In the matter of a Complaint under the Clergy Discipline Measure 2003
Before the Bishop's Disciplinary Tribunal for the Diocese of Winchester

Complainant: The Venerable Peter Rouch

Respondent: The Reverend Dr Andrew Hawthorne

DECISION

Jurisdiction:

1. In a letter from his solicitor dated the 15th October 2014 the Respondent challenges the tribunal's jurisdiction to hear the complaint made against him by the Complainant. The Respondent's argument is based on the fact that he is now a member of the Personal Ordinariate of Our Lady of Walsingham established by Pope Benedict XVI in 2011 and he therefore argues that he is no longer a member of the Church of England and is no longer under its authority.

2. In an accompanying witness statement the Respondent also raises other challenges to the tribunal's jurisdiction and to the independence of the tribunal members. Although (as will be seen) this witness statement was not permitted to be introduced into evidence and was only read by the Chair of the tribunal, the tribunal as a whole nonetheless considered the legal arguments raised within the body of that statement.

3. When he was ordained within the Church of England the Respondent became subject to the ecclesiastical law of that Church. The ecclesiastical law is as much part of the law of the land as any other part of the law (see *Edes v Bishop of Oxford* (1667) Vaugh 18 at 21; *Mackonochie v Lord Penzance* (1881) 6 App. Cas. 424 at 446) whereas the Roman Catholic canon law is technically a

foreign law although no doubt consensually binding amongst its members. Section 3 of the Clerical Disabilities Act 1870 states:

> "Any person admitted (before or after the passing of this Act) to the office of minister in the Church of England may, after having resigned any and every preferment held by him, do the following things:
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> (1) He may execute a deed of relinquishment in the form given in the second Schedule to this Act:
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> (2) He may cause the same to be inrolled in the High Court of Chancery:
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> (3) He may deliver an office copy of the inrolment to the bishop of the diocese in which he last held a preferment, or if he has not held any preferment then to the bishop of the diocese in which he is resident, in either case stating the place of his residence:
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> (4) He may give notice of his having done so to the archbishop of the province in which the diocese is situate."

Section 4 of the Act then states:

> "At the expiration of six months after an office copy of the inrolment of a deed of relinquishment has been delivered to a bishop, he or his successor in office shall, on the application of the person executing the deed, cause the deed to be recorded in the registry of the diocese, and thereupon and thenceforth (but no sooner) the following consequences shall ensue with respect to the person executing the deed _
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> (1) He shall be incapable of officiating or acting in any manner as a minister of the Church of England, and of taking or holding any preferment therein, and shall cease to enjoy all rights, privileges, advantages, and exemptions attached to the office of minister in the Church of England:

> (2) Every licence, office, and place held by him for which it is by law an indispensable qualification that the holder thereof should be a minister of the Church of England shall be ipso facto determined and void:
> (3) He shall be by virtue of this Act discharged and free from all disabilities, disqualifications, restraints, and prohibitions to which, if this Act had not been passed, he would, by force of any of the enactments mentioned in the first Schedule to this Act or of any other law, have been subject as a person who has been admitted to the office of minister in the Church of England, and from all jurisdiction, penalties, censures, and proceedings to which, if this Act had not been passed, he would or might, under any of the same enactments or any other law, have been amenable or liable in consequence of his having been so admitted and of any act or thing done or omitted by him after such admission."

The Church Discipline Act 1840 (one of the enactments mentioned in the first Schedule of the 1870 Act) has been repealed and the Ecclesiastical Jurisdiction Measure 1963 has been included within the Schedule of the 1870 Act: Ecclesiastical Jurisdiction Measure 1963, ss 86 and 87, Schs 4 & 5. The Clergy Discipline Measure 2003 has not been included within that Schedule but its provisions clearly fall within the words "or of any other law" in section 4(3). It follows that, if the Respondent had wished no longer to have been subject to the provisions of the 2003 Measure, he should have followed the procedures laid down in the 1870 Act. This he has not done and this tribunal therefore still has jurisdiction in relation to this complaint.

4. In addition to the argument as to jurisdiction set out above in his witness statement dated the 15th October 2014 the Respondent raises a number of further arguments:

(a) that the Clergy Discipline procedure is a farce as the police have already investigated the complaint against him and that (in essence) the diocese should not therefore have instituted a complaint under the 2003 Measure;

(b) that he has no faith or confidence in the independence of the tribunal panel as its members are hand picked by the Church of England, that is, by their respective bishops;

(c) at a meeting between the Respondent, his union representative and the Bishop of Southampton at which the question of a complaint under the 2003 Measure was raised the Bishop stated that the outcome would be "predetermined";

(d) the Bishop of Winchester has failed in his duty of care to give pastoral care to the Respondent and his family;

(e) a complaint by the Respondent against the present Bishop of Winchester has not been properly or timeously progressed;

(f) a suspension imposed upon the Respondent consequent upon these proceedings lapsed and thereafter was purportedly renewed some months later;

(f) the motive behind the bringing of this complaint against the Respondent is his opposition to the enforcement of any chancel repair liability.

