

IN THE CHURCH IN WALES

IN THE MATTER OF THE ELECTION OF A BISHOP OF LLANDAFF

ADVICE OF THE LEGAL SUBCOMMITTEE

Introduction

1. The Legal Subcommittee has been instructed to advise the Provincial Secretary, in his capacity as Archbishop's Registrar and Secretary to the Llandaff Electoral College, in respect of three complaints ("the Complaints"; respectively, "the First Complaint", "the Second Complaint" and "the Third Complaint") that have been made in respect of the current process for the appointment of a new Bishop of Llandaff.
2. This Advice is concerned only with the appropriate legal response to the Complaints. It does not constitute an adjudication consequent upon an investigation of fact concerning what transpired at the meeting of the Electoral College mentioned below. Nor does it constitute advice as to the merits or demerits of particular persons for appointment as Bishop of Llandaff. In the interests of clarity and understanding, this Advice sets out significant parts of the legal background and factual narrative; however it does not explore matters falling outside the terms of the Complaints. For the avoidance of doubt, the Legal Subcommittee is not privy to any information concerning the proceedings of the meeting of the Electoral College that has not already been placed in the public domain.

Background

3. The Church in Wales maintains and continues the threefold order of catholic ministry, namely bishops, priests and deacons. The particular ministry of a bishop is described

in the Charge in the Order for the Ordination of Bishops in *The Book of Common Prayer for use in the Church in Wales* (1984):

“A bishop is called to be a chief minister and pastor. You are to be the centre of unity, a teacher of the Faith, and a guardian of discipline in the Church. You are to watch over the people committed to your charge, and, after the example of the chief Shepherd, to know the flock and to be known by them. You are to lead and guide the priests and deacons in your care, and to be faithful in ordaining and sending out new ministers. You are to proclaim the gospel of our Lord Jesus Christ, and to be the chief minister of the sacraments of the New Covenant. You are to confirm the baptised, and guide the people of God in the way of eternal life.”

4. Provision for the Order of Bishops is made in Part I of Chapter V of the Constitution of the Church in Wales (“the Constitution”). Section 1 provides:

“The Archbishop and the Diocesan Bishops shall sit and act as representing the ancient Provincial Synod and, subject to the Constitution, shall retain and exercise all the authority and powers of and belonging from of old to a Provincial Synod.”

5. The Complaints arise out of matters ensuing upon the vacancy created by the retirement of the Most Reverend Dr Barry Morgan as Bishop of Llandaff on 31 January 2017. At the time of his retirement Dr Morgan was also the Archbishop of Wales.
6. The election of a bishop in the Church in Wales is governed by Part III of Chapter V of the Constitution and by Regulations made in that regard by Governing Body in exercise of its powers under Chapter II of the Constitution. Sections 10 and 11 of Part III of Chapter V provide as follows:

“10.

- (1) *The election of a Diocesan Bishop shall be by a Bishop’s Electoral College.*
- (2) *The Bishop’s Electoral College shall consist of:*
 - (a) *the Archbishop and the Diocesan Bishops;*
 - (b) *the six clerical and the six lay Episcopal Electors from the diocese of which the see is vacant; and*
 - (c) *the first three clerical and the first three lay Episcopal Electors on the list of each of the other dioceses.*

- (3) *The Archbishop or in his absence the Diocesan Bishop next in order of precedence and willing to act, shall be President of the Bishop's Electoral College.*
- (4) *The President shall appoint a Facilitator for each election whose role will be to assist the vacant Diocese in its preparations for the election including the production of a Diocesan Profile and convening the Diocesan Episcopal Electors to consider the needs of the Diocese and to consider potential candidates for nomination. The Facilitator will be authorised to begin work after the retiring Bishop has given notice of his intention to do so under section 12.*

11.

“Subject to the Constitution, the Bishop's Electoral College shall make rules as to the method and manner of voting for and electing a Bishop.”

