THE BISHOP'S DISCIPLINARY TRIBUNAL FOR THE DIOCESE OF CHESTER

IN THE MATTER OF A COMPLAINT UNDER THE CLERGY DISCIPLINE MEASURE 2003

COMPLAINANT: PETER ARMSTRONG

RESPONDENT: THE REVEREND CANON PAUL ROBINSON

TRIBUNAL DECISION

Introduction

1. We order that the actual name, and any identifying details of the person described below as Z (other than the fact that Z had been convicted of manslaughter, and the fact that he had been released on licence in 2004), and of the parish described below as P, must not be published or otherwise made public, being satisfied under rule 49 of the Clergy Discipline Rules 2005 ("the Rules") that this is desirable to protect the private life of Z. For the same reason, and acting under rule 50(4), we omit from this written determination the actual names of Z and P.

2. This is the determination by the Disciplinary Tribunal of three allegations of misconduct against Canon Paul Robinson. Save where otherwise expressly stated, the Tribunal was unanimous in its determination.

3. The hearing took place in private on 22 and 23 May 2008 at the Civil Justice Centre in Manchester. Mr Adrian Iles, Designated Officer, conducted the case for the Complainant and the Respondent appeared in person. Prior to the hearing, it became apparent from correspondence received from the Respondent that he was raising numerous procedural and jurisdictional objections to the determination by the tribunal of the complaint, and that (whether or not he attended in person) he was unlikely to be legally represented. At the Tribunal Chairman's suggestion the President of Tribunals was requested to appoint counsel as *amicus curiae*, to make to the tribunal at the hearing such submissions as counsel considered should properly be made, and in particular concerning the following matters raised by the Respondent: (a) the appointment, and therefore jurisdiction, of the tribunal; (b) delay; (c) equality of arms; (d) relevance to the present proceedings of the matters which the Respondent was prevented from pursuing in separate complaint proceedings against the then Bishop of Stockport and the Bishop of Chester; (e) status of the House of Bishops' Child Protection Policy 1999 in these proceedings; and (f) any application for disclosure of documents or any category of document, necessary for the fair resolution of the complaint. With the President's permission, Mr Timothy Briden was appointed as *amicus curiae*. We are grateful to him for his considered and helpful submissions. Prior to the hearing he had informed the Tribunal that he saw no need for any application under (f).

4. The Complainant is Peter Armstrong, who since 1997 has been a Child Protection Advisor to the Chester Diocese and a member of the Diocesan Child Protection Advisory Group ("CPAG"), following 33 years experience in various local authority Child Care and Social Work positions. He has a professional qualification in Social Work, and has done a considerable amount of multi-agency Risk Assessment, but recognizes that he would not be competent to carry out a complete Child Protection Risk Assessment on his own in a complicated case. Additionally until 1 October 2005 he was the Bishop of Chester's Child Protection Representative.

5. The Respondent is aged 61 and was appointed Priest-in-charge of the parish of P in 2000. In 2004 he was appointed Rector of the same parish. He has been an Honorary

Canon of Chester Cathedral since 1998. He emphasized to us (and we have no reason to doubt) his considerable experience of youth work.

6. The complaint (in summary) was that the Respondent had not followed the required diocesan child protection procedures in relation to the appointment and use of Z as a voluntary youth worker in the Respondent's parish of P. Z was born in 1946 and convicted of manslaughter in 1996, when he was sentenced to life imprisonment. The circumstances surrounding the offence were that Z had been an Army Officer in a School Army Cadet Unit where he met a young woman who was a member of the Unit. After she left school and ceased to be a cadet a sexual relationship developed between them whilst she was in her late teens. When she ended the relationship, Z, in a state of anger, frustration and depression, obtained a weapon from the cadet armoury, tracked down the new boyfriend in the street, and shot and killed him. After 8 years in prison, during part of which he was befriended by the Respondent and given financial support by the Parochial Church Council ("PCC") of P, Z was released on Licence in February 2004 and placed under the supervision of the Merseyside Probation Service. Z began work as a voluntary youth worker at P in September 2004, and continued to work in this role until September 2005 when he was asked by the PCC not to attend for the time being whilst matters relating to his appointment were investigated. The Complainant has never suggested that Z has harmed children at any time, and has been at pains to point out that he does not have evidence that Z has been a risk to children in the past. It emerged during the hearing that Z was re-instated as a youth worker at P in 2007, following a Risk Assessment acceptable to the diocese, in which neither the Complainant nor the CPAG were involved. We regard this later development as irrelevant to the allegations we have to determine.

7. There is a further diocesan officer who should be mentioned at the outset. This is Canon Bob Powley, a qualified psychiatric social worker and former Deputy Director of Social Services for a local authority, who was diocesan Director of Social Responsibility and Diocesan Child Protection Officer (with overall responsibility for Child Protection) until his retirement in January 2005. There followed a period when the post of Diocesan Child Protection Officer was unfilled, hence the greater involvement of the Complainant in this matter, including temporarily replacing Canon Powley as chairman of the CPAG.

The allegations

8. Under section 8 of the Clergy Discipline Measure 2003 ("the Measure") disciplinary proceedings may be instituted against any priest alleging any of the following:

> "(a) doing any act in contravention of the laws ecclesiastical;
> (b) failing to do any act required by the laws ecclesiastical;
> (c) neglect or inefficiency in the performance of the duties of his office;
> (d) conduct unbecoming or inappropriate to the office and work of a clerk in Holy Orders".

The present proceedings concern a complaint relating solely to item (c).

9. Under the Measure, proceedings can be instituted against a priest by way of written complaint by the nominee of a Parochial Church Council, by a churchwarden or "(iii) any other person who has a proper interest in making the complaint": section 10(1)(a). There has been, and could be, no suggestion that the Complainant, by reason of his diocesan role and the nature of his involvement in relation to the subject-matter of these proceedings, did not have a proper interest in making the complaint.

10. On 19 April 2006 the Complainant made a written complaint that the Respondent had been neglectful and inefficient in the performance of his duties as incumbent of P in relation to his decisions and actions with regard to the appointment of Z as a youth worker in his parish. The Respondent did not serve an Answer to the complaint, notwithstanding rule 17(2) of the Rules, and refused to meet the Designated Officer to assist him with his investigation, notwithstanding the duty of co-operation under rule 28(3).

11. On 30 April 2007, the President of Tribunals decided that there was a case to answer and referred the complaint to a disciplinary tribunal under section 17(3) of the Measure. His letter to the Complainant included the following:

> "In accordance with Rule 29(2) I specify that the following allegations of misconduct should be referred to and determined by a disciplinary tribunal –
>
> > "That the following alleged conduct of the respondent Canon Paul Robinson, the Rector of [P] amounted to neglect or inefficiency in the performance of the duties of his office under section 8(1)(c) of the Clergy Discipline Measure 2003 in failing to comply with the House of Bishops' Child Protection Policy 1999, as applied in the Diocese of Chester, in that in about 2004 he allowed or appointed a member of his congregation to act as a voluntary youth worker in his Parish without following the recommended safe recruitment practice.
> >
> > In particular
> >
> > 1. he has allowed or appointed a member of his congregation to act as a voluntary youth worker without first obtaining Criminal Records Bureau (CRB) clearance, and/or
> >
> > 2. after a CRB disclosure was obtained, he ignored diocesan advice to terminate the appointment pending a risk assessment; and/or
> >
> > 3. after the Parochial Church Council had determined that the said appointee should stand down pending a risk assessment, he attempted to re-instate the said appointee in March 2006 as a voluntary youth worker without obtaining a child protection risk assessment".

As will become apparent from the chronology below, the three particulars relate to alleged neglect or inefficiency in successive Phases, of which Phase I concluded in early

2005; Phase II concluded in June 2005; and Phase III lasted until Spring 2006. All three phases were in reality part of a single on-going episode involving the Respondent's handling of issues related to Z.

12. At all material times the relevant House of Bishops' Policy was contained in "Protecting All God's Children, The Child Protection Policy for the Church of England" 3rd edition 2004, which was specifically referred to in the Statement by the Complainant in support of his complaint, provided under section 4(2)(vii) of the Measure. Accordingly we were satisfied that the President's reference to the previous 1999 document was a mistake. During the hearing we raised our concern on this matter, and, on the application of the Designated Officer and in exercise of the Tribunal's power under rule 103(b) of the Rules, we directed the substitution of "2004"or for "1999" in the specified allegations. We did this with the agreement of the Respondent, who told us that he had always understood the relevant procedures to be contained in the 2004 document, to which he (and all other Incumbents in the diocese) had been referred by Canon Powley in a circular letter in February 2004. At the hearing the Designated Officer told us that a Practice Direction had either been issued or was imminent, but no copy of it was then available to the Tribunal. Since the conclusion of the hearing, our attention has been drawn to PD 2 (2008), dated 21 May 2008, in relation to amendments to allegations of misconduct that have been referred to a tribunal. The amendment we directed was consistent with "the general test to apply" set out in paragraph 7 of PD 2 (2008), namely being necessary for the just disposal of the proceedings in accordance with the overriding objective and to meet the circumstances of the case, and capable of being made without injustice to the Respondent and the Complainant, having regard to the merits of the case.

13. On 25 October 2007 the Registrar directed that the Designated Officer should lodge a full statement of his case, with supporting witness statements, by no later than close of business on Friday 30 November, and that the Respondent, or legal representatives appointed to act on his behalf, should lodge his statement of case and supporting witness statements by no later than close of business on Friday 18 January 2008. The Designated Officer's Statement of Case, along with a witness statement by the Complainant, was received on time and supplied to the Respondent, but no Statement of Case (or supporting witness statements) were received from the Respondent by 18 January, nor by the later date in early April to which time was extended by the Tribunal Chairman's direction of 6 March 2008. Despite several further requests to the Respondent that he clarify his position relating to the substantive issues being raised against him, nothing was submitted prior to the start of the hearing, save for an e-mail received the day before the start of the hearing. The Respondent did not seek permission at the hearing to give evidence, and confined himself to asking questions of the Complainant and making an oral statement. We regard it as unfortunate that the Respondent chose to conduct his defence in this way, since it would have been helpful to have had a fuller explanation of his conduct during the relevant period and for this to have been tested under cross-examination. Later in this determination we make reference to a further document received from the Respondent after the conclusion of the hearing.

The Criminal Records Bureau

14. The role of the Criminal Records Bureau ("CRB") is fundamental to the allegations. The CRB is an Executive Agency of the Home Office which provides wide access to criminal record (and other) information through its disclosure service. In this way organizations are enabled to make safer recruitment decisions by identifying candidates who may be unsuitable for certain work, both paid and voluntary, especially that involving children or vulnerable adults.

15. The CRB was established under Part V of the Police Act 1997, and became operational in 2002. Its establishment was a major reason for the 2004 revision of the House of Bishops' Child Protection Policy in 2004, since its second edition (1999) did not deal with CRB clearance.

16. Organizations wishing to use the service can ask successful job applicants to apply for one of two types of check. The type of check required will depend upon the nature of the position. These are called Enhanced and Standard Disclosures. Both require a fee but are free of charge to volunteers. In the present case it is common ground that the relevant check was Enhanced Disclosure, which extends not merely to current and spent convictions, cautions, reprimands and warnings held on the Police National Computer and certain other Lists, but also to relevant information held by local police forces (see section 115(7) of the Police Act 1997, recently discussed in *R (on the application of L) v Commissioner of Police for the Metropolis* [2008] 1 WLR 681).

17. A Registered Body is an organization that is registered with the CRB (see section 120 of the Police Act 1997). These organizations are entitled to ask exempted questions under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and will countersign applications on behalf of people or organizations who are themselves entitled to ask exempted questions. Registered Bodies that provide access to the CRB service to other organizations are called Umbrella Bodies. A large organisation that has registered with the CRB to check its own staff and/or volunteers may offer access to CRB checks to smaller organizations. Umbrella Bodies have the same responsibilities as Registered Bodies and must take reasonable steps to ensure that any organization on whose behalf they are signing complies with the relevant responsibilities. Umbrella Bodies thus play an important role in providing the mechanism by which many smaller organizations (such as in this case an individual incumbent/PCC) will access CRB checks.

18. The Police Act 1997 does not impose a legal requirement that CRB checks be requested prior to the making of appointments. Whether to use the service is left to the discretion of individual organizations.

19. Because the disclosed information can be extremely sensitive and personal, the the Secretary of State is required to publish a CRB Code of Practice, and has done so after a lengthy public consultation and with input from a range of organizations. The CRB can refuse to issue the results of a CRB check if it suspects that the registered

person who countersigned the application has failed to comply with the Code of Practice or countersigned at the request of a body which, or individual who, has so failed to comply (section 122(3) of the Police Act 1997).

20. Certain passages from the CRB Code of Practice form part of the relevant background to the present complaint. The first stated "Obligation of the Code" (on page 4) is "Fair use of Disclosure Information", which includes the following:

> "In order that persons who are, or who may be, the subject of Disclosure information are made aware of the use of such information, and be reassured Employers shall:
> - Ensure that application forms for positions where Disclosures will be requested contain a statement that a Disclosure will be requested in the event of a successful application, so that applicants are aware of the situation;
> - Include in application forms or accompanying material a statement to the effect that a criminal record will not necessarily be a bar to obtaining a position, in order to reassure applicants that Disclosure information will not be used unfairly;
> - Discuss any matters revealed in Disclosure information with the person seeking the position before withdrawing an offer of employment;
> - Make every subject of a Disclosure aware of the existence of this Code of Practice and make a copy available on request".

Then under the heading "Good Recruitment Practice", the Code (on page 7) states:

> "1.31. The Bureau is committed to encouraging the spread of best practice in recruitment to ensure the best possible use of the information provided by the Bureau and to encourage safer recruitment. The establishment of the Bureau widens the availability of criminal record information. It is crucially important that people who have been convicted are treated fairly and are given every opportunity to establish their suitability for positions.
> 1.3.2 The existence of a comprehensive Disclosure service should not be regarded as a substitute for any of the full range of existing pre-appointment checks, including taking up references and enquiring into a person's previous employment history. Disclosure should be seen as complementary to existing recruitment practice and should only be sought after a candidate has been provided with a provisional offer of employment or a voluntary position".

Under the heading "Consideration of Checks", the Code states (on page 11):

> "4.1.1 Employers should take into account a number of factors before reaching a recruitment decision....
> 4.1.2 Employers shall consider the following:
> - whether the conviction or other matter revealed is relevant to the position in question
> - the seriousness of any offence or other matter revealed
> - the length of time since the offence

- whether the applicant has a pattern of offending behaviour or other relevant matters, and
- the circumstances surrounding the offence and the explanation(s) offered by the convicted person.