5. We will address each of these arguments and concerns in turn. First, any prosecution under the criminal law must be proved to the criminal standard of proof, namely, so that the judge or jury is "satisfied so that it is sure" whereas the standard of proof to be applied by a Clergy Discipline tribunal is the civil standard of proof, namely, "on a balance of probabilities": see the Clergy Discipline Measure 2003, s. 18(3)(a); see, too, the Code of Practice, paragraph 167. It follows that the decision not to prosecute cannot be determinative of the matter as far as a complaint under the Measure is concerned and that the Respondent's further contention that to proceed further is inconsistent with good Christian values and practice is misplaced. Second, the lay and clerical

members of the panel are chosen from persons other than those nominated by the bishop of the relevant diocese (in this case the diocese of Winchester) and the President is under a statutory duty not to appoint any person to be a member of a tribunal "unless he is satisfied that there is no reason to question the impartiality of that person": section 22(1)(2). Before so doing the President is under a duty to give the Respondent the opportunity to make representations as the suitability of any person to be so appointed: section 22(2); Clergy Discipline Rules 2005, r. 37(1). That opportunity was afforded to the Respondent but he failed to make any such representations. Third, the Bishop of Southampton has not been given an opportunity to respond to the allegation that he stated the outcome of any proceedings before a tribunal would be "predetermined" but, even if such a comment were indeed made, it does not alter the fact that each person on the tribunal is in fact entirely independent and has in no way predetermined any outcome to this complaint. Fourth, if (as alleged) the Bishop of Winchester has failed to provide the requisite pastoral care to the Respondent and his family, that is a matter which should be dealt with by a separate complaint against the Bishop and is legally irrelevant to this complaint. The remaining three matters raised by the Respondent are in our view irrelevant to these proceedings save that any question of motive might be relevant to any penalty ultimately imposed if the complaint is found to be made out. We would, however, add that any complaint against any cleric (whether bishop, priest or deacon) should be progressed in exactly the same way as any other complaint and as timeously as possible in all the circumstances.

6. Lastly, in a letter to the Registrar dated the 23rd April 2014 the Respondent raised the question "whether it is any use in going ahead" in the light of the fact that he has joined the Ordinariate and even the most severe penalty that might be applied would in the result have no effect. However, in the view of the tribunal this ignores the fact that there is a wider picture in the administration of discipline than the effect upon the individual member of the

clergy as is set out in paragraph 4 of the Code of Practice.

7. It follows that we are entirely satisfied that this tribunal has jurisdiction to consider the complaint made against the Respondent.

Admissibility of the Respondent's Witness Statement dated the 15th October 2014

8. On the 30th May 2014 the Provincial Registrar notified the Respondent and all others involved that the hearing of the complaint would take place on the 15th, 16th and 17th October 2014 commencing at 10.30 am. Prior to that hearing date and after a Pre-Trial Directions hearing at which the Respondent and his union representative were present Directions for Trial were made by the Chair of the tribunal. These were reduced to writing and sent to the Respondent's representative in a document dated the 30th July 2014. These ordered, *inter alia*, that _

> "(3) The Respondent is to lodge witness statements in response to those lodged by the Designated Officer … by **4.00 pm on Tuesday 26 August 2014,** with liberty to lodge a further witness statement or statements in response to any additional statements lodged by the Designated Officer … **within seven days** after it shall have been so lodged and served
> (4) The Respondent is to lodge a full statement of his case by **4.0 pm on Monday 8 September 2014**
> (5) In each case the Respondent is to serve copies of witness statements and his statement of case on the Designated Officer immediately upon lodging a copy with the Registrar
> (6) Either party shall be at liberty to apply within seven days after service of witness statements and/or statements of case to deal with points of law he may consider need to be addressed by the Tribunal as preliminary issues (as to which the Chair will then gives further directions)"

9. As neither the Respondent nor his representatives lodged any such witness statements or statements of case in accordance with the above Directions the Designated Officer sent an email to the Respondent's union representative pointing out that the Directions had not been complied with and within minutes the representative replied to say the matter was with their solicitors, Thompsons, and that she was asking them to respond to the Designated Officer "as a matter of urgency". Having heard nothing further, on the 23rd September 2014 the Designated Officer wrote to the Respondent's union representative again pointing out that the Directions had not been complied with and querying whether the Respondent intended to put forward a positive case. Two days later Thompsons left a telephone message for the Designated Officer and on the 26th September the latter spoke to Thompsons only to be informed that they had sent the papers to another firm of solicitors although they declined to say which firm that was.

10. Similarly, the Registrar attempted to ascertain who, if anyone, was representing the Respondent. On the 30th September the Registrar's secretary was told by Thompsons that they were not instructed but that instead it would be Mr Pinder of EAD; on telephoning Mr Pinder that same day she was told that "his firm had no instructions, and [were] waiting to hear from [the union representative] but that in any event Dr Hawthorne would be represented by Mr Graham Roberts" of EAD. On the 1st October the secretary emailed the union representative asking to whom the trial bundle should be sent. The following day Mr Roberts emailed a confirmation that his firm was representing the Respondent and asking for the bundle to be sent "by return". Although the Respondent had already been sent the trial bundle on the 30th September a further copy was sent to his solicitors by DX on the 2nd October. (DX delivery is guaranteed for the next day.) The bundle included a copy of the Trial Directions at pages 723-726.

11. Although no acknowledgement of receipt was received by the Registrar it is clear that EAD did, indeed, receive the bundle as it is referred to in Dr Hawthorne's statement dated Wednesday, the 15th October, the date of the tribunal hearing. No copy of the witness statement was sent to the Designated Officer. This statement is twenty-one pages long and contains seventy-nine paragraphs and was only sent to the Registrar by email at his Oxford office arriving shortly after 10.00 am on the 15th October, although the hearing was in London. By reason of its length and content it is clear that the drafting of the statement would have taken some time and its contents would have been fully known at the very latest by Friday, the 12th October. Indeed, we find that the purport and main thrust of that statement must have been clear some days earlier.