7. In mid-December 2016 the Archbishop's Deputy Registrar gave notice to the members of the Electoral College that the Electoral College would meet on 21 February 2017 (“the Meeting”) to elect a new Bishop of Llandaff.
8. In accordance with section 10(4) of Part III of Chapter V of the Constitution, the Episcopal Electors from the vacant diocese, the Diocese of Llandaff, produced a *Diocesan Profile* and a *Person Specification for the next Bishop of Llandaff* and considered potential candidates for nomination. Episcopal Electors from other dioceses also considered potential candidates for nomination. The Province produced a *Note on the Provincial Perspective*. The documents produced were provided to the Episcopal Electors in advance of the Meeting.
9. Also circulated to the Episcopal Electors in advance of the Meeting were draft Rules for the conduct of the Meeting, proposed for use in accordance with section 11 in Chapter V of the Constitution. (The draft Rules were described as draft Regulations, but it is convenient to use the terminology of section 11, if for no other reason than to avoid confusion with the Regulations made under Chapter II of the Constitution.) The draft Rules were in all material respects in the form of those adopted at previous meetings of the Electoral College. Draft Rule 1 provided:

“The meeting of the College is private and the proceedings are confidential. No member of the College nor the Secretary nor the Scrutineers nor the

Administrative Assistants nor the Translator shall at any time disclose to anyone else any information about nomination lists, the discussion of candidates nor the outcome of ballots.”

Draft Rule 3 provided (the bold script is in the original):

“The members of the College, the Secretary, the Scrutineers, the Administrative Assistants and the Translator shall make a declaration of confidentiality in respect of all the proceedings of the College, in the following form:

‘Yr wyf yn ddifrifolac yn ddidwyll yn datgan na fyddaf yn datgelu I unrhyw un unrhyw wybodaeth am restrau enwebiadau, trafodaethau am ymgeiswyr na chanlyniadau etholiadau.’

‘I solemnly and sincerely declare that I will not disclose to anyone any information about nomination lists, the discussion of candidates nor the outcome of ballots.’

(Already in a press release on 8 February 2017 the Province had made clear that, in accordance with its consistent practice, the proceedings of the Electoral College would be confidential.) Draft Rules 4 and 5 prohibited the use of recording devices or social media during the Meeting and provided that all voting papers, lists and personal notes should be destroyed at the close of the Meeting. The draft Rules made provision in respect of discussions, nominations and voting; we shall refer to these matters briefly below.

10. The Meeting commenced on 21 February 2017. The Scrutineer has certified that at the commencement of the Meeting the draft Rules were agreed unanimously and adopted. All those present made an oral declaration in the terms of Rule 3, and each of them signed a written declaration in the same terms.
11. It is convenient to refer to the following Regulations concerning the election of a new bishop.

“19. The Bishop’s Electoral College shall not be entitled to delegate its power of electing a Bishop.

20. The meeting shall take place in the Cathedral of the vacant see or another place within the Diocese to be identified by the President.

21.1 On the day, and at the time and place appointed for the election, and after celebration of the Holy Communion in the cathedral, the President shall

take the chair and declare the College to be assembled for the election of the Bishop of the diocese. Such meeting shall be private.

21.2 The voting shall be by ballot.

21.3 There shall not be a vote by orders.

21.4 The President shall not have a second vote.

21.5 Any dispute as to a vote shall be referred to the President whose decision shall be final.

22. If a person receives two-thirds of the votes of those present and voting he shall be declared by the President to be the Bishop-Elect.

23. If at the close of the meeting, which shall not extend beyond three consecutive days, no person shall have received two-thirds of the votes of those present and voting, the right to fill the vacancy shall pass to the Bench of Bishops, unless and until the Governing Body shall have otherwise determined.”

12. In summary, the procedure for meetings of the Electoral College, in accordance with the Regulations and the Rules, is as follows. Initial discussion leads to the production of a list of candidates. The names placed on the list will often have been identified as likely candidates beforehand—for example, by virtue of the process mentioned in section 10(4) of Chapter V—though new names might emerge in the course of the discussion. The support staff will circulate to the electors biographical information concerning the candidates; members of the Electoral College are encouraged to provide such information in advance in respect of persons whom they think likely to be nominated. There will then be a discussion concerning the candidates. Any member of the College who has been nominated will withdraw during the discussion but will return for the purpose of casting his or her vote. When the discussion has concluded, there is a short period of silence for quiet reflection and prayer. There then follows a secret ballot. Each member of the College is required to signify one of three options on a voting paper: that he or she supports a particular nominee; that he or she does not approve of any of the nominees; or that he or she does not wish to vote. The votes are then counted. If no candidate on the list attains two-thirds of the votes of those present and voting, the process begins again with the drawing of a new list of nominations; the names on the new list may or may not be the same as those on the original list. The

procedure is repeated until a candidate attains two-thirds of the votes of those present and voting or until the meeting concludes without any candidate being elected.

