

Rôl a chyfrifoldebau Archesgob Cymru

1. Cyflwyniad a chefnidir

Gofynnodd Grŵp Gweithredu Adolygiad Mynwy i'r Gweithgor Diwygio Llywodraethu ystyried rôl a chyfrifoldebau Archesgob Cymru fel rhan o'r gwaith o weithredu argymhellion adroddiad Adolygiad Mynwy. Roedd Adolygiad Mynwy wedi ystyried y digwyddiadau a'r amgylchiadau cymhleth a arweiniodd at ymddeoliad cynnar cyn-Esgob Mynwy, y Gwir Barchedig Richard Pain yn 2019.

Ymhlith 28 argymhelliad yr adroddiad, roedd dau yn ymwneud â rôl a chyfrifoldebau'r Archesgob, sef argymhellion 2.2 a 6.1:

Argymhelliad 2.2

Rydym yn argymhell y gwneir darpariaeth yn y Cyfansoddiad i'r Archesgob wneud trefniadau ar gyfer arweinyddiaeth esgobol briodol mewn esgobaeth os yw'r esgob i ffwrdd o'i ddyletswyddau am gyfnod hir oherwydd salwch neu achos arall a heb fod wedi ei atal o'i swydd.

Ac

Argymhelliad 6.1

Rydym yn argymhell y dylid cynnal adolygiad llawn o rôl a phwerau Archesgob Cymru yn y Cyfansoddiad.

Pwrpas yr adroddiad hwn yw hwyluso ymateb yr Eglwys yng Nghymru i'r ddau argymhelliad hyn. Grŵp Gweithredu Adolygiad Mynwy yw'r grŵp a gomisiynwyd ar y cyd ym mis Ionawr 2022 gan y Pwyllgor Sefydlog, Corff y Cynrychiolwyr a Mainc yr Esgobion i arwain y gwaith sy'n angenrheidiol i fynd i'r afael â'r 28 argymhelliad gan roi cyngor ar eu gweithredu.

Lluniwyd argymhellion adroddiad Adolygiad Mynwy yn amlwg yng nghyd-destun y gyfres benodol o amgylchiadau a digwyddiadau a oedd yn destun yr Adolygiad. Diben yr argymhellion yw galluogi'r Eglwys yng Nghymru i ddiwygio ei hun o ran strwythur a diwylliant ac o ran deddfwriaeth, polisi a gweithdrefn hefyd fel ei bod yn y sefyllfa orau bosib i sicrhau nad oes modd i ddigwyddiadau o'r fath neu rai tebyg ddigwydd eto. Yr hyn a achosodd gymhlethdod a dryswch sylweddol yn ystod y digwyddiadau a fu'n destun Adolygiad Mynwy oedd y diffyg eglurder a fodolai yn yr hyn y gallai ac na allai'r Archesgob ei wneud i geisio datrys y sefyllfa.

Mae argymhellion adroddiad Adolygiad Mynwy yn gwahodd yr Eglwys yng Nghymru i unioni'r sefyllfa hon ac mae argymhellion a luniodd y Gweithgor Diwygio Llywodraethu ei hun, sydd wedi eu nodi yn yr adroddiad hwn, yn bwrw ati i wneud hyn.

2. Gweithgor Diwygio Llywodraethu

Cafodd yr adroddiad hwn ei baratoi gan y Gweithgor Diwygio Llywodraethu, sef grŵp a gafodd ei sefydlu gan y Pwyllgor Sefydlog i ystyried materion sy'n ymwneud â llywodraethu o fewn strwythurau'r Eglwys yng Nghymru, yn ogystal ag ystyried a chynghori'r Pwyllgor Sefydlog ar ddiwygiadau i rai adrannau o'r Cyfansoddiad.

Ar y cyfan, mae'r Gweithgor Diwygio Llywodraethu yn trefnu ei waith yn ffrydiau gwaith unigol ac mae wedi mabwysiadu'r arfer o benodi rhai o'i aelodau (dau fel arfer) i weithredu fel *rapporteurs* ar gyfer pob ffrwd waith. Mae'r *rapporteurs* yn gwneud gwaith ar ran y gweithgor cyn trafod canlyniadau'r gwaith hwnnw gyda'r gweithgor cyfan.

Felly, bu dau *rapporteur* sef Syr Paul Silk a Llyr Williams yn gwneud gwaith cefndir i'r perwyl hwn gan adrodd canlyniadau eu gwaith i'r gweithgor llawn ar 31 Awst 2023 i'w trafod ymhellach.

3. Methodoleg

Fel rhan o'u gwaith, cynhaliodd y *rapporteurs* gyfres o gyfweiliadau gyda nifer o bobl a grwpiau o bobl i archwilio'r cwestiwn o awdurdod archesgobol yn yr Eglwys yng Nghymru a pha awdurdod a chyfrifoldebau y dylai Archesgob Cymru eu cael. Y rhai a gafodd eu cyfweld oedd:

- Mainc yr Esgobion
- Ysgrifennydd y Dalaith, y Canon Simon Lloyd
- Cadeirydd (blaenorol) ac Is-gadeirydd (cyfredol) y Pwyllgor Sefydlog, Dr Siân Miller a Dr Heather Payne
- Cadeirydd Corff y Cynrychiolwyr, yr Athro Medwin Hughes
- Cyn-Archesgob Cymru, y Gwir Barchedig John Davies
- Grŵp cynrychiadol o archddiaconiaid:
 - Yr Hybarch Andy Grimwood, Archddiacon Llanelwy
 - Yr Hybarch Andrew Jones, (cyn) Archddiacon Meirionnydd
 - Yr Hybarch Mike Komor, Archddiacon Margam
 - Yr Hybarch Stella Bailey, Archddiacon Cymoedd Gwent
 - Yr Hybarch Alan Jevons, Archddiacon Aberhonddu.

Archwiliwyd ystod eang o faterion yn y cyfweiliadau hyn gan ein galluogi i lunio'r argymhellion a welir yn yr adroddiad hwn.

Yn gynnar yng ngwaith y *rapporteurs* daeth yn amlwg y byddai dau fater yn dominyddu'r maes gwaith hwn ac yn sylfaenol i unrhyw argymhellion:

- a) Analluogrwydd esgobion – bu'r *rapporteurs* yn ystyried yn ofalus y cysyniad o analluogrwydd a'r amrywiol agweddau y gallai hyn ei olygu. Sut y gellid adnabod neu ddiffinio analluogrwydd; pwy ddylai farnu ar analluogrwydd; beth y gellid ei wneud pe bai esgob yn cael ei ystyried yn 'analluog'; ac ystyriwyd yn helaeth beth yw rôl ac awdurdod yr Archesgob mewn perthynas ag analluogrwydd.

- b) Pwerau metropolitaidd Archesgob Cymru. Nid yw'r rhain yn cael eu cyfundrefnu yng Nghyfansoddiad yr Eglwys yng Nghymru, nac mewn man arall, ac maent yn ymwneud ag amrywiaeth o faterion - gan gynnwys rôl yr Archesgob mewn materion disgyblu yn ymwneud ag esgobion esgobaethol, ac awdurdod yr Archesgob i ymyrryd mewn esgobaeth ac ymarfer gweinidogaeth esgobol lle mae'r esgob esgobaethol yn analluog neu'n absennol am unrhyw reswm.

Mae'r argymhellion a luniwyd yn yr adroddiad hwn yn canolbwyntio'n bennaf ar y ddau fater hyn.

4. Datblygiadau eraill

Hefyd, cafwyd dau ddatblygiad perthnasol arall wrth baratoi'r adroddiad hwn a fu'n arwyddocaol i waith y *rappoteurs*.

a) Analluogrwydd meddygol esgobion

Bu digwyddiad hynod bwysig ym mis Ebrill 2023, pan gyflwynwyd cynnig aelodau preifat gerbron y Corff Llywodraethol sef y dylid mewnosod darpariaeth benodol yn y Cyfansoddiad i ganiatáu i'r Archesgob ymyrryd yn benodol mewn amgylchiadau lle'r oedd esgob esgobaethol yn absennol ar sail feddygol ardystiedig, ac felly yn analluog i gyflawni ei ddyletswyddau.

Trafododd y Corff Llywodraethol y cynnig hwn a chymeradwyodd y dylid mewnosod y ddau gymal canlynol yn Adran 14 o Bennod V y Cyfansoddiad:

- 1) *Os na all Esgob gyflawni dyletswyddau ei swydd oherwydd salwch neu reswm meddygol arall am gyfnod parhaus o fwy na thrigain o ddiwrnodau, yna gall yr Archesgob gyflawni unrhyw ddyletswydd a gweithredu unrhyw hawl sy'n rhan o swydd y cyfryw Esgob o fewn esgobaeth yr Esgob yn y cyfnod na all gyflawni ei ddyletswyddau.*
- 2) *Bydd datganiadau yn unol â darpariaethau Rheoliadau Tâl Salwch Statudol (Tystiolaeth Feddygol) 1985 sy'n nodi nad yw'r Esgob yn ffit i weithio yn dystiolaeth bendant at ddibenion yr Adran 14 hon na all yr Esgob gyflawni ei ddyletswyddau oherwydd salwch neu reswm meddygol arall am y cyfnod a gwmpesir gan y datganiad.*

Mae'r cam hwn gan y Corff Llywodraethol yn ymwneud â dau o argymhellion Adolygiad Mynwy sy'n berthnasol i'r adroddiad hwn. Mewn perthynas ag argymhelliad 2.2 mae'n gwneud y ddarpariaeth angenrheidiol i'r Archesgob wneud trefniadau ar gyfer arweinyddiaeth esgobol briodol mewn esgobaeth os yw'r esgob i ffwrdd o'i ddyletswyddau am absenoldeb hir oherwydd salwch. Hefyd, mewn perthynas ag argymhelliad 6.1, mae'n egluro, i raddau, rôl a phwerau Archesgob Cymru.

Er ei bod yn ddefnyddiol, ymwneud y mae'r ddarpariaeth hon ag analluogrwydd *meddygol* esgob yn unig: gall analluogrwydd godi ar sail sefyllfaoedd eraill sy'n llai hawdd eu diffinio a'u datrys. Bydd hyn yn cael ei ystyried yn ddiweddarach yn yr adroddiad hwn.

a) Pwerau ymweliadol Archesgob Cymru

O ddyddiau cynnar yng ngwaith y *rappoteurs*, pwynt trafod o ddiddordeb mawr oedd gallu'r Archesgob i gynnal ymweliad archesgobol er mwyn ymyrryd mewn esgobaeth pe bai anawsterau systemig yn codi. Er bod y Cyfansoddiad yn cyfeirio at allu'r Archesgob i ymweld ag esgobaeth ni cheir unrhyw fanylion pellach. Mae pwerau ymweliadol yn elfen allweddol o allu'r Archesgob i weithredu pe bai sefyllfa sy'n ddigon difrifol yn codi o fewn esgobaeth.