12. The Clergy Discipline Rules 2005 state:

> "1. The overriding objective of these rules is to enable formal disciplinary proceedings brought under this Measure to be dealt with justly, in a way that is both fair to all relevant interested persons and proportionate to the nature and seriousness of the issues raised. The rules are, so far as is reasonably practicable, to be applied in accordance with the following principles _
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> (a) The complainant and the respondent shall be treated on an equal footing procedurally.
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> (b) The complainant and the respondent shall be kept informed of the procedural progress of the complaint.
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> (c) Undue delay is to be avoided.
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> (d) Undue expense is to be avoided.
>
> 2 (1) All parties shall co-operate with any person, tribunal or court

exercising any function under the Measure in order to further the overriding objective.

(2) Any failure to co-operate by a party may result in adverse inferences being made against that party at any stage of the proceedings."

13. In spite of the timings set out above and the contents of the witness statement no warning was sent to the Registrar either that such a witness statement was being prepared or that new evidence and argument would be sought to be placed before the tribunal. Nor did the Respondent or his solicitor give any advance warning that they would not be attending the hearing.

14. Rule 35 of the 2005 Rules states:

"A party wishing to rely on a witness statement at the hearing of the complaint shall call the witness to give oral evidence unless _

(a) the parties agree that the witness statement may be put in evidence;

(b) the witness has died, is too ill to attend or is overseas, or

(c) the Registrar of Tribunals or the Chair directs otherwise."

The purpose of this rule is clearly to allow a witness' evidence properly to be tested under cross-examination and for the tribunal panel the better to assess the witness' reliability and veracity. In the present case the Designated Officer did not agree to the statement being put in evidence without the Respondent's presence and the Respondent is neither dead nor overseas. In the statement itself the Respondent says (at paragraph 26):

"Finally, during the course of my previous service and work in the Church of England I considered that my health has been damaged by certain individual's conduct towards me. I need to take appropriate steps

> to protect my health and this is what I am doing by not attending the hearing in person."

It is true that in September 1999 the Respondent suffered from severe depression and received early retirement on health grounds in 2000. However, he slowly began to recover and to assume light duties so that he was licensed as an assistant curate on the 4th March 2005 (Bundle page 33). Moreover, in a letter dated the 13th February 2009 (Bundle at page 167-169), the Bishop of Southampton recorded that _

> "It was good to know that the change in medication now seems to be helping and settling down in terms of your mental health .... It is clear that you need to continue to manage carefully your time and energies with your health but as we noted it is very encouraging that you are able to do as much as you are given the circumstances several years ago."

However, on the following page in relation to the taking of funerals the Bishop sounded a note of caution:

> "There is also concern around your own health and if there is a sense that actually the two days plus Sundays is all that you should be doing then it would seem questionable whether there should be occasional offices being taken at other points of the week."

Nonetheless, in his *Responses to the claims of misconduct* (Bundle at page 461) the Respondent says:

> "I was never on sick-leave. I took some time off, yes, but it was never sick-leave …. The Diocese took the position it did on my health, I believe, because various parties had been briefing against me on these

grounds for some time. Medical reports gave me a good bill of health, but these of course were ignored."

None of these reports have been produced to the tribunal.

15. In accordance with rule 35(4)(c) the Chair of the tribunal alone ruled on the admissibility of the witness statement dated the 15th October and, as a result, none of the other members of the tribunal has read that statement although the arguments therein contained as to jurisdiction were necessarily summarised by the Chair during the tribunal's deliberations and subsequent ruling on admissibility. In fairness to the Respondent the whole tribunal was also made aware by the Chair of the Respondent's statements as to his mental health (see above).

16. In reaching his decision the Chair considered the health of the Respondent in the light of the provisions of rule 35 (4) and the Respondent's statements as to his mental health summarised above; in so doing he bore in mind that the Respondent was able to attend the Directions hearing although he also bore in mind that episodes of depression may manifest themselves at different times, in differing ways and in differing degrees of severity. However, especially as there was no medical report as to the Respondent's current or past health before him, the Chair decided that there was insufficient evidence to support a contention that he was "too ill to attend" within the meaning of that rule.

17. The Chair also went on to consider whether there was any reason (including the Respondent's own statement that he was too ill to attend) by reason of which he should rule that the witness statement should be admitted into evidence in the Respondent's absence. In this regard the Chair considered whether the tribunal could deal with the complaint justly in a way that would be fair to the Respondent, the complainant and the Designated Officer, and in

proportion to the nature and seriousness of the issues raised, if either the statement were to be introduced or, on the other hand, if it were not admitted into evidence. He accepted the contention of the Designated Officer that in the light of new matters raised in the witness statement he should be allowed the opportunity to seek additional evidence if the statement were to be so introduced; however, in the view of the Chair that would necessitate an adjournment which would introduce undue delay as well as undue expense due to the cancellation and reconvening of the tribunal, in addition to further expense to the complainant. He also bore in mind the failure of the Respondent (either by himself or through his various representatives) to co-operate with the Designated Officer and the tribunal in the execution of the orders contained in the Directions for Trial and the fact that at no time had there been any application either for further directions or for the vacation of the hearing date. Nor did the Respondent or his representatives keep the Designated Officer or the tribunal informed of the stance to be taken by the Respondent in relation to the hearing in the absence of a statement of case. In addition, he bore in mind that it seemed highly unlikely that the Respondent would present himself for cross-examination even if the matter were to be adjourned. In the event the Chair decided that in all the circumstances it would be unfair to the complainant and the Designated Officer to permit the introduction of the witness statement at the last possible minute without any adjournment or an opportunity for the Designated Officer to cross-examine and that such delay would amount to undue delay as well as itself causing undue expense. On the other hand the Chair considered the effect on the Respondent's case if matters were to proceed without the introduction of a witness statement from the Respondent for the tribunal to consider. Nonetheless, highly relevant to that consideration was the fact that the Respondent's case was adequately contained in the many documents placed before the tribunal in the Hearing Bundle (see, especially, his *Preliminary Remarks* at pages 447-450 and his *Responses to the claims of misconduct* at pages 451-465) although they would necessarily not be

