

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

THE BISHOP'S DISCIPLINARY TRIBUNAL FOR THE DIOCESE OF EXETER

Complainant: The Reverend "C"

Respondent: The Reverend "R"

**Appearances: Mr Adrian Iles, Designated Officer for the Complainant
 Mr Justin Gau, Counsel for the Respondent**

**WRITTEN REASONS
FOR DETERMINATION**

1. The Complaint which was referred to the Tribunal for determination was:

"That the conduct of the respondent, the Reverend "R" was unbecoming or inappropriate to the office and work of a clerk in Holy Orders within Section 8(1)(d) of the Clergy Discipline Measure 2003 in that, having befriended the Complainant ("C") in 1995, who was then 17 years old, and formed a relationship with the Complainant so that he and his parents trusted the respondent to help him achieve his aim of being ordained into the Church:

(i) the respondent had an intimate sexual relationship with the Complainant which started shortly after C's

18th birthday in 1996 and continued until about 2000;

- (ii) the respondent invited or allowed C to live with him in the vicarage whilst engaged in a sexual relationship;*
- (iii) through forming a sexual relationship with C, who was over 20 years his junior, the respondent failed to observe and maintain appropriate professional boundaries;*
- (iv) in all the circumstances the respondent led C into a sexual relationship using to his advantage the power imbalance between the respondent and C."*

2. The hearing took place on 12 to 14 March 2018. On 15 March, we communicated in writing our unanimous decision to dismiss the Complaint. These written reasons are provided as a summary of the most pertinent matters and of our reasoning. There are aspects of the evidence which were peripheral. We do not wish to lengthen this document by reciting them in detail here and it is not necessary to do so, in order to convey the essence of our reasoning.

3. The Complaint related to matters dating back more than 20 years. It was, therefore, made well outside the normal limitation period under the Clergy Discipline Measure 2003 ("CDM"). The Deputy President of Tribunals gave permission for the Complaint to proceed. That decision did not, of course, amount to a finding of guilt. Nor can such a procedural decision erase the difficulties for all concerned in bringing, responding to and determining such an old Complaint. Clearly, it is sometimes in the interests of justice for old cases to be brought, but it must be remembered that the burden of proof on

the balance of probabilities, which rests on the Complainant, applies in such a case, as in any other.

4. We considered the terms and particulars of the Complaint very carefully. The allegations were serious. The Complaint was framed and the case presented on the basis that the Respondent had “*befriended*” the Complainant and his family so that he gained their trust, while the Complainant was still a minor; that, having done so, the Respondent then developed a sexual relationship after the Complainant’s eighteenth birthday, using his influence and position to do so. The Designated Officer pointed to the 22 year age difference between the Complainant and the Respondent and the difference in status between the aspiring ordinand and the experienced priest.
5. The particulars of the Complaint set out in paragraphs (i) to (iv) were all predicated on the existence of a sexual relationship between the Respondent and the Complainant. It was alleged in (i) that “*an intimate sexual relationship*” existed from around June 1996 until “*about 2000*”. Paragraphs (ii), (iii) and (iv) all hinged on the existence of a “*sexual relationship*” and paragraphs (iii) and (iv) clearly alleged that the Respondent had “*formed*” the relationship and “*led*” the Complainant into it in ways which were unprofessional and amounted to an abuse of power.
6. In order to assist the Tribunal in its determination, the Chairman explored with the Designated Officer and Counsel for the Respondent during Closing Submissions what was meant by the phrase “*sexual relationship*” in the context of the Measure and of the Complaint.

