*.

20 On the one hand, this was a rare case of the Sovereign being asked to legislate for Jersey by invitation of the democratic body representing Islanders, the States Assembly.

21 There was also a statutory *vires* for the Order in Council: The General Synod had made the Channel Islands Measure 2020<sup>27</sup> following

---

<sup>24</sup> <https://www.churchofengland.org/news-and-media/news-and-statements/update-archbishop-canterburys-commission-relationship-channel>

<sup>25</sup> <https://www.churchofengland.org/media/18685>

<sup>26</sup> Also a Statutory Instrument in the United Kingdom (2022 No 867).

<sup>27</sup> Channel Islands Measure 2020 (legislation.gov.uk).

the acceptance by the Deanery Synods in Jersey and Guernsey and the Diocesan Synod in Salisbury of the recommendation that the Islands should be attached to Salisbury. The 2020 Measure allowed the Queen in Council to attach Jersey and Guernsey to Salisbury and made a number of consequential changes to the 1931 legislation and other Measures relating to Jersey and Guernsey including for representation of the laity. In particular, the electoral roll form was aligned with that in England, where the minimum age is 16 years, and where persons habitually worshipping in Church of England churches may join despite them being members of Trinitarian churches not in communion with the Church of England. Historically, the form had required people to state that they were not members of any church electoral roll elsewhere in Winchester. This requirement was removed. Significantly, the 1931 legislation would no longer be the means of application of Church of England Measures—these could instead be applied by “any other procedure for doing so which has effect in the Bailiwicks or (as the case may be) in the Bailiwick in question”.<sup>28</sup>

22 So, although Elizabeth I’s perpetual annexation to Winchester had not in fact lasted in perpetuity, the law has preserved that which was done lawfully by the Island authorities and bishops whilst Jersey was so annexed.

23 The second legislative instrument registered on 2 September 2022 was the Order in Council sanctioning the new revised Canons of the Church of England in Jersey. This Order was made purely under Her Majesty’s prerogative powers when invited to legislate by the States Assembly. The new Canons reflected the efforts over a number of years of a subcommittee of the Deanery Synod which began its work in anticipation of likely findings of an Archbishop’s Commission once appointed. It sought to remedy the perceived deficiencies in the 2012 Canons that had been highlighted by the “great matter” which had begun in 2013. Some of the issues were found difficult to progress until there was a clear resolution on the issue of Jersey’s permanent episcopal home. The resulting draft of the Canons was then also subject to substantial negotiation by the Dean and Sir Philip Bailhache, the then Lay Chair of the Jersey Deanery Synod, with the then Bishop of Salisbury and the Church of England’s legal advisers in England. The Canons once approved by the Bishop were also approved by the Deanery Synod in the summer of 2021 and prepared as a report to a proposition lodged before the States by the Chief Minister in January 2022. With the Queen invited by the States in March 2022 to approve the Canons, that approval was signified at the Privy Council meeting on

---

<sup>28</sup> Section 3 of the 2020 Measure.



19 July 2022. These new Canons would come into force 28 days from registration.<sup>29</sup>

24 When the 2012 Canons had been enacted, they reflected the position in the English Canons that nothing therein made it lawful for a woman to be consecrated a bishop. It was in 2014, and consequently at a time of a breakdown in relations between the Channel Islands and the Bishop of Winchester, that the General Synod eventually resolved to allow women to be consecrated as bishops.<sup>30</sup> The House of Bishops agreed on five guiding principles to ensure the unity and mutual flourishing of all the Church irrespective of individual theological stances on this innovation. They made provision in a declaration<sup>31</sup> for parochial church councils in England to request on grounds of theological conviction that arrangements be made for their parishes in accordance with that declaration (for pastoral and sacramental provision from an alternative bishop to the diocesan bishop). Although the bishops made express additional provision for guild churches in the City of London, it is notable that they failed completely to make any provision for Jersey and Guernsey where parochial church councils are not provided for by law. One of the tasks, therefore, of the new Jersey Canons was to ensure that they reflected the Church of England's threefold orders (the diaconate, the presbyterate or priesthood, and the episcopate) being open to all, regardless of gender, but also ensured that congregational meetings could pass resolutions reflecting the theological convictions of their particular benefice to enable that benefice to seek alternative episcopal oversight.

25 There has been general criticism that Jersey had not implemented these changes in Church legislation at any great pace. Part of the issue was the need for a scheme setting out the changes to be drawn up under the 1931 legislation<sup>32</sup> and, then, the need for a debate in the States Assembly followed by drafting time for an Order in Council to be

---

<sup>29</sup> Section I on Commencement.

<sup>30</sup> Bishops and Priests (Consecration and Ordination of Women) Measure 2014.

<sup>31</sup> House of Bishops' Declaration on the Ministry of Bishops and Priests (GS Misc 1076).