supported by a statement of truth. Weighing all these matters and in the light of the overriding objective the Chair ruled against the introduction of the witness statement.

The Law

18. The President of Tribunals has referred two matters for the decision of the tribunal. By consent at the Directions Hearing these were slightly amended by order of the Chair:

> "1. That the conduct of the respondent the Reverend Dr Andrew Hawthorne, Assistant Curate in the benefice of Christchurch, was unbecoming or inappropriate to the office and work of a clerk in Holy Orders within section 8(1)(d) of the Clergy Discipline Measure in that he has dishonestly retained fees payable under the Parochial Fees Orders for services at which he has officiated:
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> (1) in respect of three funerals at St George's Church Jumpers in September and October 2010, fees for which, totalling £287, he should have duly remitted to the Winchester Diocesan Board of Finance or Christchurch Parochial Church Council as appropriate;
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> (2) in respect of approximately 227 cremations at Bournemouth Crematorium from November 2010 to April 2012 where the deceased was not a parishioner and was not on the electoral roll of the benefice of Christchurch, fees for which, estimated to total over £23,000, he should duly have remitted to the appropriate incumbent or Diocesan Board of Finance;
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> (3) in respect of approximately 33 cremations in Bournemouth Crematorium from November 2010 to April 2012 where the deceased was a parishioner or was on the electoral roll of the benefice of Christchurch, fees for which, estimated to total £3,360,

he should have duly remitted to the incumbent of Christchurch or the Winchester Diocesan Board of Finance.

2. That as well as, and in the alternative to, paragraph 1 above, the said acts or omissions particularised in (1), (2) and (3) of the said paragraph amounted to neglect in the performance of the duties of the said office held by the said Reverend Dr Andrew Hawthorne and were contrary to section 8(2)(c) of the Clergy Discipline Measure 2003."

19. As to these allegations we accept that, if proved, such allegations of dishonesty contained in the first referred matter would indeed amount to conduct unbecoming or inappropriate to the office and work of a clergyman. If any support for such a view is necessary it is to be found in Canon 26, paragraph 2, of the Revised Canons Ecclesiastical:

> "A clerk in Holy Orders … at all times shall be diligent to frame and fashion his life and that of his family according to the doctrine of Christ, and to make himself and them, as much as in him lies, wholesome examples and patterns to the flock of Christ."

(See, too, 34 Halsbury's Laws of England (4th ed.) at para 1133.) In considering the question of dishonesty we apply the same meaning as that word has in everyday life. As to the second referred matter we bear in mind that there is no reliance upon any alleged "inefficiency in the performance of the duties of [the Respondent's] office" (see the wording of the Clergy Discipline Measure 2003, s. 8(1)(c)) and that "neglect" is different from "negligence" in the civil law; we also note the guidance in the Code of Practice, paragraph 27, that "generally neglect or inefficiency will amount to misconduct only if they occur over a period of time". In so far as the words "in the performance of the duties of his

office" is concerned we accept that which is said in the earlier disciplinary case of *Re Robinson* (2008) where the tribunal said:

> "Whilst we regard it as unfortunate that the Measure contains no definition of the meaning of "duties of … office", we are satisfied that the phrase should be read broadly.... In this context we set out a helpful passage from Bursell : *Turbulent Priests: Clerical Misconduct Under the Clergy Discipline Measure 2003* (2007) 9 Ecc LJ 250, 259:
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> > "Apart from the duties set out in the actual Canons or statutory enactments, the breaches of duty that might be neglected are likely to be in the general fulfilment of a cleric's office; it is in relation to those duties, too, that inefficiency is likely to arise. As paragraph 28 of the Code of Practice states: 'The Code of Practice gives as an example a cleric who, on a single occasion, takes money belonging to the church, intending to repay it. Even if the money is repaid quickly and without prompting, the cleric's behaviour is a breach of trust; indeed, disciplinary proceedings could be brought even if the cleric has been acquitted of theft. Such behaviour would seem to be a neglect of duty, as would the failure to declare appropriate fees received. …."

Here, of course, parochial fees in relation to burials and cremations are prescribed under the powers given to the Archbishops' Council by the Ecclesiastical Fees Measure 1986; indeed, by section 2(4) any Parochial Fees Order is treated as if it is a statutory instrument. The relevant Parochial Fees Orders are contained in the Bundle at pages 7-10.

20. In reaching our decisions we have applied the civil standard of proof in accordance with section18(3)(a) of the 2003 Measure. We have also borne in mind paragraph 200 of the Code of Practice which states:

> "This means that a complaint is to be proved on a balance of probability, but there is a degree of flexibility when applying that standard. The more serious the complaint the stronger should be the evidence before the tribunal concludes that the complaint is established on a balance of probability."