7. The Designated Officer submitted that there were two forms which such a relationship might have taken, as a matter of law. His submissions were made, at the Chairman's invitation, on the hypothesis that the Panel might not be satisfied that acts involving the genital area of either Complainant or Respondent, or both of them, had been established.
8. The Designated Officer's first submission, which was uncontroversial, was that actions involving the genital area would be sexual and, if undertaken in the context of a relationship, would constitute a "*sexual relationship*".
9. Secondly, Mr Iles said, there could be a sexual relationship without any genital contact where there was sexual attraction and a physical expression of that. Such attraction, he said, need not be mutual. Whether or not such attraction was expressed in physical form, for example by kissing, holding or hugging, was to be judged objectively. Asked to elaborate on this proposition by one of the Tribunal members, Mr Iles said that touching might still be arousing, though not involving the genital area. Similarly, kissing in areas other than the lips might be sexually arousing.
10. Lastly the Designated Officer brought to the Tribunal's attention Practice Direction 2 (2008): Clergy Discipline Measure 2003: Amendments to Allegations of Misconduct that have been referred to a Tribunal ("PD2"). Paragraphs 5 – 7 of the PD state, under a heading, "*Amending the Allegation*":
 - “5. *At any stage after the President has referred a complaint to the tribunal and before the tribunal has pronounced its determination, any irregularity on the face of the written allegation may be cured under rule 103. An illustrative example is provided in the Annex to this Practice Direction.*

6. *At any stage after the President has referred a complaint to the tribunal and before the tribunal has pronounced its determination, the Registrar or Chair may give directions under rule 30 that the descriptive particulars of the allegation of misconduct be amended to meet the circumstances of the case. An illustrative example is provided in the Annex to this Practice Direction.*

The general test to apply

7. *The general test to apply is that the amendments in question: a. are necessary for the just disposal of the proceedings in accordance with the overriding objective and meet the circumstances of the case, and b. can be made without injustice either to the respondent or to the complainant having regard to the merits of the case.”*
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11. The example under paragraph 5 was of an erroneous date or reference in a complaint, but the example under paragraph 6 was substantive – amending a complaint of adultery to a relationship falling short of adultery which was “*unprofessional and intimate.*” The Designated Officer’s suggestion, in referring to these passages, was that the Tribunal might, of its own motion, amend the complaint if not satisfied that a sexual relationship had existed, to allege some different form of conduct unbecoming within s.8 of the Measure.
 12. Counsel for the Respondent robustly objected to such a course being suggested and requested a ruling on the point.
 13. The Chairman gave the following ruling:

Preamble

“(i) *The Complaint, which was framed by the Deputy President of Tribunals, in exercise of his functions under s.17 of the Measure and Rule 29 of the Clergy Discipline Rules 2005, having considered whether to direct a referral outside the*

normal time pursuant to 2.9 of the Measure, is predicated on there having been a 'sexual relationship' between the Respondent and the Complainant.

- (ii) The Designated Officer opened and closed his case on the basis that the relationship 'became sexual' 'shortly after the Complainant's 18th birthday' – sometime between 28/29 May and 7th June 1996. We have to decide whether, in the light of all the evidence, oral and documentary, and on the balance of probabilities, we conclude that this was the case.*
- (iii) In answer to my questions about what can amount to 'a sexual relationship', Mr Iles referred to the possibility of making lesser findings which could amount to conduct unbecoming or inappropriate behaviour. The authority for this, he submitted, was PD2 (2008), paragraphs 5 and 6. I also note paragraph 7.*
- (iv) I have had regard to the Overriding Objective set out in Rule 1 of the Rules.*

'The overriding objective of these rules is to enable formal disciplinary proceedings brought under the Measure to be dealt with justly, in a way that is both fair to all relevant interested persons and proportionate to the nature and seriousness of the issues raised. The rules are, so far as is reasonably practicable, to be applied in accordance with the following principles —

- (a) The complainant and the respondent shall be treated on an equal footing procedurally.*
 - (b) The complainant and the respondent shall be kept informed of the procedural progress of the complaint.*
 - (c) Undue delay is to be avoided.*
 - (d) Undue expense is to be avoided.'*
- (v) Mr Iles suggested that the discretion in paragraph 6 might be exercised.*
 - (vi) Mr Gau submitted that to do so would be unfair and that he did not know what case he had to meet. He requested me to give a ruling on Mr Iles' suggestion. My ruling is set out in the next following sub-paragraph.*