O ystyried cymhlethdod y maes hwn, gofynnwyd i Fainc yr Esgobion gomisiynu'r Is-bwyllgor Cyfreithiol i lunio Barn gyfreithiol ffurfiol ar natur a maint pwerau ymweliadol Archesgob Cymru. Cwblhaodd yr Is-bwyllgor Cyfreithiol y gwaith hwn ym mis Mehefin 2023.

Mae'r Farn yn fanwl iawn ac mae wedi ei nodi'n llawn yn atodiad 2 o'r adroddiad hwn.

Mae'r Is-bwyllgor Cyfreithiol yn dod i'r casgliad fod pwerau ymweliadol yr Archesgob yn parhau yr un fath â'r rhai a oedd gan Archesgob Caergaint adeg datgysylltu'r Eglwys yng Nghymru ar 30 Mawrth 1920, fel y darperir yn Rhan VIII o Bennod IX y Cyfansoddiad. Mae'r Farn yn nodi'n fanwl beth oedd y pwerau hynny a sail y cyfryw bwerau.

Mae'r Farn yn dod i'r casgliad canlynol:

1. Mae gan Archesgob Cymru y pŵer i gynnal ymweliadau cyffredinol (ymweld â phob esgobaeth yn ei thro ar sail trefn) ac ymweliadau arbennig (ymweld ag esgobaeth benodol mewn modd bwriadol ar ôl nodi bod angen gwneud hynny). Fodd bynnag, nid yw'r gyfraith ynghylch pryd y gellir cynnal ymweliad arbennig mor glir ag y gallai fod.
2. Bydd ymweliad yn awtomatig yn atal pob clerig isradd (a rhai rolau esgobaethol, gan gynnwys canghellor yr esgobaeth) o'u rolau – ni fydd angen unrhyw ataliadau ar wahân. Fodd bynnag, gall cylch gorchwyl yr ymweliad wneud eithriadau fel y bo'n briodol.

Mae'r Farn hefyd yn nodi beth yw ystyr ymweliad eglwysig (boed gan archesgob, esgob neu archddiacon). Ymweliad yw:

1. Ymholi i fywydau ac ymddygiad clerigion, eu cymwysterau, a'u modd o gyflawni eu dyletswyddau mewn perthynas â gofal eneidiau.
2. Archwilio adeiladau eglwysig, addurniadau ac offer ar gyfer gwasanaeth dwyfol, ac i gywiro unrhyw ddiffygion a ganfuwyd.
3. Ymchwilio a chosbi troseddau yn gyffredinol.
4. I wirio gweinyddiaeth ymarferol y plwyf.
5. I gael gwybodaeth am gyflwr yr esgobaeth *ac ati*.

6. At ddibenion pregethu ac addysgu.
7. Gweithredu'r ddyletswydd weinidogol o dderbyn wardeniaid eglwysig i'w swydd.

Mae'r Farn hefyd yn gwneud y sylw pwysig y gall yr Archesgob wneud ymweliad archesgobol personol neu gall anfon un neu fwy o gomisariaid yr Archesgob yno ar ei ran.

Mae'r Farn hefyd yn ystyried pwerau disgyblu'r Archesgob, pe bai angen ystyried unrhyw gamau disgyblu ar ôl cwblhau'r ymweliad. Ym marn yr Is-bwyllgor Cyfreithiol, pe bai hyn yn codi, y camau priodol yn unol â'r Cyfansoddiad yw i'r mater gael ei gyfeirio at y Tribiwnlys Disgyblu.

5. Archesgob Cymru fel metropolitan

Argymhelliad cyntaf y gweithgor yw y dylid cyfundrefnu pwerau Archesgob Cymru fel metropolitan - naill ai o fewn y Cyfansoddiad neu mewn manau eraill - fel bod y pwerau a'r awdurdod fel y'u trosglwyddwyd adeg y datgysylltu ym 1920 yn glir. Yn y cyd-destun hwn, mae canon C17 Eglwys Loegr, sy'n nodi yn fanwl rôl, pwerau a chyfrifoldebau ei harchesgobion, yn berthnasol a gellir ei ystyried yn fodel posibl ar gyfer gweithredu'r argymhelliad hwn. Yn benodol, mae'r canon hwnnw'n datgan bod 'gan yr archesgob ledled ei dalaith bob amser awdurdodaeth fetropolitaid, fel uwch-aroogydd yr holl faterion eglwysig ynddi, i gywiro a chyflenwi diffygion esgobion eraill.' Nodir testun llawn canon C17 yn atodiad 1 i'r adroddiad hwn.

Er bod y gweithgor yn ymwybodol nad yw arferion seciwlar o reidrwydd yn drosglwyddadwy i'r Eglwys, mae hefyd yn ymwybodol y byddai'n anarferol iawn mewn cyd-destun seciwlar i berson sydd â theitl swydd arweiniol beidio â gallu arfer awdurdod yn y sefydliad y mae'n ei arwain. Felly, pe bai mater o bryder cyhoeddus ehangach yn codi yn unrhyw le yn yr Eglwys yng Nghymru, yr Archesgob yw'r person y disgwylir iddo fod ag awdurdod a chyfrifoldeb.

Argymhelliad I

Dylid cyfundrefnu pwerau ac awdurdod Archesgob Cymru fel metropolitan.

6. Pwerau ymweliadol

Mae Barn yr Is-bwyllgor Cyfreithiol yn ddogfen ddefnyddiol iawn ac mae ei chasgliadau'n cael eu cefnogi gan y Gweithgor Diwygio Llywodraethu. Mae'n sefydlu y gall yr Archesgob gynnal ymweliad ac y gellir trefnu ymweliadau ar sail ymweliad cyffredinol (cyfres arfaethedig o ymweliadau â'r holl esgobaethau) neu ymweliad arbennig (ymweld ag esgobaeth benodol fel ymateb i ganfod mater penodol).

Mae'r gweithgor yn argymhell bod pwerau ymweliadol Archesgob Cymru fel y'u mynegir o fewn Barn yr Is-bwyllgor Cyfreithiol yn cael eu mynegi'n ffurfiol. Gallai hyn fod yn rhan o fynegiant o bwerau metropolitaidd ehangach yr Archesgob fel y cyfeirir atynt yn argymhelliad I yr adroddiad hwn, neu drwy basio canon ar wahân tebyg i

ganon G5 Eglwys Loegr sy'n darparu diffiniad byr o ymweliadau a'r dull o'u cynnal. Nodir testun llawn canon G5 yn atodiad 1.

Argymhelliad II

Mae pwerau ymweliadol Archesgob Cymru wedi'u cyfundrefnu, ar sail Barn yr Is-bwyllgor Cyfreithiol dyddiedig Mehefin 2023.

Un o'r meysydd mwy cymhleth i'r *rappoteurs* eu trin yn ystod eu gwaith, fodd bynnag, fu sut y byddai ymweliad arbennig yn cael ei ysgogi - beth ddylai sbarduno'r cam gweithredu hwn?

Bellach, gellid ystyried y cysyniad o ymweliad archesgobol arbennig yn un anodd, yn bennaf oherwydd yr egwyddor fod archesgob, i bob pwrpas, yn gorfodi ei awdurdod dros esgob esgobaethol arall – gan arfer yr awdurdod hwnnw o fewn awdurdodaeth yr esgob arall hwnnw – a gallai hynny deimlo'n ormesol. Ond nid yw'r egwyddor sylfaenol fod archesgob yn uwch nag esgobion eraill o fewn talaith wedi bod yn gysyniad dadleuol yn hanesyddol. Hefyd, pan drafododd y *rappoteurs* y cysyniad hwn fel rhan o'r gyfres o gyfweliadau a gynhaliwyd ganddynt, mynegwyd syndod gan rai o'r ymatebwyr nad oedd hyn eisoes yn cael ei adlewyrchu yn y Cyfansoddiad a threfn gyffredinol yr Eglwys yng Nghymru.

Felly, mae'r gweithgor yn argymhell y dylai awdurdod yr Archesgob i ysgogi ymweliad arbennig ag esgobaeth gael ei nodi'n benodol fel egwyddor sylfaenol. Gall yr Archesgob ei hun ysgogi a chynnal ymweliad arbennig. Fodd bynnag, byddai'n ddoeth i awdurdod o'r fath fod yn destun gwiriadau a chydbwysedd yn unol â mesurau diogelu cyfoes: er bod gan yr Archesgob yr awdurdod i ysgogi ymweliad arbennig, ni ddylid arfer yr awdurdod hwn heb gyfeirio at farn yr Eglwys ehangach.

Awgryma'r gweithgor felly fod yr Archesgob yn bwrw ymlaen ar ôl ymgynghori: mae'r gweithgor hefyd yn awgrymu y dylid gwahaniaethu'n gynnil rhwng *dyletswydd* yr Archesgob i ymgynghori â rhai carfanau ac y dylai'r Archesgob *roi sylw* i farn pobl eraill.

Mae'r gweithgor yn teimlo y dylai fod yn *ddyletswydd* ar yr Archesgob i ymgynghori â Deon Cadeirlan ac Archddiaconiaid yr esgobaeth dan sylw a Mainc yr Esgobion cyn sefydlu unrhyw erthyglau ymchwilio ar gyfer ymweliad arbennig. O ganlyniad byddai gan yr esgobion eraill gyfle i herio'r Archesgob a'r camau sy'n cael eu cynnig – camau o bosibl yn codi yn sgil methiannau canfyddedig ar ran un o'u cydweithwyr esgobol. Trwy ymgynghori â Deon ac Archddiaconiaid yr esgobaeth dan sylw, byddai teimlad ac ysbryd cyffredinol yr esgobaeth ehangach yn cael eu hystyried: byddai barn y Deon a'r Archddiaconiaid yn cael eu ffurfio trwy eu rhyngweithio â phobl yr esgobaeth wrth iddynt fynd ati i arfer eu rolau eu hunain.

Yn ogystal, mae'r gweithgor yn awgrymu y dylai'r *Archesgob roi sylw* i farn clerigion a lleygion yr esgobaeth dan sylw.

Mae ystyr geiriau yn arwyddocaol ac yn bwysig yn hyn o beth. Mae'r Archesgob yn 'rhoi sylw' i farn clerigion a lleygion yr esgobaeth dan sylw, yn hytrach na bod â

dyletswydd i ymgynghori â hwy, yn gwarchod rhag amgylchiadau sy'n codi lle gallai'r clerigion a'r lleygion mewn gair ddeisebu yn erbyn esgob o ganlyniad i'w benderfyniad amhoblogaidd, ei arddull arwain neu ei safbwynt diwinyddol. Mae'r gweithgor yn awyddus iawn i sicrhau nad yw cyfundrefnu pwerau ymweliadol yn anfwriadol yn creu'r cyfle i awdurdod yr esgob yn ei esgobaeth ei hun gael ei danseilio a'i ryddid i arfer yr awdurdod a'r arweinyddiaeth honno yn y ffordd y gwêl yn rhesymol gael ei gyfyngu. Mae'r gweithgor yn glir nad yw gwrthwynebu penderfyniadau arweinyddol a wnaed gan esgob, safbwynt diwinyddol esgob neu gefndir Eglwysig esgob yn faterion sy'n teilyngu ysgogi ymweliad arbennig – oni bai bod rhesymau ychwanegol a mwy difrifol amlwg.