13. The Meeting occupied 21, 22 and 23 February 2017. It closed on the afternoon of 23 February. No candidate had received two-thirds of the votes of those present and voting.
14. On 24 February 2017 a report appeared on the on-line publication *Christian Today*. The report purported to give information as to the results of voting at the Meeting and it named one person as a candidate at the Meeting. On account of the confidentiality of the Meeting, we have not received and have not sought confirmation of the accuracy of the information concerning voting, though we have no reason to suppose it to be inaccurate. It has been publicly confirmed that the individual named in the report was a candidate considered at the Meeting. It is a reasonable inference that someone present at the Meeting had broken his or her obligation of confidentiality.
15. In accordance with Regulation 23, where the Electoral College does not elect a bishop, the right to appoint a bishop passes to the Bench of Bishops. On 2 March 2017 a Provincial press release was issued in the following terms:

“Under the provisions of the Constitution of the Church in Wales, the right to fill the vacancy has passed to the Bench of Bishops, and the Bishop of Swansea & Brecon, as the Senior Bishop and President of the Electoral College, has determined that there should be a process of consultation before names for possible appointment are considered. The consultation is intended to focus upon the ongoing and future needs of the Diocese of Llandaff and its communities and the needs of the wider church in the life of which a new Bishop will also have an important role. Those consulted will be invited to suggest names of individuals who might be considered suitable for appointment as Bishop of Llandaff, and names must be suggested in time for the next meeting of Bishops which begins on March 14th.

In the Diocese of Llandaff those being consulted are: (1) Members of the Electoral College, (2) Members of the Diocesan Standing Committee, (3) The Area Deans. In the remaining five Dioceses, Bishops are consulting: (1) The members of the Electoral College, (2) Members of the Diocesan Standing Committee.

In addition to those being directly consulted, others may send (brief) e-mails to their Diocesan Bishop (please send them to Bishop John Davies for the Diocese of Llandaff).

When they meet, the Bishops will consider all the names suggested to them as potential candidates for appointment in the hope that a suitable candidate can be identified. Unlike the Electoral College process, there is no fixed timetable for an appointment process. However, the Bishops would wish to announce any appointment made as soon as all necessary formalities are finalised.

The Bishops continue to ask for the prayers of the church both for the Diocese of Llandaff and for their own work as they continue to discharge their responsibility for discerning the person whom they believe will serve not only the Diocese of Llandaff but also the wider church in the office of Bishop.”

16. The Bench of Bishops met on 14, 15 and 16 March 2017. Upon the conclusion of their meeting, the following Provincial press release was issued:

“The process to appoint the next Bishop of Llandaff will continue to a further stage, following the March meeting of the Bench of Bishops of the Church in Wales (March 14-16).

The Bishops met to discuss a possible appointment, having consulted widely within their dioceses. They will now meet with short-listed candidates.

The Bishop of Swansea and Brecon, John Davies, who is the senior bishop, thanked everyone who had taken part in the consultation, and also all those who had supported the Bishops with their prayers during the period of consultation and discussion.

He said, ‘We received a wide variety of responses to the consultation, and heard from a particularly large number of people suggesting possible candidates. We have now considered those responses and, after a lengthy but productive meeting, we are ready to move to the next stage in the appointment process. We are very grateful to all those who have held us and the Diocese of Llandaff in their prayers at this time and we hope they will continue to do so.’

The appointment of the next Bishop of Llandaff fell to the Bench of Bishops after a meeting of the Electoral College in February ended with no candidate receiving enough votes to be declared Bishop-Elect.

During their Bench meeting, the Bishops chose not to give further consideration to any candidate nominated at the Electoral College in order not to compromise the integrity of the College process.

