IN THE ARCHES COURT OF CANTERBURY

ON APPEAL FROM THE BISHOP'S DISCIPLINARY TRIBUNAL FOR THE DIOCESE OF SOUTHWARK

APPLICANT: THE REVEREND NATHAN NTEGE

In the matter of an application by Nathan Ntege for leave to appeal against various decisions of the bishop's disciplinary tribunal for the diocese of Southwark on the 29th day of November 2019

Peter Neville Collier QC, having been appointed by the Dean of the Court of Arches with the consent of the Archbishops of Canterbury and York, under powers conferred on the Dean by section 12(1) of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018, for the purpose only of determining the said application for leave to appeal and (if such leave is granted) to hear such appeal; and

Philip Curl, having been appointed by the President of Tribunals under section 20 (1B) of the Clergy Discipline Measure 2003; and

Peter Neville Collier QC, Deputy Dean of the Arches, having determined that the matter shall proceed without a hearing; and

Peter Neville Collier QC and Philip Curl having considered the representations made in writing by the applicant and by Adrian Iles, the designated officer (DO), have determined as follows:

1. The applicant seeks leave to appeal on the basis that

    a. The hearing should have been adjourned on medical grounds and should not have proceeded in the applicant's absence in view of the medical evidence presented to the Panel.

    It is argued that the decision to reject the application to adjourn was not in accordance with the overriding objective and was flawed in that it placed undue weight on the late service of the applicant's statement of case as showing that he was "not fully cooperative or engaged" and he had "failed to keep in touch with his solicitors such that they were unable to obtain further information from him".

    b. The hearing should not have proceeded without a determination as to the location of the original deed of assignment.

c. The complaint should not have been brought – it was out of time in accordance with s.9 of the Clergy Discipline Measure 2003.

d. The sanction of prohibition for life was too harsh.

2. The material we have considered is the written determination of the tribunal dated 11th December 2019; the Forms A1A (Rule 4A) and A1 (Rule 5) completed on behalf of the applicant by his legal representative; the response from the DO, Mr Adrian Iles; and the applicant's response along with a letter, dated 6th January 2020, from Dr John Chan of the Eversley Medical Centre.

The background events

3. The applicant, the Revd Nathan Ntege, was licensed as priest in charge of the parish of St Jude with St Aidan, Thornton Heath in the diocese of Southwark in January 2002; he was installed as vicar of that same parish in February 2007.

4 Between January 2002 and December 2006, 29 weddings were celebrated in the church. Between January 2007 and April 2011, 475 weddings were celebrated in the church.

4. Although 475 weddings were celebrated no fees were remitted to the DBF in that 4 ¼ year period.

5. As a result of a police investigation which commenced in 2011 the applicant and several others were charged with offences in relation to 'sham marriages'. In October 2014 His Honour Judge Madge stopped the trial of the applicant and others as a result of misconduct on the part of the investigating authority, the UK Border Force.

6. The Venerable Christopher Skilton, the Archdeacon of Croydon thereafter sought leave to bring a complaint against the applicant under the Clergy Discipline Measure 2003 notwithstanding that more than 12 months had elapsed since the last instance of misconduct complained of.

7. On the 20th November 2017 Sir Andrew McFarlane, the then President of Tribunals, gave his leave under section 9 of the Measure for proceedings to be instituted.

8. On 22nd March 2019 Dame Sarah Asplin, the President of Tribunals granted an extension of time for the submission of the DO's report and referred to the tribunal the following matters for determination:

(1) That the Respondent was neglectful or inefficient in the performance of the duties of his office as vicar of the benefice of St Jude with St Aidan in that in the period 6th January 2007 to 30th April 2011 he failed

properly to maintain the marriage register and/or he failed properly to maintain the banns register.

(2A) That the conduct of the Respondent was unbecoming or inappropriate to the office and work of a clerk in holy orders in that having by a deed of assignment dated 7th January 2002 assigned to the Southwark Diocesan Board of Finance ("the DBF") all fees payable to him in accordance with the provision of orders made pursuant to the Ecclesiastical Fees Measure 1986 and having undertaken to remit all such fees to the DBF he during the period 6th January 2007 to 30th April 2011 did not remit to the DBF assigned fees estimated to be approximately £60,000.

(2B) Alternatively, that the Respondent was neglectful or inefficient in the performance of the duties of his office by reason of the conduct alleged in 2A.