Penderfyniad yr Archesgob yw ysgogi ymweliad yn dilyn yr ymgynghoriadau a argymhellir. Fodd bynnag, mae'r gweithgor yn cydnabod y byddai'r dull gweithredu hwn heb os yn adlewyrchu patrwm o bryder o fewn esgobaeth a gydnabyddir gan Fainc yr Esgobion a deon ac archddiaconiaid yr esgobaeth yn ogystal â chan glerigion a lleygion yr esgobaeth. Byddai cychwyn ymweliad arbennig yn gam sylweddol a byddai camau o'r fath yn cael eu cymryd mewn amgylchiadau prin iawn yn unig. Dylid cydnabod hefyd y bydd ymweliad arbennig yn ddi-os yn straen i'r esgob dan sylw ac y bydd angen darparu cefnogaeth a gofal drwy holl broses yr ymweliad.

Argymhelliad III

Dylid egluro bod gan Archesgob Cymru awdurdod penodol i ysgogi ymweliadau arbennig o fewn esgobaethau.

Cyn i'r awdurdod hwn gael ei ddefnyddio, dylai fod dyletswydd ar yr Archesgob i ymgynghori â deon cadeirlan ac archddiaconiaid yr esgobaeth dan sylw a Mainc yr Esgobion. Dylai'r Archesgob hefyd ystyried barn clerigion a lleygion yr esgobaeth dan sylw.

Pe bai'r Archesgob yn dymuno cynnal ymgynghoriad pellach a manylach gyda charfan neu gynghorydd proffesiynol penodol fel rhan o'r paratodau hyn, dylai'r Archesgob allu gwneud hynny, yn ôl ei ddisgresiwn.

Os oes ymweliad arbennig yn cael ei gynnal, dylai'r Archesgob sicrhau bod gofal bugeiliol a chymorth priodol yn cael eu darparu i'r esgob dan sylw.

Nid yw'r gweithgor yn gwneud unrhyw sylw penodol ar sut y dylai'r Archesgob gynnal ymweliad archesgobol (boed yn gyffredinol neu'n arbennig), heblaw cydnabod y manylion a fynegwyd gan yr Is-bwyllgor Cyfreithiol fel rhan o'i Farn ym mis Mehefin 2023.

Fel y nodwyd uchod, mae'r gweithgor yn rhagweld mai anfynych y defnyddir y pwerau ymweliadol, ond mae'n dymuno nodi'r amgylchiadau cyffredinol lle byddai'n rhagweld y caent eu defnyddio. Yn amlwg ni ellir rhagweld pob digwyddiad a darparu rhestr gynhwysfawr, ond y meysydd canlynol oedd prif ffocws y *rappoteurs*:

- **Rhesymau meddygol**

Mae adran 4a yr adroddiad hwn yn cyfeirio at gynnyg a basiwyd gan y Corff Llywodraethol ym mis Ebrill 2023 a oedd yn darparu o fewn y Cyfansoddiad allu'r Archesgob i gymryd arweinyddiaeth esgobol mewn esgobaeth pe bai esgob yr esgobaeth honno yn absennol am fwy na 60 diwrnod am resymau meddygol. Mae'r ddarpariaeth hon wedi'i chyfyngu i resymau meddygol ardystiedig. Mae'r gweithgor yn awyddus i sicrhau nad yw'r posibilrwydd yn cael ei anwybyddu pan nad yw esgob yn gweithio'n iawn, ond eto nid yw'n fodlon cael asesiad meddygol er mwyn darparu tystysgrif salwch. Efallai y bydd amgylchiadau lle nad yw esgob yn iach ac eto mae'n amharod i gydnabod hyn a gofyn am gymorth meddygol.

Pe bai hyn yn codi, a bod ymddygiad afreolaidd esgob yn dod yn destun pryder, dylai'r Archesgob allu ymyrryd drwy ymweliad arbennig, wrth gwrs, yn amodol ar y mesurau diogelu a fynegwyd yn argymhelliad III uchod.

- **Camreoli'r esgobaeth**

Yn amlwg, mae gan hyn y potensial i fod yn faes goddrychol a sensitif ac yn un lle gellid trefnu honiadau o gamreoli yn blagus mewn ymateb i benderfyniad anodd neu amhoblogaidd gan yr arweinyddiaeth. Ond mae amgylchiadau y gellid eu rhagweld lle, er enghraifft, y cam-briodolwyd adnoddau ariannol neu y gwnaed penderfyniadau nad oeddent yn unol ag egwyddorion llywodraethu da - amgylchiadau a allai arwain at ganlyniadau difrifol i sefydlogrwydd, hyfywedd neu statws da yr esgobaeth.

Mewn unrhyw amgylchiadau o fewn y maes penodol hwn byddai argymhelliad y gweithgor (o fewn argymhelliad III) i'r Archesgob ymgynghori â Mainc yr Esgobion a deon ac archddiaconiaid yr esgobaeth dan sylw (ac eraill yn ôl disgrisiwn) yn arbennig o berthnasol cyn cymryd unrhyw gamau ar ffurf ymweliad arbennig

- **Camymddwyn**

Eisoës, mae gan yr Archesgob yr awdurdod i gyfeirio esgob i'r Tribiwnlys Disgyblu os oes tystiolaeth bod yr esgob wedi gwneud unrhyw un o'r pethau a allai arwain at gamau disgyblu o dan y Cyfansoddiad. Fodd bynnag, mae'r gweithgor yn teimlo y gallai fod yn ddefnyddiol i'r Archesgob gael y cyfle i weithredu drwy ymweliad arbennig ar sail camymddwyn honedig mewn rhai sefyllfaoedd. Ni fyddai hyn wrth gwrs yn atal esgob rhag cael ei gyfeirio'n uniongyrchol i'r Tribiwnlys Disgyblu heb ymweliad, ond gall ymweliad er mwyn ymchwilio i honiad penodol o gamymddwyn fod yn gam cyntaf gwerthfawr cyn atgyfeirio i'r Tribiwnlys Disgyblu - neu gall ddangos nad oes angen atgyfeiriad o'r fath. Dymuna'r gweithgor ailadrodd y sylw, sef ym marn yr Is-bwyllgor Cyfreithiol, y gall comisari (neu gomisariaid) gynnal ymweliad archesgobol ar ran yr Archesgob.

- **Rhesymau eraill**

Nid yw'n fwriad i'r rhestr uchod o resymau dros gynnal ymweliad arbennig fod yn hollgynhwysfawr ac yn derfynol. Mae'n bosib y bydd nifer o resymau eraill pam y gallai fod angen gweithredu fel hyn - er enghraifft os yw esgob yn profi argyfwng ffydd. Mewn achosion lle byddai angen gwneud ymyriadau bugeiliol ac ysbrydol, ond

nad yw'r gweithgor o'r farn y byddai ymyriadau o'r fath yn llwyddiannus, gallai fod yn briodol ac yn rhesymol i'r Archesgob ymyrryd, gan ddefnyddio pwerau ymweliadol.

7. Esgobion yn dychwelyd i'r gwaith yn dilyn analluogrwydd meddygol

Mae Adran 4a yr adroddiad hwn yn cyfeirio at y darpariaethau cyfansoddiadol sydd bellach yn bodoli mewn perthynas ag absenoldeb hir esgob ar sail feddygol ardstyedig. Mae'r ddarpariaeth hon yn ddatblygiad pwysig a defnyddiol iawn. Fodd bynnag, hoffai'r gweithgor wneud rhai sylwadau ychwanegol penodol mewn perthynas ag analluogrwydd meddygol.

Yn gyntaf, rhaid nodi bod yr Eglwys yng Nghymru wedi diffinio prosesau a chanllawiau sydd ar waith yn y Llawlyfr Clerigion ar gyfer absenoldeb meddygol clerigion a phe bai'r esgob yn cael ei ddatgan yn anaddas i weithio ar sail feddygol, byddai'r un prosesau yn berthnasol. Mae'r gweithgor yn cefnogi'r broses hon. Yn yr un modd, mae prosesau diffiniedig hefyd yn bodoli i sicrhau bod unrhyw drefniadau dychwelyd i'r gwaith ar ôl cyfnod o absenoldeb meddygol yn ddiogel a phriodol a bod unrhyw ddarpariaethau a luniwyd mewn ymgynghoriad ag adnoddau dynol a gweithwyr iechyd galwedigaethol proffesiynol ar waith, yn ôl yr angen. Unwaith eto, mae'r prosesau hyn yn berthnasol i esgob sy'n dychwelyd i'r gwaith yn ogystal ag unrhyw glerig arall ac mae'r gweithgor yn cefnogi parhad hyn.

Fodd bynnag, nid oedd mor glir i'r gweithgor fod clerigion ac esgobion yn cael eu trin yn gyfartal wrth benderfynu pryd y mae'n briodol dychwelyd i'r gwaith yn dilyn cyfnod o absenoldeb meddygol. Ar gyfer clerig plwyf, mae Llawlyfr y Clerigion yn gweithredu darpariaeth fanwl ar gyfer cysylltu â'r archddiacon *i ganfod a ellir rhoi unrhyw gymorth* [wrth i'r clerig ddychwelyd i'w ddyletswyddau]. Mae'r gweithgor yn credu y dylai hyn fod yn berthnasol i esgobion hefyd (gyda'r Archesgob yn cymryd rôl yr archddiacon). Mewn achos prin pan fyddai esgob yn bwriadu dychwelyd i'r gwaith yn erbyn cyngor meddygol ac na ellid ei berswadio fel arall, byddai gan yr Archesgob y pŵer i ysgogi ymweliad arbennig (a fyddai yn atal dychwelyd i'r gwaith yn gyfreithiol).

Mae'r gweithgor hefyd yn teimlo ei bod yn bwysig, pryd bynnag y bydd esgob yn absennol ar sail feddygol, y dylai'r Archesgob sicrhau bod gofal bugeiliol priodol a chefnogaeth i'r esgob yn cael eu trefnu a'u darparu.

Argymhelliad IV

Mae'r prosesau adnoddau dynol presennol ar gyfer esgobion sy'n rheoli absenoldeb meddygol a dychwelyd i'r gwaith, prosesau sy'n cynnwys ymgynghori ag adnoddau dynol a gweithwyr iechyd galwedigaethol proffesiynol, yn briodol.

Wrth ddychwelyd i'r gwaith yn dilyn absenoldeb meddygol, dylai esgobion wneud hynny mewn ymgynghoriad â'r Archesgob ac o dan ei oruchwyliaeth

Pryd bynnag y bydd esgob yn absennol ar sail afiechyd, dylai'r Archesgob sicrhau y darperir gofal bugeiliol a chymorth priodol yn unol â hynny.