Ruling

- (vii) *Although I recognise that PD2, issued pursuant to s.4 of the Measure, provides for the amendment of the particulars of allegations in certain circumstances, I do not consider that amendment would be appropriate in this case at this stage or any later stage for the following reasons:*
- *the Overriding Objective provides for proceedings to be dealt with justly in a way that is both fair to all parties and proportionate to the nature and seriousness of the issues raised;*
 - *paragraph 193 of the Code provides: 'It is a fundamental principle of disciplinary proceedings that neither side should be taken by surprise by the other in relation to the evidence that is to be given at a hearing or by any legal submissions that are made. Any failure to observe this principle may result in the tribunal exercising its discretion to exclude evidence or legal submissions if the other party is disadvantaged by not having had prior notice'.*
 - *it is very late in the day – all the evidence has been heard;*
 - *the Complaint concerns matters over 20 years ago and I bear in mind the difficulties inherent in preparing to meet such a charge;*
 - *the Complaint is a very serious one;*
 - *it would be unfair to the Respondent and not proportionate to the seriousness and age of the Complaint to allow a fundamental change to it now."*
14. The hearing accordingly proceeded on the basis of the Complaint as originally framed and as set out in Paragraph 1 above.
15. It was common ground that, if the Tribunal were satisfied, on the balance of probabilities, that the factual elements of the Complaint had been made out, then such conduct would fall within s.8 of the Measure. The advocates also helpfully clarified in Closing Submissions the nature of the civil standard of

proof which applies in disciplinary proceedings brought under the Measure, namely the balance of probabilities. The Designated Officer added that paragraph 200 of the Code must now be regarded as out of date in the light of more recent House of Lords authority.¹ It is clearly desirable that a suitable amendment be made to the Code as soon as possible. In our deliberations and determination of this matter, we considered whether the Complaint was made out on the balance of probabilities.

16. At the beginning of the hearing the Chairman decided to admit a letter from a former diocesan Bishop, the Right Reverend Michael Langrish, having heard brief submissions from the advocates; by the time the issue was aired, it had become largely uncontroversial since the letter had been put into appropriate form and the Designated Officer accepted that it was admissible in terms of relevance. He properly reserved his right to make submissions on it, along with the other written evidence.

SUMMARY OF THE EVIDENCE

Complainant's Case

17. The Designated Officer's Statement of Case is a succinct and helpful summary of the way in which the case was opened and reflects, in general terms, the Complainant's Written Statements dated 21 November 2016 and 27 January 2018. The first Statement was appended to the Complaint Form 1a, which contains a declaration of truth. The second was a formal Witness Statement, also containing a declaration of truth. These statements were

¹ Re B (Children) [2008] UKHL 35

taken as read and the Complainant confirmed his signature and the truth of the contents.

18. The material parts² of the Statement of Case said:

- "2. *The complainant was born on 12 May 1978.*
3. *The respondent was born in November 1955. There is an age difference of 22 years.*
4. *They first met when the complainant was a schoolboy. The respondent was an experienced cleric, having been ordained deacon in June 1980 and priest in January 1981. The respondent became vicar of St X's, Y in 1992.*

Development of close relationship

5. *During the course of 1995 the complainant and respondent became well acquainted and friends. The complainant became a regular server at St X. He was invited by the respondent to dinner and to see a play ("Murder in the Cathedral".) The respondent visited the complainant's home and met his parents.*
6. *The respondent already knew in 1995 that the complainant was interested in being ordained.*
7. *They had discussions about the complainant becoming a priest. He confided in the respondent about his sexuality – the respondent assured him that being gay was not a bar to ordained ministry, and the respondent disclosed that he too was gay. The complainant was still only 17 at this time.*
8. *Towards the end of May 1996 the complainant invited the respondent to stay with him at his holiday cottage at Z. No one else was present. The respondent showed him pornographic material from the Gay Times. The respondent kissed him. Although the respondent denies the complainant's account, he accepts that "by then, we were becoming close" and "By mid-1996 we had become very close. C had known from an early age that he*

² We have omitted the references to the Tribunal bundle

was gay, and he was concerned about that for Ordination. He told me a lot of personal things, and a closeness developed between us as a result of the information we shared."