4.1.3 Ultimately, it is the responsibility of the employer to decide whether to offer the applicant a position....".

The House of Bishops' Policy on Child Protection

21. As stated above, this is contained in "Protecting All God's Children, The Child Protection Policy for the Church of England" 3rd edition 2004. Although sub-titled by reference to "the Church of England", the Foreword by the two Archbishops refers to it as "House of Bishops' Policy on Child Protection", and we shall refer to it as "the House of Bishops' Policy". The Foreword refers to "seeking to develop good practice and respond carefully and appropriately to concerns when they arise". Emphasising that "Our children deserve the best care and teaching the Church can provide", the Foreword concludes:

> "This policy and its accompanying procedures are presented to offer guiding principles and ways of operating to achieve [child protection].
> **We thank God for our children and those who nurture them in the faith and pray that we may faithfully fulfil our responsibilities towards them**" [original emphasis]

22. The "Principles" (set out on page vii) include:
"We will carefully select and train ordained and lay ministers, volunteers and paid workers with children and young people using the Criminal Records Bureau, amongst other tools, to check the background of each person."

Under the heading "Aims and purpose" (on page 3), are stated:

- "At a national level it is the House of Bishops which approves the policy and provides recommended procedures where it is judged that the Church of England should have common practice across the dioceses.

- Building on this, dioceses may provide additional procedures and examples of good practice to give further substance to the House of Bishops' policy so that those authorized volunteers, employed laity and people holding the bishop's licence, can properly and with confidence engage with children."

On the same page, under the hearing "Our theological approach", the potential conflict is identified between the "duty to protect [all people] from harm" and the Church's role in assisting in the rehabilitation of offenders "because redemption and the possibility of

forgiveness are so central to the gospel". In a passage directed at "abusers", the point is made that:

> "The genuine penitent will accept the need for careful arrangements for their return to church fellowship".

Central to the allegations in the present case is that the Respondent has not adequately recognized this need.

23. The "Child Protection Policy Statement for the Church of England" is set out on page 4:

> "The Church of England, in all aspects of its life, is committed to and will champion the protection of children and young people both in society as a whole and in its own community. It fully accepts, endorses and will implement the principle enshrined in the Children Act 1989 that the welfare of the child is paramount. The Church of England will foster and encourage best practice within its community by setting standards for working with children and young people and by supporting parents in the care of their children. It will work with statutory bodies, voluntary agencies and other faith communities to promote the safety and well-being of children and young people. It is committed to acting promptly whenever a concern is raised about a child or young person or about the behaviour of an adult, and will work with the appropriate statutory bodies when an investigation into child abuse is necessary."

Part of the complaint here made is that the Respondent failed to respect the paramountcy of the welfare of the child, and the importance of working with statutory bodies.

23. There is a broad definition of "child abuse" on page 5, to include physical, sexual, emotional and neglect, and the point is made that "It is vitally important to recognize that abuse of children is much broader than sexual abuse and that all abuse is a betrayal of trust and a misuse of authority and power". Then there follows a chapter entitled "Responsibilities" (page 6), which begins:

> "The Church of England, within its national institutions and within dioceses, has an obligation to support parishes and those working with children and young people in exercising their primary responsibility for those entrusted to them".

The overall aim is "to create a culture of informed vigilance at all levels in the Church", and (at page 7) is the statement:

> "The Church seeks not simply to keep the law in regard to Child Protection but to foster and promote best practice as part of its work and witness to God's kingdom".

In consequence:

"All those working with or in direct and regular contact with children in a paid or unpaid capacity will be carefully recruited and their backgrounds checked at the appropriate level through the Criminal Records Bureau."

24. At page 8, "responsibilities" are set out for dioceses and parishes. Amongst diocesan responsibilities (3.3) are:

- "Adopt the House of Bishops' Policy on Child Protection together with any additional diocesan procedures and good practice guidelines which shall be endorsed by the diocesan synod.
- Provide a structure to manage child protection in the diocese,
- Appoint a suitably qualified diocesan child protection adviser, directly accountable to the diocesan bishop, and provide appropriate financial, organizational and management support.
- Include the monitoring of child protection in parishes as part of the archdeacons' responsibilities.
- Provide access to the Criminal Records Bureau for parishes...for those beneficed and licensed clergy, paid workers and volunteers who need to obtain disclosures.
- Provide access to a risk assessment service so that the bishop and others can evaluate and manage any risk posed by individuals or activities within the church.
- Provide training and support on child protection matters to parishes...
- Provide a handbook of procedures and recommended good practice to enable parishes and others to undertake their duties, encouraging them to implement such procedures and good practice according to their local needs."

The Respondent is criticized for failing to recognize the archdeacon's sphere of responsibility, as well as the role of the diocese, particularly in relation to risk assessment. Amongst parish responsibilities (3.4) are:

- "Accept the prime care placed upon the incumbent and Parochial Church Council (PCC) to ensure the well-being of children and young people in the church community;
- Adopt and implement a child protection policy and procedures, accepting as a minimum the House of Bishops' Policy on Child Protection but informed by additional diocesan procedures and recommended good practice whilst being responsive to local parish requirements.
- Appoint a coordinator to work with the incumbent and the PCC to implement policy and procedures...

.....

- Ensure that all those authorized to work with children and young people or in a position of authority are appropriately appointed, trained and supported...

...

- Provide appropriate insurance cover for all activities undertaken in the name of the parish".

The Respondent is criticized for failing to prioritize the well-being of children and young people, and failing to follow House of Bishops' Policy and diocesan procedures in relation to the appointment of Z, and thereby jeopardizing the parish's insurance cover.

25. The "recommended procedures" referred to at page 3 of the House of Bishops' Policy are those set out in Part III, which contains three procedures, "Responding to concerns about possible abuse" (page 33), "Ministering to people who might pose a risk to children" (page 41), and "Safe recruiting" (page 44). It is only necessary to refer to the second and third of these. Under Procedure 2, advice concerning ministry to those who have abused children is followed by this passage:

> "As well as people with convictions against children there are others whose position in a congregation may need to be carefully and sensitively considered to decide whether they pose a risk to children. This would include people convicted of violent or sexual offences against adults including domestic violence, people involved in drug or alcohol addiction, adults with a mental disorder or special needs which might in rare cases result in erratic behaviour."

The Respondent is criticized for failing to appreciate the potential relevance of Z's conviction for manslaughter.

26. Procedure 3 on Safe Recruiting, which is the procedure of greatest relevance to the present complaint, starts by emphasizing the need "to take care over the way adults are appointed when they are likely to have contact with children", and that procedures will include:

> "all volunteers who work with children or who may come into regular and direct contact with children during their activities; this will include adult members of mixed age activities such as, bell-ringers, choirs, servers."

P3.3 is headed "Appointment of volunteers and employees". This makes clear that prospective appointees for posts "involving direct contact with children and young people" should:

- "be regarded as job applicants...;
- complete an application form;
- name two referees, one of which should be from the current employer or previous church
- complete a Confidential Declaration [described in P3.4]
- have an appropriate interview".

Then, "If the decision is made to appoint, the appointee should:

- provide a disclosure at the appropriate level [described in P3.7 as the "enhanced" level where the post involves "supervising, training, caring or being in sole charge of children"]
- be offered the post subject to a probationary period;
- have the appointment confirmed in writing by the authorizing body [i.e. the diocese]".

This makes it absolutely clear that appointment, even of volunteers, is subject to rigorous procedures, including the involvement of the CRB and the diocese.

27. P3.4 contains a form with questions for applicants, including "volunteers who are likely to be in regular and direct contact with children and young people under eighteen years of age". The questions include whether the applicant has "ever been convicted of a criminal offence", and makes clear that this applies to "All previous convictions with the exception of technical motoring offences leading only to a fine". This is a further indication that Child Protection procedures are not merely concerned with safeguards against those with previous convictions for child-related offences. The form expressly states, at its end, that "Before an appointment can be confirmed applicants must provide an enhanced/standard disclosure from the Criminal Records Bureau". P3.7 is headed "Criminal Records Bureau", and states:

> "Although it is not a legal requirement for the Church to use this service, the House of Bishops regards it as a mandatory element in the recruitment process that disclosures should be obtained".

P3.8 explains that in cases of enhanced disclosure the additional information from local police records "is supplied to the registered body and not to the applicant". P3.9 explains that "in the case of standard and enhanced disclosures individuals will need to obtain a counter-signature from a registered body.

28. P3.10 is headed "Registered body" and includes the following:

> "It is recommended that each diocese registers [with the CRB] and provides a service as an umbrella body to parishes and other relevant bodies. The registered body receives a copy of the disclosure certificate. Each diocese will need to appoint several counter-signatories to administer the system and sign disclosures."

29. There then follows P3.11, possibly the most important paragraph of all for present purposes, headed "Positive disclosures":

> "Counter-signatories receiving disclosures containing information [i.e "positive disclosures", as opposed to negative, or clear, disclosures] should check with the applicant that they accept the information (if they do not they will need to take this up with the CRB). A risk assessment should then be undertaken by a professionally qualified person or panel and advice offered to the person making the appointment. A panel from a neighbouring diocese may be used if an appeals

procedure [from the conclusion of the risk assessment], as required by the CRB, is needed".

We regard it as unfortunate that P3.11 is so brief, since it deals with the key, and most difficult, situation, i.e. where the disclosure is positive. However, it is implicit from the final sentence that the risk assessment is to be carried out at diocesan level, followed by advice to the person, in the case of a parish the incumbent or PCC, making the appointment. The complaint in the present case is that the diocese was excluded from risk assessment and therefore from offering advice in the light of the diocesan-level risk assessment.

30. P3.15 is headed "Criteria for the portability of CRB disclosure". This is concerned with the acceptability of previous disclosure made to another organization. The first three points made are that:

- "The disclosure must be less than two years old.
- The person must still be in the same job or post for which the disclosure was sought.
- The disclosure must be clear'."

31. Appendix 7 consists of a Statement from Ecclesiastical Insurance, including the following:

> "Policies of insurance require the insured to take all reasonable steps to prevent injury, loss or damage occurring. Failing to take such precautions may prejudice the insurance arrangements in force. A duty therefore exists upon the insured to research and adopt best practice based upon current and ongoing guidelines".

As we shall see, the diocese became increasingly concerned that the Respondent's actions were jeopardizing his parish's insurance cover.

32. Note 11, on page 54 of the House of Bishops' Policy, explains that "the PCC and the incumbent...are together responsible for ensuring that the child protection policy is implemented [in parishes]". As we have already mentioned, Canon Robinson accepts that he received the February 2004 circular letter to incumbents from Canon Powley, which referred expressly to "the new House of Bishops' policy: "Protecting All God's Children". (Available from Church House Publishing, www.chpublishing.co.uk)". It is clear that the PCC, and therefore presumably the Respondent, possessed a copy of the House of Bishops' Policy in 2005, since there is express reference to P3.11 of the document in a letter from the PCC Secretary to the Bishop of Chester of 13 September 2005. In his letter to members of the PCC of 15 March 2006, the Respondent not merely stated that he had "correctly followed the procedures laid down in the House of Bishops' Policy", but also that he had "yet again gone through the Child Protection policy documents of the House of Bishops".

The Diocese of Chester's "Guidelines for Child protection"

33. As mentioned above, one of the "responsibilities of the diocese" set out in the House of Bishops' Policy was to:

> "Adopt the House of Bishops' Policy on Child Protection together with any additional diocesan procedures and good practice guidelines which shall be endorsed by the diocesan synod".

Although "Guidelines for Child protection", which we shall refer to as "the Diocesan Guidelines", has the date of April 2004 on its cover, the document was available earlier than this, for, enclosed with Canon Powley's circular letter of 25 February 2004 to incumbents (including the Respondent), were "two copies of the revised Diocesan Child Protection Guidelines; one for yourself, the other for your parish Child Protection Co-ordinator". The Complainant was unaware, nor were we told, of any formal approval given to the Diocesan Guidelines other than by the CPAG.

34. In a preface to the Diocesan Guidelines, the Bishop of Stockport referred to them as the response of the Diocese of Chester to the House of Bishops' Policy:

> "The Christian Church...must have a prime concern for the safe-keeping of young people...
> It is very important that the guidelines and policy are implemented in every place in the Diocese where people have responsibility for the care of children".

Much of the Diocesan Guidelines is a summary of the House of Bishops' Policy, including the statements (at page 2) that:

> "The Church seeks not simply to keep the law in relation to Child Protection, but to promote best practice as part of its work for and witness to God's kingdom",

and that:

> "The Church will work with the statutory agencies to manage the presence in congregations of offenders, including those who are on the Sex Offenders' register".

Criticism is made of the Respondent for opposing the involvement of the local authority in relation to the assessment of Z

35. The parish responsibilities in the House of Bishops' Policy are repeated (page 12), with only minor variation of language, including the responsibility:

- "to ensure the well-being of children and young people in the church as a prime duty of care.

- To adopt and implement a child protection policy based on the House of Bishops' policy and Diocesan Guidelines (adapted to the local situation) as minimum standards
- ...
- to ensure that people who are authorized to work with children or who hold a position of authority are properly appointed, trained and supported".

Reference is made to annual review by parishes of confidential declarations and CRB checks. Then under the heading "Creating A Safe Environment", appears the statement (page 3):

> "Each church has a responsibility to develop high standards of practice for work with children and young people. Safeguarding children is integral to this. It is essential that the proper care and development of children is undertaken by adults whose actions are informed by best practice and who work with the support and confidence of the whole church".

Staffing levels are recommended, as well as the practice of minimizing the opportunities when an adult and child (or small group of children) are left alone together.

36. For the purposes of the present case, the two most important sections are headed "Good Recruitment Practice" (page 6) and "The Criminal Records Bureau" (page 16). The former repeats what is in P3.3 of the House of Bishops' Policy, making it clear that the principles apply to the recruitment of "All volunteers who work with children or who may come into regular and direct contact with children during their activities". In particular the following is re-restated:

> "If the decision is made to proceed with the appointment [of volunteers and employees, prospective applicants should]:
> 6. **Obtain a CRB Disclosure at the appropriate level.**
> 7. **Be confirmed in post after the successful completion of a probationary period** [the bold type is used in the Diocesan Guidelines].