9. The complainant's case in relation to the registers was that although in the period from 2002 to 2007 both the Banns and the Marriage Registers had been properly completed, between 2007 and 2011 there were many examples where there had been a failure to properly record matters. In the Marriage Register there were 14 cases where the applicant had not signed the Register in respect of weddings he had conducted and 15 cases where there was no record as to the nature of the preliminaries for the marriage.

10. In relation to the Banns Register there were multiple failures falling within 6 categories as set out in paragraph 9 of the Tribunal's written judgment, including many instances of wrong dates being recorded and 100 instances where the Register had not been signed although the Register of Services showed that the applicant had been the officiant at the service where the Banns purportedly had been read.

11. The complainant's case in relation to marriage fees not being transmitted to the DBF was that on taking office in 2002 the applicant had on the 7th January 2002 signed a deed of assignment in favour of the DBF in relation to marriage fees. The complainant further alleged that the incumbent's fees for the 475 weddings conducted in the relevant period would have been £66,912.50. It was accepted by the complainant that there may have been waivers of fees in a small number of weddings and also that a few weddings may have been conducted by other clergypersons. However no sums at all had been paid to the DBF.

The pre hearing proceedings

12. The complaint was laid on 30th November 2017.

13. On 12th June 2018 the Respondent served an Answer to the Complaint together with a witness statement running to 31 paragraphs. The Respondent did not in either of

those documents take issue with the contention that he had signed a deed of assignment in 2002.

14. On 13th September 2019 timetabling directions were given for the complainant to lodge his Statement of Case and supporting witness statements by 11th October 2019, for the applicant to lodge his Statement of Case and any witness statements by 8th November 2019, and for a tribunal hearing to take place between 27th – 29th November 2019.

15. The complainant served his Case and witness statement on 11th October 2019.

16. On 29th October 2019 the applicant's solicitors asked the DO to disclose the original deed of assignment. The DO responded on 1st November 2019 saying that the original deed was no longer available.

17. On 13th November 2019 the applicant, not having filed his Statement of Case or witness statement, through his solicitors said that he had discovered that the deed was fictitious and asked for an adjournment of the hearing on the grounds that he was going to ask the police to investigate the alleged forgery.

18. The Panel Chair declined to order an adjournment stating that the panel could decide the issue of the deed's authenticity, it being a matter of fact, although he said that the application could be renewed at the hearing in the light of any views expressed by the DO. The DO opposed the adjournment and the previous directions were renewed on 20th November 2019.

19. On 25th November 2019 a further application was made for an adjournment by email. This was accompanied by a GP's note dated 22nd November 2019 stating that the applicant was "unfit for work" from 22nd November to 6th December 2019 because of "low back pain/sciatica". The solicitor's email said that the applicant's condition was "critical".

20. The panel chair on 25th November 2019 gave the following directions.

    "1. The note from the GP says that the Respondent is not fit for work. It does not say that he is not fit to attend the hearing of the tribunal.

    2. In particular the note does not give any basis for believing that the Respondent will not be able to attend the hearing and to take a proper part in proceedings potentially with arrangements being made by way of breaks or otherwise to address any discomfort to which he is subject.

    3. The assertion in the email from the Respondent's solicitors that his condition is "critical" does not appear to be borne out by the doctor's note.

    4. In those circumstances the hearing will remain listed. The Tribunal will consider any proposals which the Respondent or his solicitors wish to put forward for

measures to modify the hearing procedure to enable him to participate with the minimum of discomfort."

The hearing – the application to adjourn

21. On 26th November 2019 the applicant served a response to the DO's Case which was dated the 22nd November 2019. It referred to several exhibits which did not accompany it.

22. The applicant did not attend the hearing on 27th November 2019 but was represented by Justin Gau of counsel. Mr Gau produced an email from the applicant's wife timed 10.38 that morning stating that the applicant was in pain; that she was going to seek stronger medication for him; that he had developed a fever; and that if his condition did not improve by the evening she was going to seek an ambulance. Mr Gau renewed the application to adjourn. The DO adopted a neutral stance to the application.

