IN THE ARCHES COURT OF CANTERBURY

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

APPLICANT: THE REVEREND PAUL PARKS

And in the matter of an application by Paul Parks for leave to appeal against various decisions of the bishop's disciplinary tribunal for the diocese of Chichester made on the 10th day of January 2020 (15 pages) and undated (2 pages)

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 ("EJCCM"), for the purpose only of determining the said application for leave to appeal and (if such leave is granted) to hear such appeal; and

Robert Hugh Foulkes, having been appointed by the President of Tribunals under section 20 (1B) of the Clergy Discipline Measure 2003 ("CDM"); 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 Robert Hugh Foulkes 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:

   "The Tribunal was wrong to dismiss the Respondent's application *(and, apart from when quoting verbatim from the findings of the tribunal, we will refer to him hereafter as "the Applicant" as that is what he is in this application)* for the anonymisation of the published judgment under Rule 49 of the Clergy Discipline Rules 2005 ("CDR") (no written reasons have been provided for this decision):

   - The identification of the Applicant and the full details of the judgment as currently promulgated is likely to set back the course of his recovery from severe and enduring post-traumatic stress disorder (PTSD), and to have an adverse impact on his two young children who are still at primary school.

   - The judgment contains highly sensitive personal information relating not only to the Applicant's misconduct but also the severe mental disorder. The tribunal found by a majority that some of the Applicant's misconduct, on balance, occurred during a dissociative episode of the PTSD (paragraph 20).

- The Applicant was diagnosed in August 2017 and has been receiving ongoing treatment which is yet to be completed.

- The publication of a limited version, or summary, of the judgment with appropriate anonymisation, will serve to inform the public of the reason why the Applicant has been disciplined while not unjustifiably interfering the private and family life rights of the Applicant and his children under article 8 of the European Convention on Human Rights.

- The Applicant will following submission of this Notice to Appeal seek permission under Rule 18 of the Clergy Discipline Appeal Rules 2005 ("CDAR") to adduce new evidence from:
    - Dr Konu, his GP (as appended hereto)
    - Professor Hacker Hughes, consultant clinical psychologist and expert in military PTSD; and
    - Ms Emma Meyer, treating therapist.

- This evidence was not before the Tribunal as the issue arises as a consequence of the Tribunal's decision, namely, the psychological impact of publication on the Applicant, his wife and children.

- This new evidence from his GP, an expert on military PTSD and his treating therapist are well place to give evidence on the impact of publicity on the Applicant."

The background events

1. Following a complaint of misconduct made on 4 August 2017 by the Archdeacon of Hastings (The Ven Dr Edward Dowler), on 17th December 2018, the President of Tribunals directed that a complaint be referred to a tribunal in the following terms, that:

    > "The conduct of the respondent, the Rev'd Paul Parks, Rector of Ore (St Helen with St Barnabas), 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 on diverse occasions he has assaulted and/or threatened to harm his wife, Lois Parks, including putting her in a headlock, threatening her with a knife or letter opener, and detaining her against her will".

2. At the outset of these proceedings, the complaint was formally put to the Applicant who admitted the misconduct alleged.

3. The details of the conduct are set out in the findings of the tribunal, but in short they amounted to a course of conduct which commenced before the Applicant married his wife in 2003 and which extended until she reported his conduct to the police in 2017. Although she was ultimately to say that she had not suffered physical injuries,

his conduct had consisted of verbal confrontations and abuse and threats of physical violence. She reported his abusive conduct to the suffragan bishop in 2005 and arrangements were put in place for him to be seen by and helped by a psychologist. The Applicant failed to cooperate with an assessment as he did not believe that he needed any assistance. There were subsequent episodes of verbal violence following the birth of their child in 2011. His abusive controlling and manipulative behaviour continued and appears to have escalated in 2017 resulting in her speaking to the bishop and the police on 9th May 2017. She told the police that she had kept a narrative diary of events since 2010 "in case anything happened to her". In later May she withdrew her support for any prosecution but maintained that "everything that I have told the police happened". Subsequently the CPS advised that no further action should be taken and he was released from bail. Before the tribunal the Applicant admitted the truth of the allegations recounted in her statement.