The Diocesan Guidelines include a recommended "Registration form for voluntary workers with children and young people" (which concludes "Please note that before taking up work with children you will be required to complete a Confidential Declaration form and obtain a Disclosure from the Criminal Records Bureau"); and a "Confidential Declaration form", sub-headed "Information required from people volunteering to work with children", which is very similar to that in P3.4 of the House of Bishops' Policy, including the same statement that "All previous convictions with the exception of technical motoring offences leading only to a fine should be disclosed"; and that "Before an appointment can be confirmed applicants must seek an appropriate Disclosure from the Criminal Records Bureau".

37. The section on the CRB expressly recites that "The House of Bishops regard [involvement of the CRB] as a mandatory element in the church's recruitment process" and that "Consequently the Diocese is registered with the CRB as an Umbrella Body in order to support parishes in this aspect of their work". Under the heading "Who needs to complete a CRB Application Form in the parish?", the clear statement appears:

> "All volunteers/workers now have to be checked.....including:
>
> .....
>
> Regular leaders and helpers on all on-going, church-based childrens' groups".

Reference is made to a diocesan "Clergy Guide" to assist parishes in checking the identity of applicants, to which we refer below. There is also a heading "Accepting an existing Disclosure: known as "Portability"", which states:

> "Some people may already have been checked by another agency (e.g. as a teacher). In considering whether to accept an existing Disclosure the following criteria should be used:-
>
> - The Disclosure must be clear (of previous offences etc.); less than two years old; and at the level you require (Enhanced)."

These references to the role of CRB checks lie at the core of the complaint.

38. The emphasis in the Diocesan Guidelines is on former abusers, and little mention is made of other previous offenders. Although at page 14 there is reference to procedures "when an ex-offender is identified within a church community", this is within a section headed "Dealing with Adults who have harmed children". In particular the specific reference to violent offenders in Procedure 2 to the House of Bishops' Policy is not repeated. The Complainant accepted, under questioning from Mr Briden, that it was possible to read the diocesan guidelines in relation to CRB checks as not applying in the case of previous offences against adults. Also entirely absent from the Diocesan Guidelines is any specific reference to risk assessment, and in particular to the diocesan role in risk assessment and advice, following positive CRB disclosure (dealt with in P3.11 of the House of Bishops' Policy). We regard this as most unfortunate. Two of the specified allegations of misconduct concern diocesan procedures for risk assessment and advice.

The Diocese of Chester's "Clergy guide to the disclosure application form"

39. As mentioned above, the Diocesan Guidelines refer to a diocesan Clergy Guide to assist parishes in checking the identity of applicants. The Complainant agreed that it was unfortunate that a copy of the Clergy Guide was not specifically included in the Diocesan Guidelines. Our attention was drawn to two versions of the Clergy Guide, the first produced in 2002 (to which the CPAG had contributed), the second headed "For use from April 2004". The evidence of the Complainant was that until quite recently he was personally unaware of the later version, which had not been considered by the CPAG;

and that even after April 2004 most incumbents would have only been aware of the former document. It became clear that the latter part of this evidence was incorrect. Attached to the circular letter sent to all incumbents by Canon Powley on 25 February 2004 were "details of a new procedure for CRB checking of existing as well as new appointments [to be] initiated by parishes between 1 April and 30 September 2004". Whereas the former document stated that "At this stage only newly appointed volunteers and workers need to be checked", the later document stated that "All volunteer/workers have to be checked". In most other respects the two versions were very similar. It appears that there is some basis for the Complainant's view that use of the earlier version continued after April 2004, because in a letter of 21 July 2004 to which we shall return the Respondent was evidently referring to the wording of the earlier, rather than the later document.

40. The Clergy Guide re-iterates as "The policy" that:

> "Those who are to work with children or vulnerable adults are not allowed to start work until the disclosure process has been satisfactorily completed",

and that:

> "All volunteers/workers have to be checked...including:
> ...
> Regular leaders and helpers in all on-going, church-based childrens' groups".

Referring to previous disclosure, the Clergy Guide differs from the Diocesan Guidelines in two ways. First, there is no mention in the Clergy Guide of the effect of previous positive disclosure; second, the Clergy Guide introduces the question "whether the duties of the post are similar" to those the subject of the previous CRB application, which was not raised in the Diocesan Guidelines. We regard such differences as markedly unhelpful to those to whom the guidance is directed, particularly the clergy.

41. A marked advantage of the Clergy Guide over the other policy documents is the flow-diagram, entitled "The process", divided into three steps. Step 1 includes selection of the volunteer, completion and sending of the CRB application form by the incumbent to the diocesan counter-signatory. (It is unfortunate that different terminology is used in the Clergy Guide to that used in the Diocesan Guidelines. Thus what the Clergy Guide terms "CRB application form" is described in the Diocesan Guidelines as "registration form", and no mention at all is made in Step 1 of completion of the confidential declaration form). Step 2 deals with checking of the application form by the diocesan counter-signatory and its sending to the CRB (implicitly by, and having been signed by, the counter-signatory).

42. Step 3 (building on P3.11 of the House of Bishops' Policy) covers the period after the CRB disclosure has been returned by the CRB to the diocesan counter-signatory and the applicant. It usefully indicates the different position depending on whether the disclosure is negative ("If clear") or positive ("If any concern"). In the former case, the

diocese informs the incumbent in writing, and the volunteer/worker can start work. But in the latter case (i.e. where disclosure is positive or not clear), there is to be "Discussion involving Countersignatory [sic], Applicant and Incumbent". If this leads to concerns being resolved, then the incumbent is informed in writing (implicitly by the diocesan counter-signatory), and the volunteer starts work. On the other hand:

> "If concern remains, Applicant and Incumbent informed, with details of appeal/complaint procedure".

In such a case it is implicit that the volunteer/worker cannot start work. The reference to appeal/complaint procedure is explained in a note below the flow-diagram:

> "If at the end of this process the applicant considers that a wrong decision has been made in their case or they have a complaint about the system, they can write to the Diocesan Secretary....".

In this way the Clergy Guide to an extent supplements the gap to which we have already referred in the Diocesan Guidelines. On the other hand the Complainant was unable to explain why explicit reference to "risk assessment", which was included in the 2002 version of the Clergy Guide ("Risk assessment and discussion involving Countersignatory, Applicant and Incumbent") had been removed from the 2004 version. We surmise that this may have been because risk assessment could, and often would, involve other people than those specifically mentioned (counter-signatory, applicant and incumbent), as is apparent from P3.11 of the House of Bishops' Policy. Since it is positive/not clear disclosure which gives rise to problems (and not merely in the present case of Z), and given the key importance at such a stage of risk assessment, it is regrettable that the flow-diagram (and text) of the 2004 Clergy Guide was silent on the matter (as were the Diocesan Guidelines). However, as already mentioned, the Respondent's letter to Canon Powley of 21 July 2004 shows that he was using the earlier version, because he cites what the earlier version said about Step 3 risk assessment.

The Charity Commission's publication "Safeguarding Children, Protecting children in your organisation"

43. The only version of this document we were provided with is dated November 2006, and therefore post-dates the subject of the allegations. The document refers to previous guidance issued in 2002.

44. The Introduction includes the following:

> "Charity trustees are responsible for ensuring that those benefiting from, or working with, their charity are not harmed in any way through contact with it. They have a legal duty to act prudently and this means they must take all reasonable steps within their power to ensure that this does not happen. It is particularly important where beneficiaries are vulnerable persons or children in

the community. Trustees are expected to find out what the relevant law is, how it applies to their organization, and to comply with it where appropriate. They should also adopt best practice as far as possible – advice on this is available from a number of knowledgeable sources, some of which are listed below.
Children are an especially vulnerable group and therefore the Charity Commission is concerned to stress the importance of charities having proper safeguards in place for their protection."

45. Reference is made to "Safeguarding", defined as:

"All agencies working with children, young people and their families taking all reasonable measures to

- Ensure that the risks of harm to children's welfare are minimized; and
- Where there are concerns about children and young people's welfare, all agencies taking appropriate actions to address those concerns, working to agreed local policies and procedures in full partnership with other agencies....

Safeguarding children is vital for charities as charity trustees have a duty of care towards the children with whom they have contact..."

Chronology of the material events

46. It has seemed appropriate to delay a detailed narrative of the chronology until after our summary of the policy background. We hope, however, that this course will assist understanding. We sub-divide into three phases, reflecting the timing of the three allegations against the Respondent.

(i) Phase I

47. As already mentioned, in 1996 Z was convicted of manslaughter of his former girl-friend's new partner, and sentenced to life imprisonment. Some members of Z's family, including two of his grandchildren, worshipped at the Respondent's church, and, whilst serving sentence, the Respondent was put in touch with Z by Bishop Colin Bazley (an honorary Assistant Bishop in the Diocese of Chester and Warden of Readers from 2000), because Z had expressed a wish to become a Reader. This led on to frequent prison visits by the Respondent to Z, and eventually to some financial assistance being given by the PCC of P to assist his training (whether this was for training as a Reader or training as youth-worker remains unclear). In 2003 Z applied for a CRB check, and nothing was disclosed other than his manslaughter conviction. (How it came about that Z made this application at a time when, so far as we are aware, he had not been offered any post is also unclear).

48. In February 2004 Z was released on Licence. It was a term of the Licence that he only undertake such employment, paid or unpaid, as the Probation Service approved. He started to worship at the Respondent's church. The church was involved in youth work, particularly with a Friday Youth Club for 10-14 year olds. Z had some previous

experience of youth work, both working with army cadets and with young people doing Duke of Edinburgh awards. To our minds rather surprisingly, but undoubtedly with the best of motives, within a month of release from prison, the Respondent was considering involving Z in youth work in the parish. On 15 March 2004 the Respondent wrote to Canon Powley asking whether Z "would get through both CRB and our own checks". The letter concluded:

> "[Z] totally accepts that we have to ask about this and do the checks. But there is no point starting the process if it will inevitably end in a "no"."

Correctly this letter recognized a diocesan role in the matter, and (implicitly) that the "no" might come from the diocese.

49. On 18 March 2004 Canon Powley replied that, bearing in mind Z's recent release date, his initial reaction was that it would be too soon for Z to work with children and young people, but offered to discuss the matter further with the Respondent. At this point the Respondent telephoned Z's Probation Officer and explained what he had in mind for Z. As a result, on 27 April 2004 the Probation Officer sent a letter marked "Private and Confidential" to Canon Powley, containing information about the offence for which Z had been convicted, and its background, in which Z's depression was described as having grown into "a morbid cocktail of anger, jealousy and frustration". The letter stated that at the time of release, the risk of further offending was considered low, although potential risk areas would always remain. In particular it was explained that probation and psychology colleagues were concerned that in the future Z should not have sole pastoral responsibility of any young person and that any attachment he might possibly form should be discouraged. The letter, upon which the Respondent has always placed great reliance, concluded:

> "I recognize that [Z] has a wealth of experience of working with young people and he is anxious to make a contribution within his own community. As long as those working alongside [Z] are aware of the above risk areas, I would have no objection to him becoming involved in church youth work."

Under questioning by the Respondent, the Complainant described the 27 April 2004 letter as a reference for Z, and expressed the view that it was likely it was shown to Z before being sent. We see no reason to differ. The Complainant also described the letter of 27 April as "a heavy weight document, giving evidence of great causes of concerns".

50. It is clear that at that stage Canon Powley had not ruled out the possibility that Z might eventually be approved as a church youth-worker, because in early July he counter-signed on the diocese's behalf Z's application for enhanced CRB disclosure, which was also counter-signed by the Respondent. We accept the Complainant's evidence (conceded by the Respondent to be correct) that the application form was dated 1 July 2004 and made it clear that the post in mind was as a voluntary youth worker, and not as a Reader. Since a CRB application should only be made where a decision has already been made to

proceed with an appointment, we conclude that the Respondent (and presumably also the PCC) were satisfied that, CRB process apart, Z should be appointed.

51. On 20 July 2004 there took place what Canon Powley described as a "Risk Assessment Meeting", attended throughout by himself, the Probation Officer, the Respondent and his curate, with Z attending for the first part of the meeting. In our view it was unfortunate that the meeting was later so described by Canon Powley, since (as the Complainant explained in oral evidence), it was not a meeting to make a Risk Assessment, but rather to discuss the question of Risk Assessment, a difference which (as the Complainant conceded under questioning) the Respondent perhaps would not have picked up. In his oral statement at the hearing, the Respondent stated that Canon Powley had carried out a Risk Assessment, whereas in our view he had plainly done nothing of the sort. During the meeting, and in Z's presence, the Probation Officer explained the need for close supervision and no sole pastoral responsibility for young people, if Z were to be appointed. After Z left the meeting, Canon Powley set out his concerns, and said that in his view a longer period within the church fellowship was advisable, primarily for three reasons. First, because Z's conviction arose out of an inappropriate relationship with a young person. Second, because of Z's forceful personality. Third, to offer some re-assurance to the parents of youth group members. It was agreed that Canon Powley would write to the Respondent with his considered recommendation with a view to the recommendation being passed onto Z. There is nothing to suggest that the Probation Officer disagreed with Canon Powley's recommendation. On the other hand Canon Powley's reference to an inappropriate relationship with a young person was the cause of later difficulty. It had never previously been suggested that anything improper occurred when the young woman who became Z's girl-friend was an army cadet and under age, their relationship only having been formed later, when she was in her late teens. It is unclear precisely what Canon Powley was categorizing as inappropriate.

52. Before Canon Powley could send his letter, the Respondent himself had composed a lengthy letter to Canon Powley which, essentially, made eight points. First, that Canon Powley was wrong to consider Z's offence (described in the Respondent's letter as "most serious") as a Child Protection matter. Second, that issues about Z's domineering manner were similarly not a Child Protection matter. Third, that Z should have been allowed to remain throughout the "risk assessment and discussion", quoting from the flow-diagram in the 2002 version of the Clergy Guide. Fourth, that Canon Powley had already made his decision before the meeting, "which is completely unjust as well as not being what the Diocesan Policy expects". Fifth, that there was "nothing whatsoever in the Diocesan "Guidelines for Child Protection" which relates to the consideration of offences and offenders other than those which relate to child abuse...the procedures outlined refer only to the treatment of offences where there has been child abuse". Sixth, that the flow-diagrams in the Clergy Guide referred only to child abuse offences and offenders. Seventh, that the diocesan policy which Canon Powley had played a significant part in creating was deficient in not setting objective criteria for risk assessment. Eighth, the contrast between Canon Powley's "gut feeling" (a phrase apparently used by Canon Powley himself) and the "professional and very informed" judgment of the Probation Officer, and seeking "the evidence on which that judgment is

rejected". This is the first of many *ad hominem* letters written by the Respondent to those in positions of diocesan responsibility, which, whilst clarifying his own position, made it difficult for others to engage in moderate and reasoned discussion of a difficult problem.