8. Materion eraill

Yn ystod eu cyfweiliadau y cyfeirir atynt yn adran 3 yr adroddiad hwn, trafododd y *rappoteurs* analluogrwydd meddygol yn bur helaeth. Fel rhan o'r trafodaethau hyn, cyflwynwyd syniad diddorol a oedd yn trafod a ddylai esgobion ar ôl eu hethol ac wrth gychwyn eu swydd baratoi dogfen sy'n nodi eu dymuniadau ynghylch ymddygiad yr esgobaeth pe baent yn mynd yn analluog yn y tymor hir - efallai o ganlyniad i ddamwain drychinebus neu ddechrau salwch meddwl cronig.

Byddai gan y ddogfen hon swyddogaeth debyg i atwrneiaeth a byddai'n cael ei chadw gan Gofrestrydd yr Archesgob i'w defnyddio pe bai amgylchiadau o'r fath yn codi. Byddai'r esgob yn cael cyfle i adolygu a diweddarau'r ddogfen, yn rheolaidd ar adeg benodol.

Gallai'r ddogfen hon gynnwys enwau'r swyddogion a ffefrir gan fynegi dymuniadau ar gyfer cyfeiriad strategol parhaus yr esgobaeth.

I ryw raddau mae ychwanegu'r ddarpariaeth Gyfansoddiadol newydd sy'n caniatáu i'r Archesgob ddarparu arweinyddiaeth esgobol pe bai esgob yn absennol ar sail feddygol ardystiedig am fwy na 60 diwrnod, wedi lleihau perthnasedd trefniant o'r fath.

Mae'r gweithgor yn teimlo bod gan y syniad hwn rywfaint o rinwedd ond, gan gydnabod bod anfanteision iddo hefyd, nid yw'n dymuno gwneud unrhyw argymhellion ffurfiol mewn perthynas ag ef. Fodd bynnag, nid oes dim i atal esgobion – boed yn newydd yn eu swydd neu wedi eu sefydlu – rhag ymrwmo i ysgrifennu eu dymuniadau ar gyfer gweinidogaeth barhaus yr esgobaeth pe baent yn mynd yn analluog, dogfen y gall yr Archesgob ei hystyried wrth arfer arweinyddiaeth esgobol yn ystod y cyfnod o analluogrwydd.

9. Casgliad

Crëwyd yr adroddiad hwn yn sgil dau argymhelliad yn adroddiad Adolygiad Mynwy sy'n ymwneud â rôl a chyfrifoldebau Archesgob Cymru. Y gobaiith yw bod argymhellion y gweithgor ynghyd â gwaith arall yn ymwneud ag analluogrwydd meddygol esgobion ac adolygiad ac eglurhad o bwerau ymweld yr Archesgob wedi mynd i'r afael â manylion ac ysbryd yr argymhellion hynny. Mae'r gweithgor yn hyderus, pe bai sefyllfa debyg i'r rhai a oedd yn destun Adolygiad Mynwy yn codi yn y dyfodol, y byddai'r Eglwys yng Nghymru wedi sefydlu amgylchedd cyfansoddiadol mwy diffiniedig sy'n caniatáu cymryd camau effeithiol, cyflym ac amserol ac mae'n cymeradwyo'r adroddiad hwn i'r Eglwys ehangach.

**Y Gweithgor Diwygio Llywodraethu
Medi 2023**

Annex 1

Church of England – canon C17

Of archbishops

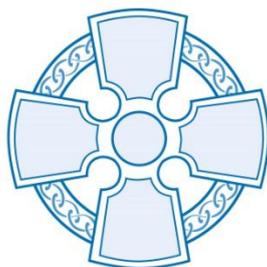
1. By virtue of their respective offices, the Archbishop of Canterbury is styled Primate of All England and Metropolitan, and the Archbishop of York Primate of England and Metropolitan.
2. The archbishop has throughout his province at all times metropolitanical jurisdiction, as superintendent of all ecclesiastical matters therein, to correct and supply the defects of other bishops, and, during the time of his metropolitanical visitation, jurisdiction as Ordinary, except in places and over persons exempt by law or custom.
3. Such jurisdiction is exercised by the archbishop himself, or by a Vicar-General, official, or other commissary to whom authority in that behalf shall have been formally committed by the archbishop concerned.
4. The archbishop is, within his province, the principal minister, and to him belongs the right of confirming the election of every person to a bishopric, of being the chief consecrator at the consecration of every bishop, of receiving such appeals in his provincial court as may be provided by law, of holding metropolitanical visitations at times or places limited by law or custom, and of presiding in the Convocation of the province either in person or by such deputy as he may lawfully appoint. In the province of Canterbury, the Bishop of London or, in his absence, the Bishop of Winchester, has the right to be so appointed; and in their absence the archbishop shall appoint some other diocesan bishop of the province. The two archbishops are joint presidents of the General Synod.
5. By ancient custom, no Act is held to be an Act of the Convocation of the province unless it shall have received the assent of the archbishop.
6. By statute law it belongs to the archbishop to give permission to officiate within his province to any minister who has been ordained priest or deacon by an overseas bishop within the meaning of the Overseas and Other Clergy (Ministry and Ordination) Measure 1967, or a bishop in a Church not in communion with the Church of England whose orders are recognised or accepted by the Church of England, and thereupon such minister shall possess all such rights and advantages and be subject to all such duties and liabilities as he would have possessed and been subject to if he had been ordained by the bishop of a diocese in the province of Canterbury or York.
7. By the laws of this realm the Archbishop of Canterbury is empowered to grant such licences or dispensations as are therein set forth and provided, and such licences or dispensations, being confirmed by the authority of the Queen's Majesty, have force and authority not only within the province of Canterbury but throughout all England.

Church of England – canon G5

Of visitations

1. Every archbishop, bishop, and archdeacon has the right to visit, at times and places limited by law or custom, the province, diocese, or archdeaconry in question, in a more solemn manner, and in such visitation to perform all such acts as by law and custom are assigned in that behalf for the edifying and well-governing of Christ's flock, that means may be taken thereby for the supply of such things as are lacking and the correction of such things as are amiss.
2. During the time of such visitation the jurisdiction of all inferior Ordinaries shall be suspended save in places which by law or custom are exempt.

Y R E G L W Y S
Y N G N G H Y M R U



T H E C H U R C H
I N W A L E S

Legal Sub-Committee

**OPINION ON THE NATURE AND EXTENT OF THE
VISITATORIAL POWERS OF THE ARCHBISHOP OF WALES**

June 2023

Annex 2

THE OPINION OF THE LEGAL SUB-COMMITTEE ON THE NATURE AND EXTENT OF THE VISITATORIAL POWERS OF THE ARCHBISHOP OF WALES

OPINION

Introduction and Summary

1. The Bench of Bishops has asked the Legal Sub-Committee to give its opinion on the question, “What are the visitatorial powers of the Archbishop of Wales in nature and extent?”
2. This is the Opinion of the Legal Sub-Committee, to which all its members have contributed. The Legal Sub-Committee wishes to express its gratitude to Mr Matthew Chinery, Head of Legal Services, for his provision of relevant materials and a helpful briefing note.
3. The opinion of the Legal Sub-Committee, more fully explained below, is as follows:
 - 1) The Archbishop’s powers of visitation remain unaltered from those that were held by the Archbishop of Canterbury on 30 March 1920.
 - 2) Both the nature and the extent of those powers are to some degree uncertain.
 - 3) The Archbishop clearly has a power to make a general visitation of the Province, visiting the dioceses in turn.
 - 4) It is probable that the Archbishop has the power to make a special visitation of a particular diocese (that is, one perceived to be in need of intervention) without making a general visitation. There is limited authority for the existence of such a power. This is at least partly due to the infrequency of the exercise of archiepiscopal visitatorial powers in England and in Wales in recent history.
 - 5) The effect of a visitation is automatically to inhibit (suspend) the authority of inferior jurisdictions in the place of visitation for the duration of the visitation. For this reason, it will generally be necessary for the visitor to make such express exemptions from the inhibition as are necessary for the continued exercise of necessary ecclesial functions. In particular, therefore, it will be necessary to limit the inhibition to the minimum necessary to ensure that the visitation may be properly conducted.
 - 6) The essential nature of a visitation is an inquiry.

- 7) It has historically been a recognised power of an archbishop to correct abuses found upon the visitatorial inquiry. In general, this power is part of the Archbishop’s visitatorial powers and is exercised by giving directions and orders for future conduct. The power to discipline inferior clergy (that is, by sanction for ecclesiastical offences) is not itself a visitatorial power.
- 8) The former archiepiscopal (non-visitatorial) power to discipline clergy has probably not been preserved in the Constitution of the Church in Wales but has been ceded to the Courts of the Church in Wales.
- 9) Even if, as is arguable to the contrary, the power to discipline inferior clergy, including diocesan bishops, remains in theory exercisable by the Archbishop, it would be imprudent to purport to exercise such a power, both because the existence of the power is at best uncertain and because it would be regarded as inappropriate to purport to exercise it in the light of the extensive disciplinary provisions of the Constitution of the Church in Wales. The proper course would be to make a referral to the Disciplinary Tribunal of the Church in Wales.

The Constitution of the Church in Wales

4. The Constitution of the Church in Wales (the “Constitution”) provides in Chapter IX, Part VIII, section 43:

“(1) Archiepiscopal Visitations shall be held as heretofore, and the law and practice relating thereto shall be that prevailing on 30 March 1920.

(2) Episcopal Visitations shall be held at such intervals as the Bishop may decide, and the form of such a Visitation shall be determined by the Bishop.

(3) Archdeacons shall conduct regular Visitations of all Parishes in their archdeaconries, and subject to any direction by the Governing Body the form of such a Visitation shall be determined by the Archdeacon.”

Accordingly, the law and practice relating to Archiepiscopal Visitations remains precisely that which applied on 30 March 1920.

5. Certain other provisions of the Constitution are relevant to be noted. Chapter I, section 5 provides:

“The ecclesiastical law as existing in England on 30th March 1920, with the exception of:

- (a) The Clergy Ordination Act, 1804;
- (b) The Church Discipline Act, 1840;
- (c) The Ecclesiastical Commissioners Act, 1840;
- (d) The Clerical Subscription Act, 1865;

- (e) The Clerical Disabilities Act, 1870;
- (f) The Colonial Clergy Act, 1874;
- (g) The Public Worship Regulation Act, 1874;
- (h) The Sales of Glebe Lands Act, 1888;
- (i) The Clergy Discipline Act, 1892;
- (j) The Benefices Act, 1898;
- (k) The Pluralities Acts;
- (l) The Incumbents' Resignation Acts;

shall be binding on the Members (including any body of Members) of the Church in Wales, and shall be applied to the determination of any question or dispute between them as such Members, in so far as it does not conflict with anything contained in the Constitution or in any special contract as to glebe between the Representative Body and an Incumbent, provided that the Courts of the Church in Wales shall not be bound by any decision of the English Courts in relation to matters of faith, discipline or ceremonial.”