4. An issue was raised on behalf of the Applicant in relation to his health in that it was his case that he was afflicted by PTSD arising from both his early life and his military career which significantly diminished his culpability for his admitted conduct.

5. The tribunal panel permitted evidence to be led as to his condition notwithstanding that Rule 36 of the CDR had not been complied with in relation to that evidence as they were satisfied that it was required for them to determine his level of culpability; also that it was just, fair and practicable to do so.

6. The panel felt that the evidence was unsatisfactory for the reasons they set out in paragraph 15 of their determination, but nevertheless concluded that on the balance of probabilities and notwithstanding their concerns that the Respondent did have PTSD from which he was suffering in the course of his marriage. Having rehearsed in some details their findings in relation to the culpability flowing from his PTSD they said it was their

> "… unanimous view that whilst they accept, as stated above, that a) the Respondent has and had PTSD, and that b) some if not all of the more serious episodes of threatening behaviour were, on the balance of probabilities, dissociative episodes, nevertheless, the evidence placed before them demonstrated a clear pattern of domestic abuse throughout the marriage of which the Respondent was fully aware but in respect of which he took no meaningful steps to address, thereby putting his wife at risk of harm and betraying the trust of his wife, the Church and the wider Community. The Panel therefore considered that the Respondent bears a significant level of culpability for the abuse of his wife over many years."

7. In relation to penalty they

> "considered each of the penalties available (…) in turn:
>
> The Panel considered that given the seriousness of the misconduct admitted and found proved, the length of time over which it was perpetrated and the degree

of harm caused, that neither a conditional discharge nor a rebuke would be sufficient to dispose of this case. In respect of an injunction, the Panel considered that there were no terms in which an injunction could be made which would be appropriate to this case.

The Panel then considered removal from office with or without a prohibition. They noted the contents of paragraph 7 in the Guidance on Penalties 2016 in respect of acts of misconduct in private life, including violence in the home, which states that, *'[violence in the home] should not be tolerated, and removal from office and prohibition for a specific period of time or for life should normally follow'.*

The Panel concluded that in all of the circumstances of this case it was not appropriate for the Respondent to remain in office for the following reasons:

a. The seriousness of the misconduct,
b. The length of time over which it was perpetrated,
c. The effect that his conduct would inevitably have on the trust that his parishioners could place in him as their parish priest, particularly in circumstances where in that role he may well have to provide pastoral support to others who have experienced the effects of domestic abuse.

In the Panel's view, the Respondent's misconduct was extremely serious and demanded a significant penalty. The Panel therefore considered whether the removal from office should be accompanied by either a limited prohibition or prohibition for life. The Panel considered that behaviour of this type causes enormous reputational damage to the Church and to the trust that is placed in the Clergy by the wider society. The Panel had to balance the seriousness of the misconduct and these concerns with the evidence that the Panel heard and the conclusions it reached about the Respondent's mental disorder, his levels of culpability and the prospect of rehabilitation through lengthy and ongoing therapy. The Panel were conscious of the Respondent's hope to return to active ministry which is supported by his wife and treating therapist, and note that there has been no reported repetition of abusive behaviour over the course of the last 2 years. However, the Panel observed that during this period of time he has had a great deal of support and intervention on a weekly basis; furthermore, he has been subject to these proceedings, which may well have been an additional factor that has served to regulate his behaviour. It was the Panel's sincere hope that the support that the Respondent has received and the progress he has made to date continues. However, the Panel were not satisfied that the Respondent has at this stage fully addressed all the issues that led to the misconduct and are of the unanimous view that he should not be able to return to ministry – particularly parish ministry - at this time. It may well be that, given the seriousness and the nature of this misconduct, it will never be appropriate for the Respondent to exercise parish ministry again; however, the Panel do consider that there is a realistic prospect of rehabilitation such that he could at a later date exercise ministerial functions in some other capacity.

Penalty
Accordingly, the Panel directs that the Respondent be removed from office and prohibited from exercising any functions as a member of the Church of England Clergy for a period of 2 years from today's date and that his name be entered on the Archbishops' List in accordance with Section 38 of the Measure."