Bishop John said, ‘Our unanimous view was that to consider further all or any of the candidates nominated at the College, none of whom achieved the required majority of votes to be elected, would call into question the integrity of the Electoral College process, and that, were any one of the candidates offered to the College to be subsequently appointed, that would be unfair to the other candidates.’

Unlike the Electoral College process, there is no fixed timetable for an appointment process. However, the Bishops would wish to announce any appointment made as soon as all necessary formalities are finalised.”

17. On 17 March 2017 the Senior Bishop wrote a letter marked “Strictly Private and Confidential” to each of those who had been nominated at the Meeting and who, in consequence of the decision of the Bench of Bishops on the previous day, would not be further considered. It is in the public domain that there were at least two such persons; the Legal Subcommittee does not know whether there were more than two. One of the recipients published the letter that he had received and his reply dated 18 March. The reply made an allegation that homophobic comments had been made at the Meeting.
18. On 21 March 2017 the Senior Bishop issued a statement in response to the allegation of homophobia:

“The meeting of the Electoral College for the next Bishop of Llandaff was confidential and the Church in Wales will not comment on speculation about the nomination and discussion of candidates. However, we strongly deny allegations of homophobia in the process. Neither homosexuality nor participation in a civil partnership are (sic) a bar to any candidate being either nominated or elected as a Bishop in the Church in Wales. Moreover, this was made clear to members of the Electoral College by its President, the Bishop of Swansea and Brecon.”

The Senior Bishop reiterated these matters in a radio interview on 26 March 2017, when he also stated that more than one gay candidate had been considered at the Electoral College and that no complaints of homophobia had been made in the course of the Meeting.

The Complaints

19. The First Complaint was made on 24 March 2017, one month after the conclusion of the Meeting, by four of the twelve Episcopal Electors from the Diocese of Llandaff. (A fifth has since asked to be considered a co-signatory.) It is in the following terms:

“We the undersigned Llandaff electors wish to make a formal complaint about the recent process to appoint a Bishop of Llandaff, regarding the following:

We object to the raising at electoral college of the matter of sexuality or civil partnership status, in direct contravention of the Church in Wales's own policy that sexuality or civil partnership status is not a bar to appointment as a Bishop.

We consider that this action was deeply inappropriate, and prejudiced the electoral college proceedings so as to render them invalid.

We ask that this complaint be passed to the correct person who can undertake investigation and response. As the complaint is materially relevant to the outcome of the electoral college, we ask that the electoral college of February 2017 be declared invalid, and any further appointment be stayed until such time as this complaint has been investigated and satisfactorily resolved. Please would you be kind enough to

- 1. acknowledge this complaint*
- 2. let us know what procedure will be used for investigation*
- 3. let us know the timescale we can expect for investigation."*

20. The Second Complaint was made on 28 March 2017 by four further individuals from the Diocese of Llandaff. Although they describe themselves as and are members of the Llandaff Diocesan Standing Committee, they have made it clear that they write in their personal capacity. The Second Complaint is in the following terms:

"We the undersigned, members of the Llandaff Diocesan Standing Committee, wish to lodge a formal complaint about the process to appoint a new bishop of Llandaff, arising from the press release which states that a short list of candidates has been drawn up (C in W website 16th March 2017) and quotes Bishop John as saying:

'Our unanimous view was that to consider further all or any of the candidates nominated at the College, none of whom achieved the required majority of votes to be elected, would call into question the integrity of the Electoral College process, and that, were any one of the candidates offered to the College to be subsequently appointed, that would be unfair to the other candidates.'

It is the duty of the Bench of Bishops to appoint the most suitable candidate i.e. the person who best fits the diocesan profile and the person specification as determined by the Electoral College, and the Note on a Provincial Perspective given to electors. These documents were made available to the Standing Committee prior to the meeting with Bishop John on March 8th as part of the consultation process.

It is unreasonable and unfair of the Bishops to have excluded from the shortlist those candidates nominated for consideration by the Electoral

College, who would be among those most likely to match the agreed criteria. The failure of any candidate to obtain the necessary two thirds majority of votes does not imply that there were objections to those candidates.