53. On 22 July 2004 Canon Powley wrote to the Respondent, enclosing notes of the meeting and recommending that it would not be prudent to allow Z to take up youth work until he had spent a further period establishing himself in the fellowship of the Respondent's church. The letter concluded:

> "You could explain to him that you are prepared to review matters in (say) six months time. This would give him something positive to aim for and gives you and your Church Wardens a longer period to assess how he is fitting in, particularly in terms of his relationships.
> I would of course be happy to advise you further up to my retirement at the end of the year".

In a post-script, added after receipt of the Respondent's letter of 21 July, Canon Powley added that the Respondent should discuss this case with his parish's insurance company, with particular reference to his recommendation. We have already drawn attention to the Statement from Ecclesiastical Insurance in the House of Bishops' Policy. We infer from Canon Powley's post-script that he was already anticipating that Z might be appointed in disregard of his own recommendation.

54. There followed an e-mail from the Respondent to Canon Powley, describing his letter, notes and opinions as "unprofessional, factually inaccurate and flawed". Canon Powley then referred the matter to the Archdeacon of Chester, who wrote to the Respondent on 3 August:

> "[Canon Powley] tells me that you have stated your intention of disregarding his recommendation and appointing [Z] to work with young people in the parish...
> [T]he presence of someone on the leadership team of a youth group encourages young people and their parents to think of that person as "safe" outside the group as well...
> I urge you most strongly not to make this appointment...
> I certainly intend to check with EIG that the diocesan insurance cover is in no way compromised by your decision"

55. If the decision had not been previously reached, it was at about this time that the Respondent, presumably with the agreement of his PCC and churchwardens (though there was no evidence of this), appointed Z as a "voluntary youth club leader" (the job-description given in the Respondent's letter of 15 March 2006), and he started in early September, the beginning of the new school year. The Respondent confirmed the start-date at the hearing and was plainly surprised that the Complainant had been unaware, until considerably later, that Z had started work in the parish. The Respondent told us (and we have no reason to doubt this) that every member of the PCC knew of Z's history, though whether their knowledge was confined to the fact that he had been convicted of

his manslaughter was not explained further to us. The Respondent also told us that he had understood Canon Powley's reference to a 6 month delay as constituting an acceptance that Z could be appointed immediately, provided it was on a probationary basis. We regard this interpretation as far-fetched.

56. On 12 September 2004 there was a meeting of diocesan CPAG including the Complainant and Canon Powley, which the Archdeacon was also invited to attend. They supported Canon Powley's view that it too soon for Z to be involved in youth work, and that a child risk assessment was needed. It was agreed to invite the Respondent and his churchwardens to a special meeting of CPAG, to be chaired by the Archdeacon, and which the diocesan youth and children's advisers would not attend to avoid future issues about conflict of interests and confidentiality.

57. Shortly before this meeting took place, the Probation Officer wrote on 11 October 2004 to the Respondent, confirming that his position remained broadly the same, and that Z should not have sole pastoral care of a young person or form any particular attachment above and beyond that one would normally expect of a youth leader. Subject to this, he had no objection to Z undertaking youth work. His view was that Z's life was probably now at the stage when he could take on the extra commitment of some small level of voluntary work without it placing him under too much pressure.

58. In mid-October 2004 the special meeting of CPAG was held, to discuss matters with the Respondent and one of his churchwardens and chaired by the Archdeacon. Z was invited but did not attend. It was proposed to the Respondent and his churchwardens that a joint diocesan and local authority Risk Assessment should be undertaken. We accept the Complainant's oral evidence that the purpose of such a Risk Assessment ahead of CRB disclosure was to speed matters up, so that in due course the Step 3 procedures could be carried out more quickly. As the Complainant explained under questioning by the Respondent, the CPAG was trying to be helpful. We are satisfied that the meeting proceeded without the members of CPAG or the Archdeacon being aware that Z had already been appointed, despite the fact that the Respondent was at pains to say at the hearing that he had not been deliberately evasive. He told us that he had never hidden that Z was working, and that he did not wish to hide from the CPAG and the Archdeacon that Z was working.

59. Such a Risk Assessment could only take place with the co-operation of Z, for it would require his consent to the disclosure of personal information about him which was held by other authorities, and in particular psychiatric reports prepared before his release on Licence. We do not know what advice, if any, the Respondent gave to Z, following the special meeting, though the Respondent told us at the hearing that he had not regarded the CPAG suggestion as an independent Risk Assessment at all, and that Z was reluctant to have any Social Services' involvement. A few days later, on 16 October 2004, the Archdeacon received an e-mail from the Respondent, stating that Z was not prepared to consent to CPAG proposal since there was no child protection issue with regard to his offence (language very similar to that contained in the Respondent's letter to Canon Powley of 21 July 2004). The Archdeacon was told that Z refused consent to the

disclosure of information held by the Probation service. There then followed what we can only describe as a tirade to the effect that Canon Powley and the Diocese had consistently ignored, discarded and worked outside the laid-down procedure; the recent meeting was also irregular, because there had been no appeals committee, and it therefore had no standing. The Respondent threatened legal action if Ecclesiastical Insurance or any third party was told there was a child protection risk. The letter referred to Canon Powley's:

> " utterly unreasonable prejudice against this ex-offender and his unprofessional and completely irregular handling of this case...
> We have asked that [Z]'s case be put to the Diocesan CP Appeals and Complaints committees and this has been refused...
> On the basis of this thoroughly researched and investigated professional and statutory advice [a reference to the views expressed by the Probation Officer], we see that there is no Child Protection issue in using Z in our Youth Work and will continue to use him. We cannot see that the Diocese has any further role and therefore the matter is now closed."

We have seen no evidence of any request by this time to use appeal or complaint procedures (or refusal), the former of which (at any rate) was inapplicable until Step 3 was reached. On 22 October 2004, the Archdeacon forwarded this e-mail to Canon Powley.

60. The same day Z wrote a lengthy letter to the Archdeacon, referring to his voluntary work with P's Youth fellowship on Friday evenings. In our view, this ought to have alerted the Archdeacon to the fact that Z was already engaged in church youth work, and not merely a prospective applicant. Z told the Archdeacon that under no circumstances would he allow anyone sight of any documentation appertaining to his offence or any subsequent prison documentation. Z expressed his understanding that risk assessments were a thing of the past, apart from the ones carried out by the Probation Service during his Licence. He criticized the procedure followed at the meeting on 20 July 2004, and said that he had been told (we presume by the Respondent) that the correct procedure had not been followed. Z said that he wished to appeal the matter. We assume the reference to appeal was drawn from the flow-diagram in the Clergy Guide, or possibly to P3.11 in the House of Bishops' Guidance, though both relate to Step 3, when the diocesan authority does not advise appointment after receipt of a positive CRB disclosure.

61. Thus far, from the diocesan side, risk assessment had been under consideration whilst the CRB application was at Step 2. When once the CRB disclosure was received, since it would inevitably be negative, there would then be a need for Step 3 risk assessment and advice. No doubt any risk assessment made at Step 2 would guide, and probably shorten, the process of Step 3 risk assessment. However, no risk assessment could take place without the co-operation of Z and disclosure of his personal information to the assessors. Given Z's e-mail to the Archdeacon, not merely could the Step 2 risk assessment not take place, but also (unless Z changed his mind) there could be no

prospect of a Step 3 risk assessment in the future. In simple terms, therefore, Z could not possibly be appointed a youth worker at P. This explains why neither the Archdeacon nor Canon Powley took any further action towards Z in late 2004, and we accept the Complainant's oral evidence that before he retired, Canon Powley told him that there was no further action that could be taken in the matter, because Z had refused consent to a risk assessment. When on 4 January 2005 Z's positive CRB disclosure was returned to Canon Powley, the diocesan counter-signatory, who had just retired, leaving the position of Child Protection Officer unfilled, he simply marked it "pending", and placed it with the relevant files. The Complainant suggested that Canon Powley had done this on a visit to his former office to tidy up on leaving. At this time neither he, nor the Complainant, nor the Archdeacon appreciated that Z had already completed a whole term as a church youth worker. There is no evidence that Canon Powley spoke to anyone about the document, and we accept the Complainant's evidence that he did not know until some months later that the CRB disclosure had been received.

(ii) Phase II

62. Procedurally, however, receipt of the CRB disclosure marked the start of Step 3 in the Clergy Guide. But nothing further happened (save that Z continued as a youth worker) until 3 April 2005, when the Complainant was informed by a female colleague at a CPAG meeting that the Archdeacon had told her that he suspected the Respondent was using Z as a youth worker, information which the Archdeacon soon after confirmed to the Complainant in a telephone conversation. But nothing was done immediately by the diocese to establish whether Z was working at P, and, if he was, to seek to stand down Z pending Step 3 risk assessment.

63. At about the same time, on 15 April 2005, the Diocesan Secretary told the Complainant that Z's "not clear" CRB check had been received. Neither pieces of information was followed up with the speed we would have expected, and it was not until 25 May 2005 that the Complainant initiated further action by consulting Wirral Social Services ("Social Services") in general terms about how to take the matter forward. .Eventually on 4 June (five months after receipt of the CRB disclosure), the Complainant met the Archdeacon and Diocesan Secretary to discuss the CRB disclosure (the "not clear" contents of which can have occasioned none of them any surprise). On 6 June 2005 a telephone conversation took place in which the Probation Officer informed the Complainant that he was not going to get involved in a church dispute, and confirmed that Z would not be able to get a job working with children in health, education or social services.

64. On 14 June 2005 the Diocesan Secretary wrote to the Respondent a letter to the drafting of which the Complainant had contributed. The letter informed the Respondent that the diocese had received the CRB reply to Z's July 2004 application. Using language which concealed the diocesan suspicion that Z was already in post as a youth worker, the letter stated:

"You are advised ...not to appoint Z to work with young people without further investigation [presumably a reference to Step 3 risk assessment and advice]....
If, in the light of the discussion last year, Z decided not to pursue his application to help with work with young people in your parish, please let me know.
However, if you still wish to proceed with Z's appointment ....I suggest you meet with Peter Armstrong, the Bishop's Child Protection Representative in order to discuss how to take the matter forward, and for him to obtain your advice as to the best way to involve Z in the process".

The letter made no reference to child protection procedures whether at national or diocesan level, and was couched in very low-key terms, concluding with an expression of "kind regards and best wishes".

65. On 16 June 2005 the Respondent replied by e-mail to the Diocesan Secretary that it was most annoying that the matter was being raised again. The letter said (entirely erroneously in our view) that the CRB application related to Z becoming a Reader. The e-mail stated that:

"[Z] has been a voluntary youth worker at [P] for over a year [in fact the period was only nine months, September to June] and will continue to be so. There are no grounds whatsover [sic] for stopping his excellent youth work here. I would respectfully point out to you that the "advice" in your letter of 14th June is inappropriate and does not accord at all with the process laid down in the Diocesan Guidelines and it is apparent that the Diocese continues to have an ill-managed and whimsical Child Protection Policy.
I repeat however, that there are no Child Protection issues whatsoever related to [Z's] offence...Those who considered [Z] for release had available far more information about him and considerably more relevant expertise to use in making judgement than would be available to anyone in the Diocese....[Z]'s Probation Officer has specifically told me that he gives his full support to [Z] being involved in our Youth Work.
As you know, we went through all this last year, and after the abuse of [Z], the breaches of confidentiality and the failure to act according to the Diocesan Guidelines by Bob Powley, the other senior Diocesan officers involved, and the members of the CPAG, the matter will absolutely not be re-opened.
If you have mentioned [Z] to the Child Protection Representative [i.e. the Complainant], I would be grateful if you could let him know that this matter is now completely and totally closed, and it will not be revisited".

The e-mail ended by informing the Diocesan Secretary that Z had made it clear to the Respondent that if anyone in the future were to suggest that Z was a risk to children and young people, the "unfounded and unjustified defamation" would be dealt with by his solicitors.

66. We mention in passing that, as the Complainant commented in his witness statement, the Respondent in his e-mail of 16 June 2005 did not acknowledge the

different considerations involved in deciding on whether a prisoner may be released from licence compared with assessing the risks for child protection purposes.

(iii) Phase III

67. In early July 2005 the Complainant expressed his concerns to the Bishop of Chester, and on 29 July a meeting took place between the Bishop, the Complainant and the Diocesan Registrar. The Complainant told the Bishop that members of the CPAG were considering reporting matter to Social Services. It was agreed that the Complainant would notify Social Services on behalf of the CPAG, whilst the Bishop would approach the PCC. It seems to have been regarded as inappropriate to continue direct correspondence with the Respondent, in our view unsurprisingly, given the tone of his recent e-mail.

68. On 29 July 2005 the Bishop wrote to the Secretary of the PCC referring to various discussions in recent months concerning the appropriateness of using Z in youth and children's work against the advice of the diocesan Child Protection Team. The letter continued, using language which we consider to have been unfortunate:

> "Decisions concerning the use and employment of lay people in a parish are essentially a matter for the incumbent and the PCC. I and my colleagues with diocesan responsibilities can only offer advice. I regret that this advice has not been heeded".

The letter concluded by referring to the personal liability of all members of the PCC as charity trustees, and to concern about insurance cover, given the failure of the Vicar [sic] and PCC to follow the professional advice which had been given them by diocesan officers. It was mentioned that the Diocesan Registrar joined in pressing this concern.

69. On 2 August 2005 the Complainant wrote to the Director of Social Services, explaining the background and seeking review of whether the actions and advice given to the Respondent by the Probation Service in 2004 were appropriate in the circumstances. The Complainant explained that his view might be modified by a thorough 'risk assessment', though it would require a very high degree of balancing factors to justify a safe appointment. The letter said that:

> "Canon Robinson and Z himself have refused to allow, or participate in, such an assessment [leading to an] unacceptable degree of risk in the light of current practice standards and guidance".

The letter went beyond the reference to an inappropriate relationship by Canon Powley, on 20 July 2004, and wrongly suggested that Z had formed an emotional attachment to a young female cadet at the school, whereas the emotional attachment came a few years later. This (as the Respondent established in questioning the Complainant) led to the mistaken impression being formed by Social Services that Z had engaged in what is

sometimes described as "grooming". The Respondent says (and we accept) that this matter coloured the Respondent's willingess to accept advice from the Complainant.