<sup>32</sup> The Scheme no longer needed to be drawn up and applied within two years of the Measure receiving Royal Assent. The Channel Islands (Church Legislation) Measure 1931 (Amendment) Measure, 1957 had removed this requirement thought "unnecessary and sometimes inconvenient" (see the speech of the then Lord Bishop of Winchester when the House of Lords considered the 1957 Measure, Hansard of the United Kingdom Parliament, vol. 204 for the debate on Thursday, 4 July 1957).

sought and obtained. Another issue had been the substantive work leading to the 2012 Canons that had not focused on the other Measures of the Church of England and whether it was now desirable to adopt them or make some provision akin to them reflecting Jersey law and custom. Some, at least of the criticism may be unfounded since it simply reflects that Jersey is a separate jurisdiction with its own law and courts of law. Most of the Measures passed over the last century have touched upon English ecclesiastical law and there were already different Jersey customary and statutory processes, for instance reflecting the Jersey law on *surveillants* (Churchwardens) or the municipal ownership of the parish church and parsonage house.

What had, however, become clear was that the issue of safeguarding of all God's people has become of such primordial concern that in England a duty was imposed on the clergy and lay ministers and officers of the Church to have due regard to the safeguarding guidance issued by the House of Bishops. A duty to have "due regard" to guidance means that the person under the duty is not free to disregard it but is required to follow it unless there are cogent reasons (clear, logical, and convincing) for not doing so.<sup>33</sup> Failure to have "due regard" was made a matter of misconduct by amendments to the Clergy Discipline Measure in 2016.<sup>34</sup> By the time, therefore, of the Archbishop's Commission in 2019, the Channel Islands had not implemented this Measure which was considered of vital importance.

The new Jersey Canons have, therefore, followed the principles in the amendments made to English ecclesiastical law through the Safeguarding and Clergy Discipline Measure 2016, rather than seek to implement the Measure itself in Jersey. In other instances, of less controversy in the government of the church, it is proposed that the means of applying Church of England Measures in Jersey might be left to the Church in Jersey via the Deanery Synod with its separate Houses of Clergy and Laity where there was agreement with the Bishop on a way forward. Canon G of the new Canons therefore proposes that the Deanery Synod may make regulations with a two-thirds vote in each of its Houses and with the consent of the Bishop and those regulations may then be published. This then ties into the provisions of the Channel Islands Measure 2020 as a new procedure which has effect in the Bailiwick of Jersey for applying Church of England Measures in the law of the Island. It is hoped that this will enable a new direction of examining the legislation before the General Synod and taking decisions as to what is or is not pertinent in a Jersey setting and

---

<sup>33</sup> <https://www.churchofengland.org/safeguarding>

<sup>34</sup> Safeguarding and Clergy Discipline Measure 2016.

providing regulations not requiring Royal Assent where that is not necessary, but retaining the ability for legislation by Order in Council where the Deanery Synod and Bishop agree that the matters concerned are of such significance (with respect to the constitutional position of the Church in the Island or in respect of the interaction of the ecclesiastical law with ordinary civil law) that an Order in Council would be preferable.

26 Developments in England made it necessary to create a new division within the Ecclesiastical Court of Jersey, known as the Clergy Disciplinary Division. Historically, the Court of the Dean of Jersey had cognisance of all matters ecclesiastical in the Island and that involved ensuring adherence to the catholic and reformed doctrine and ritual of the Church as established by law in the Island. The Clergy Discipline Measure 2003 in England had provided for tribunals to deal with all manner of clergy discipline, save in matters of doctrine and ritual which were dealt with under a court system under the Ecclesiastical Jurisdiction Measure 1963 (a Measure which was not itself capable of extension to Jersey or Guernsey). The Canons of 2012 had not sought to make such distinction but that left the Bishop of Salisbury concerned that the Ecclesiastical Court in Jersey might make pronouncements upon doctrine and ritual when these areas were reserved in England for a specialist tribunal. The new Canons of 2022 therefore make provision for the Disciplinary Division of the Ecclesiastical Court to be constituted differently by two judges appointed by the President and three diocesan bishops or retired diocesan bishops appointed by the Dean of Arches and Auditor (the judge of the senior Ecclesiastical Court of the Province of Canterbury) following the English model but adapted for Jersey.<sup>35</sup> Appeals would lie to the Archbishop alone, whereas appeals from the Disciplinary Division otherwise constituted would lie to the Royal Court.<sup>36</sup>

27 This and other changes to the Jersey Canons in the field of discipline owe much to the issues raised since 2012 about dealing with circumstances in which the Dean and Bishop failed to agree on a disciplinary matter. The present Dean of Jersey has agreed that the initial stages of a complaint of misconduct (where one might seek conciliation or where a person might admit misconduct and accept a penalty by consent) will be dealt with by the Bishop alone, though nothing in the Canons would prevent the Bishop, where appropriate, from consulting the Dean and seeking his advice in relation to a

---

<sup>35</sup> Canon F3.33(4) and (5).

