

**IN THE MATTER OF A COMPLAINT UNDER THE CLERGY DISCIPLINE MEASURE 2003
BEFORE THE BISHOP'S DISCIPLINARY TRIBUNAL FOR THE DIOCESE OF CHICHESTER**

Complainant: XY

Respondent: The Reverend CD

Constitution of the Tribunal: Chancellor Ruth Arlow (Chair)
The Reverend Alison Evans
The Reverend John Witheridge
Mr Mark Ruffell
Dr Patricia Morgan

Appearances: Mr Henry Gordon, Counsel for the Designated Officer
Mr Justin Gau, Counsel for the Respondent

DETERMINATION OF THE TRIBUNAL

1. This is a distressing and difficult case involving cross allegations of sexual assault. The Respondent, the Revd CD, faces an allegation of misconduct in that his conduct:

“...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 he, a married man: in or around November 2016 to December 2017 had an intimate and unprofessional relationship with XY which included kissing and/or inappropriate touching.”
2. The Designated Officer’s Statement of Case sets out allegations of four separate incidents of conduct which are said to be unbecoming or inappropriate to the office and work of a clerk in Holy Orders. It is not disputed that these allegations, if made out, would amount to conduct unbecoming or inappropriate under section 8(1)(d) of the CDM 2003. Those four incidents as alleged are set out in summary form below:
 - a. Allegation 1. In November 2016: the Complainant, XY, and the Respondent went out for dinner and drinks and then returned to the Respondent’s house where

more alcohol was consumed. The Complainant fell asleep on the Respondent's sofa and then awoke to find his belt undone and his trousers and underwear pulled down. The Respondent was in his t-shirt and socks masturbating near to the Complainant. The Complainant pushed the Respondent away at which point the Respondent began to cry and said "I know you want it.";

- b. Allegation 2. In early 2017: During a dinner party at the Respondent's home the Respondent gently touched Complainant's groin and flicked his bottom. The Respondent also forcefully punched the Complainant in the groin;
- c. Allegation 3. In May 2017: Whilst the Complainant was at the Respondent's house to play a board game the Respondent made sexual advances to the Complainant;
- d. Allegation 4. In May/June 2017: the Respondent pushed his fingers into the crease of the Complainant's bottom whilst squeezing past him in church.

Background

- 3. The Respondent was ordained deacon in the summer of 2015 whereupon he joined a his parish as curate. He was ordained priest in the summer of 2016. Upon his arrival in the parish parishioners, including the Complainant, were encouraged to make him and his family feel welcome. In response to this invitation a friendship grew up between the parties which included frequent social outings and spending time in each other's homes. Their families became friends and socialised together. It is clear from the accounts of both parties, and that of others who gave evidence, that the friendship between the parties was very close – perhaps even rather intense – and was valued greatly by them both. There was a familiarity in their correspondence which included the regular exchange of messages which appear to have been extremely familiar – described in places as 'banter' or 'jokes', but clearly at times rather risqué in content.
- 4. On a November evening – and it is disputed between the parties whether this was November 2015 or 2016 – the parties went out together for a meal and a significant amount of alcohol was consumed. Upon return to the Respondent's home an incident occurred between the parties which is accepted forms the basis of Allegation 1. Each party gave evidence that the other sexually assaulted them that night. After a telephone conversation between the parties the next morning, the parties remained in contact for a number of months and some sort of friendship continued, as shown, amongst other things, by the evening playing a board game together (with at least one other person) at which it is said that the incident at Allegation 3 took place. Each party suggests some reluctance in pursuing the friendship over this period.
- 5. In 2017 a tragedy of national significance occurred. The Complainant had a tangential association to that event. This date is relevant for reasons which will become clear below.
- 6. In October 2017 there was a family tragedy in the Respondent's family. The Respondent says that that traumatic event gave him the strength to tell the Complainant in strong

terms to leave him alone. It is clear that the Complainant continued to make efforts to contact the Respondent after this time.