Accordingly, the limitations on the archiepiscopal and episcopal disciplinary powers introduced by the Church Discipline Act 1840 are not, in general, imported into the Church in Wales. However, if and insofar as those limitations relate specifically to the archiepiscopal visitatorial powers, they are part of the law that applied in 1920 and is expressly preserved by Chapter IX, Part VIII, section 43.

6. Subject only to the provisions of the Constitution, the exercise of inherent powers is preserved and protected by Chapter II, section 37, which provides:

“Subject to the Constitution, no proceeding of the Governing Body shall interfere with the exercise by the Archbishop of the powers and functions inherent in the Office of Metropolitan, nor with the exercise by the Diocesan Bishops of the powers and functions inherent in the Episcopal Office.”

7. Also important is Chapter IX, entitled “The Tribunal and the Courts of the Church in Wales”. Part I contains general provisions. Part II comprises section 8, which provides:

“(1) There shall be a Disciplinary Tribunal of the Church in Wales which shall be constituted as provided in Part III.

(2) The Courts of the Church in Wales shall be:

(a) a Diocesan Court in each diocese, constituted as provided in Part IV and

(b) the Provincial Court, constituted as provided in Part V.

(3) Subject to the provisions of the Constitution, the power of the Archbishop, a Diocesan Bishop, and the Provincial Court shall include

that of passing sentence of monition, suspension or expulsion from office in the Church in Wales.”

Part III of Chapter IX establishes the Disciplinary Tribunal, which has jurisdiction over clerics, as well as over specified categories of lay persons, and has the power to impose a range of sanctions including deposition from Holy Orders and expulsion from office (section 18). Part IV relates to the Diocesan Court. Part V relates to the Provincial Court, which has power to hear and determine appeals from the Disciplinary Tribunal (section 32). Part VI establishes the Rule Committee. Part VII, “Miscellaneous powers and provisions relating to Diocesan Bishops and the Archbishop’s Registrar”, confers certain powers of suspension on Diocesan Bishops and the Archbishop’s Registrar. Part VIII, “Visitations”, comprises only section 43, which has been set out above. Part IX concerns the Archbishop’s Registrar’s List.

8. The following points may be noted with regard to Chapter IX:
- 1) None of its provisions derogate from the archiepiscopal visitatorial powers as they existed on 30 March 1920, as these are expressly preserved unaltered by Chapter IX, Part VIII, section 43.
 - 2) Therefore, section 8(3) (“Subject to the provisions of the Constitution, ...”) cannot be read as qualifying the archiepiscopal visitatorial powers.
 - 3) Section 8(3) expressly confirms the power of the Archbishop (and, indeed, of Diocesan Bishops) to pass sentence of monition suspension or expulsion from office. This is made “[s]ubject to the provisions of the Constitution”. That in turn raises the questions of (i) the nature and extent of such power apart from the provisions of the Constitution and (ii) the extent, if any, to which the Constitution limits, qualifies or removes such power of sentence.
 - 4) The jurisdiction of the Disciplinary Tribunal is not expressly stated to be an exclusive jurisdiction. While the Disciplinary Tribunal now has power to suspend or expel from office a Diocesan Bishop, it is not said that *only* the Disciplinary Tribunal (or, on appeal, the Provincial Court) has such power.

The law and practice as at 30 March 1920

9. *Halsbury’s Laws of England* (1st edition, 1910), in the volume on Ecclesiastical Law, states¹:

“726. An archbishop is that minister of the Word who within that province whereof he is archbishop has, next and immediately under the King, supreme power, authority and jurisdiction in all causes and things ecclesiastical. ...

¹ Here and elsewhere in this Opinion, citations from texts will generally omit footnoted references. Where such references are included, they will be shown in square brackets.

728. The powers and duties conferred by law on an English archbishop beyond those conferred on a bishop are as follows: An archbishop has authority to visit and inspect the bishops and inferior clergy of his province and to deprive bishops for notorious cause, and he sitting alone can try a bishop [*Lucy v St David's (Bishop)* (1699), Carth. 484; *Ex parte Read* (1888), 13 P.D. 221, O.C.]. But in the case of the inferior clergy the proceedings must take the due legal form directed by the various Church Discipline and Public Worship Regulation Acts, or by the general ecclesiastical law for the time being in force [*Re York (Dean)* (1841), 2 Q.B. 1, where the Archbishop of York was prohibited from summarily depriving the Dean of York at a visitation without due process under the Church Discipline Act 1840 (3 & 4 Vict. c. 86); *Sanders v Head* (1843), 2 Notes of Cases, 355; and see p. 410, *post*].

When an archbishop visits his province it is usual for him first to visit his own cathedral and diocese, then in every diocese, to begin with the cathedral and proceed thence as he pleases to the other parts of the diocese, but the manner of a visitation is not so material as to be a ground for prohibition, as any defect in the manner of a visitation may be remedied by appeal [*Kildare (Bishop) v Dublin (Archbishop)* (1724), 2 Bro. Parl. Cas. 179].

All deans and chapters are subject to the visitation of the archbishop of the province *jure metropolitico*, in addition to the bishop's visitation [Stephens' Laws relating to the Clergy, p. 1379]. ...”

10. Three questions of practical importance arise:

- 1) Can the Archbishop make a special Visitation (that is, a Visitation limited to one or more particular dioceses) or must a Visitation be general (that is, a Visitation of the entire province, taking the dioceses in turn)?
- 2) What is the immediate effect of a Visitation?
- 3) What if any are the Archbishop's Visitatorial powers in respect of disciplinary sanctions?

The primary sources mentioned by *Halsbury's Laws* provide a basis for considering these questions.

Lucy v Bishop of St David's 88 E.R. 1287 [1558-1774] All ER Rep 349

11. *Lucy's* case is remarkable for its procedural complexity (which is simplified and abridged below) and for the uncertainties to which it gives rise. The background to the case is not without relevance or interest. Dr Thomas Watson was appointed as Bishop

of St David's by James II, seemingly for political reasons. It appears² that in 1694 the registrar of the diocese of St David's, Robert Lucy, having purportedly been deposed by Bishop Watson, prevailed upon Archbishop Tillotson to make a special metropolitanical visitation of the diocese. The visitation did not find any wrongdoing on the bishop's part; however, for granting an institution after receipt of the archbishop's inhibition (see paragraph 33 below), the bishop was found to be in contempt of the archbishop's authority and was suspended from office for some months.

12. Subsequently, Mr Lucy promoted articles for simony and other offences against Bishop Watson before the next Archbishop of Canterbury, Thomas Tenison, who cited the Bishop to appear before him, or his vicar general, at his hall at Lambeth House. In the event, Archbishop Tenison sat in person, assisted by several other Bishops as assessors. In 1699, in the course of the proceedings, Bishop Watson moved in the Court of King's Bench for a prohibition on the ground *inter alia* that the case should have been tried in the Court of Arches. On his behalf it was submitted that the hall of Lambeth House, at which he had been cited to appear before the Archbishop, was "not a court whereof the law takes notice" and that, although the Archbishop had the same power over his suffragan (that is, inferior) bishops as every bishop had over the clergy of his diocese, yet "no bishop can cite the clergy before himself but in his court" and that therefore the citation ought to have been "to appear in the Court of Arches, or some other court of the archbishop." The Court of King's Bench refused a prohibition on that ground. The Lord Chief Justice, Sir John Holt, is reported as holding,

"that to admit this point of jurisdiction to be disputed, was to dispute fundamentals; for the archbishop had, without doubt, provincial jurisdiction over his suffragan bishops, which he may exercise in what place of his province he pleases, for it is not material to be in the Arches any more than in any other place; for the Arches is only a peculiar consisting of twelve parishes within London, exempt from the Bishop of London, and that is properly the Arches; and though the provincial and metropolitan jurisdiction be exercised there also, yet it may be exercised elsewhere; for the citation is to appear before the archbishop, or his vicar general, who is an officer the law takes notice of; for the vicar general in the province is the same as the chancellor in a particular diocese; and the Dean of the Arches is also a vicar general of the archbishop over all his province, and acts in the Arches sometimes as vicar general, and sometimes as Dean of the Arches."

13. The archbishop, with the concurrence of the majority of his assessors, proceeded to find Bishop Watson guilty of various ecclesiastical offences, including simony, and pronounced sentence of deprivation upon him. The bishop attempted to reverse or suspend the sentence by a number of routes. First, he appealed to the Court of Delegates. Second, when it became apparent that the Delegates would uphold the archbishop's sentence, he sought to assert his privilege as a peer to be tried by the House

² This information is taken from Ruth Paley, "A Matter of Judgment: Politics, Law and the Trial of Bishop Thomas Watson", *Parliamentary History*, vol. 34, pt. 2 (2015), pp. 181-200. The article contains a great deal of fascinating detail and historical analysis.

of Lords; however, the House rejected his plea, because he had originally waived his privilege. Third, he moved again in the Court of King's Bench for a prohibition to stay the appeal proceedings in front of the Delegates.

14. This second motion for a prohibition was again refused by the Court of King's Bench, Lord Chief Justice Holt presiding. Bishop Watson's argument rested on two grounds: first, that the archbishop alone had no jurisdiction to deprive a bishop but could do so only in a synod of the bishops of the province; second, that the Delegates on appeal refused to admit the bishop's allegations. It appears³ that Holt CJ was "fully satisfied" that the first ground was wrong but rested his actual decision on his rejection of the second ground, holding that the correctness or otherwise of the first ground was a matter properly for consideration by the Delegates upon the appeal and that there was no proper basis for prohibiting them from proceeding. Thus the Court did not formally decide the first ground, but Phillimore states:

"As to the first [ground], Holt, Chief Justice, and the rest held, that an archbishop hath power over his suffragan bishops, and may deprive them; that though there may be a co-ordination amongst the bishops *jure divino*, yet there is a subordination *jure ecclesiastico qua humano*; not of necessity from the nature of their offices, but for convenience: and for what other purpose have archbishops been instituted by ecclesiastical constitutions? The power of an archbishop was very great here in England anciently; and he had the same jurisdiction of supremacy, as the patriarchs of Constantinople and other places. The pope used to call him *alterius orbis papam*, and he exercised the same jurisdiction with him. Theodore, who was archbishop not long after Austin, deprived Winifred, Bishop of York, for the said see was not then metropolitical, but subject to the Archbishop of Canterbury; and yet at the same time there was a council held, and Beda commends Theodore for it. But afterwards, in the time of Henry I and King Stephen, the pope usurped the authority of the archbishops; in exchange for which, they became *legati nati* of the pope. And that is the reason why this practice⁴ cannot be found to have been put in use for so long a time. But at this day, by the act of Henry VIII this jurisdiction is restored. It was always admitted that the archbishop had metropolitical jurisdiction, and the bishops swear canonical obedience to him; and where there is a visitatorial power, there is no reason to question the power of deprivation; for the same superiority, which gives him power to pass ecclesiastical censures upon the bishops, will give him power to deprive, it being only a different degree of punishment for a different degree of offence. And to question the authority of the archbishop is to question the very foundations of the government."

