

**John Cleary**

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**From:** Bishop Peter  
**Sent:** Wednesday, 1 September 2010 3:37 PM  
**To:** Bishop Brian; John Cleary (JohnCleary@angdon.com)  
**Subject:** FW: Draft Professional Standards Amendment Ordinance

Dear +Brian and John:

Yesterday I sent you a copy of my comments on the Chancellor's proposed amendments to the PSO. He has forwarded a response to my comments below.

+Peter

**From:** Paul Rosser [mailto:REDACTED]  
**Sent:** Wednesday, 1 September 2010 3:23 PM  
**To:** Bishop Peter  
**Subject:** Draft Professional Standards Amendment Ordinance

Dear +Peter

I have had the chance to consider the specific matters you have raised. I adopt your numbering.

1. Experience has indicated that the scope of the present prohibition orders did not permit the making of a direction for the performance of some positive action eg regular consultation with a spiritual adviser. I have sought to remedy this. It seemed that them 'prohibition order' became somewhat inapt. I accept that 'directions order' is not a thing of beauty. Basically the terminology does not concern me and I would not object to reverting to prohibition order.

2. The terms do not appear in the NMO. I do not think they are necessary. The PSO and Board are concerned with what a respondent has done in fact (whatever label may be attached to it) and whether it constitutes examinable conduct.

3. I agree that this desirable and will amend the draft.

4. I don't understand either but don't think it matters.

5. I agree but wonder whether the Bishop will. I am amending the draft as you suggest.

6, 7, 8 &9. I agree and will adopt your suggestions.

10. I am afraid I am going to be implacable on this. Both the PSC and the Director are appointed by DC. I think it utterly undesirable that the PSC or Director should be able to appoint a person for some function who is utterly unqualified and personally unsuitable for it and the DC not be in a position to prevent or rectify the position. It is, at least, arguable that DC impliedly has this power in any event. I wish to make it explicit. It may be useful if we speak on this issue.

11. I acknowledge that it can be done by resolution. I would rather set it out in the legislation. I understand that the DBM is very much in favour of this.

12. The only relevance of issue of who is the Church authority is that this is the body which deals with a suspension recommendation or that of a Board. The Church authority has no role in an investigation beyond this and I do not believe that questions of delaying tactics arise. The proposed section 26C appears to me to be no more than declaratory of the actual position at law.

13. I agree and will rectify this.

14. I want to work through this and I will take on board gratefully your suggestions. I am, as you are aware, opposed to the idea that a suspension is in some way a deposit on future punishment. It should be used, in my view, solely as a protection against some real risk of harm to a person or to the Church. I agree that prejudice to an investigation is a factor. I do not believe that the strength of the evidence (except insofar as it weighs upon the assessment of risk to some person or the Church) is a relevant factor nor do I believe that some general formulation (eg 'appropriate in all the circumstances') is desirable. As I say, I will work on this.

Something has occurred to me in reflecting on this. Consider the case of a priest held in custody bail refused on serious charges. The risk of damage to the Church would I think clearly justify suspension. It would appear to me that no possible case can be made for the payment of salary etc in such a case. I will do some work on s39(d) to deal with this.

15. I agree.

16. I think you are referring to what should have been numbered 36(1) If that is so, I agree.

17. I agree so far as a respondent is concerned and will redraft this. So far as the PSC is concerned I believe that it is desirable that it be represented by person who is subject to the Bar Rules. They apply to any person - barrister or solicitor - who appears to prosecute even before a domestic tribunal. I am not at all suggesting that another person is likely to act inappropriately, merely that there is a significant Diocesan interest in the prosecutor being subject to some minimum standard of conduct that is enforceable against him or her.

18. I note your comments. I have no strong feelings on the matter. I do think, however, that the Bishop should not be seen to be merely a rubber stamp for the Board. The review provisions allow only a limited review. I am aware that a provision of this nature is desired by a significant number of people. I am inclined to leave it to debate.

Other matters - I propose replacing the reference to natural justice in s83(a) with a reference to procedural fairness which is the term used now. I am also inclined to add a further basis for review, namely, 'that the Board materially misdirected itself as to the law'

This would not necessarily result in setting aside a Board determination. The matter would be returned to the Board under s94(b). It seems to me to be highly unsatisfactory that a Reviewer should have no power in respect of an egregious error of law.

I shall circulate a fresh draft at the end of the week or over the weekend. I note that the deadline for the business paper is mid next week.

Paul Rosser

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