7. In November 2017 the Complainant made a disclosure about Allegation 1 to a significant member of the congregation. This person encouraged the Complainant to take the allegation further despite significant reluctance on his part.
8. On 18 December 2017 the Respondent made a full disclosure to his wife about what had occurred between him and the Complainant. At his wife's insistence he went to see his training incumbent, the Reverend EF and a meeting took place that day where he told the training incumbent something of the difficulties between himself and the Complainant. The training incumbent made a note of that meeting the same day. We have seen a copy of that note.
9. From 18 December 2017 onwards we have seen copies of messages sent between the parties, although any earlier messages had been deleted by both parties and were not available to us. It is clear from the messages that we have seen that the Complainant was insistent about being in contact with the Respondent throughout this period. The Respondent is making efforts to minimise or stop contact between them.
10. Having taken no further action on the Complainant's November 2017 disclosure, on 13 February 2018 the member of the congregation to whom the disclosure had been made gave the incumbent a copy of a type-written note setting out what she had been told by the Complainant. We have seen a copy of that note which was clearly written on the day of the February meeting. EF then spoke to the Archdeacon, following which the Respondent was suspended. The matter was referred to the police by the Diocesan authorities.
11. The Complainant's Complaint was made on 27 March 2018. He was also video interviewed by the police about the allegation of sexual assault on 2 May 2018. The Respondent was also interviewed by the police about those allegations. The police decided to take no further actions on that matter in January 2019. Accordingly, in February 2019 the Respondent filed his formal Response to the Complaint. In February 2020 the President issued her Case to Answer Decision referring the complaint in its present form to the Tribunal for determination.
12. Whilst much of this was going on, from early January 2018 what can only be described as a sustained campaign of harassment against the Respondent took place. That harassment took place over a number of months until at least late May 2018. It involved the creation of at least five false online identities who sent harassing emails and other messages to various people, many of them alleging indecent behaviour by the Respondent. Recipients of these messages included the Respondent, his wife, various of the Respondent's friends and family members, a parishioner, EF, the parish Facebook page, the local Air Training Corps and an online group dedicated to the memory of a group of Commandos killed in

Afghanistan. Messages were also sent in the Complainant's own name. Numerous calls were made to the Respondent's home, often late at night with a withheld number. The Respondent's study windows were smashed and his car damaged.

13. This campaign ceased when the Complainant was arrested for harassment of CD's wife in early July 2018. In interview he admitted that he had been responsible for the messages sent in his own and the false names and accepted a police caution for harassment. No evidence has been produced about how the damage to the windows and car were caused and we make no findings in relation to that.

The Evidence

14. The burden of proving the misconduct lies with the Designated Officer and he must prove that it occurred on the balance of probabilities (s 18(3)(a) of the CDM 2003).
15. Our attention has been drawn to caselaw which addresses the question of how the burden of proof may be discharged in cases such as this. In particular, both parties drew our attention to the dictum of Lord Nicholls of Birkenhead in *Re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563 as approved by the House of Lords in *Re B (Children) (FC)* [2008] UKHL 35. In summary, we take those cases to mean that in determining whether the case has been proved on the balance of probabilities, we should have regard to the nature of the allegations made. If the nature and seriousness of the allegations makes it inherently less likely to have occurred, then more cogent evidence will be needed to satisfy us on the balance of probabilities that that allegation is made out.
16. In this case we are faced with two directly contradictory versions of events: one from the Complainant and one from the Respondent. The credibility of the evidence which has been put before us, especially (but not limited to) the evidence of the Complainant and the Respondent is at the heart of this case. We have carefully considered that issue in order to determine whether the Designated Officer has made out his case.
17. We heard evidence from five witnesses. Witness statements were also provided by six other witnesses, although they were not called to give evidence before us. The live witness evidence represented substantively the most important evidence upon which we must base our decision. Their evidence was both the most directly relevant to the issues before us and also tested by, at times rigorous, cross-examination.

Mrs GH

18. On the first day of the hearing Mr Gordon, on behalf of the Designated Officer, applied for the removal of the witness statement of GH from the evidence before the Tribunal on the basis that her evidence was irrelevant to the issues before the Tribunal. Mr Gau, for the Respondent, resisted that application on the basis that her evidence was relevant to

the credibility of the Complainant, whilst accepting that it was a matter for the Tribunal to assess how much weight could be attached to her witness statement.