By their exclusion of qualified individuals the bishops are failing in their duty to appoint the best candidate, each of whom should be considered on her/his merits.

We request that no appointment be made until this complaint has been investigated and satisfactorily resolved, or the decision to exclude these candidates is revoked.

Please acknowledge receipt of this complaint, pass this complaint to the appropriate person(s) to investigate and respond, inform us of the procedure that will be used to investigate this complaint, and the likely timescale.”

21. The Third Complaint was made late on the evening of 30 March 2017, a full fortnight after the announcement by the Bishops on 16 March, by five Area Deans in the Diocese of Llandaff. It is in the following terms:

“As a group of Area Deans serving in the Diocese of Llandaff we write to complain about an irregularity in the consultation process announced in a Church in Wales press release on March 2nd 2017. The consultation included the Area Deans of Llandaff.

The statement read: ‘Those consulted will be invited to suggest names of individuals who might be considered suitable for appointment as Bishop of Llandaff, and names must be suggested in time for the next meeting of Bishops which begins on March 14th.’

Other interested parties were also invited to send emails to their Diocesan Bishop or, in the case of Llandaff Diocese, Bishop John Davies, with suggestions of names for consideration.

The statement went on: ‘When they meet, the Bishops will consider all the names suggested to them as potential candidates for appointment in the hope that a suitable candidate can be identified.’

The clear implication in this statement and at the meeting held by Bishop John with the Area Deans on March 6th at the Prebendal House in Llandaff, was that all names would be considered. It has subsequently become apparent that certain persons, namely those identified as potential candidates at the Electoral College, irrespective of suitability, were not included on a short list compiled by the Bishops.

*Clergy and laity in the Diocese of Llandaff sent the names of their preferred candidate in good faith that each would be taken seriously. It appears that the Bench decided only those who had **not** been considered at the Electoral College were to be deemed eligible for consideration by the Bishops. The result is that many of us feel our trust in this good faith has been misplaced*

and that confidence in the process has been eroded. This has caused considerable anguish amongst clergy and laity in the Diocese and has brought the Church into a level of disrepute.

We therefore request that the process of appointing a new Bishop of Llandaff be halted until such time that this defect of proper process has been fully investigated. This investigation should also take into account the lack of consideration given to those of us who wrote to support a candidate who may have been mentioned in the Electoral College, given that we had no certain knowledge of who these may have been. It is imperative that an appointment is made without any tarnish of discrimination.

We would be grateful for a speedy response to this letter of complaint. We trust you will refer it to the appropriate authority for investigation and let us know who this is. Finally we request that you appraise us of an estimated timescale for this investigation.”

22. Accordingly, the First Complaint challenges the validity of the proceedings at the Electoral College. By contrast, the Second Complaint and the Third Complaint are premised on the validity of those proceedings and instead challenge the rationality and fairness or the regularity of the Bishops’ response to the outcome of the Electoral College.

Discussion of the First Complaint

23. The tenor of the First Complaint is that, by reason of things said at the meeting of the Electoral College, its proceedings were “invalid”. The consequence of upholding the complaint would presumably be that the right to fill the vacancy had not passed to the Bishops in accordance with Regulation 23.
24. However, the First Complaint must be rejected as it is without merit, for several reasons.
25. First, the validity of the proceedings of the Electoral College is to be determined in accordance with the Constitution. The Meeting was in accordance with the requirements of the Constitution. That is sufficient to dispose of a complaint of invalidity.
26. Second, no power is conferred by the Constitution upon any person or body within the Church to exercise a supervisory jurisdiction over the Electoral College acting in accordance with the Constitution.