8. We have set out in full those findings as to penalty as in our judgement they bear upon the substance of this application for leave to appeal against a further ruling made by the panel when it declined to grant the application for an anonymity order in relation to his identity in their published findings.

9. They had, pending their final determination, made an interim order granting anonymity, but reviewed the matter at the conclusion of the proceedings. They were then

> "entirely satisfied that there were no good reasons for making a final order that identity should be withheld. It is right that, on the balance of probabilities, we accepted the evidence of the professional witnesses from whom we heard, that the Respondent had PTSD, although – as is clear from our judgment – we had reservations about the quality of the evidence adduced. Of course, we did not, and could not have ourselves made a diagnosis to this effect. However, we were also very clear in our judgement that in addition to any misconduct caused by or contributed to by PTSD, there was a significant history of domestic abuse which could not all be accounted for by the Respondent's mental health condition; we found him significantly culpable for his actions. We were also gravely concerned by his failure to seek or accept help and his lack of insight as a result of which he put his wife at risk of harm over a significant period and betrayed the trust of the church and the wider community. As stated in our judgment, in our view his misconduct was extremely serious and demanded a significant penalty."

10. They also stated that

> "We considered whether we should make any order withholding details of any person involved in the case. However:
>
> a. the names of the children were not at any stage mentioned and they did not feature significantly in the case or in our judgment at all;
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> b. a direction withholding the name of the Respondent's wife would be frankly nonsensical; her details could only be withheld if the entire subject matter, charge, determination and penalty were also withheld;
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> c. it is a fundamental principle that justice should be administered openly and be held to public scrutiny;
>
> d. we felt very strongly that the parish and the wider community (whether churched or unchurched) who had been let down badly by the

Respondent, had a right to know why he had been suspended and removed from office.".

11. They finally concluded that "in our view far from the interests of justice requiring that the identity of any party should be withheld, the interests of justice demanded the opposite."

Preliminary point taken by the Determining Officer

12. In relation to this application for leave to appeal the DO has taken a preliminary point and has submitted that a right of appeal lies only under section 20 of the CDM in relation to (a) any imposed penalty and (b) any finding of the disciplinary tribunal on a question of law or fact. He submits that this application raises no question of law or fact and is related to what he describes as a decision or order which is merely ancillary to its findings on the complaint it was considering. He contrasts the wording of the section to that under section 7 of the Ecclesiastical Jurisdiction Measure 1963 ("EJM") under which the Court of Arches has jurisdiction to hear appeals from "judgments, orders or decrees of the consistory courts".

13. We are not attracted by that submission. The DO appears to have misunderstood the legislation. Section 7 is not dealing with appeals from consistory courts at all. The appeal from consistory courts is governed by section 14 of the EJCCM and by Parts 21 to 27 of the Faculty Jurisdiction Rules 2015 ("FJR"). Section 7 of the EJM (as amended) only deals with appeals in relation to the CDM. It provides for appeals against judgments, orders or decrees of the courts of both the Vicar-General's court under s.7(1A) and disciplinary tribunals under s.7(1B). Any appeal however is limited to questions of law (for either party) and of fact for the defendant in the proceedings under s.7(2). All decisions made by a court or tribunal are decisions of either law and/or fact. To succeed an appellant must show an error of law and/or fact. It is clear therefore that an appeal lies from the order refusing to grant an anonymity order in this case.

Application to call fresh evidence

14. The Applicant seeks leave to call fresh evidence. He has submitted an additional short statement from Dr Konu his medical general practitioner; he would also wish to submit, as yet unobtained evidence from Professor Hacker Hughes, a consultant clinical psychologist and expert in military PTSD, and also from Ms Emma Meyer, his treating therapist. Both Prof Hughes and Miss Meyer submitted reports to and gave evidence before the tribunal. It is unclear what they would say in addition to that which they have already said other than that which is in the report of Dr Konu, namely that publicity "may not be helpful for his ongoing recovery and may pose a safeguarding risk regarding his mental health. Publication of the entire report may also detrimentally affect his children's well-being."