19. GH is a long-term resident of the parish in which the Respondent is curate. Her witness statement was certainly rather unusual in its content. As she was not called before us, it was hearsay evidence in any event, but when regard was had to the substance of her statement it was plain that almost all, if not all, of it was multiple hearsay. She gave an account of the Complainant's reputation within the local community, including a long standing argument between her own family and that of the Complainant going back some 20 years. She spoke of "common knowledge" within the community and arguments which others were said to have had with the Complainant's wider family.
20. Hearsay evidence is admissible in proceedings before this Tribunal as long as it is relevant – that is, it will support or adversely affect the case of one or other of the parties. Nevertheless, it will be for the Tribunal to decide how much weight can be attached to that evidence, taking account of its substance and the manner in which it is produced.
21. Having considered how crucial the credibility of the Complainant and the Respondent is to the determination of this case, we decided that it could not be said that Mrs GH's evidence was irrelevant, but rather that we would need to consider carefully how much weight we could attach to the statement. We have taken account of the multiple hearsay nature of the evidence provided by Mrs GH, sometimes from unidentified sources. Much of what was said was unspecific and lacking in detail. Mrs GH was not called to give evidence before us such that her evidence was not tested under cross-examination. Taking into account all of these factors we have found that, although we could not say that Mrs GH's evidence was inadmissible as being irrelevant, we are unable to attach any weight to that evidence, being substantially a statement of local rumour and supposition.

The Spouses

22. We heard helpful and relevant evidence from the Complainant's and Respondent's spouses. Although neither witness was able to give any substantial direct evidence of the allegations set out in the Statement of Case, the Complainant's spouse recalled an incident when the Respondent struck the Complainant in the groin at a dinner party as alleged in Allegation 2. Both witnesses were able to give useful evidence about the states of mind and behaviour of their husbands at key periods. We found both witnesses to be compelling and truthful witnesses who were clearly doing all they could to assist the Tribunal to understand what has clearly been a traumatic period in the lives of their families. We accept the evidence which they gave.

The Complainant

23. The Complainant gave evidence for much of the first day of the hearing. He was subject to extensive cross-examination. It was put to him that he was dishonest, manipulative and cruel.
24. We found the Complainant's evidence troubling. It was clear to us, and accepted by all, that during key periods of time in 2017/18 the Complainant was evidently unwell. He accepted in his evidence that he was depressed and struggling with a cocaine addiction and the excessive consumption of alcohol. The explanation given to others, including his doctors, at the time for this crisis was his association with the events referred to at paragraph 5 of this judgment. The Complainant now says that it was instead a result of the sexual assault alleged in November 2016.
25. It is apparent that the Complainant has been dishonest, whether directly or by omission, in relation to the matters with which we are concerned. For example:
 - a. In oral evidence he insisted that Allegation 1 had occurred as set out in the Complaint and summarised above. Nevertheless, there are at least three people who recorded his disclosure of the allegation in more serious terms: the member of the congregation to whom he made his disclosure, an Archdeacon, and the police. In evidence the Complainant maintained that each of these individuals had misrepresented what he had told them and that he was not mistaken. In her police statement, the Archdeacon, clearly states: "[the Complainant] said... when he woke up he was being raped...[He] told me that he was aware that penetrative sex had taken place". We are unable to accept that this clear and repeated reference to rape in the context of a police statement carefully given after a disclosure meeting with the Complainant was a misinterpretation on her part of the Complainant's words, particularly when that allegation is repeated in the police log at p.615 in the bundle and indeed in a text message from the Complainant himself in May 2018;
 - b. The Complainant lied to his incumbent by saying that one of the false identities he had created to harass the Respondent was a friend or a contractor that he knew;
 - c. There was a concerning lack of honesty in failing to have mentioned in his Complaint Form 1a and to the Designated Officer in his statements the circumstances of his cocaine addiction and alcohol problems and campaign of harassment culminating in the accepting of a police caution for harassment
26. In light of his oral evidence and the written evidence before us, we accept the submission that the Complainant had become obsessed with the Respondent. This was shown by his repeated insistent efforts to contact the Respondent after it had been agreed that they should not be in contact. Many of the significant number of messages sent barely veiled threats to produce evidence and make disclosures to others (e.g. the bishop, the police) if contact was not made. The suggestion by the Complainant that he was simply seeking an understanding of when the Respondent would be leaving the parish was unsatisfactory and unconvincing given the explanation he was given by the Respondent at Christmas