70. On 17 August 2005 the Director of Social Services replied that the information caused some considerable concern about the potential risk to young people, and proposed use of Social Services inter-agency arrangements with a view to forming a view about the need for some intervention.

71. At about this time the Respondent appears himself to have contacted Ecclesiastical Insurance, presumably in the light of the concerns in the Bishop's letter to the PCC Secretary of 29 July, and raised the question of the appointment as a volunteer of a person with a positive CRB disclosure. His telephone call was followed by a letter of 19 August from Ecclesiastical Insurance to the Respondent, which (for the first time) made detailed reference to the House of Bishops' Policy:

> "The House of Bishops' Policy (P3.11) indicates that, in the event of a positive disclosure, a risk assessment should be undertaken by a professionally qualified person or panel and advice offered to the person making the appointment. As Insurers we would not wish to sanction or otherwise individual appointments but would confirm that policy cover will apply and provide an indemnity to the PCC where the House of Bishops Policy has been followed".

Implicit in this response was that policy cover would not apply where the House of Bishops' Policy had not been followed.

72. Advised no doubt by the Respondent, the PCC's view at this stage was that there had been compliance with the House of Bishops' Policy. Therefore in its response to the Bishop of 13 September 2005, the PCC Secretary referred to Ecclesiastical Insurance's view, and confirmed that there had been compliance with P3.11of the House of Bishops' Policy about risk assessment, which the letter quoted. The PCC Secretary said that advice had been obtained from statutory professionals and authorities who had assessed, monitored and observed Z whilst in prison and since his release. Nevertheless the letter said that that Z had been asked not to attend the Youth Club as a volunteer until the PCC heard from the diocese that it accepted that the advice given to the PCC was that of a "professionally qualified person", the phrase used in P3.11.

73. On 27 September 2005 Social Services wrote to the Complainant pointing out that a probation assessment is based upon the adult perspective of behaviour management, i.e. whether Z conformed well to his licence period, but would not have been able to safely assess the risk the adult posed to children and young people. The view was expressed that the writer did not feel that any risk assessment could give a positive outcome and assurance of Z working with young people in a position of authority, trust and possibility. This view was said to be further compounded by Z's refusal to participate in any assessment should he be requested to do so. The conclusion was that Z should not continue in his current position, the "firm recommendation" being that Z should

immediately be asked to step down from his current post. There followed a proposal for a meeting between the Respondent, the Complainant, the Probation Service and Social Services on 7 October "to share relevant information and to consider how a formal Risk Assessment could be undertaken". This letter was copied to the Respondent who requested, but was not supplied with, a copy of the Complainant's letter to Social Services of 2 August 2005. We accept the Complainant's evidence that on at least three occasions he offered to meet the Respondent to discuss the letter of 2 August 2005, and his reasons for sending it, but that the Respondent refused to meet him. This may have been because the Respondent wanted to see the contents of the letter before any meeting took place.

74. On 30 September 2005 the Complainant, following consultation with the Diocesan Secretary and Diocesan Registrar, wrote an exceptionally full letter to the Bishop, advising that the diocese should not accept that the Probation Officer's advice was adequate, and giving a detailed criticism of that advice. A key section of the letter was headed "Responsibility for Risk Assessment", and gave detailed reasons for the conclusion that the parish cannot be responsible for this task, responsibility for which seemed to be at the heart of the dispute between diocesan officers and the Respondent.

75. On 6 October 2005 the Bishop replied to the PCC Secretary, enclosing the Complainant's letter of 30 September 2005 "which does not permit me to confirm that, in this case, the House of Bishop's Policy has been followed". The Bishop insisted on the need for risk assessment, which would need Z's consent "before [Z] is appointed to any role or post". The Bishop concluded by warning the PCC of the damaging consequence if Social Services were to intervene.

76. On 10 October 2005 the Complainant wrote to the Respondent requesting a meeting to discuss the Complainant's letter of 30 September and Social Services' letter of 27 September 2005.

77. On 11 October 2005 the PCC Secretary replied to the Bishop, accepting that his letter made the diocesan position quite clear and provided the PCCs with the explanation they had requested. The Bishop was informed that, following receipt of his correspondence Z had been asked to continue not to attend the Youth Club as a voluntary youth worker, and that the PCC was to meet on 14 November 2005.

78. At the PCC meeting on 4 November 2005 there was open disagreement between the PCC and the Respondent. This led the PCC Secretary to write to the Bishop on 15 November 2005, explaining that, due to this disagreement, the matter remained largely unresolved, but that she had written formally to Z advising him that until the matter was settled he should not attend the Youth Club. The letter said that the churchwardens would be contacting the Bishop separately about this issue. We received no further evidence relating to the role of the churchwardens, save that at some stage that winter both churchwardens resigned.

79. On 8 December 2005 there was a meeting between the Complainant, the Respondent and Z, at which, for the first time, the Respondent and Z were shown the Complainant's letter of 2 August to Social Services. Z corrected certain information in it and agreed that the Complainant might speak to the Probation Officer, although Z did not agree to the carrying out of a child protection risk assessment. Following this meeting, the Complainant sent an e-mail on 16 December 2005 to Social Services containing both an update on the situation and a correction to the letter of 2 August 2005, as well as the information that Z was not currently working with young people in the Church. The correction was to point out that it was only after the girl left the school and ceased to be a cadet that an emotional attachment had developed between her and Z:

> "The concern about Z being in a position of 'trust and responsibility' in respect of the girl may therefore not be as continuous or direct as was stated in my letter [of 2 August 2005]. However there are still strong grounds for considering that the relationship was 'inappropriate', and that it played a significant part in the ensuing tragic events...
> I do not know if this will change the assessment made [in Social Services' letter of 27 September 2005]"

80. On 9 January 2006 the PCC met to consider using Z as a volunteer worker. The Minutes record that the Respondent considered that a complete and comprehensive risk assessment had already been undertaken in respect of Z, whereas the Diocesan Registrar, who attended the meeting, said that a further risk assessment, conducted jointly by the diocesan and statutory authorities, was required. A proposal for a full Child Protection Risk Assessment, organized by the diocesan CPAG, was carried with 16 in favour. Z was to be informed, the PCC recognizing that that the decision to go forward with this procedure rested with Z.

81. On 8 February 2006 a meeting took place between the Complainant, Social Services and the Probation Officer, to which the Respondent was invited but did not attend. There was discussion how to carry out an assessment, including the possibility of using an Independent Assessor.

82. On 13 March 2006 there was a further PCC Meeting, at which the Respondent was outvoted 4:6, one abstention, on his proposal to re-instate Z as a youth worker. Amongst those sending apologies was the Parish's Child Protection officer.

83. On 14 March 2006 the Diocesan Secretary wrote to Z, proposing a Child Protection Risk Assessment by an Independent Assessor, commissioned jointly by the Diocese and by the Wirrall Safeguarding Agencies, to whom the Assessor would report. Z's in principle agreement was sought, prior to Z's written approval, so that records held by the various agencies could be consulted as part of the assessment.

84. Then on 15 March 2006 the Respondent sent a lengthy letter to all PCC members. Since this is the fullest, contemporary statement of the Respondent's views, we consider that it should be set it out in full, although we have added paragraph numbering:

"[1] As not all members of the PCC were able to be at the meeting this Monday I am writing to confirm what I said at the meeting with regard to the Youth Club issue which we have been concerned about for such a long time.
[2] I have now made the decision to re-instate the person concerned as a voluntary youth worker at the Youth Club. The primary reason is that we are a Christian Church and our principles are Biblical and Christian principles. These include acceptance of those who are penitent, respect for those others regard and treat as "outsiders", compassion for "prisoners" (i.e. those who have been convicted), forgiveness and justice. None of these are optional extras in our faith.
[3] The person concerned has asked for meetings with the Bishop, the Archdeacon and the Diocesan Child protection officer to discuss the basis of any further risk assessment and this has been refused. The person concerned is clear that his crime was once [sic] of the most appalling possible, but that nothing can undo the offence he has committed. All he feels he can now do is to use his life positively for the benefit of others; the church should support him in that. As I reported to a previous PCC meeting, the Bishop also refused to discuss any aspect of the matter at the consultation which he was required to have with me following the resignation of our churchwardens.
[4] I have yet again gone through the Child Protection policy documents of the House of Bishops of the Church of England and those of Chester Diocese and these make it clear that the matter is my decision as the incumbent.
[5] Equally I am sure that I have correctly followed the procedures laid down in the House of Bishops' Policy and the Policy document of Chester Diocese in the matter we have had under our view. Full and proper risk assessments have been done both by Statutory agencies (who have had absolutely complete information and evidence) and by the Diocese.
[6] The only issue of disagreement was that I did not completely follow one element of the Diocesan recommendation. This was that the person concerned should not be used in the Youth Club for a six month period. Firstly, this recommendation was not supported either by those responsible for the risk assessment given by the statutory bodies, nor indeed by the two members of the Diocese's own Child Protection Advisory Group which is the body overseeing Child Protection in this Diocese. In this situation where conflicting advice was being given, it was wise to take not only the majority advice (three against one), but of those with the most information (the Statutory body) and the greater professional experience (the statutory bodies and the members of the Diocesan Child Protection Advisory Group). Secondly, the Diocesan officer making this recommendation stated that the reason for this delay was specifically and only to permit the person concerned to establish himself in the community and congregation of [P]. In fact there was a period of six months in which the person established himself as a member of the congregation dating from the time he started coming to [P] to September 2004 when he began as a voluntary youth club leader. Thirdly, and very obviously, that six months period has long passed and the person is now well established as a very regular member of our Church. That sole condition of the Diocesan risk assessment has now well and truly been met.

Fourthly, the Diocesan officer who made that assessment was explicit that at the end of the period of delay it was to be me and me only who had to make the decision whether to use this person in our Church youth work.

[7] I have also been assured by the National Child Protection Advisor to the Church of England that in following all the policy guidelines it is right to make the appointment of the individual concerned as a voluntary youth worker in our Youth Club.

[8] It is a matter of great regret to me, that members of the Diocesan staff and Diocesan officers have created so many problems, and I accept that it is entirely reasonable that members of the PCC should normally expect these people to act with honesty, integrity and in accordance with proper procedures. The problems we have experience [sic] are simply because they have not done so, and because they have never once proceeded in their actions by any principles of Christian faith or behaviour.

[9] I reported to the PCC my discussion with the senior underwriter and the senior legal officer of our insurers. Their position is that the insurers will not confirm to any parish (not simply [P]s), in a situation where a person has not had a clear CRB disclosure, whether they will be covered in the possible situation that a claim is made against the parish under its Child Protection insurance. They will not tell any parish whether they regard those who make a risk assessment on any individual are satisfactory. They tell me that if (highly unlikely in our case) there was to be any claim under the Child Protection provisions of an insurance policy by any parish in any circumstances then the liability of the insurers would have to be established in a court of law; and as I say, that is the situation for every parish in the land. As the people who have made the risk assessment in our case are the most informed and most qualified available, and because I have rigorously followed the policy procedures as laid down nationally and in this Diocese, I personally have no doubt that we are covered by insurance. However, as I have already made clear, the actions of a Christian church are not governed by the dictate of an insurance company but very much first and foremost, by the Gospel of Jesus Christ.

[10] I am more than willing to discuss these things with any member of the PCC. However, I would again emphasise that all this matter is absolutely and completely confidential. No part of this matter can be discussed with anyone else but other PCC members. If we are approached by others then we have to say we cannot discuss the matter as it would be in breach of the confidentiality the PCC has agreed to."

85. We shall consider below whether the Respondent did "rigorously follow the policy procedures as laid down nationally and in this Diocese", as claimed in [9] and also in [4], as well as some of the other interpretations of policy and justifications advanced in this letter; but it is necessary at this stage for us to make some observations on certain factual matters stated in this letter to PCC members. We do so under the paragraph numbers:

[1] We do not know the total number of members of this PCC, though as a minimum it was 18, excluding the Rector (as appears from the PCC Minutes of 9 January 2006). On 13 March 2006, there were 10 members present, as well as the Rector.
[2] We note the absence of any reference to the principle enshrined in the Children Act 1989, and repeated in the various policy documents, that the welfare of the child is paramount.
[3] We have seen no evidence to substantiate the first sentence, which is at odds with the content of Z's letter to the Archdeacon of 22 October 2004 and his later telephone conversation with the Diocesan Secretary on 21 March 2006. With regard to the final sentence, we have already explained that we know nothing of the circumstances in which the churchwardens resigned, and therefore we cannot form any view as to whether, if the Bishop did refuse to discuss the matter of Z at the subsequent consultation with the Respondent, this was justified.
[4] We shall need to consider below whether the policy documents do "make it clear that the matter is [the Respondent's] decision as the incumbent". We accept that the Bishop's letter of 29 July 2005 may have implied this.
[5] We are unaware of any "full and proper risk assessment" carried out by statutory agencies at any time following Z's release on Licence, the only relevant documents that we have seen being the Probation Officer's letters of 27 April and 11 October 2004, and Social Services' letter of 27 September 2005. The letter of 27 September 2005 made it clear that the writer did not at that stage have "absolutely complete information and evidence". Insofar as risk assessments carried out prior to Z's release on Licence we do not doubt that they were based on as complete evidence and information as was then available.
[6] The evidence does not support the claim that "the only issue of disagreement" concerned the six month stay. The Notes of Risk Assessment Meeting held on 20 July 2004 show that at that stage Canon Powley had considerable reservations about Z's suitability for working with children. So far as the third sentence, we have seen nothing to suggest that the Probation Officer disagreed with the suggestion of a further six month stay before the matter was reviewed, which would have ended in early 2005. We prefer the evidence of the Complainant that on 12 September 2004 the members of the CPAG "all supported Canon Powley's view that it was too soon after Z's release from prison to become involved in youth work and therefore the recommendation for him to wait for a further period before applying seemed appropriate", to that set out in the third and fourth sentences. The statement in the fifth sentence, that Canon Powley's recommendation, in his letter of 22 July 2004, was "specifically and only to permit the person concerned to establish himself in the community...", is strictly correct, but this is to ignore the reason for this wording, which flowed from the Probation Officer's comment at the meeting on 20 July 2004 that Z would be better able to receive the recommendation if couched in this way, rather than by reference to other concerns. We have heard or seen no evidence to confirm the final sentence, that it was "me and only me" to make the final decision.
[7] We do not know what information the National Child Protection Advisor to the Church of England had, or what was the precise nature of his assurance to the Respondent. This is precisely the sort of evidence that we would have expected the Respondent to include in a witness statement for use at the hearing, which he failed to do.