9. *The next day the complainant and respondent went by train to attend a festival. They stayed in a B&B in Brixton which the respondent had found in the Gay Times. They ate in a gay restaurant. The respondent paid for everything. Photographs were taken on this trip – they show an inappropriate degree of physical closeness.*
10. *[An Exhibit] dated 31 May 2006, shows a card addressed to "my dearest C with all my love always, From your R ". A week later, 7 June 1996, when the complainant was at a conference, the respondent wrote a letter to him addressed as "My darling C ", and informing him "I will miss you every moment while you are away"; the respondent sent him a photograph of himself for the complainant to keep with him whilst away and then later to put in his bedroom when he returned home. The respondent enjoined the complainant to "Save yourself for me as I will for you ".*
11. *The respondent has already clearly crossed the appropriate professional boundary between priest and young member of his congregation who was looking for help and guidance in seeking to be ordained.*
12. *The complainant contends that the behaviour of the respondent, who was in a position of authority, at a time when the complainant was young and impressionable trying to determine his own sexuality and hoping to enter ordained ministry, was intended to lead the complainant into a sexual relationship.*

Sexual relationship

13. *Physical sexual relations started in early June 1996 at the Vicarage (a week after returning from London) -mutual masturbation. During the rest of 1996 the complainant and respondent spent much time together, including staying overnight together at the Vicarage, and going on an overnight trip from Plymouth to Roscoff. There was regular sexual contact. In a letter sent to the complainant before*

*mid-August 1996 the respondent refers to him as his "B**fr**nd" ie, his Boyfriend.*

14. *From the end of October 1996 the complainant moved in to the Vicarage. He lived there until 2000. For appearances sake he had his own bedroom, but usually slept with the respondent - their sexual relationship was covert.*
15. *The respondent told the complainant he loved him, but he could not split from his long- term partner "P" (who was normally based in the West Midlands).*
16. *In 1997 the complainant started an undergraduate course at "Q" University, and in vacation time returned to the Vicarage to live with the respondent.*
17. *Having graduated in 2000 the complainant went on a long-term placement in another part of the country, sent by the diocese of Exeter. From that point, the relationship ceased to be sexual. The complainant later attended "T" Theological College and was ordained deacon in 2003. During vacations at "T" he sometimes returned to the Vicarage.*
18. *The complainant was manipulated by a much older man in authority, who ignored proper professional boundaries to achieve a sexual relationship with a young person who was a member of his congregation and one of his servers. There was an obvious power imbalance in the relationship. The exploitation has had a negative effect on the complainant.*
19. *When interviewed by the suffragan Bishop "B" on 16 February 2017 the respondent told the Bishop that the relationship was one of "mutual love and affection" from autumn 1996 onwards, and that they were "friends". He denied there was a sexual relationship but said they "were affectionate and demonstrative. It was above the waist" and he "might have" kissed the complainant; he accepted he had told the complainant that he loved him. Even on his own case, he ignored proper professional boundaries and his relationship with the complainant was inappropriate.*

19. It is helpful to include here a little more of the interview with the then suffragan Bishop "B", a note, but not a recording, of which was made at the time. Asked by Bishop "B" to describe the relationship with the Complainant, the Respondent replied, *"We got extremely close over two years ..."* Witness 2, who was, at that stage, churchwarden of the Respondent's parish said, *"He was like a mentor"*. The interview continued with questions from the Bishop and answers from the Respondent.

Q. *"As things developed was this mentoring or more?"*

R. *"More than that. It was personal at first. I felt very conscious that I had been given family life and church life. He did not have either apparently. He identified me as the person able to deliver that."*

Q. *"You were a mentor helping with his discernment. Was it a relationship in which there was mutual love and affection?"*

R. *"Yes"*

Q. *"When did it become that?"*

R. *"In the autumn of 1996"*

Q. *"The relationship became more?"*

R. *"We were friends ... After 25 years of parochial life the difference between my parishioners and my friends is not discernible ... [the Complainant] was not a member of my congregation. The friendship came first."*

Q. *"Did the relationship become sexual?"*

R. *"No it did not"*.

Q. *"Is there anything that he could have misunderstood?"*

R. *"No. We were affectionate and demonstrative. It was above the waist."*

Q. *“You held and kissed each other?”*

R. *“I might have. I am that sort of person. I use my arms, body and face.”*

Q. *“You loved him?”*

R. *“Yes, we used those words.”*

...

Q. *“Did you have similar relationships with others?”*

R. *“No, he was the only person.”*

Respondent's Case

20. The Respondent in his Answer, Form 2, denied the misconduct alleged in the Complaint, appending a detailed written Statement, signed on 19 January 2017. He made a similar, sworn, statement on 22 February 2018. These Statements were taken as read at the hearing.