15. In email correspondence between the DO and the Applicant's solicitor, the latter expressed the view that it is not appropriate to submit the proposed additional evidence unless and until leave to appeal has been granted.

The Applicant's case for an appeal

16. So, we turn to deal with the submissions made on behalf of the Applicant seeking such leave. There are four principal issues advanced:

    a. That the Applicant has been receiving treatment for his PTSD and publicity is likely to set back the course of his recovery;

    b. Publicity will have an adverse effect on the Applicant's wife and children;

    c. Some of the Applicant's behaviour occurred during dissociative periods;

    d. When balancing the Applicant's Article 8 rights against the right of the press and others to report matters (Article 10 rights), the need of the public to be informed would be met by limited and anonymised disclosure.

17. 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."

18. Having considered the undated written determination of this matter which had effect on the 10th January 2020; 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, dated 4th March 2020; and the Applicant's further response from Ms Aswini Weereratne QC about; we have reached the conclusions which we have set out below and about which we are both in agreement. We would add that each of us had separately come to the conclusion that there was no real prospect of success before conferring together about the matter.

Discussion of the issues raised

19. We are prepared to accept that publication of the details may receive some publicity, particularly local publicity in the area where the Applicant was ministering when the complaints arose.

20. We are also prepared to accept, that such publicity would in all likelihood be distressing not only to the Applicant but also to his wife and children. It would seem to us to be common sense, and not something for which expert medical evidence is

required, that distress suffered by someone undergoing therapy may cause a degree of setback in relation to that therapy.

21. We also note that the tribunal did find that some of the Applicant's behaviour that was complained about had happened during dissociative of periods that occurred as a result of his illness. However we cannot overlook the findings of the panel at para 26 of their written judgment that "it was the Panel's unanimous view that whilst they accept …. that a) the Respondent has and had PTSD, and that b) some if not all of the more serious episodes of threatening behaviour were, on the balance of probabilities, dissociative episodes, nevertheless, the evidence placed before them demonstrated a clear pattern of domestic abuse throughout the marriage of which the Respondent was fully aware but in respect of which he took no meaningful steps to address, thereby putting his wife at risk of harm and betraying the trust of his wife, the Church and the wider Community. The Panel therefore considered that the Respondent bears a significant level of culpability for the abuse of his wife over many years."

22. The critical issue is therefore that of the balancing of the Applicant's Article 8 rights to respect for his private and family life with that of the wider interests of justice, whether expressed as the need for the public to know or as the right of the press to report these matters. The tribunal in balancing those matters found

    - "It is a fundamental principle that justice should be administered openly and be held to public scrutiny.
    - We felt very strongly that the parish and the wider community (whether churched or unchurched) who had been let down badly by the Respondent, had a right to know why he had been suspended and removed from office.
    - In short, in our view far from the interests of justice requiring that the identity of any party should be withheld, the interests of justice demanded the opposite.

23. In addition to his Article 8 rights to respect for his private and family life, Rule 49 of the CDR provides that:

    "The tribunal may order that the name and any other identifying details of any person involved or referred to in the proceedings must not be published or otherwise made public, if satisfied that such an order—

    (a) is desirable to protect the private life of any person, or

    (b) is desirable to protect the interests of any child, or

    (c) is otherwise in the interests of the administration of justice."

24. We note that the provisions of Rule 49 give the tribunal a discretion – "may order …." and do not give an absolute right to the Applicant. His interests and the interests of others under Rule 49 must clearly be weighed in the balance with any other competing interests, including the overall interests of justice.

25. So far as we are aware there have been no previous decision in relation to proceedings under the CDM or the CDR to guide us as we approach this matter. Nor are there any other statutory provisions that we are called upon to apply apart from the Human Rights Act 1998 ("HRA"). We therefore turn for guidance to general principles set out by the higher courts as to how the several rights that arise under the HRA are to be balanced. Some take specific account of the impact of publicity on the children of the person whose identity and conduct is to be made public.