[8] We have seen nothing whatever to support the Respondent's allegations of lack of honesty and integrity or absence of Christian faith or behaviour.
[9] We assume that the passage in brackets, "(highly unlikely in our case)", is an expression of the Respondent's assessment, rather than that of the insurers. We do not consider that "the people who have made the risk assessment in our case [were] the most informed and most qualified available".
[10] We assume that the attempt to impose confidentiality was to protect Z, but if and insofar as there was an attempt to conceal what was happening from those at diocesan level we find this regrettable. It is clear from the Bishop's letter of 29 March 2006 that a copy of the confidential letter was passed to him, in our view entirely properly, by someone.

(iv) subsequent events

86. On 21 March 2008 Z telephoned the Diocesan Secretary, in response to his letter of 14 March, saying that he would not agree to an independent assessor having access to his records. He was asked to confirm this in writing. This was consistent with Z's letter to the Archdeacon of 22 October 2004.

87. On 29 March 2008 the Bishop wrote to the Respondent, urging him to reconsider inviting Z to work in the parish youth club without a prior risk assessment as requested by the diocesan child protection team and Social Services. The letter described as "misleading" the Respondent's advice on insurance in his letter of 15 March 2006.

88. On 30 March 2008 the Probation Officer wrote to Z, referring to terms of his Licence which required Probation Service approval of any paid or unpaid work he undertook. The letter said that as both Chester Diocese and Social Services were insisting that a full risk assessment be undertaken in relation to his involvement with the youth club, Z was instructed not to attend as a voluntary helper until such time as an independent assessment had taken place. We accept the Complainant's evidence that the Probation Officer had been alerted by Social Services, who had been informed by the Complainant about the Respondent's decision to reinstate Z.

89. We have no evidence to suggest that Z in fact attended at the youth club between the Respondent's decision (on or about 15 March 2006) to re-instate him, and receipt of the Probation Officer's letter of 30 March 2006. As mentioned previously, Z was eventually re-instated with diocesan concurrence in 2007.

90. As stated above, on 19 April 2006 the present complaint was made, leading in due course to the President's decision on 30 April 2007 to refer the complaint to a disciplinary tribunal. We have set out above the three specified allegations.

Issues
91. Against this background of policy and fact, the issues which arise for our

determination are:

(1) whether, in respect of each of the three allegations of misconduct referred to us by the President, there was a failure to comply with the House of Bishops' Policy, as applied in the Diocese of Chester in allowing or appointing Z to act as a voluntary youth worker in his Parish without following the recommended safe recruitment practice, i.e. the practice recommended in those documents ("Issue 1");
(2) if so, whether the policy documents gave rise to duties of the Respondent's office, and if so, the nature of those duties ("Issue II");
(3) in the light of the answer to (2), whether, in respect of each of the three allegations, the failure to comply constituted neglect or inefficiency in the performance of the Respondent's duties of his office ("Issue III").
There is inevitably some overlap between Issues II and III.

92. The burden of proof lies with those prosecuting the complaint, and the standard of proof is the civil standard (see section 18(3)(a) of the Measure).

Issue I (failure to comply)
93. It was already apparent before the hearing, from the written evidence in support of the complaint and from the Complainant's later witness statement, that the Respondent considered that he had been complying throughout with the House of Bishops' Policy, as applied in the Diocese of Chester. There could be no clearer statement of this view than in paragraphs [4] and [9] of his letter to PCC members of 15 March 2006.

94. This was also, save in one respect ("portability"), the Respondent's position at the hearing. Although in his letter to Canon Powley of 21 July 2004 he criticized the absence of objective criteria for risk assessment in the Diocesan Guidelines, and in his e-mail to the Diocesan Secretary of 16 June 2005 referred to the diocese's "whimsical Child Protection Policy", he was always claiming compliance, and criticizing the way the policy was being (in the Respondent's view, wrongly) interpreted and applied by the diocese.

95. The position of the Complainant was set out in paragraph 49 of his written evidence in support of the complaint, as slightly expanded in paragraph 57 of his witness statement which we set out in full:

> "In dealing with the matter of [Z]'s application and wish to engage in church youth work, [the Respondent] has not followed the diocesan guidance. Initially this was not a great problem as the guidance is somewhat complicated for those using it infrequently. However even when properly advised by diocesan officers and advisors, [the Respondent] chose to ignore the advice and engaged [Z] without first obtaining CRB clearance. When this was drawn to his attention [the Respondent]'s reaction was to dispute the guidance or challenge its validity, and when this was explained to him he attempted to discredit and undermine the personal and professional credibility of those advising him. When eventually CRB disclosure was obtained he ignored diocesan and Social Services advice to

terminate Z's appointment until a child protection risk assessment had been carried out. After his PCC resolved to abide by the Bishop's advice and suspend Z from youth work pending a diocesan child protection assessment, [the Respondent] attempted to re-instate Z against the wishes of his PCC."

Unlike the President's specification of the allegations (which is determinative of what this Tribunal has to determine) the original complaint was not solely focused on breach of policy, for it included such matters as ignoring diocesan and Social Service advice and going against the advice of the Bishop and his PCC. At the outset of the hearing we considered whether, given (inter alia) the terms of section 17(3) of the Measure, this discrepancy between the allegation and the complaint called into question the President's particular specification under rule 29(2) of the Rules. However, by a majority we decided that the relevant powers had not been exceeded, and that therefore the question whether there had been an irregularity or error of procedure in this respect under rule 103 did not arise. We record that the Respondent did not see any problem for himself in proceeding with the allegations as specified, and we have already mentioned the correction we made in respect of the reference in the specified allegations to the date of the House of Bishops' Policy.

96. We shall consider each of the three allegations of misconduct separately, because a finding of breach of policy in relation to one allegation would not necessarily entail a similar finding in relation to the other allegations. The question is simply whether there was breach, and not whether it was a deliberate or reckless breach. Indeed, as we explain below, we do not find that there was an intentional breach in respect of the second and third allegations.

I (i) allowing or appointing Z to act as a voluntary youth working without obtaining CRB clearance

97. The Tribunal is entirely satisfied that all three documents, the House of Bishops' Policy, the Diocesan Guidelines and the Clergy Guide, provide that all voluntary youth workers should have their backgrounds checked at enhanced level through the CRB prior to taking up appointment. We have set out above the relevant passage from page 7 and from P3.3, P3.6 and P3.7of the House of Bishops' Policy. To like effect are the section of the Diocesan Guidelines on "Good Recruitment Practice" and "The Criminal Records Bureau (CRB)", together with the footnotes to the two forms in Appendices 1 and 2; and also the Clergy Guide (both versions of which include the statement that "those who work with children or vulnerable adults are not to be allowed to start work until the disclosure process has been completed", and illustrate this in the flow-diagram).

98. When he was questioning the Complainant at the hearing, the Respondent suggested that he was entitled to place reliance on Z's 2003 CRB disclosure, thereby eliminating the need for a further CRB check in 2004. But this is to ignore two of the portability criteria in P3.15 the House of Bishops' Policy, since Z was not in 2004 "still in the same job or post for which the disclosure was sought" (and obtained) in 2003; nor was the 2003 CRB disclosure "clear", for it must have disclosed Z's manslaughter

conviction. The same requirement that the disclosure be "clear" appeared at page 17 of the Diocesan Guidelines. When his attention was drawn to these passages, the Respondent agreed that he had misinterpreted the policies in that respect. But in any event we have seen and heard nothing to suggest that in 2004 the Respondent was relying on the 2003 CRB disclosure. We find that this was not so for two reasons. First, the Respondent's opening letter of 15 March 2004 to Canon Powley was written upon the basis that a further CRB check was needed. Second, by counter-signing Z's CRB application in July 2004, the Respondent was accepting that further disclosure was needed. We entirely reject the Respondent's claim, in his e-mail to the Diocesan Secretary of 16 June 2005, that the July 2004 application "was in regard to his being a Reader and not in regard to the youth work to which you refer". We have accepted above the evidence of the Complainant that the application form expressly referred to the carrying out of youth work at P.

99. The Respondent accepts that Z began work as a youth club leader at P in September 2004. The only relevant CRB disclosure was not returned to the diocese (and presumably to Z, the applicant) until 4 January 2005. We find that the Respondent was primarily responsible for the appointment of Z (whilst accepting that the PCC also played a role), and that by his action in appointing Z before a CRB disclosure had been obtained the Respondent was acting in breach of the House of Bishops' Policy, as applied in the Diocese of Chester.

I (ii) after a CRB disclosure was obtained, ignoring diocesan advice to terminate the appointment pending a risk assessment

100. As is immediately apparent from the formulation of this allegation, its primary focus is on the Respondent's conduct in ignoring the Diocesan Secretary's letter of 14 June 2005 with its advice not to appoint Z to work with young people without further investigation. This will only have constituted a breach of the House of Bishops' Policy, as applied in the Diocese of Chester, if those documents contained policies which required, or at least advocated, that, following Z's "not clear" CRB disclosure, Z's appointment should have been terminated.

101. None of the policy documents explicitly address the question of terminating an appointment which should not have been made in the first place. What the policies do provide is that not only should there be no appointment prior to obtaining CRB disclosure, but also that if the disclosure was "not clear" (i.e. so that a conviction or other relevant information was disclosed) there should be no appointment until further matters had been addressed. The clearest statement is that in P3.11 of the House of Bishops' Policy, requiring the undertaking of a risk assessment and the offering of advice to the person making the appointment, with both (implicitly) to be carried out at diocesan level. We have already expressed our concern that the position was not mentioned at all in the Chester Guidelines, but the position was also plain from the Clergy Guide, which was expressly referred to in the Chester Guidelines. We have already concluded that the Respondent was working from the 2002 version of the Clergy Guide, because (in his

letter of 21 July 2004) he expressly referred to the box in the flow-diagram referring to "Risk assessment and discussion involving Counter-signatory, Applicant and Incumbent", which was to take place where the CRB disclosure was not clear and before the volunteer started work.

102. In correspondence in the period 2004-5 the Respondent contended that no further risk assessment was required by the relevant policies in the case of Z for two reasons. First, because "there is nothing whatsoever in the Diocesan "Guidelines for Child Protection" which relates to consideration of offences and offenders other than those which relate to child abuse" (letter of 21 July 2004 to Canon Powley). Second, because it was sufficient compliance with policy if the risk assessment was carried out before the CRB disclosure and by independent professionals with no input at diocesan level at all (e-mails to the Archdeacon of 16 October 2004 and to the Diocesan Secretary of 16 June 2005). The same point was taken in paragraph [5] of the Respondent's letter of 15 March 2006 to PCC members. He also criticized the policy for the absence of objective criteria for risk assessment (letter of 21 July 2004 to Canon Powley), but that is not relevant to whether or not the policy was breached.

103. We have already drawn attention to the minimal reference to previous offenders, other than child abusers, in the Diocesan Guidelines and to their absence of reference to risk assessment following positive CRB disclosure. However, it seems to us obvious, and this was the evidence of the Complainant, that many offences that are not against, or do not involve, children could have serious implications if the person concerned sought paid or voluntary work with children. Such offences would include drug offences; careless or dangerous driving, or driving above alcohol limits; theft, fraud or other dishonesty; sexual offences with or against adults and particularly offences involving violence. Such offences would not, of course, preclude an application being considered, and possibly an appointment being confirmed, but they would need careful assessment before the person concerned could start work. The more serious the offence, the greater the scrutiny required. That is why express reference was made under Procedure 2 (page 41) of the House of Bishops' Policy to the need for careful and sensitive consideration of risk to children in relation to people convicted of violent offences against adults, the particular category within which Z fell. Whereas the Respondent claimed that Z's case raised "no Child Protection issue" (e-mail of 16 October 2004), we accept the evidence of the Complainant that no-one other than the Respondent and Z himself ever suggested that the case did not raise child protection issues, and indeed that everyone else involved in the case had come to the conclusion that there were child protection concerns. The diocesan authorities were understandably concerned about the attitudes and personality factors that had led to the original violent act and the potential risk that there might be another angry or violent outburst, which might put children at risk. As the Complainant put it, it was how these matters should be resolved that were the real issues. We find it impossible to read either the Diocesan Guidelines or the Clergy Guide as excluding the (to us) obvious need for risk assessment at Step 3, following positive disclosure of a violent offence, even where the fact (and some of the details) of the violent offence were already known to all concerned (as was the case here), and even where there had been a form of risk assessment before Z was released on Licence, and when his Probation Officer was not

objecting to Z undertaking youth work at P. Such a risk assessment would not only have assessed the risk of harm to children. It would have served two other purposes which we consider important. The first would have been to assess the risk that Z posed to himself by premature exposure to youth work. The second would have been to assess the risk to other adults (for example fellow youth workers) whom we regard as potentially vulnerable people were Z to be prematurely appointed.

104. Even though the Diocesan Guidelines and the flow-diagram in the Clergy Guide did not expressly state that there had to be risk assessment at diocesan level, the flow-diagrams (in both versions of the document) are only consistent with that interpretation. First, they expressly showed that, in the case of a positive CRB disclosure, the volunteer could not start work unless "any concern" was "resolved", and that so long as "concern remains", an applicant (and incumbent) were confined to use of the appeal/complaint procedure if they still wanted to press for the applicant's appointment. Second, the fact that "risk assessment and discussion" (the wording of the earlier version being used by the Respondent) and "discussion" (the wording in the later version) were, in both cases, to "involve" the counter-signatory (described in the accompanying Glossary of terms as "A number of Diocesan staff...authorized to act on behalf of the Umbrella body [in this case the diocese] in dealing direct with the CRB)" can only mean that there could be no appointment until the diocesan counter-signatory had been satisfied or an appeal procedure exhausted. Quite apart from P3.11 of the House of Bishops' Policy, we cannot interpret the diocesan policy documents as if it was for Z and the Respondent to determine what advice should be relied upon, and to choose to rely only on the view of the Probation Officer, and the pre-release risk assessment. (But in fairness to the Respondent, we record that, under questioning from Mr Briden, the Complainant said that ultimately the person making the appointment could disregard the recommendation of the Risk Assessment. For our part, we do not regard that as the proper interpretation of the policies applying at Step 3).