³ From Phillimore, *The Ecclesiastical Law of the Church of England*, (2nd edition, 1895), ("Phillimore"), pp. 68ff, which has an extensive account of the case.

⁴ By "this practice" it is assumed that what is meant is the deprivation of a bishop by an archbishop acting alone.

This reasoning, as recorded by Phillimore, appears to distinguish the power of deprivation from a strictly visitatorial power but to ground both on the same basis, namely the metropolitanical jurisdiction of the archbishop. Gould J, concurring, said:

“There is no case, where a person hath power of visitation, but he hath also power of deprivation.”

This may imply that the power of deprivation is an incident of the visitatorial power, but it is consistent with the two powers having merely a common ground.

15. The appeal then proceeded in February 1700 in front of the Delegates, who held that the Archbishop of Canterbury had had jurisdiction in the cause and upheld his sentence. The Legal Sub-Committee does not know of any record of the reasoning of the Delegates or indeed whether any reasons were given.
16. Bishop Watson petitioned the House of Lords to have the denial of a prohibition set aside, but the petition was refused in March 1700. After the sentence of deprivation had been confirmed, the Crown, as having custody of the temporalities of the see during vacancy, brought proceedings in the Court of Exchequer against Dr Watson for possession of the bishop’s palaces and lands. Dr Watson defended the action on the ground that being a peer he could not be deprived by the archbishop. That plea was rejected by the Court of Exchequer and, on appeal in 1704, by the Exchequer Chamber. An appeal to the House of Lords was dismissed on the ground that it had been filed out of time.

The Church Discipline Act 1840

17. The Church Discipline Act 1840 (“the 1840 Act”) effected substantial change to the law of the Church of England relating to the discipline of clerks in holy orders, other than bishops. In general terms, its provisions in force in 1920 were not imported into the law of the Church in Wales: see Chapter I, section 5, of the Constitution. However, to the extent if any that the 1840 Act limited the archiepiscopal visitatorial powers, those limitations do form part of the law of the Church in Wales: see Chapter IX, Part VIII, section 43, of the Constitution.
18. For present purposes, the following provisions of the 1840 Act are the most relevant and sufficiently show how the discipline of clerics was henceforth to be dealt with in the Church of England.
 2. ... the Word “Bishop”, when used in this Act, shall be construed to comprehend “Archbishop”; and the Word “Diocese”, when used in this Act, shall be construed to comprehend all Places to which the Jurisdiction of any Bishop extends under and for the Purposes of an Act passed in the Second Year of the Reign of Her present Majesty intituled

An Act to abridge the holding of Benefices in Plurality, and to make better Provision for the Residence of the Clergy⁵.

3. And be it enacted, That in every Case of any Clerk in Holy Orders of the United Church of England and Ireland who may be charged with any Offence against the Laws Ecclesiastical, or concerning whom there may exist Scandal or evil Report as having offended against the said Laws, it shall be lawful for the Bishop of the Diocese within which the Offence is alleged or reported to have been committed, on the Application of any Party complaining thereof, or if he shall think fit of his own mere Motion, to issue a Commission under his Hand and Seal to Five Persons ... for the Purpose of making Inquiry as to the Grounds of such Charge or Report: ...

5. And be it enacted, That the said Commissioners or any Three of them shall transmit to the Bishop under their Hands and Seals the Depositions of Witnesses taken before them, and also a Report of the Opinion of the Majority of the Commissioners present at such Inquiry whether or not there be sufficient prima facie Ground for instituting Proceedings against the Party accused; ...

6. And be it enacted, That in all Cases where Proceedings shall have been commenced under this Act against any such Clerk it shall be lawful for the Bishop of any Diocese within which such Clerk may hold any Preferment, with the Consent of such Clerk and of the Party complaining, if any, first obtained in Writing, to pronounce, without any further Proceedings, such Sentence as the said Bishop shall think fit, not exceeding with Sentence which might be pronounced in due Course of Law; and all such Sentences shall be good and effectual in Law as if pronounced after a Hearing according to the Provisions of this Act, and may be enforced by the like Means.

Accordingly, a bishop or archbishop could hold an Inquiry, conducted by Commissioners, into allegations of clerical misconduct and, with the consent of the cleric, could proceed to sentence upon any misconduct that was found. Where such consent was not given, or the bishop or archbishop so chose, sections 7 to 12 provided for a hearing before the bishop or archbishop sitting with Assessors. In the alternative, section 13 provided that the bishop or archbishop might instead send the case for determination by the Court of Appeal of the Province. There followed provisions concerning procedure and appeal; then the following:

23. And be it enacted, That no Criminal Suit or Proceeding against a Clerk in Holy Orders of the United Church of England and Ireland for any Offence against the Laws Ecclesiastical shall be instituted in any Ecclesiastical Court otherwise than is hereinbefore enacted or provided.

⁵ The Pluralities Act 1838

25. And be it enacted, That nothing in this Act contained shall be construed to affect any Authority over the Clergy of their respective Provinces or Dioceses which the Archbishops or Bishops of England and Wales may now according to Law exercise personally and without Process in Court; and that nothing herein contained shall extend to Ireland.

19. Section 25 had the effect, therefore, that so far as disciplinary powers over inferior clergy (that is, other than bishops) were exercisable by the archbishop in court they were removed and replaced by the new statutory jurisdiction of the courts under the Act, but that so far as the disciplinary powers were exercisable by the archbishop personally and apart from a court they remained unaffected.
20. The provisions of the Constitution, set out above, have the combined effect (it is thought) that any disciplinary powers that were exercisable by the archbishop before the 1840 Act were imported into the law of the Church in Wales except (1) so far as they were strictly visitatorial powers—in which case, the limitation or removal of those powers effected by the 1840 Act was imported into the Constitution by Chapter IX, Part VIII, section 43—or (2) so far as they were limited or removed by the provisions of the Constitution itself.

In Re a Visitation of the Archbishop of York to the Dean and Chapter of York (1841) 2 Q.B. 1

21. In this case (“the *Dean of York’s* case”):

“The Archbishop of York, after the passing of stat. 3 & 4 Vict. c. 86 [the Church Discipline Act 1840], cited the dean and chapter of York ... to appear at a visitation of the dean and chapter, canonically to receive and submit to the archbishop's intended ‘metropolitan visitation, examinations, due corrections,’ &c., to exhibit their statutes, &c. if required, pay the due procurations, and further to do and receive what the business and nature of such a visitation require. He also appointed a commissary⁶ for holding the visitation in his absence, for correcting and punishing by ecclesiastical censures whoever should be contumacious, for administering articles in writing to the dean and chapter, and receiving their presentments and answers, and for adjourning and proroguing such visitation from time to time and place, and completing and dissolving the same, and for doing every thing else appertaining to the nature and quality of the said visitation.”

The visitation was a special rather than a general visitation and was in response to concerns about the financial affairs of York Minster. However, the specific visitatorial jurisdiction being exercised is not wholly clear—a point raised in argument before the

⁶ Dr Joseph Phillimore, Regius Professor of Civil Law at the University of Oxford and father and grandfather respectively of the authors of the first and second editions of Phillimore, *The Ecclesiastical Law of the Church of England*.

Court of the Queen's Bench. The Lord Chief Justice, Lord Denman, stated that the Archbishop visited as Ordinary⁷, but the citation referred to a "metropolitanical visitation". Further, *Halsbury's Laws*, in the passage already cited, states, "All deans and chapters are subject to the visitation of the archbishop of the province *jure metropolitico*, in addition to the bishop's visitation."

22. At first the visitation proceeded by way of a normal inquiry. Then, however,

"in answer to an interrogatory respecting the actual state of repair of several churches and chancels, the reverend Mr. Dixon, one of the canons, made a statement which was considered as a direct charge of simony against the dean. The dean was requested to attend in order to meet this charge: and he did attend. The commissary required him in the first place to purge himself of the contempt [for failing to appear at a prior stage of the visitation]; which he declined to do, and again absented himself, protesting against the proceedings, and saying, not by way of consent but of defiance, that Mr. Dixon might go on to prove his charge in his absence. The learned commissary, himself satisfied with the proofs which were then adduced, pronounced the charge established in several cases, and gave judgment that the dean should be for that offence, as well for contumacy, deprived of his office. Sentence to the like effect was afterwards solemnly pronounced by the archbishop."

23. The Dean moved for a prohibition. Two of the grounds of the motion are relevant: first, that the Archbishop had no visitatorial jurisdiction to deprive; second, that if a charge of simony were raised, it ought to have been dealt with by proceedings under the 1840 Act. The following submissions, recorded in the report, are set out at some length as they bear on the issues identified above.

"The charge of simony is of ecclesiastical cognizance; but the archbishop had no authority to try and sentence upon it on this visitation. No stress can be laid upon authorities affirming generally a visitor's power to deprive. The objection here is that there has been no regular assertion of such an authority. The visitor must proceed in his proper Court; if he assume an authority to act in any other way, he is acting wholly without jurisdiction. ... It is a fallacy to represent the present complaint as merely a point raised on a question of practice of a particular Court: the complaint is that the tribunal is not a legitimate tribunal at all. No such Court is known to the law of England.

...

⁷ Phillimore's Ecclesiastical Law states: "The archbishop has two concurrent jurisdictions, one as ordinary or bishop within his own diocese, the other as superintendent throughout his whole province of all ecclesiastical matters, to correct and supply the defects of other bishops."

The visitatorial Court seems, in fact, to be a mere Court of inquiry; the power of deprivation belonging to the bishop as Ordinary, not as visitor. ... The Act of Uniformity, 1 Eliz. c. 2, s. 23, provides that archbishops, bishops, &c., shall have full power by virtue of this Act 'to inquire in their visitation, synods, and elsewhere within their jurisdiction at any other time and place, to take accusations and informations,' &c., 'and to punish the same by' 'deprivation,' &c.: but this must be understood *reddendo singula singulis*; to inquire at their visitations, and to hear accusations and punish in their Courts: the object of this Act being to restore the law to the state in which it was before the reign of Mary.

... The manner of constituting the Court in the present instance shews how (probably from long disuse) the business of a visitation has been misunderstood. The archbishop in his citation announces that he will hold a 'metropolitan visitation' for the purpose of visiting the dean and chapter. If this had been a proper metropolitan visitation, the archbishop would have visited first the cathedral and diocese of York, and then the other dioceses of the province; and in the mean time all the inferior ecclesiastical jurisdictions would (in strictness) have been inhibited. The commission authorizing the commissary states the appointment of a "Metropolitan visitation over the dean and chapter," and puts the commissary in place of the archbishop for doing all things 'appertaining to the nature and quality of our said visitation.' What can be said to appertain to the nature of such a visitation as this? The authorities shew that the archbishop could no more visit the dean, metropolitanically, than he could so visit a rector. He could visit the dean only in his triennial visitation. All intermediate authority of this kind is, in modern times, made over to the archdeacon.