21. The Respondent's statements were wide ranging, with considerable detail concerning the Complainant's actions when at Theological College and in his first curacy, as well as material concerning the role of the Complainant's parents, both in his life and in the life of the Respondent. There was also material dealing with the point at which the identity of the Complainant became known, together with the reactions of his parents to this. Much of this material is peripheral to the essential questions which we have to decide concerning the nature of the relationship between the Complainant and the Respondent and the consequential questions about the Complainant's presence at the Vicarage and the propriety of the Respondent's having caused or permitted it. As the Designated Officer rightly observed in closing, there are only two people who know the answers to those questions – the

Complainant and the Respondent. The nature of the relationship is the essential question which we must decide, on the balance of probabilities.

22. The following Witnesses were called on behalf of the Respondent:

- The Rev Witness 1, a former Chaplain of a non-parochial church organisation (“the Organisation”).
- Witness 2, Churchwarden of the Respondent’s church during the relevant period.
- Witness 3, organist since 1999 and PCC Secretary of the Respondent’s church; also former secretary of the Organisation.
- Witness 4, Head Server of the Respondent’s church from 2000, having become a server there in late 1999.

There was also a written statement from The Rev Canon Witness 5 and a letter from former diocesan Bishop A. None of these witnesses was able to speak to the essential question concerning the nature of the relationship between the Complainant and the Respondent. They dealt with peripheral matters concerning: the Complainant’s alleged behaviour towards parishioners on visits to the parish after he commenced his studies at University and Theological College; his first curacy in London and the circumstances in which he had come to make two other complaints in respect of clergy; and a meeting between the Respondent and the Complainant’s parents after it became known who had made the Complaint. We do not find it necessary to rehearse their evidence in detail. There is, however, one respect in which we shall return to the evidence of Witness 3.

23. The Respondent robustly denied in his written statements and in his oral evidence that his relationship with the Complainant was ever of a sexual nature. He accepted that there had been a conversation about sexuality. He stated that this occurred at the Vicarage after the Complainant imparted that he was gay and that the Respondent only told him of his own homosexuality in response to this disclosure, which took place in the context of the Complainant's concern about whether his sexuality would be a bar to ordination. Although he differed as to details of time and place (the Complainant said that this conversation occurred in the car before the eighteenth birthday), the Complainant concurred that it was he who raised the subject. The Respondent said in his sworn Witness Statement of February 2018:

"After this conversation, and subsequent similar ones, there is no doubt that our friendship moved forward by several notches. Because of shared information, there was an intimacy and an understanding between us, in which most other people in our respective lives did not share. I also felt an enormous regard and affection for him."³

24. The Designated Officer put many questions to the Respondent about the appropriateness of these disclosures and the Complainant's status at the time, in terms of precisely when he became a member of the Respondent's congregation, rather than the one in which he was brought up by his parents. With regard to the first point, the Respondent said that he would have found it helpful to have been able to talk to someone about being gay when he was that age. He also denied trying to distance himself now from the true degree of pastoral responsibility for the Complainant at the time of these conversations.

³ Bundle p.49

25. The Respondent admitted taking the Complainant to his house at Z on the way to London in May 1996, but denied the Complainant's version of events, specifically, showing him pornographic material or kissing him. He denied "*canoodling on the sofa*", but said that on arrival and departure sometimes there was a kiss or a hug. He had shown him the Gay Times because the Complainant wanted to see it and he considered it appropriate for him to have information about being gay; it had not contained "*titillating*" pictures. He agreed that they went to London and stayed in a Bed and Breakfast in Brixton, stating that he was combining a trip to visit a parishioner who was in HMP Brixton with taking the Complainant to visit King's College, where he aspired to study. They shared a bedroom, but not the same bed. The Respondent denied having found the B&B in the Gay Times. He was recommended it and chose it for its location and parking facilities. A photograph, apparently taken by a waiter, of the Complainant and the Respondent out to dinner on this evening shows the Respondent posing close to the Complainant with his arm round his shoulders. The Complainant is smiling.
26. At about this time, there was a flurry of cards and other notes passing from the Respondent to the Complainant. Three of these are referred to in paragraph 10 of Mr Iles' Statement of Case.
27. On 7th June, when the Complainant was away at a vocations conference, the Respondent sent a letter stating, "*I will miss you every moment while you are away ... Save yourself for me as I will for you*". The Designated Officer suggested to the Respondent that these words carried a sexual connotation.