2017 and the fact that that information could, in any event, have been readily sought from the incumbent. The harassment of the Respondent's wider family, friends and contacts through an elaborate scheme of false identities and online abuse demonstrated this obsession further.

27. In light of all of the above, we have come to the conclusion that much of the Complainant's evidence lacked credibility and we have treated it with caution when uncorroborated by other evidence.

The Respondent

28. On the whole, we found the evidence of the Respondent more credible than that of the Complainant. He, too, was subject to lengthy cross-examination. His evidence was measured and largely consistent. We take the view that the Respondent was naïve and failed to maintain appropriate boundaries in his relationship with the Complainant.
29. A significant discrepancy in the Respondent's evidence is the note by the incumbent of his meeting with the Respondent on 18 December 2018. In that note, and in his oral evidence, the incumbent suggests that the Respondent's description at that meeting of what had happened in relation to Allegation 1 gave him the impression that the inappropriate touching and kissing described was consensual but regretted. That is a significant difference from the circumstances now described by the Respondent which clearly amounts to an assault by the Complainant on the Respondent. That has troubled us. The explanation for the events of the first incident being consensual was potentially credible, with both parties speaking to each other about what may have happened the following day, both maintaining a strong relationship thereafter and engaging in banter in messages. Then, it appears that when the Respondent wanted to cease communicating with the Complainant, the Complainant did not take kindly to the rejection and engaged in a campaign of harassment. However, this was not the case put by the Designated Officer nor the Respondent. That explanation depended entirely upon the credibility of the incumbent. When asked about how he had described events to the incumbent, the Respondent gave the explanation that he was extremely distressed at the meeting on 18 December 2018 and that he gave him only the detail necessary for him to understand that the Respondent was frightened and wanted the Complainant's efforts to contact him and his implied threats to share texts and emails to stop. He says that the response of the incumbent to the disclosure was dismissive rather than supportive and that consequently he did not give detailed disclosure of what had gone on but rather continued to try to manage matters himself. He says he did not say that the acts described were consensual, but that the incumbent may have assumed that. In the light of the comments we make below about the evidence of EF and his attitude to the Respondent, we do not consider that his evidence is enough to support a finding that the incident was consensual. The note of the December meeting supports the suggestion that at that meeting the Respondent was focussed on stopping the Complainant's behaviour rather than on making a complaint or disclosure himself.