105. We regard it as obvious that (as stated in the Complainant's evidence) the considerations involved in deciding on whether a prisoner may be released from Licence are quite different from those involved in assessing the risk for child protection purposes. We do not accept that the relevant policies can be read in such a way as to suggest that they endorsed, or were consistent with, the approach taken by the Respondent at Step 3, following notification to him, by the Diocesan Secretary's letter of 14 June 2005, of the positive CRB disclosure, together with the advice that Z was not to be appointed to work with young people without further investigation.

106. Because, at the time of sending that letter, the Diocesan Secretary did not (so it would seem) have definite knowledge that Z was already working as a youth worker, the letter only expressly dealt with the matter of not appointing Z, rather than with the question of standing him down. But just as it was plainly contrary to the spirit of the Diocesan's Secretary's advice to continue to use Z as a youth worker in the absence of further risk assessment (or "investigation" to use the word in the Diocesan Secretary's letter), so too it was plainly in breach of the spirit of the various policy documents not to stand down Z at that stage. If (as is plain) there would have been a

breach of policy in appointing Z for the first time in June 2005, so too it was a breach of policy not to request him to stand down at this stage. The fact that the Diocesan Secretary made no reference to the policy documents in his letter of 14 June 2006 is of only marginal (if any) relevance to this issue.

I (iii) after the PCC had determined that Z should stand down pending a risk assessment, attempting to re-instate Z in March 2006 without obtaining a child protection risk assessment

107. Given our conclusions in respect of (i) and (ii) above, the conclusion in respect of (iii) follows almost automatically. But even if we were wrong in respect of (ii), we should unhesitatingly find that the Respondent's attempt to re-instate Z in March 2006, when there had been no further risk assessment whatsoever since the positive CRB disclosure, was in breach of the relevant policies at House of Bishops and diocesan level.

108. We have already commented in some detail on the contents of the Respondent's letter to PCC members of 15 March 2006. We do not understand the suggestion in paragraph [4] of that letter that the policy documents "make it clear that the matter is my decision as the incumbent", nor how he could contend in paragraph [5] that he was "sure that I have correctly followed the procedures laid down in the House of Bishops' policy and the Policy documents of Chester Diocese in the matter we have had under our view". Quite plainly "full risk and proper risk assessments" had not been "done...by the Diocese"; and, as the PCC Secretary told the Bishop in her letter of 11 October 2005, the position of the Diocese was by then "quite clear". The "Statutory agencies" (upon whose risk assessment the Respondent so relied) had done no assessment whatever in the period 2005-6, other than the expression of concern in Social Services' letter of 27 September 2005, which had included a "firm recommendation that [Z] should immediately be asked to step down from his current post". In our view, the Respondent's decision to re-instate Z, far from involving "rigorous" following of the national and diocesan policy procedures (as claimed in paragraph [9] of the letter of 15 March 2006), constituted a straightforward breach of those policies, despite the Respondent's assertion at the hearing that he had no intention to flout, and never thought he was flouting, the policies.

Issue II (duty and nature of duty)

109. It then becomes necessary to decide whether the House of Bishops' Policy and its diocesan implementation in the Chester Guidelines and the Clergy Guide give rise to "duties of [the clergy's] offices", and if so, the nature of those duties, before considering whether, if so, there have been neglect or inefficiency in the performance of duties of office in the present case. This is because the complaint against the Respondent relates to "neglect or inefficiency in the performance of the duties of his office", the category of misconduct under section 8(1)(c) of the Measure. Was compliance with these child protection policies part of the duties of the Respondent's office?

(i) submissions on duty

110. Mr Briden essentially takes two points. The first is that the expression "duties of his office" should be narrowly construed. The second is that these particular child protection policies "lack the force of law", being no more than guidance. His contention is that, in the absence of a mandatory element, the Respondent was under no "duty" to comply with the recommended practice, even though non-compliance might be a serious error of judgment.

111. In relation to the first point, Mr Briden drew our attention to the similar phrase "neglect of duty" in section 14(1)(b)(ii) of the Ecclesiastical Jurisdiction Measure 1963 ("the EJM"). Headed "Offences under the Measure", section 14(1) (of which the words from (b) to the end of the sub-section were repealed by section 46 and Schedule 2 to the Measure) provided:

> "(1) Proceedings may be instituted under this Measure against any of the persons specified in section seventeen thereof charging –
>
> (a) an offence against the laws ecclesiastical involving matters of doctrine, ritual or ceremonial;
>
> (b) any other offence against the laws ecclesiastical, including –
>
> (i) conduct unbecoming the office and work of a clerk in Holy Orders, or
>
> (ii) serious, persistent, or continuous neglect of duty:
>
> Provided that no proceedings in respect of unbecoming conduct shall be taken in respect of the political opinions of such person;
>
> And provided further that no proceedings in respect of neglect of duty shall be taken in respect of the political opinions of such person".

Neglect of duty, in the context of section 14 of the EJM, was interpreted in *Bland v Archdeacon of Cheltenham* [1972] Fam 157, 162C as:

> "the failure to perform an ecclesiastical duty without due cause. A clerk who holds ecclesiastical preferment is guilty of neglect of duty if he fails, without due cause, to perform the duties attaching to that preferment".

Though Mr Briden did not expressly refer us to this, the ambit of neglect of duty under the EJM is treated in Halsbury's *Ecclesiastical Law* (14th ed.) paragraph 1357:

> "The expression "neglect of duty" is to be interpreted as meaning the failure without due cause to perform an ecclesiastical duty. The definition of the offence suggests that it applies mainly, if not exclusively, to the case of a person who holds preferment and is therefore responsible for the performance of certain duties. In many instances the neglect of duty would be recognized by the law as constituting a distinct offence in itself, and it seems that in such a case it is preferable (although not essential) that the charge should specify that particular offence rather than the general offence of neglect of duty.

> There is a wide range of clerical duties in respect of which culpable neglect may occur, including in particular those associated with the administration of the sacraments and the performance of occasional offices....
> Other ecclesiastical offences connected with the performance of a minister's ecclesiastical duties are breaches of the obligation to read services, failure to observe the requirements of residence, and failure to attend a visitation.
> Ministers holding ecclesiastical office are subject to certain restrictions as to their right to engage in trade or any other occupation in such manner as to affect the performance of the duties of their office".

(Note 6 to that paragraph refers the reader to the duties appertaining to the office of incumbents as set out in paragraphs 690, 698 and 700). None of this makes any reference to duties to follow policies (howsoever expressed) promulgated at House of Bishops or diocesan level.

112. So far as his second point is concerned, Mr Briden reminded us that the Archbishops' Foreword to the House of Bishops' Policy expressly refers to the policies as "guiding principles", whilst the title of the diocesan document is "Guidelines for Child protection". He might have made the same point of Chester daughter-document, the "Clergy guide to the disclosure application form". This, he argued, was not the language of mandatory procedures, and did not purport to prescribe or impose duties of office. As he put it, however desirable the child protection procedures may be, they lack the force of law. It might, he accepted, be different (because of the duty of canonical obedience under Canon C1.3) if the Bishop had written to the Respondent directing him to follow the various policies, but that had not happened. A duty, he argued, may be elastic, but elasticity has its limitations too. There might have been errors of judgment in not following the guidance, but in the absence of a duty or duties, there was no potential for misconduct within section 8(1)(c) of the Measure.

113. The Designated Officer's response was that under section 14(1)(b) of the EJM, only duties imposed under ecclesiastical laws were relevant, given the introductory words "any other offence against the laws ecclesiastical, including...". That was the context of the statement in *Bland* upon which Mr Briden relied. The Measure had introduced a completely fresh disciplinary structure with new concepts as well as different procedures. Section 8 of the Measure was considerably wider in scope than section 14 of the EJM, because only section (8)(a) and (b) of the Measure were concerned with acting in breach of the laws ecclesiastical, not section 8(1)(c) and (d). Section 8(1)(c) was freestanding. Misconduct was committed when there was neglect or inefficiency in the performing of the duties of office. There was no longer any premise that those duties must be prescribed by ecclesiastical law.

114. The Designated Officer argued that an incumbent had the cure of souls within the parish, and was under a duty with regard to safeguarding children within his cure. He drew attention to 3.4 of the House of Bishops' Policy ("Each parish should... accept the prime duty of care placed upon the incumbent and Parochial Church Council (PCC) to ensure the well being of children and young people in the church community").

Accordingly either the Church's child protection policies imposed an ecclesiastical duty upon clergy to comply; or alternatively amongst an incumbent's duties was a duty to comply with proper child protection procedures, and therefore with the House of Bishops' Policy and the Chester Guidelines. He drew attention in particular to the wording of the Ordering of Priests in the Prayer Book, and in particular:

> "Have always therefore printed in your remembrance, how great a treasure is committed to your charge. For they are the sheep of Christ, which he has brought with his death, and for whom he has shed his blood. The Church and the congregation whom you serve, is his spouse and his body. And if it shall happen the same Church, or any member thereof, to take any hurt or hindrance by reason of your negligence, ye know the greatness of the fault...."

Together with the reference in the following two paragraphs ("shew yourselves dutiful" and "that this your promise may the more move you to do your duties"), he argued that implementation of these child protection policies was part of the duties of the office of clergy. It was, said the Designated Officer, inconceivable that the policies did not place on clergy, including the Respondent, a duty to follow them, as part of the duty to ensure children are safe. In choosing not to follow the policies, the Respondent had, so the Designated Officer argued, acted irrationally, and his wrong choice itself constituted a negligent breach of duty. In any event, since the PCC is a charity of which the Respondent was, as part of his office, at all material times not merely a member, but also chairman, and therefore required to follow the law of charities, including the legal obligations with regard to the safeguarding of children. The Designated Officer referred to the Charity Commission's publication "Safeguarding Children, Protecting children in your organisation" which we have summarised earlier in our determination, and in particular to the reference to the "legal duty to act prudently" and to "adopt best practice as far as possible". It would, he said, be extraordinary if, as a charity trustee, a priest with the cure of souls were at risk from the exercise of the Charity Commission's regulatory jurisdiction for not complying with appropriate child protection procedures, but was not at risk from the Church's own disciplinary procedures.

115. In support of a wide interpretation of "duties of ...office" in section 8(1)(c) of the Measure, the Designated Officer drew our attention to the only case so far determined under section 8(1)(c) (*Re the Reverend David Faulks,* Diocese of Peterborough, 25 January 2008, unreported). Three allegations of misconduct for neglect or inefficiency in the performance of the duties of office were upheld, failing to account to a PCC for all fees due from a marriage, failing to keep full and accurate financial records in relation to the parish magazine, and failing to provide the PCC with full and accurate accounts for the parish magazine. The alleged duty upon the incumbent to keep and produce financial records and accounts did not arise from any mandatory element of ecclesiastical law, yet the tribunal recognized in paragraph 97 of its determination that there was "an obvious duty of which he should have been aware in his handling of others' money to place arrangements on a transparent and proper footing". (The same may also be said of the tribunal's finding in paragraph 125 that "the handling of any surplus gave rise to a duty...to record, to account, to behave transparently").

116. The Respondent's case has always been that he was following the various child protection policies, not breaching them. In his oral statement to the hearing, he said that he had no intention to flout, and never considered flouting, the church's policy on child protection and safe recruitment. In answer to a question from the Tribunal, he claimed to have done everything possible to establish that there was no risk. At the hearing he did not specifically address the issue of "duties of...office", although his stated position appears largely to accord with that of the Designated Officer. In an e-mail to the Registrar sent on 21 May 2008, having received Mr Briden's Outline Submission which we summarised above, the Respondent wrote in characteristic language:

> "What is very clear...is that the suggestion made by Mr Briden that the policy and guidance provided by House of Bishops and the Diocese are not law and therefore have no legal force is silly and dangerous and has to be resisted totally...Mr Briden's suggestion would, if it were either true, or became accepted from my case as a precedent, would be immensely damaging to the safety of children...it is simple common sense (and without any need for obscure legal debate) that such policies must be in place and the clergy and members of the Church of England must be guided by them. I would certainly argue that they must be adhered to unless it can be shown that what was has been done is better and of a higher standard of protection or justice than the baseline requirements of these policies".

Thus he was arguing that there was a duty, albeit qualified in one important respect.

(ii) conclusions on duty

117. We agree with the Designated Officer that "duties of...office" in section 8(1)(c) of the Measure are not restricted to offences against ecclesiastical law, and that we gain little assistance from what was said in *Bland* in relation to the EJM.

118. 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. We are not therefore, confined to considering matters such as whether the Respondent's duty of canonical obedience in all things lawful and honest to the bishop under Canon C1.3 is engaged. 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:

> "Apart from the duties set out in the actual Canons or statutory enactments, the breaches of duties 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 had been acquitted of theft. Such

behaviour would seem to be a neglect of duty, as would failure to declare any appropriate fees received. Moreover, whereas a breach of the seal of the confessional would be a breach of the unrepealed proviso to Canon 113 of the 1603 Canons, a breach of confidentiality would similarly be a neglect of duty"

We agree with the broad approach to "duties...of office" taken in the *Faulks* case.

119. On the other hand we do not think that every policy pronouncement by the House of Bishops or its refinement at diocesan level by those responsible for formulating policy at diocesan level will automatically give rise to "duties...of office". The matter will be fact-sensitive, depending upon both the topic covered by the policy, and the language used in the policy. We also accept that the language of the House of Bishops' Policy and the Chester Guidelines (incorporating the Clergy Guide) was generally in terms of guidance ("guiding principles"/"guidelines") rather than prescription, and also that in none of the correspondence was it ever expressly stated that these child protection policies gave rise to duties on the Respondent. For this reason in particular we have given very serious consideration to the argument of Mr Briden that no duty could flow from those policies.

120. Nevertheless, in the present case, we find that the Respondent's cure of souls brought duties towards children and young people in his diocese, and that these duties included (at the very least) ascertaining, paying regard to, and generally acting in accordance with, House of Bishops' Policy and the Chester Guidelines (which incorporated the Clergy Guide). That seems to us to be how the system works within the Church of England, notwithstanding that there is no prescribed legal mechanism for the transition of such child protection policies into legal duties and our slight concern as to how the Chester Guidelines and the Clergy Guide were actually authorized.

121. Furthermore we do not see how child protection could properly, or safely, operate if each parish had merely to ascertain and pay some regard to the guidance and could then substitute its own view of what was the appropriate procedure, or was free to substitute its own view of what was a "better and...higher standard of procedure" which is the approach urged by the Respondent in his e-mail of 21 May 2008 although we regret that the policies were not more clearly spelled out, particularly with regard to risk assessment and their mandatory status.