In reply, the Respondent said that this is not what he had meant; rather, he was saying that he would be free of other distractions on the Complainant's return from the conference ... *"It's an expression I use – giving priority"*. When it was put to him that he had used lovers' language, he agreed that it could be so construed, but that this was just how he expressed himself. He *"found it difficult to read this correspondence which he had believed to be private"*.

28. On several occasions, the Respondent agreed, when cross-examined about the appropriateness of these communications, that he would not now send such cards. Similarly, he said that *"in the current climate"*, he is *"much more careful about physical demonstrations to others, but physical demonstrations of affection had not been confined to the Complainant."* He said this, specifically, about the *"B**fr**nd"* card, though at the time, he said, he had meant it as a joke between close friends.
29. The Respondent denied in his February 2018 Witness Statement the Complainant's claim that he had shown him a pornographic video in his bedroom at the Vicarage in June, followed by mutual masturbation. He categorically denied any subsequent sexual contact when the Complainant was at the Vicarage in University and Theological College holidays. No details were put to him.
30. The Respondent agreed that he had taken the Complainant on a boat cruise and dine trip to France on 8 September, but denied that it was a *"date,"* saying that he had taken numerous friends on similar trips that summer. It was not put to him that they slept together on this occasion and the tickets contain reservations for *"seats"*, not cabins or berths.

31. Mr Iles also questioned the Respondent closely about cards sent to the Complainant in October. One, dated 15 October from a conference which the Respondent attended with four colleagues, had a picture of five naked men on a beach viewed from behind. The message was to the effect that, as the Complainant would see, the five of them had arrived at the venue. It was sent in an envelope to prevent "*the postman having heart failure*". It is signed "*Lots of love to you xxxxx*". The Respondent said that the card was a joke between close friends.
32. On 28 October, the Respondent sent the Complainant a postcard of a young man with a bare torso. In it, he spoke of being "*torn*" between wanting to be at the Vicarage with the Complainant and wanting to stay at his house with his partner. Mr Iles cross-examined the Respondent closely about this. He said that he did not want either of them to be alone and denied that he was equating the Complainant with his partner.
33. The Respondent did not accept that the Vicarage was ever the Complainant's home. He stayed there for a brief period in October 1996 and then house sat in January 1997 when the Respondent went to Hong Kong for a few weeks. The Complainant paid no rent or expenses, he said, and did not register himself as living there on the civil electoral roll. The Respondent said that he stayed from January until September 1997, when he went to University but did not share the Respondent's bedroom. Thereafter, during his seven years of study, he would spend much of his vacations there, though the Respondent said that he had tried to persuade him to spend some time at his parents'

home. Asked about his acceptance of the Bishop's suggestion that the Complainant was living at the Vicarage ("*Yes. It was no secret. Everyone knew*"), he said that he had reflected on the phrase and its "*deadly significance since*". He also said in interview that he had previously helped others in similar ways.

34. In cross-examination, the Complainant stated that the Respondent had never invited him to live at the Vicarage. Mr Gau put questions to the Complainant on many of the detailed aspects of his evidence about the Brixton trip and the first stay at the Respondent's private home at Z. When asked about his claims that the B&B in Brixton and dinners were "*extravagant*", he was unable to substantiate them. He accepted that people came into the Vicarage as it was next to the church, but said that it was "*not like Piccadilly Circus*". Under cross-examination, the Complainant said for the first time that an arrangement had been made while at Z and in London to have sex at the Vicarage. Pressed for details, he said that he was unable to remember "*the mechanism of how we got to his bedroom*" or the terms of the invitation. The Complainant also said, for the first time under cross-examination, that the Respondent had "*discussed his tastes*" at Z, stating that "*he did not like anal sex or kinky things, but enjoyed mutual masturbation*". This statement, the Chairman observed by way of clarification, seemed at odds with his January 2018 Witness Statement, in which he stated that the Respondent had once penetrated him but that he (the Complainant, rather than the Respondent) had not enjoyed it and did not want it again. In his reply to the Chairman, he said that the conversation was as stated in cross-examination, but that the

Respondent had penetrated him once. Despite the reference to oral sex in the Complainant's Statements, he did not mention this as featuring in the conversation about the Respondent's "*tastes.*"

35. The Complainant gave no other details in his oral evidence of any sexual activities after this time in 1996, but in his Statements he said that they often shared a bed, "*although for the sake of presentation*" he had a room of his own. The Respondent denied both these suggestions.