... In the last century Bishop Gibson failed in an attempt to revive the power of proceeding summarily: and the proceedings must now conform to the rules of the established Courts. Cases have arisen in which the summary and personal exercise of jurisdiction now contended for would have removed much difficulty in acting against offenders; but no such course has been attempted.

That deprivation takes place by regular sentence in Court appears from all the authorities. ...

Then, as to stat. 3 & 4 Vict. c. 86 [the 1840 Act]. This is clearly a 'proceeding' for an 'offence against the laws ecclesiastical': the language of the archbishop's sentence so treats it: and it therefore comes within sect. 23. Nor does it fall within the reservation in sect. 25, since the archbishop could not exercise this kind of authority personally, that is, individually, the presence of others being necessary to form his Court. Nor could he adjudicate here without 'process in Court.' It may be asked what this clause was meant to include, if not

cases like the present: but it may well apply to more ordinary subjects of discipline, such as residence and preaching. Simony is one of the causes termed by the writers on ecclesiastical practice ‘plenary’: Cockburn’s Practice, 7, c. 2, s. 5 (4th ed.); 1 Oughton’s Ordo, 21, tit. 7. And ‘plenary’ causes ‘are those in which the order and solemnity of the law are exactly observed; so that if there is the least infringement, or omission of that order, the whole proceedings are annulled:’ ‘summary are those in which such order is dispensed with’; Cockburn’s Practice, 6, c. 2, s. 2. The forms resorted to in this case, though imperfect, are an admission that some regular process was necessary. The proceeding in question is sufficiently the act of a ‘Court’ to fall within sect. 23, and to be the subject of prohibition. ...”

24. The Archbishop of York relied, among other matters, on *Lucy’s* case, on the basis that “an archbishop has the same power over a dean within his diocese as over a bishop in his province”. As for the 1840 Act, it was submitted that it did not affect the visitatorial powers.
25. The judgment of the Court was delivered by Lord Denman C.J. He considered first whether the case involved a “criminal suit or proceeding” within the meaning of the Act and for the purposes of section 23:

“But is this a criminal proceeding, or is it merely an incidental fact arising out of the visitation, in the course of which it is brought to the Ordinary’s knowledge, and, properly, in the discharge of that duty, inquired into by him, but not instituted as a criminal proceeding? The answer appears to be that, as soon as the visitor proceeds to examine the proofs of an ecclesiastical offence committed by a clerk for the purpose of punishment by deprivation, more especially, as in this case, at the instance of an accuser who avails himself of the aid of a professional advocate, a criminal proceeding is undoubtedly instituted and in full progress.”

Lord Denman considered next whether the matter fell within the proviso in section 25, that is, whether the Archbishop was exercising personal powers that were exercisable without process in a court. Having remarked on the lack of clear authority for such a personal power, he continued:

“We are aware that the jurisdiction of visitors has been described in most comprehensive terms by common lawyers of high authority. Lord Holt himself is cited as allowing them an arbitrary power, in his often reported judgment on the case of *Philips v. Bury* (1 Ld. Raym. 5). ... Scarcely any other remark upon it requires to be made, than that the case arose out of the visitation of a charitable foundation. Holt’s strong language is all applied to that case. The founder might do as he would with his own: the parties deriving benefit from his endowment must abide by the conditions which he has annexed. *Cuius est dare ejus est*

disponere. The Bishop of St. David's v. Lucy, where the Archbishop of Canterbury gave sentence of deprivation against one of his suffragan bishops for simony and other ecclesiastical offences, was supposed to shew that power to reside in the breast of the archbishop without any rules or forms. Prohibition was claimed, on the ground that the citation was to appear at Lambeth, not in the usual place of holding the Metropolitan Court, and it was answered here by Lord Holt and his brethren, that the archbishop 'may hold his Court where he pleases'; that 'the Spiritual Court might proceed to punish him for any offence done against the duty of his office as bishop', adding, 'as the clergy are under different rules and duties, it is but reasonable that if an ecclesiastical person offend in his ecclesiastical duty, he should be punishable for it in the Ecclesiastical Court.' These expressions all occur in Salkeld's report (1 Salk. 134). The bishop was called by citation to answer for his delinquency. The form and mode of proceeding were objected to in no other particular than the place of sitting. We scarcely need say that this case supplies no evidence of the right to proceed personally without process in Court. [emphasis added]"

Lord Denman observed that another case much cited in the books, *The Bishop of Kildare v The Archbishop of Dublin* (1724) (1 Bro. P.C. 179, 2d ed., was not authority for the proposition that the archbishop as visitor had lawful power to deprive personally, and without process in Court. He suggested that the language used in that case and in *Phillips v Bury* might have led to the belief that the bishops' power of deprivation consequent on a visitation was personal, and he continued, "The opinion is thus accounted for; but the law can only be established by practice and precedent. Both are wanting here." The Court's conclusion on this point was as follows:

"Some of the books speaks of a Court of visitation; and the phrase is not incorrect. It is an authority acting with certain forms of procedure and inquiry, suspending its proceedings from time to time by adjournment, making certain orders and decrees. Whether or not these acts are of necessity judicial, those done in the course of establishing a charge against a party accused bear that undoubted character.

The authority now challenged declared the party in contempt for withdrawing himself after citation, and required him to purge his contempt before he could be heard in his defence against charges preferred. It proceeded then with the examination of witnesses in support of those charges, and finally adjudged him guilty, and awarded sentence of deprivation. All these are assuredly the acts of a Court. It is admitted that they may be appealed against; and we are at a loss to conceive an appeal against any proceedings but those of a Court. That Court, however, the late statute has divested of all such jurisdiction. It is not within the saving clause, which leaves untouched the Ordinary's power over his clergy as it might then be exercised by law without process in

Court, because this power does not appear to have been ever exercised by law. We are constrained to conclude that the most reverend prelate, in so far as he proceeded at his visitation to deprive the dean, has acted without jurisdiction. [emphasis added]”

26. The Court dealt, finally, with the argument that, as sentence had already been passed, there were no subsisting proceedings that could be prohibited. This argument was rejected. Among the reasons given by Lord Denman CJ was the following:

“The dean could not apply [for a prohibition] before sentence; for the sentence of deprivation is the only thing done which is beyond the jurisdiction of the archbishop. Up to that point he had unquestionably power; for it was his duty to inquire with a view to ulterior proceedings ...”

Writing of this case and of another, Phillimore states at p. 1049:

“The joint result of these two cases seems to be that the bishop may visit and may inquire and may make orders; and that contumacy at the visitation or disobedience to the orders of the visitor will be the ecclesiastical offence of disobedience to the lawful orders of the ordinary, which will have to be punished by separate and substantive proceedings.”

27. The following observations are made on and arising from the *Dean of York's* case.
- 1) The case evidences the confusion that existed even then as to the visitatorial jurisdiction. This appears from the submissions for the Dean (whether they were right or wrong) and from the manner in which the court treated the visitation as that of the Ordinary. The visitation was purportedly metropolitcal. The bishop of the diocese, though ordinary of the diocese, is not the ordinary of the cathedral, but he or she has rights of visitation of the cathedral as of other churches in the diocese and is said to visit *jure ordinario*. In *Phillpotts v Boyd*⁸ (1875) 6 L.R. 435, Lord Hatherley, delivering the judgment of the Privy Council, said at 450:

“It is not, and indeed it could not be, disputed that, according o the General Ecclesiastical Law, ‘all deans and chapters are subject to the visitation of the bishop, *jure ordinario*, and of the archbishop of the province, *jure metropolitico*’ (*Burn's Eccl. Law*, [*Phillimore's* Ed. 1842], vol. ii. p. 93).”

Dr Peter Smith adverts to the distinction⁹:

⁸ The case concerned a visitation of Exeter Cathedral by the Bishop of Exeter. The actual decision in the case was that, although the bishop, in the exercise of his visitatorial powers, could not *in his discretion* order an alteration in the fabric of the cathedral, it was within his jurisdiction to find that sculptures (in the reredos) had been unlawfully erected and *on that definite legal ground* to order their removal.

⁹ “Points of Law and Practice Concerning Ecclesiastical Visitations”, (1991) 2 Ecc LJ 189

“[A]n archbishop visiting *jure metropolitico* has the same visitatorial powers that any visitor possesses in right of his office, though his jurisdiction stemming from the superior nature of his position may encompass persons and places not subject to an inferior jurisdiction. An archbishop, however, may be content to exercise his visitatorial powers as diocesan ordinary, and in that case, though he is an archbishop, he will not be visiting *jure metropolitico*, but *jure ordinario*.”

- 2) The visitatorial power is one of inquiry and includes the power to give orders for the correction of abuses and for the good management of the place visited.
- 3) However, the visitor’s power to discipline for ecclesiastical offences was exercisable only in court proceedings: either by a trial of offences discovered on the visitation or by way of separate and substantive proceedings for the offence of disobedience to the lawful orders given by the visitor. Thus the *Lucy* case was considered to involve a decision of the Archbishop of Canterbury’s court.
- 4) That power, as regards inferior clergy, was removed by the 1840 Act. As the 1840 Act has no application to the Church in Wales, the question is whether the Archbishop of Wales retains a curial jurisdiction under the Constitution.
- 5) Although the proviso in section 25 of the 1840 Act preserved any power exercisable by the archbishop or bishop personally and otherwise than through a court proceeding, no such *personal* power of deprivation was proved to have been ever exercised by law. The reasoning in the case is consistent with the limitation of the power to non-contentious cases. The visitatorial power to make inquiry and to give orders was unaffected by the Act.

Conclusions

(1) *Must a Visitation be general, or may it be specific?*

28. Phillimore speaks of archiepiscopal visitations as being general. At pp. 1045-6 it states:

“By a constitution of Otho, archbishops and bishops shall go about their dioceses at fit seasons, correcting and reforming the churches, and consecrating and sowing the word of life in the Lord’s field. And, regularly, the order to be observed therein is this: In a diocesan visitation, the bishop is first to visit his cathedral church; afterwards the diocese. In a metropolitanical visitation, the archbishop is first to visit his own church and diocese; then in every diocese to begin with the cathedral church and

proceed thence as he pleases to the other parts of the diocese. Which appears from abundance of instances in the ecclesiastical records, as well of papal dispensations for the archbishop to visit without observing the said order, as of episcopal licences for the visitor to begin in other parts of the diocese than in the cathedral church.