23. The panel noted the approach to be taken in relation to applications for adjournment on medical grounds in the civil courts as set out by Warby J in *Decker v Hopcraft* [2015] EWHC 1170 (QB) and by the Court of Appeal in *GMC v Adeogba* [2016] EWCA Civ 162 in relation to the approach to be taken by regulatory tribunals to proceeding in the absence of a respondent.

24. In paragraphs 31 and 32 of its written determination the panel set out the several factors which operated in support of the grant of an adjournment and the several factors operating against.

25. They concluded that they were unable to accept that the applicant was subject to a medical condition such as to prevent him from attending or participating in the hearing. In the light of that and all the other factors they had set out in the preceding paragraphs they concluded that the applicant had not put forward any proper basis on which the hearing could be adjourned and that, conversely, the interests of justice favoured proceeding with the hearing notwithstanding his absence.

The hearing – the findings made

26. The panel proceeded on the basis that the allegation at 2A was tantamount to dishonesty and consequently they could only find he had acted in the way alleged if the complainant had shown on the balance of probabilities that the applicant had retained the monies knowing that he was not entitled to them and should have remitted them to the DBF. They specifically adopted the approach laid down in *Re H* [1996] AC 563 per Lord Nicholls at 586C – 587G as explained by Lady Hale in *Re B* [2008] UKHL 35, [2009] 1 AC 11 at [62] – [73].

27. They noted that his absence from the hearing was not to be seen as an indication of his guilt or the correctness of the allegations made against him. They also noted that they had taken care not to draw adverse inferences from the absence of documents which might have been retained or lost by the UK Borders Agency.

28. They then set out in several respects how they had approached particular documents and other aspects of the evidence and the various submissions made on behalf of the applicant by Mr Gau.

29. They concluded that the applicant failed to maintain the Marriage and Banns Registers and that his failure had been sufficiently serious to mean he had been neglectful and inefficient in the performance of the duties of his office. They were satisfied that the contents of the registers themselves left no other conclusion available to them.

30. In relation to the allegation of the wrongful retention of fees they rejected any contention that the deed of assignment was a forgery and consequently concluded that the applicant knew he was not entitled to retain the fees. The payment of fees from 2002 – 2005, and various documents signed by him in that period, supported that conclusion. They noted the irreconcilable inconsistency of defences advanced by him. Apart from in a few cases, as accepted by the complainant, they rejected any large-scale waiver of fees, noting the inconsistency of that with the payment of PCC fees and the substantial sums collected at weddings. They rejected the suggestion that the former Archdeacon had approved his conduct, noting the absence of evidence from the Archdeacon to that effect. They rejected the contention on his behalf that his fees had been remitted through the PCC. They were unable to conclude that the comments made by the parish administrator when she had been arrested in June 2011 amounted to anything more than her asserting her innocence; they did not assist in assessing the applicant's conduct.

31. Although unable to reach definitive conclusions as to the precise amount of money he had received by way of incumbent's fees, the panel was satisfied that the sum was of the order of £60,000 and that it was money he knew he ought to have remitted to the DBF over a period of a number of years. Engaging in such conduct was in the panel's view unbecoming and inappropriate to his office.

32. Having therefore concluded that complaint 2A was established it was unnecessary for them to reach a determination in relation to 2B.

Hearing – Penalty

33. The panel noted that it had had regard to the Clergy Discipline Commission's Guidance on Penalties, and the submissions of the DO and Mr Gau. They had not been asked and decided not to invite the Bishop of Southwark to express a view about penalty.

34. They noted the applicant's good work as priest and pastor, his work with the Lugandan-speaking congregation, and his real abilities as a priest.

35. However they were driven to conclude that their findings on complaint 2A meant that prohibition for life was necessary – the applicant had engaged in systematic wrongdoing over a period of several years – wrongfully retaining substantial sums of money which he knew he should have remitted to the DBF and doing so over a sustained period of time. Further he had not demonstrated any remorse but had refused to accept his wrongdoing and was willing to make false allegations against others.

Appeal – discussion of grounds

36. The approach that we must take in relation to the application is set out in section 20 1B (c) of the Measure: any application "shall be granted if at least one of the judges considers either that the appeal would have a real prospect of success or that there is some other compelling reason why the appeal should be heard."

