

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

**BEFORE THE BISHOP'S DISCIPLINARY TRIBUNAL FOR THE DIOCESE OF
HEREFORD**

Complainant: THE VENERABLE DEREK CHRISTOPHER CHEDZEY

Respondent: THE REVEREND CLIVE ROGER EVANS

**Constitution of the Tribunal: The Worshipful Lyndsey de Mestre QC (Chair)
The Revd Canon Dr Anthony Rustell
The Reverend Canon Jeremy Stephen Thorold
Mr Robert Paul Needle
Mrs Patricia Anne Sykes**

**Appearances: Mr Edward Dobson, Designated Officer
Mr Justin Gau, Counsel for the Respondent**

RULING ON JURISDICTION

1. By the decision of the Dame Sarah Asplin, the President of Tribunals, dated 6 November 2020, three allegations have been framed in these proceedings (referred to in the President's decision by (a), (b) and (c). They are as follows:
 - (a) On 18 April 2017, performed the baptism of Person 3 in a private dwelling whilst wearing only his boxer shorts;
 - (b) In or around February 2018, touched Person 2, then a child, on her bottom without her consent; and
 - (c) On 3 March 2019, touched Person 1 on her bottom without her consent.

2. It has been submitted on behalf of the Respondent that this Tribunal has no jurisdiction to consider allegation (a) of the three allegations before it. If this submission is correct, the

consequence will be that that allegation shall not be proceeded with and the remainder of the hearing shall proceed on the grounds of allegations (b) and (c) only.

3. Counsel for the Respondent, Mr Gau, raised the jurisdiction issue on 29 October 2021. This was ventilated in a skeleton argument prepared ahead of a case management hearing held on 12 November 2020, chaired by me sitting alone. At that CMH the need for time to consider the position and provide arguments and authorities plus the need for the matter to be heard by the Tribunal sitting together (on the basis that the outcome of the application would be decisive of one of the allegations before the Tribunal) was agreed by all attending. I therefore deferred the issue to be dealt with as a preliminary matter on the first day of the substantive hearing and gave associated directions for written submissions and authorities. These have all subsequently been provided by the parties, for which we are grateful.
4. The parties have further developed their submissions in oral argument before the Tribunal this morning and, in summary, their positions are as follows.

The Respondent's position

5. On behalf of the Respondent, Mr Gau submits that this Tribunal lacks jurisdiction to hear allegation (a) because there is no allegation of, for example, inappropriate or sexual behaviour. Rather the allegation boils down simply to the fact that the Respondent was incorrectly vested. The complaint is therefore, Mr Gau says, in its essence limited to a complaint about ceremonial behaviour. Ceremonial behaviour concerns liturgical actions, including whether or not appropriate clothing is being worn, and the correct jurisdiction to deal with matters of doctrine, ritual or ceremonial is the Court of Ecclesiastical Causes Reserved (which, by the express wording of section 7, retained jurisdiction over such matters when the Clergy Discipline Measure 2003 (the "CDM") was passed.) Accordingly this Tribunal is not the correct forum for a decision on allegation (a).

The Designated Officer's position

6. Mr Dobson, the Designated Officer, responds to this submission by stating that the Tribunal does have jurisdiction to determine the matter because the offence, as it is charged by the President, does not raise an offence against the laws ecclesiastical involving matters of doctrine, ritual or ceremonial.

7. In Mr Dobson’s submission, the allegation is not one of an offence against ceremonial rubric, but rather a question of a failure by the Respondent to comply with good order by appearing in a state of substantial undress. This, in Mr Dobson’s submission, amounts to conduct unbecoming or inappropriate to the office and work of a clerk in Holy Orders under section 8(1)(d) CDM 2003.
8. In so submitting Mr Dobson accepts that aspects of the matter might arguably touch on the ceremonial but points out that there is no exclusivity in either the CDM or the Ecclesiastical Jurisdiction Measure 1963 (the “EJM”) and that in consequence some overlap is jurisdictionally permissible.
9. He further submits that in this case any such overlap is ancillary to the key element of the allegation, which is, he says, whether or not the Respondent’s state of undress in just his underwear was inappropriate. He referred the Tribunal to the case of *Bland v Archdeacon of Cheltenham*¹ in which Mr Bland refused to baptise a child on grounds of “doctrine and conscience” and was charged with serious neglect under the EJM. The argument run on appeal for Mr Bland was that the disciplinary court in that case had lacked jurisdiction to hear the allegation regarding refusal to baptise because the offence involved doctrine and therefore that allegation ought properly to have been heard by the Court of Ecclesiastical Causes Reserved. In his skeleton argument Mr Dobson took us to the following passage of the Court of Arches judgment dismissing the appeal:

*“Certain offences clearly involve a matter of doctrine, e.g. a public statement (as in a sermon or a book) denying the doctrine of the Trinity or of the deity of Christ. These offences would be charged as such and would be referred without hesitation to the Court of Ecclesiastical Causes Reserved. This offence is of a different nature. The act of refusal to baptise a child is not a doctrinal offence as such **and is not charged as such. It is concerned with pastoral work and activity. The motive behind the refusal might be partly connected with a doctrinal view held by the person refusing but the act of refusing to baptise cannot be called an offence against doctrine nor was it in this case charged as such.**”* (Designated Officer’s emphasis.)

¹ [1972] 1 All ER 1012

10. Mr Dobson also took us to the academic writing of Rupert Bursell QC in the Ecclesiastical Law Journal from 2007² where the learned former Chancellor set out a view that in the context of proper charging of disciplinary offences, what a minister wears at any given time and in any given context concerns the question of good order and does not engage issues of ritual or ceremonial.

Discussion

11. The Tribunal has carefully considered the helpful arguments advanced by the advocates on this point. The issue in respect of this allegation arises from the Respondent's state of undress. Whilst the Tribunal accepts that in one aspect it is accurate to say that a state of undress is related to a question of being correctly vested, the Tribunal looked at the substance of what it was tasked with addressing. The issue of being in a state of undress engages more than simply the question of whether or not the correct robes and vestments were being worn, and as such the Tribunal does not accept the submission that the offence in this case ought properly to be seen as a ceremonial issue.

12. The gravamen of the allegation is the question of pastoral propriety, or otherwise, of the state of undress of the Respondent. Any element connected with, or offence against, the ceremonial is ancillary to this. In this regard the panel finds the judgment in *Bland* instructive and notes in that case the Court of Arches' deprecation of assessing pastoral work and activity as a doctrinal offence simply because a doctrinal motive might underly the facts.

Decision

13. On the basis of the foregoing reasoning the Panel is unanimously satisfied that allegation (a) as framed does properly engage its jurisdiction under the CDM and is not properly a matter for the exclusive jurisdiction of the Court of Ecclesiastical Causes Reserved. The allegation shall therefore remain in place and be considered by the Panel as to its substance.

6 December 2021

² (2007) 9 Ecc LJ 250