And this sprang from the precept of the canon law, which requires that the archbishop willing to visit his province shall first visit the chapter of his own church and city, and his own diocese; and after he has once visited all the dioceses of his province, it shall be lawful for him (having first required the advice of his suffragans, and the same being settled before them, which shall be put in writing that all may know thereof) to visit again, according to the order aforesaid, although his suffragans shall not assent thereunto. And the like form of visiting observed by the archbishops shall be observed also by the bishops in their ordinary visitations.”

29. Consistently with this, again with clear reference to general visitations, the same text states at p. 66:

“Our own Ecclesiastical History furnishes several instances of metropolitanical visitations in the times which immediately followed the Reformation. Archbishop Cranmer was the first to exercise this ‘*jus metropolitanum*’. In 1560, Archbishop Parker visited the dioceses within the province of Canterbury. In 1576, Archbishop Grindal, and in 1583 Archbishop Whitgift, held similar visitations.”

30. That an archiepiscopal visitation was necessarily general was the basis of the Dean’s submissions in the *Dean of York* case: see paragraph 23 above. The Court of Queen’s Bench did not address that submission, because it treated the visitation as made by the Archbishop as Ordinary. The case does not provide any clear support for the existence of an archiepiscopal power to make special visitations. The Legal Sub-Committee has not found unequivocal legal authority for the existence of such a power.

31. Nevertheless, it is considered probable that such a right does exist.

- 1) The archiepiscopal duties and powers, as summarised in *Halsbury’s Laws of England*, seem to require a power to visit in order to make inquiry of any particular “trouble-spots”. In particular, archbishops of the Church of England had a long-established power to summon diocesan bishops to answer charges in an archiepiscopal court; it makes little sense to suppose that an archbishop, having such a power, could not first make inquiry, if convenient by commissaries. The fact that a visitation of the province will usually involve going around the dioceses in turn need not preclude such a power of special visitation.
- 2) A precedent for such a special visitation appears to exist in the facts that eventually gave rise to the case of *Bishop of St David’s v Lucy*. It appears that

the Archbishop of Canterbury had made a special visitation of the diocese of St David's in response to concerns that had been expressed concerning the conduct of the bishop.

3) Dr Peter Smith, in the article cited, states:

“In addition to the regular visitation undertaken by an ordinary of the parishes and churches of his territory, he may make a special or extraordinary visitation to inquire into a particular matter which has come to his attention. He may do this either in his own person or by means of an official or commissary. Such a special visitation may be in addition to his regular visitation.”

The authority cited for the power of the ordinary to make a special visitation is *Phillpotts v Boyd*, cited above, which did indeed concern a special (episcopal) visitation, in that case of Exeter Cathedral. The Legal Sub-Committee considers that the same necessity, namely to inquire into particular matters, applies equally to archiepiscopal oversight and therefore indicates that archiepiscopal visitatorial powers are unlikely to be more limited than episcopal visitatorial powers.

4) Although it does not constitute a binding authority, it is of interest to note that in December 2011 the Archbishop of Canterbury, The Most Revd Dr Rowan Williams, commenced a (special) visitation of the Diocese of Chichester to inquire into safeguarding matters. The Archbishop's authority was exercised in accordance with Canons C17 and G5. Canon C17 provides in part:

“2. The archbishop has throughout his province at all times metropolitanical jurisdiction, as superintendent of all ecclesiastical matters therein, to correct and supply the defects of other bishops, and, during the time of his metropolitanical visitation, jurisdiction as Ordinary, except in places and over persons exempt by law or custom.”

Canon G5 provides:

“1. Every archbishop, bishop and archdeacon has the right to visit, at times and places limited by law or custom, the province, diocese or archdeaconry in question, in a more solemn manner, and in such visitation to perform all such acts as by law and custom are assigned in that behalf for the edifying and well-governing of Christ's flock, that means may be taken thereby for the supply of such things as are lacking and the correction of such things as are amiss.

2. During the time of such visitation the jurisdiction of all inferior Ordinaries shall be suspended save in places which by law or custom are exempt.”

Those Canons reflect the general law that was applicable in 1920 and remains applicable in the Church in Wales. The Archbishop of Canterbury clearly understood the law as reflected in Canon G5, paragraph 1, to permit a special visitation, and this indicates that his interpretation of the implications of the law as reflected in Canon C17 accords with that of the Legal Sub-Committee.

32. It is thought that any archiepiscopal visitation, other than a general (provincial) visitation, will only be of a diocese (or, rarely, of a dean and chapter). A visitation of any lesser institution will be a matter for the diocesan bishop. If the diocesan bishop is unable or unwilling to take necessary action, an archiepiscopal visitation of the diocese, suitably limited if need be, will be appropriate. For the avoidance of doubt, the Legal Sub-Committee does not consider that any difficulty arises from the fact that the province contains entities that did not exist as at 30 March 1920 (such as, for example, two of the six dioceses) and therefore could not have been visited by the Archbishop of Canterbury: the law is general, relating to the scope of the metropolitanical jurisdiction, though its application is contingent, varying with the particular entities to which that law falls to be applied from time to time.

(2) What is the immediate effect of a Visitation?

33. The effect of an archiepiscopal visitation is to inhibit (suspend) all inferior jurisdictions. As this will usually be inconvenient, an exemption will ordinarily be appropriate, so as to limit the effects, or even the scope, of the visitation. Phillimore states at p. 1050:

“In the bishop’s triennial, as also in regal and metropolitanical, visitations, all inferior jurisdictions respectively are inhibited from exercising jurisdiction, during such visitation. ...

However, it has not been unusual, especially in metropolitanical visitations, to indulge the bishops and inferior courts, in whole or in part, in the exercise of jurisdiction, pending the visitation. Thus, we find relaxations granted, pending the visitation, by Archbishop Abbot; and by others, an unlimited leave or commission, to exercise jurisdiction, or proceed in cases, notwithstanding the visitation; and elsewhere, a leave to confer orders, confirm, grant fiats for institution, institute, or correct, whilst the inhibition continued in other respects.”

34. A modern example is provided by the Archbishop of Canterbury’s visitation of the Diocese of Chichester. The Instrument of Visitation provided in part:

“The Archbishop of Canterbury hereby:

...

2. Directs that during the period of the Visitation, all issues relating to Safeguarding within the Diocese shall be dealt with solely by those

persons to whom the Archbishop may from time to time make delegation in writing, and by no other

3. Mandates that the Visitation shall be limited in its scope to

3.1 Examining progress made in implementation of and actions taken upon the Diocesan Safeguarding Guidelines ... [etc];
and

3.2 Making such further recommendations as may appear necessary and expedient

4. Directs that during the period of such Visitation the inhibition provided by Canon G5 Paragraph 2 shall have effect only in relation to the matters referred to in Articles 2 and 3 above.

35. The consequence of automatic inhibition is that, upon the commencement of an archiepiscopal visitation of a diocese, all inferior clergy *including the diocesan bishop* are, subject only to exemption granted by the citation, inhibited from performing their duties and functions. (So, too, are other functionaries, such as diocesan chancellors.) No “suspension” of such persons is required.

(3) What are the Archiepiscopal Visitorial powers?

36. The essential nature of a visitation is that of an inquiry. Dr Peter Smith, in the article cited, has summarised the traditional aims of ecclesiastical visitations as follows:

- “1. to inquire into the lives and behaviour of the clergy, their qualifications, and the manner in which they discharged their duties with respect to the cure of souls;
2. to inspect church buildings, ornaments and utensils necessary for divine service, and to correct any defects found;
3. to search out and punish crimes generally;
4. to check on the practical administration of the parish;
5. to obtain information about the state of the diocese, etc;
6. for the purpose of preaching and teaching;
7. to exercise the ministerial duty of admitting churchwardens to office.”

See also Principle 23.1 of the Principles of Canon Law Common to the Churches of the Anglican Communion (Anglican Consultative Council, 2nd edition, 2022): “Visitation enables the exercise of a supervisory jurisdiction or a pastoral ministry, including enquiry into and assessment of the condition of an ecclesiastical entity.”

37. The scope of the inquiry will usually be set out clearly in Articles of Inquiry. Although the Archbishop may visit personally, he will generally delegate the conduct of the visitation to one or more commissaries. (In the visitation of the Diocese of Chichester, the visitation was conducted by a bishop and a chancellor as commissaries. See also the *Dean of York's* case.)
38. The remaining question concerns the Archbishop's disciplinary powers.¹⁰
40. The effect of the *Dean of York's* case is to confirm that the power to discipline clergy is not to be regarded as a visitatorial power. It was, rather, a power to be exercised by the archbishop in court proceedings distinct from the visitation. After the coming into force of the 1840 Act, that power could be exercised only over bishops, all other clergy being subject only to the ecclesiastical courts established by the 1840 Act. As the 1840 Act does not apply to the Church in Wales, that limitation also does not apply. The question is therefore what, if any, non-visitatorial disciplinary powers the Archbishop has over inferior clergy.
41. It is considered that the answer to this question is provided by section 8 of Chapter IX of the Constitution. This establishes the Disciplinary Tribunal and two Courts, namely the Diocesan Court of each diocese and the Provincial Court. Chapter IX does not expressly confer *exclusive* jurisdictions on the Disciplinary Tribunal and those two Courts. However, the terms of section 8(2) do not admit of the existence of any other Court. Therefore the archiepiscopal powers that would formerly have been exercisable by the archiepiscopal courts, including disciplinary powers, can no longer be so exercised. This is consistent with the remark of Archbishop Green in *The Constitution of the Church in Wales* (1937), p. 211, that "the Welsh Bishops covenanted with the Clergy and Laity of the Church in Wales to delegate their judicial functions as far as possible to legal experts". (The qualifications he appends to this remark, relating to the words "as far as possible", do not affect this point.)
42. It is true that a question remains as to the meaning and application of section 8(3) of Chapter IX. Any power, as therein mentioned, that was exercisable by the Archbishop in a court is, in our opinion, caught by the words, "Subject to the provisions of the Constitution", for those provisions do not preserve any such archiepiscopal court. It is possible that the powers mentioned in the subsection can be exercised personally by the Archbishop and Diocesan Bishops with the consent of those subject to the sentence. Beyond that, the existence of a purely personal power (that is, other than one exercisable in court) may be treated with circumspection, as it was by the Lord Chief Justice in the *Dean of York's* case.
43. In any event, and even if (contrary to our view) the Archbishop has a subsisting power to impose disciplinary sanctions on inferior clergy, we are clearly of the opinion that it would be inappropriate to purport to exercise such a power. The correct course is clear. If, upon a visitation or otherwise, it appears to the Archbishop (or, indeed, to a Diocesan Bishop) that there are grounds for prosecuting a cleric for an ecclesiastical offence, the matter ought to be referred to the Disciplinary Tribunal.

¹⁰ As has been observed, no powers of suspension are required, as the visitation automatically inhibits the exercise of inferior functions.

Professor Norman Doe
His Honour Judge Andrew Keyser KC (Chair)
The Revd Canon Rebecca Stevens
The Very Revd Nigel Williams

26 June 2023