36. Turning to the issue of his living at the Vicarage, Mr Gau questioned the Complainant about passages in his Witness Statements in which he stated that some parishioners were very worried about this and they wrote to the Bishop of Exeter about it, although the Respondent had not, to his knowledge, been questioned about the matter.⁴ He agreed in cross-examination that he had learned from the Diocesan Safeguarding Officer in January 2016 that there were no such letters on the file (which is, of course, consistent with the Respondent not being questioned about this). Nevertheless, the Complainant had persisted in this claim in the Witness Statements of November 2016 and January 2018.

37. One of the allegations in the Claimant's Witness Statements was that, in 2003, when the Respondent was dangerously ill in hospital, he asked the Claimant to remove some pornographic material allegedly in his study at the Vicarage, so that his parents would not find it. Under cross-examination, he agreed that the Respondent's mother was already there, and had had full access to the house. However, he went further than he had done in his Statements, in

⁴ Bundle pp.169-170; 11-12.

which he had simply said that he was asked to get rid of the material, adding that he had put it in the boot of Witness 3's car. The Chairman asked Witness 3 about this suggestion. He firmly denied ever having authorised or found porn in his car and said that the Complainant had never had access to his car key.

THE TRIBUNAL'S FINDINGS

38. We found that a friendship developed between the Respondent and the Complainant from 1995, when the Complainant's parish was in vacancy. The Respondent had a pastoral responsibility for the Complainant, by virtue of his role as one of the chaplains to the Organisation, to which the Complainant belonged. He also assumed a responsibility as mentor in relation to the Complainant's aspiration to be ordained.
39. The Complainant's parents (that is, his mother and stepfather, the Complainant's father having died and his mother subsequently remarried) were not called to give evidence. Nor was any written evidence from them adduced. There was considerable reference to them by both sides but we found it difficult to form a clear view in the absence of any evidence from them. On balance we decided that the relationship between the Complainant and his parents was not close by the relevant period. By this time, however, we bear in mind that he was passing into adulthood. On the evidence presented, we are unable to find that the Respondent manipulated the Complainant's parents to gain their trust, either in 1995/early 1996 or subsequently. They appear to have had a relationship, partly friendship and latterly partly business, after the Complainant's stepfather became a self-

employed gardener and handyman. Beyond these matters, we are unable to find anything else proved, on the balance of probabilities.

40. We reiterate that we find that a friendship between the Respondent and the Complainant developed in the latter part of 1995 and 1996. This friendship was close, apparently very close, as disclosed by a series of cards and notes spanning a short period from late May to late October 1996.
41. It is not disputed that the Respondent took the Complainant, alone, in October 1995 to see a performance in a church of *"Murder in the Cathedral"*; took him, sometimes alone, in his car meetings of the Organisation; took him, in 1996, sometimes alone, sometimes in company with the Respondent's long term partner, to the house which the Respondent and his partner owned at Z; took him to London to visit King's College and an Additional Curates' Society Festival, on the former occasion staying together at a Bed and Breakfast, in the same room, though occupying separate beds; took him on an overnight boat trip to France in September 1996, though occupying seats rather than berths. These trips, especially those in 1996, as well as the increasingly and extravagantly affectionate nature of cards and notes sent by the Respondent to the Claimant, bear witness, in our view, to a very close friendship and considerable affection for the Complainant on the part of the Respondent. There was no suggestion in the Complainant's evidence that he resisted this friendship. Some of the witnesses who were called or made Witness Statements on behalf of the Respondent testified to a man who was, at that time, routinely very demonstrative with his social circle. He made this point

when asked by Bishop B about hugging and kissing – *“I am that sort of person. I use my arms, body and face”*.