27. Third, the First Complaint is based upon things supposedly said at the Meeting. That means that consideration of the grounds of the First Complaint would require investigation of what happened at the Meeting; the terms of the First Complaint acknowledge this. However, the Meeting was conducted on the basis of a rule of confidentiality. This itself demonstrates that a challenge to the validity of the proceedings of the Electoral College cannot be based on anything said at the Meeting.
28. It could not be contended that the assumption of an obligation of confidentiality was outwith the powers of the Electoral College: the settled practice of the Church in Wales is always to conduct the proceedings of meetings of the Electoral College confidentially; that is consistent with the express provision of Regulation 21.1 that the meeting shall be private; there is no contrary provision in the Constitution.
29. The declaration of confidentiality made by all those present at the Meeting serves an obvious twofold purpose. First, it enables members of the Electoral College to speak freely in the course of discussions and deliberations concerning candidates, without being inhibited by concern that oral remarks over the course of up to three days will be published, whether or not partially and inaccurately. Second, it enables potential candidates to permit their names to go forward to the Electoral College in the assurance that neither their candidacy nor what was said about them will be disseminated. The objections to breach of confidentiality are not addressed by any attempt to limit the scope of an investigation: the breach of a voluntary obligation, expressly assumed, remains; those who spoke on the basis of the declaration are entitled to have it abided by; and investigation of particular comments can only be misleading if they are abstracted from their wider context, including the discussion of other candidates.
30. If persons present at a confidential meeting of the Electoral College genuinely have serious concerns that remarks made in the course of a meeting are improper (rather than merely disagreeable to the person hearing them), the proper course is to challenge the remarks to which they object and, if they think appropriate, to seek a ruling from the chair. If the chair supports what a member considers to be genuinely improper comments, it is open to a member to withdraw from the Meeting or even resign from the Electoral College on the ground that he or she has no confidence in the proceedings. In the present case, the President of the Electoral College has publicly stated that neither

from the members of the College nor from any others present, including the Archbishop's Registrar and the Church's legal adviser, did he receive any complaint of improper remarks in respect of sexuality. No member withdrew from the Meeting.

31. Fourth, the assertion in the First Complaint that "the raising at electoral college of the matter of sexuality or civil partnership status [was] in direct contravention of the Church in Wales's own policy that sexuality or civil partnership is not a bar to appointment as a Bishop" is plainly incorrect. We shall assume for present purposes that the Church in Wales does indeed have such a policy, although we consider that the existence of a "policy" in a strict sense is doubtful: it is not obvious that either a collegiate statement of the Bishops or the Senior Bishop's statement on the matter at the start of the Meeting is capable of binding the Electoral College. The question is academic, because the Meeting was conducted in accordance with the supposed policy: sexuality or civil partnership did not bar nomination, and what prevented election was insufficiency of votes not a sexuality-based prohibition. Anyway, the terms of the First Complaint do not in the least suggest that the policy was breached. First, the fact that, as mentioned, at least two gay candidates were considered and that at least one of them appears to have received a substantial proportion of the votes sufficiently demonstrates that there was no breach of the supposed policy. Second, even if it were the case that in a full and frank discussion over three days one or more persons present at the Meeting made remarks that conflicted with a policy, that would not indicate that the Electoral College had not complied with its policy. The approach suggested by the First Complaint would render any form of Electoral College or decision-making by frank discussion impossible. Third, the supposed policy does not suggest that matters of sexuality are either irrelevant or improper to be mentioned or considered. An obvious way in which such matters are likely to arise is in connection with biographical information about candidates; it could not properly be said that the mere mention that someone was gay or in a civil partnership was pejorative or prejudicial. More generally, however, all manner of considerations might arise in connection with sexuality. Thus, by way of example, questions concerning sexuality might be relevant to a consideration of a candidate's ability to promote equality of opportunity and diversity or to increase the representation of LGBTI Anglicans (as referred to in the Diocese of Llandaff's *Person Specification*) or to bring reform to the Church; they might also be relevantly raised in connection with a candidate's ability to be a "centre of unity" (cf. the Charge, set out

in paragraph 3 above) both within the diocese and within the Province and within the wider Anglican Communion, with reference to matters including scriptural interpretation and church doctrines such as that of marriage. Different people within the Church will have different views on matters such as these. We do not purport to express our own. Nor do we know what if anything was discussed in the Meeting in these respects. We simply observe that we do not consider that the Electoral College was precluded by the Constitution or by any policy or by any other legitimate consideration from having regard to such matters.