37. Having considered the written determination of this matter dated 11th December 2019; the Forms A1A (Rule 4A) and A1 (Rule 5) completed on behalf of the applicant by his legal representative; the response from the designated officer, Mr Adrian Iles; and the applicant's response along with a letter from Dr John Chan of the Eversley Medical Centre; we have reached the following conclusions about which we are both in agreement:

The timeliness of the complaint

38. The extension of the time for bringing the complaint was a decision made by Sir Andrew McFarlane on 20th November 2017, following an application for leave by the complainant dated 20th September 2017, the applicant having made representations against the grant by letter dated 2nd October 2017.

39. It is a matter within the President's discretion under section 9 of the Measure whether having regard to all the facts and any representations made "there was good reason why the complainant did not institute proceedings at an earlier date".

40. Having regard to the prosecution of the applicant following the matters coming to light, it was reasonable to await the outcome of those proceedings and subsequently the registers becoming available to the complainant archdeacon.

41. In our judgement there is no arguable case let alone any real prospect of success of any appeal based on this ground.

The absence of the original deed of assignment

42. The decision of the panel chair to decline an adjournment so that the police could investigate the allegation that the deed which could no longer be found was a forgery was based on the ability of the panel to decide that issue of fact on the basis of the evidence they would see and hear. Any evidence about the alleged forgery could have been presented to the panel. We have seen no reference to such evidence being adduced other than the applicant asserting late in the day, and after he had learned that the original was not available, that it was a forgery. That is in contrast to his earlier stance in his written Case Statement dated 12th June 2018 in which he did not take issue with the fact that he had signed such a deed and so was impliedly aware of his duties under it. The panel has set out the evidence in paragraph 52 of the written determination upon which it concluded that he had signed a deed, that he was aware off its contents and that in earlier years he had acknowledged his liability to remit his incumbent's wedding fees under it.

43. It is clear to us that there is no arguable case that in all these circumstances the panel was not able to proceed to hear the case and reach the conclusions it did in the absence of the original deed. There is not any real prospect of success of an appeal based on this ground.

The refusal of the application to adjourn based on the applicant's medical condition

44. Although we consider that this is an arguable ground, and there is argument on both sides for us to consider, we are satisfied that there is no real prospect of success based on this ground.

45. Judges in all manner of tribunals regularly face applications to adjourn based on the ill health of a party or a witness. Judges have to make decisions balancing a number of factors, some of which will weigh in favour of granting the adjournment and others which will militate against an adjournment.

46. There are now well-developed sets of principles to guide judges in making those decisions in different jurisdictions. They do vary from jurisdiction to jurisdiction. We are concerned with a disciplinary tribunal, although one for which the consequences of proceeding will always be potentially very severe for a respondent before the tribunal.

47. The tribunal in this instance noted in its written determination that it had had regard to the principles set out at first instance in *Decker v Hopcraft* [2015] EWHC 1170 (QB) and in the Court of Appeal in *GMC v Adeogba* [2016] EWCA Civ 162.

48. Since those case were decided there has been the case of *GMC v Hyatt* [2018] EWCA Civ 2796, a decision of the Court of Appeal (13th December 2018)[1]. In his judgment

[1] https://www.bailii.org/ew/cases/EWCA/Civ/2018/2796.html

Coulson LJ reviewed the authorities including *Adeogba*. He considered the general principles of law noting in contrast to an earlier approach, particularly but not exclusively in criminal cases, that hearings in absence in disciplinary cases tribunal were now relatively common compared to 15-20 years previously. He said at para 18 that "fairness fully encompasses fairness to the affected medical practitioner (a feature of prime importance) but it also involves fairness to the GMC ….. In that regard, it is important that the analogy between criminal prosecution and regulatory proceedings is not taken too far".

49. Most importantly the court addressed the issue of "The Required Standard of Medical Evidence" in paragraphs 37-41. It drew on and cited with approval a number of other authorities, in particular *Levy v Carr Ellis* [2012] EWHC 63 (Ch)[2] in which Norris J held that a medical note presented to him fell "far short of the medical evidence required to demonstrate that the party is unable to attend a hearing and participate in the trial. Such evidence should identify the medical attendant and give details of his familiarity with the party's medical condition (detailing all recent consultations), should identify with particularity what the patient's medical condition is and the features of that condition which (in the medical attendant's opinion) prevent participation in the trial process, should provide a reasoned prognosis and should give the court some confidence that what is being expressed is an independent opinion after a proper examination."