The Incumbent

30. We were troubled by the evidence of EF. It was clear that his relationship with the Respondent as his training incumbent was not an entirely happy one, yet when he gave evidence, he painted a picture of the Respondent being a hard-working and talented curate. In particular there were two elements of EF's contradictory evidence and behaviour which caused us concern. Firstly, after the meeting on 18 December referred to above when the Respondent had told him about what, on any view, was inappropriateness in the Respondent's relationship with the Complainant he convened a further meeting with the Respondent on 4 January 2018. EF's contemporaneous note of that meeting was striking in its criticism of the Respondent. Despite the issues with the Complainant being the clear catalyst for the meeting, there appears to have been no effort to further understand and address that issue; rather the meeting seems to have been given over to addressing what was perceived as the Respondent's failings in his ministry. The tone of the meeting was one intended to undermine the Respondent rather than offer any support or encouragement as might be expected of a training incumbent.
31. Second, and even more striking, was the letter which EF wrote to the Diocesan Bishop on 12 March 2019 at the time when he was dealing with the scrutiny stage of this Complaint. In evidence EF confirmed that this letter was unsolicited by the Bishop. In fact it had been written of his own volition when he was approached by a parishioner for advice about the request that she had received from the Bishop for her opinion about the situation with the Respondent. EF's description of the situation in that letter is highly critical of the Respondent – and in very stark contrast to the glowing reference which he had written for the Respondent in February 2018, just weeks after his highly critical meeting with the Respondent on 4 January. Even more striking than this discrepancy was the 'reference' given for the Complainant in EF's letter to the Bishop in March 2019. In that letter the incumbent describes the Complainant in glowing terms: "He has been hardworking, enthusiastic and reliable in his work for the Church. ...I find the above events completely surprising with regards to what I know of his character." There is no mention of the fact that the Complainant had not attended church for approximately two years at this stage; no mention of his drug addiction nor his police caution for the harassment. EF had been aware of these facts for some time at the time of this unsolicited letter to the Bishop and their absence from what is an unqualified endorsement of the Complainant is bizarre and troubling in the extreme.
32. We have been deeply concerned by EF's evidence in this case. At no point in his evidence did he appear concerned or regretful about how he had managed the situation. His failure to draw on diocesan support at an earlier stage, his clear wish to influence the outcome of the Bishop's scrutiny and his lack of support as a training incumbent was disturbing. We did not find his explanations for his contradictory evidence convincing when uncorroborated. As a consequence, as set out above, we could not regard him as being a credible witness when considering whether we should place reliance on his comments

that the Respondent had described a consensual sexual relationship with the Complainant at the meeting on 18 December 2018.

The Findings of the Tribunal

33. Having evaluated the evidence before us, we turn now to the allegations which we are tasked with determining. This has not been an easy task as the level of dispute is high, but we have had very much in mind that the burden of proof lies on the Designated Officer and that the standard of proof is on the balance of probabilities.

Allegation 1

34. This is the most serious of the four allegations relied upon. Both the Complainant and the Respondent each gave an account which amounted to a serious sexual assault on themselves by the other.
35. For the reasons given above, we do not find that the Designated Officer has proved that the Complainant was a credible witness. The parties were clearly very close friends and, without making any findings, we have some concerns about the maintenance of appropriate boundaries in the context of their friendship. The intensity of the parties' friendship means that we have considered whether there was some level of consensual behaviour as part of this incident. Such consensual behaviour would also amount to conduct unbecoming or inappropriate under section 8(1)(d) of the Measure, though at a lesser scale than a physical assault. The only evidence we have to support such a finding is the evidence from the incumbent which, for the reasons given above, we have not found to be credible.
36. Whereas there was clearly an incident of some significance which occurred on that evening, we find that the Designated Officer has not discharged the burden of proof which rests upon him and the allegation made by the Complainant is not made out.

Allegation 2

37. Having assessed the conflicting versions of events in relation to the allegations at the dinner party in the Respondent's home in early 2017 we have found the Respondent's version of events more credible than that of the Complainant for the reasons given above. There is no inconsistency between the evidence of the Respondent and that of the Complainant's spouse (which we have accepted). The Respondent's evidence was that there was some foolish 'horseplay' going on between the parties which culminated in the Respondent accidentally striking the Complainant on the testicles when he tried to release his hand from the Complainant's grasp. Allegation 2 is not made out.

Allegations 3 and 4

38. Both of these allegations rely exclusively upon the evidence of the Complainant. The Respondent's position in both cases is essentially one of bare denial. Once again, for the reasons given above, we found the evidence of the Respondent more credible than that of the Complainant. Accordingly we cannot be satisfied that these incidents occurred on the balance of probabilities and find that the Designated Officer has not discharged the burden of proof upon him.
39. It will be clear from the above that we find that all four of the allegations relied upon for this charge have been found not proved and as such the Complaint must be dismissed. Nevertheless, we take this opportunity to express our concerns about the appropriateness of the boundaries which were maintained by the Respondent in this case. The Respondent was a newly ordained priest and his decisions in this context were not assisted by a lack of support, example or guidance from his training incumbent and what appears from the evidence produced before us to have been a parish culture which enabled the eroding of appropriate boundaries.
40. The Complaint shall stand dismissed.

7 October 2021