42. What is not admitted is that there was a sexual relationship. The Designated Officer’s case in this respect relied upon the direct evidence of the Complainant on the one hand and the circumstantial evidence of the contemporaneous correspondence from May to October 1996 on the other.
43. We endorse the Respondent’s statements to the effect that, with the benefit of hindsight and in today’s church culture which is much more alive to the issue of safeguarding, he would not write in such extravagant terms or engage in displays of physical affection towards a young person for whom he had assumed a measure of pastoral responsibility, whether or not he was, at the time, his parish priest. We also consider it ill-judged and unfortunate that he was in company with the Complainant alone, in particular the trip to the B&B in Brixton. The terms of the Complaint, however, are clear. A sexual relationship is alleged.
44. We have carefully assessed the direct evidence of sexual behaviour. We find the evidence of genital sexual acts unconvincing. The Complainant, when pressed to give details of the critical period around his eighteenth birthday, did not do so. He could not say how, on his version of events, he and the Respondent *“ended up”* in the Respondent’s bedroom. In some instances, embellishment was given belatedly, only under cross-examination. He gave no details, however, of the plans for having sex at the Vicarage, apparently made in advance elsewhere. It seems surprising that the Respondent should plan for this to happen at the Vicarage, where risk of discovery would be

greater and more open to objection rather than while away at his private house or in London. No credible explanation was given by the Complainant for the inclusion of reference to letters of complaint in two Witness Statements by the time that he knew there were no such letters (see paragraph 36 above). This written embellishment went to an important element of the Complaint about the nature of his presence at the Vicarage and persisting in such an allegation in writing, not under the pressure of cross-examination, at a time when he knew that it was unsubstantiated, caused us concern about the weight that we could give to the Complainant's evidence generally. Similarly, the late allegation about Witness 3's car was surprising. We preferred Witness C's evidence on this point, which was given in a manner which was straightforward and convincing.

45. There was even less detail to support the claim that a sexual relationship continued – presumably confined to student vacations - until 2000.
46. We therefore found the direct evidence of sexual relations and some other important and relevant parts of the Complainant's evidence unconvincing. Although we bear in mind the difficulty of recollection after so long, on the Complainant's case, these were his first sexual encounters and he had had plenty of time to think about them since making the Complaint. He had also kept mementos of this period of his life in the form of the letters and cards from the Respondent. We therefore found the lack of detail surprising, making allowances for the natural embarrassment in speaking about such matters. Coupled with the clear instances of embellishment that we have recorded in

paragraph 44, we find ourselves with real concerns about the reliability of the Complainant's evidence on these key matters.

47. There was no clear evidence to support a sexual relationship based on non-genital touching in the second category put by Mr Iles in submissions. The kiss on the sofa was denied. No detail was given and there was no suggestion, for example, either by the Complainant in written or oral evidence, or by the Designated Officer in cross examination, that the Respondent became aroused by any other form of ostensibly lesser touching.
48. We turned to consider the circumstantial evidence of the letters and cards. There is no doubt that the language used and some of the pictures on the cards were extravagant and unwise. They indicate closeness, whether reciprocated or not, bordering on infatuation, for a period of some five months. On the balance of probabilities, however, we do not feel able to infer that they establish the existence of a sexual relationship. We are not called upon to make a ruling on the appropriateness of the Respondent's actions in sending them. They are only relevant to the Complaint insofar as they are probative of a sexual relationship, and we are not satisfied that they are.
49. We find that the Complainant was resident at the Vicarage from January to September 1997 and thereafter for the majority of his vacations from University and Theological College, but, in view of our finding on the sexual relationship question, we do not find paragraph (ii) of the Complaint proved.

CONCLUSIONS

50. Accordingly, we do not find the Complaint to be made out and we dismiss it.
51. Finally, in view of the conclusion we have reached, we have directed under Rule 49 (a) for the protection of the private life of the Complainant and the Respondent that no identifying material may be put into the public domain either by official bodies in the Church of England, or by journalists and commentators, or by any other conventional or social media.

MORAG ELLIS QC (Chair)

THE REVD PREB. MICHAEL GRAHAM WHITTOCK

THE REVD CANON DR JESSICA HELOISE MARTIN

CANON DAVID HUGH BENNISON

CANON NICOLETE FISHER