In this case we regard the allegation of dishonesty as more serious than the allegation of neglect. We have therefore borne in mind that stronger evidence is required to make out the first allegation. We have also borne in mind that the burden of proving the case remains upon the Designated Officer throughout.

Fees

21. The relevant Parochial Fees Orders for 2010 and 2011 appear in the Bundle at pages 7-10; there was no increase in fees for the year 2012. In 2010 the fee for a cremation service in a crematorium was £99 and in 2011-2012 it was £102 (Bundle at pages 8 & 10). In both cases the fee was payable to the incumbent. For a funeral in church in 2010 the relevant fee was £99, although this was to be divided £54 to the incumbent and £45 to the Parochial Church Council. In both cases the incumbent is necessarily the incumbent of the parish where the deceased died (or was on the electoral roll of that parish) as Note 2 makes it clear that the incumbents declare their fees to the Diocese and those fees are taken into account in determining the stipend to be paid to that incumbent.

22. We accept the evidence of Archdeacon Peter Rouch (Bundle at page 16, paragraph 7) that the Winchester diocesan policy in relation to fees is set out in the Diocesan Handbook. The Diocesan Handbook was issued in March 2003 and, although revised in January 2011, the relevant policy remained the same. The 2003 Handbook states (Bundle at pages 43-44 & 47):

"**3.4.1** NSMs do not receive any direct stipend for their ministerial work …. In some exceptional circumstances, however, where the NSM is available for almost full-time duty, some remuneration may be permitted by the Diocesan Bishop after consultation with the appropriate Archdeacon … and the Diocesan Secretary. Such remuneration should be agreed with the incumbent and the PCC and set out in the Ministry Specification.

3.4.2 Where an NSM is available to conduct a significant number of occasional offices arrangements may be made for a 'stipend' to be paid in recognition of this on annual application by the incumbent to the Archdeacon ….

4.3.1 'House for Duty' clergy may receive any of the following:-

- an agreed honorarium;
- a house with rates, insurance and repairs covered by the Diocese, parish, or trust;
- parish expenses;
- service fees, it they are not in other employment.

These should all be agreed before taking office with the incumbent and the PCC and set out in the Terms of Appointment....

4.3.3 The exact terms of any House for Duty post are determined by the Bishop, relevant Archdeacon … and the Diocesan Secretary."

The provisions in the 2011 revision (Bundle at pages 59 & 61-63) are identical save that the Non-Stipendiary Minister (NSM) is now referred to as a Self-Supporting Minister (SSM).

23. We particularly note in relation to these provisions that in each case any remuneration paid either to an NSM/SSM and/or to a House for Duty cleric is not of right but, rather, subject to negotiation and agreement. We also note that

in each case the agreement had to be reached with persons in addition to the incumbent. In the case of an NSM/SSM being available to conduct a significant number of occasional offices arrangements may be made for the payment of a 'stipend' on annual application by the incumbent to the Archdeacon, not by negotiation between the NSM/SSM and the incumbent.

24. Although the Respondent had originally undergone his ministerial training as a stipendiary assistant curate he then moved away before being re-licensed to the parish in March 2005 (Bundle at page 33). When re-licensed he did not receive a stipend although he did receive an allowance towards his house which he himself owned. The terms under which he was to serve when so re-licensed were outlined in a letter from the Bishop of Winchester dated the 8th December 2004 (Bundle at page 29). He was therefore no longer retired but was then an NSM/SSM, although he was also paid a housing allowance.

The Case

25. As the Respondent and his legal representative failed to appear the only evidence before the tribunal was that of Canon Hugh Williams and the Venerable Peter Rouch. This evidence was in the circumstances unchallenged and untested. We took this into account when assessing their evidence but the evidence of both of them was both balanced and credible. We therefore accept their evidence, although we have also tested their assertions and conclusions against the documentary evidence before us.

26. In his *Responses to the claims of misconduct* the Respondent accepts that he took the 3 funerals at St George's Jumpers (Bundle at pages 24-25, 301-303 & 453) and appends to his *Responses* a list of funerals/cremations totalling 250 that he agrees he also took; on that list he identifies the 33 that relate to Christchurch (Bundle at pages 453, 533-543). It follows, therefore, that the first issue for the tribunal to decide was whether the Respondent was entitled to

keep the fees; if he was, then no question of dishonesty or neglect can arise.

27. The Respondent has throughout denied any wrongdoing although he accepts that he was "inefficient in keeping the church Register of Service". As we have already noted, however, the allegations against the Respondent with which we are concerned are not based on any inefficiency.

28. In particular, the Respondent states in his *Responses* (Bundle at page 451):

> "The archdeacon seems to think that the remittance of funeral fees from the parish is a 'requirement' of all clergy under the general practice of the Church of England.
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> However, although this is a general case, what to do with the fee income is articulated in each and every individual contract between the House-for-Duty office holder and the incumbent, and this may differ from the 'general practice'. In December 2004, Bishop Michael offered me the post of House-for-Duty priest at St George's and stated clearly that before I was licensed 'terms of contract' were to be drawn up between myself and the then Incumbent. This as the archdeacon admits was never done."