<sup>36</sup> Canon F3.18(2) as is the case also for appeals from the Ordinary Division under Canon F2.4.

particular matter of discipline. The new Canons reflect that change and also ensure that the composition of the panel of the renamed “Disciplinary Division” of the court would comprise clergy from outside Jersey as had originally been intended by the Legislation Committee of the Deanery Synod in the early years of this century (as is reflected in William Bailhache’s 2012 article “1623 Revisited”).<sup>37</sup>

28 Under the Canons of 2012 the Dean had functions to undertake with the Bishop. The Canons made provision for the Vice-President to take upon him the Dean’s functions where a complaint of misconduct was made against the Dean. Where a person wished to complain about the conduct of the Bishop, the Canons provided that the complaint should be taken under the Clergy Discipline Measure in England. Unfortunately, despite the then Proctor of the Ecclesiastical Court, Advocate Peter Maurant, making a valid complaint against Bishop Dakin, namely that he had contravened established ecclesiastical law<sup>38</sup> in directing Dean Key in March 2013 not to follow the law of Jersey but to obey only the bishop, the complaint was not proceeded with. The ground of refusal was that the complainant ought to have been the Dean and that the Proctor lacked a “proper interest”<sup>39</sup> in the matter of which he complained. It was resolved that this should not be an issue in future, and that Jersey’s authorities should be able to level a complaint against a bishop exercising jurisdiction in relation to Jersey and to be found to have a proper interest when doing so. Even though the Canons would be the law of Jersey, and the bishops would be subject to complaints under the English Measure, it was felt apt to include in the Jersey Canons of 2022 express provision that the Proctor of the Ecclesiastical Court and the Lay Chair of the Jersey Deanery Synod should have *locus standi* to lodge a complaint against a bishop for misconduct in Jersey or in respect of Jersey. This was conceded by the then Bishop of Salisbury and now forms part of the Canons.<sup>40</sup>

29 The appellate functions of the Ecclesiastical Court have been widened by the new Canons. At customary law, *surveillants* and *Collecteurs des Aumônes* have always taken oath of office before the Ecclesiastical Court and been answerable for that oath both to parishioners before the Ecclesiastical Assembly of the relevant parish

---

<sup>37</sup> Bailhache, *op. cit.*

<sup>38</sup> The alleged contravention was based on the premise that the bishop can only require obedience to such directives as he is by law entitled to give: see the Privy Council case of *Long v Lord Bishop of Cape Town* (1863) 15 E.R. 756.

<sup>39</sup> Section 10(1)(b)(ii) of the Clergy Discipline Measure 2003 refers to “any other person who has a proper interest in making the complaint”.

<sup>40</sup> Canon F3.8.

and to the Court.<sup>41</sup> If dismissed by the parish, an appeal would lie to the Court. Given the importance in today's context of safeguarding, church officers may also now be subject to suspension or referral for risk assessments in relation to harm to children or vulnerable adults. An appeal against such suspension lies to the new Disciplinary Division of the Court. This is also the case for readers and other lay ministers of the Church. In relation to clergy, the Ecclesiastical Court already had an appellate function where a priest or deacon might be suspended where a complaint of misconduct was made or that person had been arrested on suspicion of the commission of a criminal offence. In the context of safeguarding, to this has been added that the bishop may suspend the person where satisfied, on the basis of information provided by any person in authority or the police, that the person presents a significant risk of harm. This is subject to appeal to the Disciplinary Division as with the other reasons for suspension.<sup>42</sup>

30 To the extent that the new Jersey Canons of 2022 retain potentially outmoded phraseology, this was simply a reflection of the lack of revision of the English Canons upon which for the most part they are based. It is intended that when work is eventually undertaken to revise the English Canons in this way this will be the opportune time to revisit the Jersey Canons. This was thought preferable rather than embark on a modernisation exercise of language in Jersey and see divergence with England in terminology, which could cause a court to interpret provisions differently. The differences then with English Canons reflect Jersey law, custom, tradition, and usage and the Island's different constitution. The Canons need to reflect the dual reality that whilst the Church of England is an episcopally led and synodically governed church, the last time that the law of the land in Jersey was the same as that where Jersey's bishop had his seat or *cathedra* was 1204.

31 The third and final piece of ecclesiastical law that took effect in September 2022 was the Order of the Chief Minister of Jersey bringing into force the Ecclesiastical Legislation (Consequential Amendments) (Jersey) Law 2022, a statute which had made amendments to Jersey Laws consequential on the attachment to Salisbury as opposed to Winchester. The *Loi (1899)* was recognised as otiose, and it was repealed as part of those changes.

32 Although a significant legal chapter for Jersey in its ecclesiastical relationship with the See of Winchester has now ended after 453 years, there is much hope for a new way forward in developing and keeping

---

<sup>41</sup> Canon D1.3 of the Canons of 2012, retained in Canon D1.3 of the 2022 Canons.

<sup>42</sup> Canon F3.39 of the 2022 Canons.

relevant the ecclesiastical law of the Island in a new partnership with the Bishop of Salisbury and his diocese.

*Gregory White is an Advocate and Legal Adviser in the Law Officers' Department, Jersey and is Proctor of the Ecclesiastical Court of Jersey. This article expresses his personal views and not those of the Law Officers' Department.*