26. In 2005 there was a case in the House of Lords *In re S (A Child) (Identification: Restrictions on Publication)* [2005] 1 AC 593 where it was held that the press was entitled to name a woman who had been charged with murdering one of her children, even though this would affect the private life of her other son.

27. In 2008 again in the House of Lords, there was the case of *R v Croydon Crown Court ex parte Trinity Mirror* [2008] EWCA Crim 50. That was a family court case. The judge had imposed an order preventing publication of a man's name purportedly to protect his children. He had been convicted of making indecent images of children (not his own children). The press appealed and the judge's order was overturned. The House of Lords said: "We must however add that we respectfully disagree with the judge's further conclusion that the proper balance between the rights of these children under Article 8 and the freedom of the media and public under Article 10 should be resolved in favour of the interests of the children. In our judgment it is impossible to over-emphasise the importance to be attached to the ability of the media to report criminal trials." They said quite a lot more including "It is sad, but true, that the criminal activities of a parent can bring misery, shame, and disadvantage to their innocent children. Innocent parents suffer from the criminal activities of their sons and daughters. Husbands and wives and partners all suffer in the same way. All this represents the further consequences of crime, adding to the list of its victims …. If the court were to uphold this ruling so as to protect the rights of the defendant's children under Article 8, it would be countenancing a substantial erosion of the principle of open justice, to the overwhelming disadvantage of public confidence in the criminal justice system, the free reporting of criminal trials and the proper identification of those convicted and sentenced in them. Such an order cannot begin to be contemplated unless the circumstances are indeed properly to be described as exceptional …. This court is naturally concerned for the welfare of the defendant's children. We accept the assessments of their mother, their headteacher, their social worker and the consultant child psychiatrist. Nevertheless we must adopt a much wider perspective."

28. We shall note shortly why practice in relation to criminal proceedings can properly be applied to disciplinary proceedings.

29. In 2010 in the case of an *Application by Guardian News and Media Ltd and others* [2010] UKSC 1 the Supreme Court looked at the issues that arose when various orders restricting the identity of people against whom money freezing orders had been made on suspicion that they may be aiding terrorism. In the course of its judgment the court explained why names mattered as much as the reporting of the

facts of the story; they said “What's in a name? "A lot", the press would answer. This is because stories about particular individuals are simply much more attractive to readers than stories about unidentified people. It is just human nature. And this is why, of course, even when reporting major disasters, journalists usually look for a story about how particular individuals are affected …. A requirement to report it in some austere, abstract form, devoid of much of its human interest, could well mean that the report would not be read and the information would not be passed on. Ultimately, such an approach could threaten the viability of newspapers and magazines, which can only inform the public if they attract enough readers and make enough money to survive …. Mutatis mutandis, the same applies in the present cases. A report of the proceedings challenging the freezing orders which did not reveal the identities of the appellants would be disembodied. Certainly, readers would be less interested and, realising that, editors would tend to give the report a lower priority. In that way informed debate about freezing orders would suffer.” And so they concluded that “In these circumstances, when carrying out the ultimate test of balancing all the factors relating to both M's article 8 rights and the article 10 rights of the press, we have come to the conclusion that there is indeed a powerful general, public interest in identifying M in any report of these important proceedings which justifies curtailment, to that extent, of his, and his family's, article 8 Convention rights to respect for their private and family life.”

30. A case in 2012 came before the Court of Appeal Criminal Division - *R (Press Association) v Cambridge Cr Ct* [2012] EWCA Crim 2434 – The defendant in the case had been charged with and convicted of sexual offences. At the conclusion of the case the judge ordered that his name should not be made public. He did this because he was concerned to protect the defendant’s victim and her family including her children from becoming aware of what had happened to her. There were specific provisions under the Contempt of Court Act 1981 that the judge used. The Press Association appealed against the order on the grounds that the victim was protected by laws preventing their identification but the Parliament had considered and rejected the idea of anonymity for defendants in sexual cases. In those circumstances the court should refrain from granting such anonymity. An independent advocate (amicus curiae) appointed by the Attorney General made submissions to the court that the defendant should not be named only in two limited circumstances – first, where the interests of justice require it; and second, if the court is satisfied there is a real and immediate risk to the life of the defendant.