29. We are satisfied that this statement by the Respondent is inaccurate whether or not he is properly described as a "House-for-Duty" priest or as an NSM/SSM. The letter dated the 8th December 2004 in fact states (Bundle at page 29):

> " … I am delighted to write to invite you to accept appointment here as Assistant Priest on what normally we would term a House for Duty basis _ save, of course, that in this case a housing allowance would instead be payable. This is subject to your finalising with Hugh Williams and with Adrian the terms of the contract specifying the extent of your ministry, and to settling the financial arrangements regarding the housing

allowance."

Of course, once the Respondent took the new post, he ceased to be retired. We note that the only financial arrangements specified relate to the housing allowance; the only other matter relates to "the extent of [the Respondent's] ministry". More particularly, although the general rule as to remuneration might be departed from in a particular case, as we have noted above, any such departure had in each case to be agreed with someone either different from or in addition to the incumbent. The only exception is where a 'stipend' is to be paid where a significant number of occasional offices are to be conducted and in this case the 'stipend' _ not the assignment of fees _ is to be agreed by the Archdeacon after an annual application by the incumbent. Whether or not a "contract" was ever drawn up is irrelevant save that, without an agreement in any particular circumstances with the prescribed persons, no entitlement to remuneration could arise.

30. Moreover, we note that on the 14th October 2010 (Bundle at page 83) the Respondent wrote to the Bishop of Winchester in relation to his grievances as to "housing provision and … [his] own personal arrangements re. housing allowance". In the penultimate paragraph of that letter he writes:

> "A further complication to the above issues is this. Despite promises to the contrary, after I was Licensed in 2005, I have never received Terms and Conditions or a Working Agreement or a Contract outlining my work as a 'House for Duty" priest or whatever it is I am supposed to be."

Although not entirely without ambiguity this letter seems to accept that the letter of the 8th December 2004 was concerned with his work rather than any question of remuneration. Nonetheless, in his reply dated the 3rd November 2010 the Bishop of Winchester, having addressed the question of the housing

allowance, states (Bundle at page 89):

> "I know, because I have made it my concern to find out the extent of yours (*sic*), that you have asked why you have not been given any of the fees collected in respect of offices you have conducted such as funerals and weddings. Those fees are only paid to anyone other than the incumbent when the person conducting the office is not part of the benefice or parish strength. You hold office in the benefice; you are not there as a retired priest when you carry out such offices. That is why the fees are paid to the incumbent and accounted for to the Diocese. There is nothing unusual _ far less improper _ in this arrangement. The contrary would be very unusual and would have been the subject of very specific arrangements."

This letter is of significance as the Respondent does not query the accuracy of this statement. (The reference to the Respondent's having asked questions about fees seems to refer to an email dated the 18th October 2010: see below). The Respondent now says that such a contract or agreement was, indeed, entered into verbally between him and Canon Hugh Williams, his then incumbent, (Bundle at page 452) but, even if it were, he does not suggest that it was also agreed by the PCC let alone by the Bishop (whether or not after consultation with the Archdeacon and the Diocesan Secretary). Thus no binding agreement could have been entered into as the incumbent did not have authority to act unilaterally, especially in relation to fees owed to the PCC. (We, of course, note that the Respondent says his verbal agreement was confirmed in an email but, as he says this is lost, there is no confirmation of that fact.)

31. In fact, we have the benefit of the evidence given before the tribunal by Canon Williams himself. He not only says that he discussed with the Respondent the

extent of the Respondent's ministry (as one would expect) but, in particular, he makes it clear (Bundle at page 12) that he never entered into an agreement that the Respondent could keep the incumbent's fees for all the occasional offices that he took. Indeed, he makes it clear that he would never have done so for three reasons: (i) he had already assigned all parochial fees to the diocese and that the fees were therefore not his to pass on; (ii) it would have been unfair on the other clergy in the parish if the Respondent had been allowed to keep the fees; and (iii) the Respondent was being paid a housing allowance which was in effect being funded by the PCC. We have borne in mind that Canon Williams has not been cross-examined but, as it seems from the Bishop's letter dated the 3rd November that the Respondent had been querying with the Diocesan Director of Finance why he had not received fees for such occasional offices, it appears that the Respondent's claim to such fees based on an agreement with the incumbent was (at the very least) not acted upon by the Respondent. In addition we note that in the Respondent's letter dated the 8th March 2011 to the Diocesan Human Relations Advisor (Bundle at page 315) he says:

> "Parochial Fees. This of course was never part of my working agreement."

32. In the event we have no hesitation in accepting Canon Williams' evidence that no such agreement was ever entered into. In addition we accept his evidence (Bundle at page 12) that _

> "As an assistant curate Andrew knew that parochial fees were assigned to the diocese and that he was not entitled to keep them _ the position was no different from when he had been with us from 1993 to 1997, and I made this clear to him."

That this was, indeed, so is in fact borne out by the Respondent's own email to

the Diocesan Director of Finance dated the 18th October 2010 (Bundle at page 77: see below).

33. However, the matter does not end there. In his *Responses* (Bundle at page 452) the Respondent also relies upon "custom and practice over a period of some six years" which "became part of [his] established working agreement". However, he does not produce any documentation to bear out this assertion and it again runs counter to that which he had been saying to the Diocesan Director of Finance (see below) and referred to in the Bishop's letter dated the 3rd November 2010. Even if the Bishop were incorrect in what he there related we regard it as significant that the Respondent did not immediately seek to put right the Bishop's assertion if there were, indeed, "custom and practice" to the contrary. However, such a claim to "custom and practice" flies in the face of the fact that the Respondent remitted the appropriate fees in relation to Christchurch in the period from 2005-2009 (Bundle at page 105 *et seq.*) and in relation to St George's in the period from 2006-2009 (Bundle at page 155 *et seq.*). Indeed, the Respondent's own Annual Returns to the Church Commissioners for the years 2006 and 2007 (Bundle at pages 101 & 103) also tend to undermine the assertion of previous custom and practice, although they relate to a period more than some six years before.

