

VI

REPORT

OF THE

LEGAL ADVICE & PROPERTY COMMITTEE

1. Introduction

The Legal Advice & Property Committee have sought to fulfil their remit throughout the past year. Whilst in many ways it has been a quieter time for legal matters than previously, the Committee are nonetheless aware of the responsibilities placed upon them and are thankful to the Lord for his continued upholding both during and between meetings of the Committee. They rejoice that in this, as in all areas of our Christian profession, the Lord is both our refuge and our strength.

2. Marriage Authorisation – Prescribed Body Status

For six years the Committee have been reporting to the General Assembly on the slow process of the Church's application to be prescribed under the Marriage (Scotland) Act 1977 through the Scottish Parliament. The Committee are therefore delighted to report that in July 2023 Scottish Ministers agreed that the Free Church of Scotland (Continuing) could be prescribed.

According to procedure, a draft Scottish Statutory Instrument (SSI) was then prepared under the 1977 Marriage (Scotland) Act so all FC(C) celebrants would be authorised to solemnise mixed sex marriage, without having to obtain individual authorisations, triennially, from the Registrar General of Births, Deaths and Marriages for Scotland. In accordance with usual practice, an Equality Impact Assessment and a Policy Note to accompany the SSI were forwarded to the Committee for comment – . No comments were made on either document.

The Committee were informed that the SSI had been made (i.e. signed) and laid before the Scottish Parliament on 21 September 2023 (SSI Legislation Ref: 2023 No. 266 MARRIAGE). In a seamless transition, National Records of Scotland removed the names of FC(C) celebrants from the Register of marriage celebrants on 1 December 2023 and by virtue of the aforementioned SSI, prescribed body status was conferred on the FC(C), and her ministers are now automatically able to solemnise mixed sex (i.e. biblical) marriages.

The Committee, once again, wish to express their grateful thanks to Mr Maurice Grant for his faithful work over many years in ensuring that individual authorisation licences were renewed timeously for our ministers. The Committee also thanks their current Clerk, Mr Murdo Murray, for taking over and pursuing this work to its conclusion.

This provision is a genuine help to the work of the Church, and indicative of the acceptance by the civil authorities of the Free Church of Scotland (Continuing) within the ecclesiastical landscape of our nation. It continues to grieve us greatly that false and perverted marriages are written into the laws of our land. This in no way changes our position on the definition of marriage, founded upon God's unbreakable Word.

3. Panel of Consultants anent Allegations of Sexual Impropriety Involving Adults

With the 2023 General Assembly's approval of Act XVI — Act anent *Safeguarding Policy*, the Committee turned their attention to the closely-related matter of the *Panel of Consultants anent Allegations of Sexual Impropriety involving Adults* (hereafter referred to as the Panel). The Committee's remit was to establish whether the Panel still had a functioning role when considered against the recently enacted *Safeguarding Policy*. Membership of the Panel has been noted annually in the deliverance of the Assembly Arrangements & Nominations Committee (B) Nominations Report to the General Assembly.

The Panel was appointed in 2001, with a membership of six, *to act as consultants in cases of special difficulty regarding allegations of sexual impropriety involving adults*. The appointment was made in accordance with the General Assembly's resolution in Act XIX, 2001 — Act anent Procedures for Dealing with Sexual Impropriety Involving Adults, subsequently amended by Act XIII, 2002 — Act amending Act XIX 2001 — anent Procedures for Dealing with Sexual Impropriety Involving Adults.

References to the Panel, within the above-named Acts of Assembly are as follows:

Act XIII, 2002 (amendment to Act 2001) Section 4(b) Specific Arrangement.

“In addition, the Church shall appoint a panel of experienced persons, both male and female, which can be consulted by a Kirk Session or Presbytery in cases of special difficulty.”

Act XIX, 2001 section 5.

“The Presbytery or the Kirk Session can request the attendance of one or more of the panel of consultants to be present during the investigation and formal process which will be in accordance with *The Practice of the Free Church of Scotland*.”