31. The interest of justice test is commonly applied where for example the defendant faces a series of trials and orders are made that he should not be identified until the conclusion of the last so that jurors in the second and third trials will not have read about what happened in the first trial. That is not relevant to this case.

32. The second test – real and immediate risk to the life of a defendant – was illustrated in another case – *A v BBC (Scotland)* [2014] USC 25 – A defendant who had come to the UK some years earlier had been convicted of sexual offences against his step-child, sentenced to 4 years imprisonment and subsequently served with notice of deportation. He sought and obtained an order that he should not be identified in any

reports of the immigration tribunal hearings about deportation. The BBC appealed against the restriction. This was a Scottish case and so the review by the Supreme Court considered Scottish as well as English cases when reviewing the law about anonymity. When it came to balancing press rights to freedom of expression under article 10 which can be restricted in ways necessary in a democratic society "for the protection of the… rights of others…". The rights of others here were the defendant's article 3 rights to life and safety. There was evidence that he had already been attacked in this country but the argument was that if he was deported he would be "at serious risk of violence if his identity became known in his country of origin in connection with these proceedings…" So the court decided that it was "clearly necessary in the interests of justice and in order to protect the safety of a party to the proceedings" to make an order of anonymity.

33. We have to consider how to apply these principles about how the balancing exercise should be carried out bearing in mind that the Applicant has not been convicted of a criminal offence by a criminal court. This was a disciplinary tribunal.

34. Hearings are usually held in private – s.18(3)(c) CDM; Rule 40 CDR. However, the "determination shall be pronounced in public together with its reasons therefor" s.18(3)(b) CDM. And it is the practice to publish the written determination of tribunals on the Church of England website.

35. The reason why determinations are pronounced in public and published is because of the importance of Tribunal cases in relation to professional misconduct. This significance is recognised in relation to most forms of disciplinary tribunals. The importance of the principles upon which tribunals operate and the matters that weigh with them when coming to decide penalties are important from several perspectives. They demonstrate that professions do have systems in place to uphold and that high standards of conduct are enforced. They also show that when those standards are not met people will be held to account. Finally they must be able to explain why the most severe levels of penalty are meted out when they are. If all this takes place behind closed doors, as in fact it usually does under the CDM, then unless the findings can be made public in some detail the public will not be able to see that those principles are being upheld, enforced and that penalties flow when they are not. That requires a level of publicity for the findings, particularly as the proceedings do take place in private. What was said in the *Guardian* case above therefore applies with even greater force here.

36. As we have already observed the power to make an anonymity order is discretionary, and the judgement made by those who heard a case listening to and judging the evidence they hear, is often critical to the exercise of that discretion. They form their judgements about what has happened and what is likely to happen and those judgements enable them to decide how to exercise any discretion they have. In those circumstances it is rare that anyone exercising appellate jurisdiction will interfere with the outcome of that discretionary decision unless it is plainly wrong, or unless it can be shown that the decision maker took account of something they should not have taken into account or did not have regard to something to

which they should have had regard, or that the decision was against the weight of all the evidence so that it can be said to be one to which no reasonable tribunal could have come.

Conclusion

37. We have examined the determination and the written reasons refusing anonymity and in our judgement it does not fall at any of those hurdles. The test they applied was clearly what the overall interests of justice required and they decided that by having regard to the impact publicity might have on the Applicant and his family, including his own speed of recovery, but also having regard to the significant right of the public to know and the press to report, and having regard to the seriousness of the issues alleged and the findings they had made about them and the Applicant's culpability. It is also clear from our examination of the authorities that they have applied the principles set out in those cases, even though they did not explicitly refer to them.

38. In all those circumstances we have no hesitation in concluding that the appeal has no real prospect of success. We noted that there is no other compelling reason advanced as to why the appeal should be heard, than that it was wrongly decided, which submission we have rejected.

39. In all these circumstances this application for leave to appeal is refused.

HH Canon Peter Collier QC
Canon Robert Hugh Foulkes

3rd April 2020