34. In fact the Respondent had emailed the Diocesan Director of Finance on the 18th October 2010 in which he said (Bundle at page 77):

> "While googling to see what my new Common Tenure agreement for my House for Duty service in the parish of Christchurch might be (I was doing this because the Diocese never issued a Terms of Service for me despite promises to the contrary), I was surprised to discover that as a retired stipendiary priest I was and am entitled to 2/3 of the incumbent's

fees for funerals, weddings, and interments et al. I say 'surprised' because when I started work the then Vicar, Hugh Williams, was insistent that this was not the case, and I was unwise enough not to seek further clarification.

Looking back through my records, which are not complete for this period, on the fees paid to the parish on weddings and funerals alone I am owed some £3,400. To whom shall I apply in the first instance for reimbursement _ the PCC of Christchurch, to whom the fees were first paid, or the Diocese, to whom I gather the fees were eventually sent?"

(In fact the parish records for The Priory for the years 2005-2009 (Bundle at pages 107 *et seq.*) and for St George's for the years 2006-2009 (Bundle at pages 157 *et* seq.) show the Respondent remitting fees to the Diocesan Board of Finance and the Parochial Church Council.) The assertions made in this email by the Respondent are, of course, entirely inconsistent both with any verbal agreement with Canon Hugh Williams but also with any custom and practice upon which the Respondent now seeks to rely.

35. As we have noted in his *Responses to the claims of misconduct* the Respondent accepts that he took the three funerals at St George's Jumpers and it is clear that he retained the fees in relation to them, including that portion that properly belonged to the PCC (Bundle at pages 24-25, 301-303 & 453). This was in spite of the fact that he had previously remitted similar fees to the appropriate persons (Bundle at page 163). Whether or not the Respondent was merely forgetful in relation to filling out the relevant registers, he does not suggest that he was forgetful in relation to their non-remittance nor does he seek to explain his change of practice.

36. The Respondent also asserts that he was entitled to keep fees for funerals where the deceased was not from the parish of Christchurch or St George's and,

as such, “had nothing to do with the parish nor the Diocese” (Bundle at page 453). It is, of course, true that such funerals had nothing to do with the parish of Christchurch but, that being the case, any agreement with Canon Hugh Williams (which we do not accept) was clearly irrelevant. As to the diocese the Church of England is an inclusive Church and all persons living within England live within the parochial system. It follows that, unless the deceased were from an entirely different diocese, those funerals were very much to do with the Diocese of Winchester _ and, more particularly, with the incumbents of the parishes of which the deceased were parishioners.

37. The Respondent argues (Bundle at page 453) that the Bishop's letter of the 3rd November 2010 bears out his contention to an entitlement to extra-parochial fees in that it says (Bundle at page 89):

> “Those fees are only paid to anyone other than the incumbent when the person conducting the office is not part of the benefice or parish strength.”

The Respondent goes on to say:

> “I hold office in the Parish of Christchurch, and there only. Thus the fees for any office from any other parish than Christchurch is, in the bishop's terms, rightfully mine.”

Certainly the Respondent thereafter continued to keep such fees but this argument ignores the fact that the Bishop's letter goes on to say:

> “You hold office in the benefice; you are not there as a retired priest when you carry out such offices. That is why the fees are paid to the incumbent and accounted for to the Diocese.”

This continuation makes it clear that the Bishop is only addressing the situation within the parish of Christchurch and not funerals taken elsewhere; moreover, it makes it clear that the Respondent was no longer a retired priest and that his position equated with any other licensed cleric. The Respondent relies in support on a letter he sent to funeral directors dated the 25th February 2009 (Bundle at page 547) following his pastoral review meeting with the Bishop of Southampton. Nonetheless, this letter does not address any question of remuneration but states:

> "I had my biannual Ministry Review with the Bishop of Southampton a couple of weeks ago and at this meeting, and in his follow up letter, he has asked me to ensure that for those funeral services I conduct from parishes other than that of Christchurch, I inform the relevant Vicar/Priest in Charge. I remember that when I started working with (most) of you back in 2001, the understanding was that I would happily help you if the relevant Vicar/Priest in Charge was unable to take a service, or if the next of kin specifically asked for me to take a service. The Bishop's advice is really a reiteration of this.
>
> As I have scant knowledge of the Bournemouth parishes, in most cases I will not know who is the relevant minister. We can inform the person in two ways, it seems to me. Either you can clear me taking the service yourselves (as already happens in some cases, I know), or if you prefer I can do it if you let me know who the minister is. I'm more than happy to do this.
>
> This will not affect our present working patterns, but I do wish to do the right thing."

38. We have sympathy with any cleric asked to take a service for a non-parishioner as it may well be difficult to identify and to contact the minister of the parish concerned. However we note that it is the duty of a cleric to obtain that cleric's permission even if it is the next of kin who asks that he should conduct the service. Indeed, we doubt whether it is sufficient as a matter of

practice to delegate the obtaining of the relevant permission to a funeral director as the latter may fail to do so. More especially in the context of this case, the obtaining of the permission is entirely separate from whether the fees are thereafter remitted to the parish priest. Indeed, as the Respondent (as we find) knew that parochial fees are assigned to the diocese (Bundle at page 12), he must also have been aware that most other ministers, if not all, would be under similar constraints as Canon Williams and would not, or would not be likely to, be in a position to waive the fees in his favour even if they had wished to do so. Indeed, we fail to see how any Anglican cleric would not have such an awareness in any event.