32. Fifth, if the premise of the First Complaint were correct, namely that the raising of supposedly inappropriate matters rendered the proceedings of the Electoral College “invalid”, it would seem that the result of the proceedings would have been invalid even if a candidate had received two-thirds of the votes of those present and voting. This highlights the impracticability, as well as the incoherence, of supposing that the validity of proceedings in Electoral College might turn on retrospective investigation. The complainants in the First Complaint did not withdraw from the Meeting: no member did; therefore, unless they exercised the option not to vote, they voted and must therefore have considered that they were participating in valid proceedings. The proceedings were clearly valid; they do not cease to be so because the result of a vote is not what some members hoped for. It cannot be contended that the difference lies in the effect on the outcome: the vote was by secret ballot, and each member’s conscience is his or her own.

Discussion of the Second Complaint

33. The Second Complaint accepts that the Bishops have the right to appoint the new Bishop of Llandaff but complains that the manner in which they propose to exercise their right is irrational and unfair because they do not intend to consider any person who was a candidate at the Meeting.
34. The Second Complaint is without merit and must be rejected.

35. First, the right to appoint the next Bishop of Llandaff has passed to the Bench of Bishops in accordance with the Constitution. The decision whom to appoint is a matter for them in the exercise of their own judgment.
36. Second, the Constitution does not confer upon any person or body within the Church, including the Provincial Court, a supervisory jurisdiction over the Bench of Bishops. Their decisions in respect of the appointment of bishops, made in accordance with the Constitution, are no more subject to review than are those of the Electoral College.
37. Third and in any event, even if the exercise of the Bench of Bishops' right to appoint the next Bishop of Llandaff were subject to a supervisory jurisdiction, it would not even be reasonably arguable that the decision to exclude from further consideration persons who had been nominated at the Electoral College was either unreasonable (in the sense of being outwith the range of options that might reasonably be chosen) or unfair. We make clear that we have no knowledge of the Bishops' deliberations or preferences in respect of their power of appointment. We note, however, the following points. First, the Bishops were present throughout the three days of the Meeting and have since met over three further days in Synod. They have had considerable opportunity for careful consideration of this matter. Second, it would be open to the Bishops to conclude, if they thought fit, that none of those considered at the Electoral College was suitable for appointment to the vacancy, whether on account of matters raised at the Meeting or on account of matters raised or occurring since. Third, it is not necessarily the case, as is sometimes suggested, that the best candidates must have been those considered by the Electoral College; that may or may not be the case. It is also possible that those then considered are, in the light of extensive reflection in the course of this process, not considered by the Bench to be the best available candidates. Fourth, the insistence that those considered by the Electoral College must now be further considered by the Bench after its latest exercise of consultation and deliberation is unrealistic. A hypothetical example will make the point, regardless of whether it corresponds to the facts of the present case (as to which, we repeat, we have no knowledge). Suppose that the Electoral College considered three candidates: A, B and C; A received 60% of the votes, B 20% and C 20%; the Bishops firmly regarded A as unsuitable but voted for B and C and would be content with the election of either. The Bishops were not required in Electoral College to cede either to the majority or to the views of the members from the

vacant diocese. They cannot be so required now that the right to appoint has passed to them. There is no good reason why they should be required to give further consideration to A. Yet they might reasonably suspect that, if they appointed B or C, supporters of A would complain. In such circumstances, it would in our view be entirely reasonable for the Bishops to rule out of further consideration all existing candidates. The example, whether or not relevant to the facts of this case, illustrates why the Second Complaint lacks cogency and why the attempt to constrain the Bishops is ungrounded in the law of the Church.

Discussion of the Third Complaint

38. The Third Complaint is similar but not identical to the Second Complaint and is without merit for essentially the same reasons.
39. It ought further to be noted that nothing said or done by the Bishops could reasonably be thought to have obliged them to include any of those considered at the meeting on the shortlist that they prepared after they met on 14 – 16 March. At most it would fall to the Bishops to decide whether or not to include any of the original candidates on their shortlist. It was entirely up to them, and not the Area Deans, whether to do so.

Conclusion

40. All three Complaints are without merit. The proper course is for the Bishops to proceed to fill the vacancy in accordance with Regulation 23 and the exercise of their own judgment.

His Honour Judge Andrew Keyser Q.C. (Chairman)

Mrs Carolyn Kirby, O.B.E.

The Honourable Sir John Griffith Williams

31 March 2017