It is the Committee's understanding that the Panel have not been consulted by any Kirk Session or Presbytery in recent years, or indeed since its inception in 2002, neither has any Kirk Session or Presbytery requested the attendance of a panel member during an investigation. The selection process used, and the qualifications required for membership of the Panel, are also somewhat unclear. It is also the Committee's understanding that the Panel was established solely for the benefit of Kirk Sessions and Presbyteries, i.e. not to advise or support a complainant through Church Court procedures. The support facility for a complainant is addressed in Act XIII, 2002 section 4(a) Specific Arrangement:

If a complainant wishes to discuss her concern or is unsure of procedural arrangements, the relevant Church Court will consider the appointment of one or more women advisers whom she can contact confidentially. The adviser will assist the complainant, as to procedure only, in notifying the Clerk of the relevant Church Court of all allegations. The adviser may be invited by the complainant to accompany her at any subsequent interview or hearing. It is for the relevant Church Court to determine whether the allegations are to be processed to a formal hearing, and to give prior notice of the complaint to the alleged abuser, the rights of all parties being reserved.

The Committee understand that the Panel had been appointed with a view to advise Kirk Sessions and Presbyteries from their own specific field of expertise, and not on ecclesiastical procedures. The Committee therefore examined whether the *Safeguarding Policy* and supporting documents, clearly set out for Church Courts the procedures to follow when an allegation of abuse has been made that may be civil/criminal in nature, without having to consult the Panel.

In particular, the Committee's view is that paragraphs 8 and 9 of the *Safeguarding Procedures* safeguarding document (the Five R's) are sufficiently detailed for Church Courts to safely navigate their way through the appropriate process.

The Committee therefore concluded that the Safeguarding Policy (Act XVI, 2023), together with its supporting documents, clearly explains for Church Courts, without ambiguity, the procedure to follow if a breach of civil/criminal law is suspected or has occurred, and the obligation of Kirk Sessions through their Local Safeguarding Officers and National Safeguarding Coordinator to report that matter to the appropriate investigating authorities.

The Committee cannot overemphasise that for a Church Court to be assured correct safeguarding procedures are being followed, both from an ecclesiastical and civil/criminal perspective, it is essential for every Elder and Deacon to familiarise themselves, on a regular basis, with these documents. Presbyteries should ensure, during annual examination of records, that such an entry is recorded in relevant Kirk Session Minutes.

The Committee therefore recommend to the General Assembly that the *Panel of Consultants anent Allegations of Sexual Impropriety involving Adults* be disbanded forthwith, together with the repeal of Act XIX, 2001 — Act anent Procedures for Dealing with Sexual Impropriety Involving Adults, and Act XIII, 2002 — Act amending Act XIX 2001 — anent Procedures for Dealing with Sexual Impropriety Involving Adults.

4. Church Insurance

The Committee are pleased to report that the denomination has purchased the following insurance coverage from Access Insurance, effective as of 14 December 2023 – Public and Products Liability; Employers Liability; Trustees’ Indemnity; Reputational Risks; and Legal Expenses. The Policy has been designed to meet the specific needs of the Church and ensures that adequate protection has been provided. Church-wide activities such as the General Assembly, Spring Conference and Youth Camps have been included. The Committee request that all Standing Committees take note of this provision to avoid any unnecessary doubling of insurance provision for any activities under their purview.

The provision of Trustees Indemnity Insurance was taken out for and on behalf of the General Trustees. Further information in this regard will be provided in the General Trustees Report.

5. Safeguarding Policy

The Committee recognise that the *Safeguarding Policy* deals with difficult matters, seeking to navigate the fine line between pastoral responsibilities for the flock, and civic duty to report criminal activity. For this reason, the Committee continue to review the document, but are not yet in any position to bring forward updates or amendments.

GREG MACDONALD, *Convener*
MURDO MACIVER, *Vice-convener*

PROPOSED DELIVERANCE

1. The General Assembly receive and adopt the Report of the Legal Advice & Property Committee and thank the Committee and in particular the Convener and Clerk for their diligence;
2. The General Assembly note that prescribed body status has been conferred on the denomination by the Scottish Government, allowing all Free Church of Scotland (Continuing) ministers to solemnise marriage without the need for individual registration;
3. The General Assembly hereby repeal Act XIX, 2001 (No. 19 of Class II) and Act XIII, 2002 (No. 13 of Class II), and disband the ‘Panel of Consultants anent Allegations of Sexual Impropriety involving Adults’ and thank the members thereof for their willingness to serve;
4. The General Assembly note that denominational insurance cover, tailored to meet the needs of the Church, is now in place;
5. The General Assembly note the Committee’s ongoing work on the Safeguarding Policy and await proposed updates or amendments at a future General Assembly.