39. In his *Responses to the claims of misconduct* (Bundle at page 453) the Respondent states:

> " … [T]he vast majority of these funerals were not from the Parish of Christchurch at all, and as such had nothing to do with the parish nor the Diocese. As Bishop Michael himself said in the letter of November 2010: 'Those fees [i.e. service fees] are only paid to anyone other than the incumbent when the person conducting the office is not part of the benefice or parish strength.' … I hold office in the Parish of Christchurch, and there only. Thus the fees for any office from any other parish than Christchurch is, in the bishop's terms, rightfully mine. And because of the agreement with Hugh Williams, fees from parish offices are mine as well. This was also agreed by the then Bishop of Southampton at the pastoral review meeting I had with him in February 2009. I enclose a copy of the letter I sent to all local undertakers following the meeting."

We have already considered the letter of November 2010 and that alleged agreement with Canon Williams and we therefore now consider the Bishop of

Southampton's letter following the Respondent's pastoral review; this is dated the 13th February 2009 (Bundle at pages 167-169). The relevant part of that letter reads as follows:

> "In regard to funerals from outside the area I would want to note that you need to take great care over taking these funerals in relation to the incumbents of parishes concerned. I would hope that you would inform them when you have been asked to do so."

This, of course, makes it clear that such extra-parochial funerals were discussed at that meeting. It is, of course, possible that (as the Respondent contends: Bundle at page 453) the question of such fees was, indeed, discussed but we note that there is no such mention in that letter or in the letter to the funeral directors. We also note the great detail in the Bishop's letter which is clearly aimed at summarising the discussion between him and the Respondent. In these circumstances, and in the absence of any evidence to the contrary, we find that the question of fees for any extra-parochial funerals was not in fact mentioned during that pastoral review.

40. Indeed, the Respondent's own email to the Diocesan Director of Finance dated the 18th October 2010 (Bundle at page 77: and see above) may suggest that he was aware that he was unentitled to (at least) all of an incumbent's fees, although the email may equally well be taken as referring to fees solely within his own parish. Similarly, the Respondent's letter dated the 8th March 2011 to the Diocesan Human Relations Advisor (Bundle at page 315) states:

> "Parochial Fees. This of course was never part of my working agreement. One opinion says I am not entitled to parochial fees. The Diocesan Handbook says I am. Which is correct? It is very confusing."

However, because of the heading “Parochial Fees”, this too may be ambiguous. For these reasons we place no reliance on those emails as against the Respondent. We have already noted the Bishop of Winchester's letter dated the 3rd November 2011 and the Respondent's comments upon it.

41. On the other hand, in spite of challenging other matters (see Bundle at page 287) the Respondent did not challenge the accuracy of the first draft of his Statement of Particulars for common tenure in January 2011 sent out on the 4th January 2011 (Bundle at page 93) which stated that his post was non-stipendiary and under the heading **Parochial and other fees** (see Bundle at page 282) stated:

> “You have no legal entitlement to receive parochial fees in accordance with the current Parochial Fees Order made under the Ecclesiastical Fees Measure 1988.”

We again note that in spite of the heading including the words “and other fees” the body of the Statement only refers to “parochial fees”. Nonetheless, we further note that immediately above this paragraph the draft states:

> “You must give details to the diocesan office of any additional income you receive arising from your office. For further details, see the diocesan handbook.”

42. In his *Responses to the claim of misconduct* (Bundle at pages 456 *et seq.*) the Respondent details problems that arose, or are alleged to have arisen, in relation to finance, clergy housing, titles, the separation of St George's, non-attendance at meetings and chancel repair liability. We have carefully considered these arguments but are satisfied that, other than in giving a context to the Respondent's concern about monies, they are of no relevance in relation

to the entirely separate issues of whether the Respondent was entitled to keep funeral fees for himself and any dishonesty in so keeping them.

Conclusion

43. As the Designated Officer argues, the various explanations given by the Respondent are inconsistent and, having weighed all the evidence, we find that the Respondent was dishonest in relation to his retention of the various fees for funerals and cremations for parishioners both of Christchurch and St George's. We are also satisfied that the Respondent was sufficiently experienced and trained that he was aware that, just as at Christchurch, incumbents of other parishes were likely to have assigned their fees to the Diocesan Board of Finance. That being so, and in the light of Canon Hugh Williams' evidence (which we accept), we find that the Respondent should have taken care properly to check with each individual parish priest or incumbent whether he was entitled to keep the fees for any extra-parochial cremations that he took; indeed, a failure so to do over a course of time (as here) would in our view amount to "neglect … in the performance of the duties of his office" within the meaning of section 8(1)(c) of the Clergy Discipline Measure 2003 . However, we find either that the Respondent deliberately did not make such checks or that he was in any event aware that he should not keep those fees. Bearing in mind our finding of the Respondent's dishonesty in relation to retention of the Christchurch fees we therefore also find on a balance of probabilities that the Respondent was dishonest in relation to his retention of these extra-parochial fees as well. It follows that the Designated Officer has made out the case against the Respondent on each of the three grounds alleged against him.

R D H BURSELL QC
CHAIR

26th November 2014