122. Therefore the majority of the Tribunal go further, and consider that there was a positive duty on incumbents and PCCs not merely to ascertain and have regard to these policy documents, but also to follow them. One of the stated "Aims and Purposes" of the House of Bishops' Policy was to achieve "common practice across the dioceses", which is consistent with a duty to implement and follow. Similarly, the preface to the Diocesan Guidelines expressly stressed the importance that "the guidelines and policy are implemented in every place in the Diocese where people have responsibility for the care of children". They are documents which have obviously been formulated with the benefit of theological, legal and child-welfare advice which cumulatively goes well beyond that readily available to any individual incumbent or PCC. The relevant procedures align

closely with those in other related documents (for example the CRB Code of Practice, from which we have set out some passages above), and also with the duty on charity trustees (summarised in the Charity Commission publication) which is not merely to have regard to best practice, but to adopt it as far as possible. Despite the language of "recommendations", we note the frequent references in the House of Bishops' Policy, repeated in the Chester Guidelines, to "responsibilities"; the statement in both documents that the responsibilities of the parish (including incumbent and PCC) is to "accept as a minimum the House of Bishops' Policy on Child Protection"/ "adopt and implement a child protection policy based on the House of Bishops' policy and Diocesan Guidelines....as minimum standards (which allows for additions, but not for substitutions)". In relation to use of the CRB, the language used in P3.7 of the House of Bishops' Policy could not have been more imperative ("regard it as a mandatory element in the recruitment procedure that disclosures should be obtained"), a phrase repeated in the CRB section (page 16) of the Chester Guidelines, and with which the flow-diagram in the Clergy Guidelines is entirely consistent.

123. The minority member accepts that the diocese in its child protection policy intended not only that PCCs and incumbents should have a duty to have regard to these policy documents, but also to follow them. He regards that aim as very desirable for the proper and safe operation of child protection. However, although he accepts that there is a duty to pay serious and genuine regard to the child protection policies, he considers that the language of the documents, which is generally advisory and not mandatory, imposes no duty rigorously to comply with these procedures, save in the single respect of obtaining a CRB disclosure before making an appointment. In that instance, the minority member accepts that the language is mandatory. So far as the procedures for Step 3 risk assessment, following "a positive or not clear" disclosure, the minority member does not consider that there was any duty to defer appointment until concern was no longer expressed at diocesan level or appeal and complaint procedures had been exhausted, though he accepts that this was what was provided for in the relevant child protection procedures.

Issue III (neglect or inefficiency in the performance of duties)

124. Finally it is necessary to decide whether the Respondent's actions constituted neglect or inefficiency in the performance of the duties of his office.

125. Mr Briden argued that if we were to find that the Respondent had been following what Mr Briden described as "the spirit" of the guidelines, then it was very difficult to say that what the Respondent had done in that honest belief could constitute breach of duty. If, on the other hand, we were to find what he described as a "deliberate decision not to engage in Child Protection procedures", then this could not sensibly be described as "inefficiency".

126. We are satisfied that all the steps taken by the Respondent were taken deliberately, and we have already found that they constituted breaches of the House of

Bishops' Policy as applied in the Diocese of Chester. In respect of the first allegation, we do not accept that the Respondent can have considered that he was acting in accordance with the policies. In November 2002 he had attended a diocesan training session on CRB checking and how to complete the forms. He knew that the CRB disclosure was still awaited at the time Z started as a youth worker at the beginning of September 2004. On the other hand we accept that in respect of the second and third allegations the Respondent believed (erroneously as we have found) that he was following the relevant procedures. Although he now argues that in appropriate circumstances he was entitled to disregard the House of Bishops' Policy as applied in the Diocese of Chester (see his e-mail of 21 May 2008), this was not how he explained his own actions in 2005-6, and in particular in his letter to PCC members of 15 March 2006. It follows that we do not accept the Designated Officer's submission that in respect of all three allegations (and not merely the first) the Respondent had made up his mind not to follow the policies. Nor, however, do we accept Mr Briden's contention that the Respondent's honest (if reckless) belief that he was following the policies established by itself that there was no breach of duty.

127. However one describes the Respondent's actions, they cannot be described as "inefficiency in the performance of the duties of his office", and this was accepted by the Designated Officer. The question is therefore whether they constituted "neglect...in the performance of the duties of his office". We shall consider the position in respect of each allegation in turn.

(i) allowing or appointing X to act as a voluntary youth worker without obtaining CRB clearance

128. As we have already explained, we agree that there was a duty on the Respondent to follow the House of Bishops' policies as applied in the Diocese of Chester by not allowing Z to start work as a youth worker until an up to date CRB disclosure had been obtained. Instead, having counter-signed Z's application for disclosure in July 2004, the Respondent proceeded to appoint him before that the CRB disclosure had been obtained.

129. The Designated Officer drew our attention to the statement in *Grubb v Hilder*, unreported, but cited in *Bland* at 165:

> "it is clear beyond question that when offences are proved it is not a defence to allege that the offence was caused by a conscientious objection to the performance of statutory duties or other lawful requirements".

Accepting as we do that one of the Respondent's motivations was to secure the appointment of Z as soon as possible in order to assist the process of his rehabilitation and that the appointment was seen by the Respondent as an exercise of Christian charity on his and his parish's behalf, we still do not, however, consider that the Respondent can properly claim to have made the appointment as a conscientious objection to the performance of duties or requirements. We consider, and find, that the Respondent well knew he was breaching the requirements of the relevant policies and simply believed that

he could get away with it. It is, however, clear from *Grubb* that even if the Respondent's objection can properly be categorised as a conscientious objection, this is irrelevant to whether the complaint is or is not proved.

130. We are agreed that the Respondent's failure to comply with the House of Bishops' Policy as applied in the Diocese of Chester in appointing and allowing Z to start work in September 2004 constituted deliberate neglect in the performance of the duties of his office.

(ii) after a CRB disclosure was obtained, ignoring diocesan advice to terminate the appointment pending a risk assessment

131. We have already found that the Respondent was in breach of the relevant child protection policies in not following the advice, implicit in the Diocesan Secretary's letter of 14 June 2005, that Z should not work as a youth worker at P without further investigation. We have also found that the relevant child protection policies required that at that stage the risk assessment be carried out at diocesan level, and not by whomsoever professional the Respondent chose to rely on, and that relevant duties were thereby imposed on the Respondent. We have seen no evidence of any involvement of Social Services in any risk assessment of Z carried out prior to his release, and we concur with the view of the Complainant that it looks as though they had not been previously involved. We also share the Complainant's view that the Probation Officer's letter of 27 April 2004 was not adequate as a Child Protection Risk Assessment. We consider that the Complainant was right to require more in order to satisfy him (and the diocese) on that score. In our view the Complainant was right to be "really troubled" at the time, and, when dealing with what was a most serious offence, and its components, not to be prepared to leave the matter there. As he said, under questioning from the Respondent, the consequence of not going through a Child Protection Risk Assessment, and for the diocese not being able to "give the all clear", were huge.

132. The majority of the Tribunal consider that the deliberate conduct of the Respondent in allowing Z to continue to work as a youth worker at that time constituted neglect in the performance of the duties of his office. The fact that we have accepted that the Respondent honestly (but mistakenly) believed he was following the relevant procedures does not compel the conclusion that he was not neglectfully in breach of duties.

133. As explained above, one member of the Tribunal accepts that rejection of the Diocesan Secretary's advice constituted a breach of the relevant child protection policies, but considers that their procedures in respect of risk assessment, and by whom it should be carried out, were insufficient to make it a duty of the Respondent's office to stand down Z at this time. Given that the Respondent had in mind the relevant policies, the minority member considers that he was entitled to follow his own course in reliance on the views expressed in 2004 by Z's Probation Officer, taken together with the risk assessments that must have been carried out prior to Z's release on Licence. He considers

the Respondent's actions to have been unwise, and potentially unsafe, but not misconduct within section 8(1)(c) of the Measure.

(iii) after the PCC had determined that Z should stand down pending a risk assessment, attempting to re-instate Z in March 2006 without obtaining a child protection risk assessment

134. We have already found that the Respondent was in breach of the House of Bishops' Policy as applied in the Chester Diocese in attempting to re-instate Z in March 2006 without obtaining a child protection risk assessment involving the diocese.

135. The majority of the Tribunal consider that the relevant policies imposed a duty upon the Respondent which he plainly breached by attempting to re-instate Z in March 2006. We have already accepted that the Respondent (mistakenly) believed he was following the relevant procedures. We find it perplexing, and extremely troubling, that the Respondent should have chosen to impose his own view of what was a safe way forward and of what the policies meant, in the knowledge that others, including his Bishop, the CPAG and Social Services, together with the majority of his own PCC, considered that a child protection risk assessment was required. To elevate the requirements of Christian forgiveness above the paramount interests of the child was both arrogant and imprudent, and provides no justification for what occurred.

136. As explained above, one member of the Tribunal, whilst accepting that the attempted re-instatement of Z constituted a breach of the relevant child protection policies, does not consider that there was a duty upon the Respondent to comply with these policies at Step 3, and considers that there was no more than a duty to have regard to the policies, leaving the Respondent free to act as he did without committing misconduct under section 8(1)(c) of the Measure. As in the case of the second allegation, this member of the Tribunal considers the Respondent's actions to have been unwise, and potentially unsafe, but not neglect in the performance of the duties of his office.within section 8(1)(c) of the Measure.

Conclusion on misconduct

137. Therefore the Tribunal's determination is that all three allegations against the Respondent have been proved, albeit by a majority in the case of the second and third allegations.

Other matters

138. In written correspondence with the Registrar prior to the hearing the Respondent raised a number of other issues. He did not pursue these in his oral statement at the hearing, and since he never served a Statement of Case these issues are not formally before the Tribunal. We can therefore deal with them very briefly.

139. The jurisdiction of the Tribunal was challenged on the basis that the members had been appointed as a result of a letter not signed personally by the President, but rather by Mr Stephen Slack, purporting to act on the President's behalf. We have seen a letter from the President to the Registrar dated 21 February 2008 confirming that he was fully apprised of the appointments to the Bishop's disciplinary tribunal in this matter and that the letters issued from the Legal Office of the National Institutions of the Church of England regarding the tribunal and the appointments were written with his full approval. We have also seen a letter from the President to the Respondent dated 22 February 2008, stating that the appointments were made by the President, that the letters regarding the appointments were all sent with his full knowledge and consent, and that he has not delegated his power or responsibilities to anyone else, whether at Church House or anywhere else. In these circumstances we do not consider it to be remotely arguable that our appointment was unlawful.

140. The Respondent has made a number of generalized complaints of delay. Although the matters the subject of the proceedings go back to 2004, whereas the complaint was not made until 19 April 2006, the complaint by Mr Armstrong was of a series of acts or omissions, the last instance of which occurred only five weeks before the date when proceedings were instituted. Therefore the one year time limit imposed by section 9 of the Measure was complied with. Various extensions of time since then have been approved by the President. Whilst it is to be regretted that the matter has taken so long to come on for hearing, there is no evidence of unreasonable delay or of prejudice to the Respondent. Most of the relevant evidence consisted of correspondence between the Respondent and the diocesan authorities in the period Spring 2004 to Spring 2006, so that there was no real question of the effect of fading memories.

141. The Respondent has repeatedly alleged that he is the victim of inequality of arms. On the other hand Legal Aid under the Church of England (Legal Aid) Measure 1994 is available to Respondents under section 44(5) of the Measure. This would have extended to representation by solicitor and counsel, putting the Respondent on an equal footing with the Complainant. The Respondent elected not to apply for Legal Aid on the grounds that this would involve account being taken of his wife's earnings. He also rejected the offer from the Registrar to try to arrange for him representation by counsel on a *pro bono basis*. We consider that he cannot reasonably complain about lack of representation. In any case, the appointment and submissions of Mr Briden as *amicus curiae*, together with Mr Briden's questioning of the Complainant's evidence, have covered much of the ground that might have been covered by a legal representative acting on the Respondent's behalf.

142. In correspondence the Respondent claimed that his separate complaints under the Measure about the way others in episcopal authority had discharged their functions in relation to the subject matter of the complaint against him were relevant to the determination of these proceedings. We accept the brief submission made by Mr Briden that these collateral complaints are irrelevant.

143. In correspondence the Respondent demanded, without making any Rule 31 application, disclosure of documents from a variety of sources. The unspecified documents are said to relate to himself and/or the complaint made against him. Rule 34(2) limits the disclosure of documents to those "relevant and necessary for dealing fairly with the complaint". No explanation was given as to the relevance of undisclosed documents, or the necessity for them. Nor is it apparent how the Respondent's case would have been helped by more documents, when the factual issues fell within a small range and were already well documented. Therefore we consider the Respondent can have no complaint that his demand was refused.

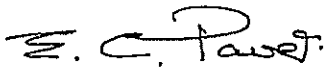
144. As mentioned earlier in this determination, on 3 June 2008, eleven days after the conclusion of the hearing, the Respondent submitted a four-page document entitled "Improper delay in the Tribunal's decision and other essential information". We reject the contention that the announcement of the Tribunal's determination had to be given by 20 June 2008 and that if this time-table were not complied with, this would invalidate any determination the Tribunal might later attempt to give. We are satisfied that the other so-called "essential information" contains nothing that could not have been raised by the Respondent at an earlier and more appropriate stage; and that in any event the further information would not alter the conclusions we have reached upon the materials available at the end of the hearing.

145. Finally we feel bound to comment on two aspects of the Respondent's conduct during the months before the hearing. The Respondent subjected our long-suffering Registrar to a barrage of highly personal and critical letters. He also wrote letters using similarly forceful and critical language to members of the Tribunal, including threats to the Chairman and clergy members of disciplinary action which the Respondent might take against them. In reaching our determination we have not allowed ourselves to be influenced in any way by these letters. But we regard the writing of them as highly undesirable and hope that there will be no repetition in other cases brought under the Measure. In the circumstances we chose not to invoke our power to refer matters to the High Court as a contempt under rule 105 of the Rules. Other tribunals might decide to do so if similar circumstances were to arise.

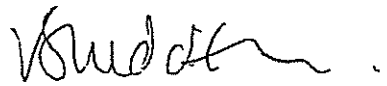
Charles George QC

David Hodgson

Elizabeth Paver



Valerie Shedden



Colin Slater