50. It also approved the decision of Lewison LJ in *Forrester Ketley v Brent & Another* [2012] EWCA Civ 324[3] in which at para 25 he had said "Whether to adjourn a hearing is a matter of discretion for the first-instance judge. This court will only interfere with a judge's exercise of discretion if the judge has taken into account irrelevant matters, ignored relevant matters or made a mistake of principle. Judges are often faced with late applications for adjournment by litigants in person on medical grounds. An adjournment is not simply there for the asking. While the court must recognise that litigants in person are not as used to the stresses of appearing in court as professional advocates, nevertheless something more than stress occasioned by the litigation will be needed to support an application for an adjournment. In cases where the applicant complains of stress-related illness, an adjournment is unlikely to serve any useful purpose because the stress will simply recur on an adjourned hearing."

51. It also supported previous decisions which stated that the court should adopt a rigorous approach to scrutinising the evidence adduced in support of an application for an adjournment on the grounds that a party or witness is unfit on medical grounds to attend the trial[4]; and that a pro-forma fit [sick] note, without more, may

[2] https://www.bailii.org/ew/cases/EWHC/Ch/2012/63.html

[3] https://www.bailii.org/ew/cases/EWCA/Civ/2012/324.html

[4] *Mohun-Smith & Another v TBO Investments Limited* [2016] 1WLR 2919; https://www.bailii.org/ew/cases/EWCA/Civ/2016/403.html

well be insufficient to found *(either)* a successful application for an adjournment at first instance.[5]

52. In the light of these authorities we note that in this case the Chair and the panel appear to have followed that guidance scrupulously. When faced with the initial email and doctor's sick note, HHJ Eyre QC in his ruling set out the inadequacy of the doctor's note and also assured the applicant that appropriate measures would be taken to accommodate his discomfort. No further medical note was supplied which would have complied with the stated requirements. The email from the applicant's wife really took the matter no further medically and it was unfortunate that neither she nor the applicant appear to have been able to be contacted on the afternoon when the hearing commenced. We also note that in the further letter from Dr John Chan submitted in support of this application, no doubt having been asked by the applicant's solicitor to provide evidence that the applicant would not be able to either attend and/or participate in the proceedings, says in relation to his not attending "He had difficulty mobilising and would not have been able to stand or sit for a lengthy period." He gives his background knowledge as this: "I saw Rev Ntege on 22 November 2019, who complained of back pain in keeping with the diagnosis of sciatica. He had been very stressed in the run up to this – his cousin had died and he had to arrange his funeral. I advised him regarding back care and gave him some exercises to help with his back pain. I signed him off work till 6 December 2019 as he would not have been able to work and required rest."

53. It follows from the fact that the decision is a discretionary one, that different tribunals applying the principles set out in the cases referred to might come to different decisions. We can accept that another tribunal might have decided to defer any decision until the next day again stating what was required by way of medical evidence if there was to be an adjournment on medical grounds. Another tribunal might have balanced matters differently, particularly if it had been possible for the tribunal to reconvene in a short space of time, although we do not underestimate the unlikelihood of that given that the 5 members of the panel, to say nothing of the advocates, would undoubtedly have had busy diaries and finding perhaps 2 days (rather than 3) when they could all break previous commitments so as to attend would be quite an eventuality; but it might have been attempted.

54. That this panel chose not to go down that route but to proceed in the applicant's absence was a robust decision, but not one that can be said to be plainly wrong in principle in that it "took into account irrelevant matters, ignored relevant matters or made a mistake of principle". In those circumstances we are satisfied that there is not any real prospect of success of an appeal based on this ground.

[5] *Emojevbe v Secretary of State for Transport*; https://www.bailii.org/ew/cases/EWCA/Civ/2017/934.html

The Penalty

55. The panel made its findings that the applicant had engaged in systematic wrongdoing over a period of several years – wrongfully retaining substantial sums of money which he knew he should have remitted to the DBF and doing so over a sustained period of time; further he had not demonstrated any remorse but had refused to accept his wrongdoing and was willing to make false allegations against others.

56. In those circumstances we see no alternative to the penalty imposed – immediate prohibition for life, with the other consequent orders made.

57. Again we find there is not any real prospect of success of an appeal against the penalty imposed.

Conclusion

58. In all these circumstances all applications for leave to appeal are refused.

HH Canon Peter Collier QC
HH Philip Curl

9th March 2020