

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

Complainant: THE VENERABLE RICHARD WORSFOLD

Respondent: THE REVEREND SIMON LUMBY

**Constitution of the Tribunal: HHJ Heather Norton (Chair)
The Reverend Canon Simon Everett
The Reverend Canon Victoria Pask
Mr Michael Elsom
Mrs Sarah Smith**

Appearances: Mr Edward Dobson, Designated Officer

DETERMINATION OF THE TRIBUNAL

In accordance with Rule 49 of the Clergy Discipline Rules 2005 (CDR), the Panel directs that neither the name of the "true complainant", nor any material that may identify him as the "true complainant" in this matter should be published

Introduction

1. The Respondent – The Rev'd Simon Lumby (SL) – faces allegations 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) on occasions between November 2013 and March 2014 fondled the genitals of Person 1, a member of the congregation of St Aidan's Church, New Parks, and lodger in the vicarage; and*
- (b) in or around the same period, failed to implement and maintain appropriate and professional boundaries with the said Person 1, by allowing him repeatedly to enter his bedroom at night and remain there.*

2. The complaint was made on 16 April 2020, permission having been given by the Deputy President of Tribunals for the complaint to be made out of time.
3. The Respondent set out his answer to the complaint: initially, in what was described as a 'holding answer' dated 30 August 2020; and then in a very lengthy and detailed response dated 31 January 2021. To this latter response he attached 12 Form 3 witness statements both as to fact and character, as well as some further documentation upon which he proposed to rely.
4. In both his initial, and subsequent response (both of which were contained in a Form 2) the Respondent denied all allegations made against him, however he did not provide a formal Statement of Case.

Absence of the Respondent

5. The Respondent did not attend the Tribunal hearing, neither was he represented.
6. The Panel were shown a letter, dated 14 February 2021, from the Respondent to the Bishop of Leicester, in which he stated that:

I am writing to inform you of my decision to resign both as Vicar of Saint Aidan's New Parks and to resign my Orders as an Anglican Priest.....For convenience, it would make sense that, and as far as I am concerned, my resignation will take effect from the end of this month. I am fully aware that the process I currently find myself in will continue..... I have come to the decision that my submitted answer will be my last word on this subject and that the process will therefore have to continue without me. I will no longer engage with it.

7. The Panel had evidence in statement form, dated 17 December 2021, from Darren Oliver, Registrar of Tribunals, setting out the steps that he had taken under CDR 101 to serve the papers upon the Respondent and to give him notice of the hearing. In his statement, the Registrar further confirmed that on 30 November 2021, he had spoken to the Respondent who stated that he was no longer in the employ of the Church, and would not be engaging in the process.

8. Having considered the material before her, in particular the statement from the Registrar, the Chair was satisfied that the Respondent had been given notice of the hearing, that his failure to engage with the process was voluntary, and therefore determined in accordance with CDR 42 that the hearing should proceed in the Respondent's absence. The remainder of the Panel agreed.

The Hearing

9. The Panel heard oral evidence from the following witnesses called by the Designated Officer on behalf of the Complainant:
 - Person 1 ("the true complainant")
 - Person 2

10. In addition, the Panel were provided with a 'Trial Bundle' including written statements from each of the witnesses above, as well as two further witnesses whose statements were read:
 - The Principal of the Anglican Theological College attended by Person 1
 - Ms Rachel Spiers

11. The Panel was also provided with the Respondent's Form 2 'Holding' and 'Full' answers to the complaints, together with a number of statements in support, as set out at paragraph 3 above. Having heard submissions from the Designated Officer, the Panel determined that in line with the Overriding Objective, they could and should take into account the written responses from the Respondent as contained within his Form 2 answers and supporting statements; however the Panel noted that:
 - a) The submissions made within the Respondent's documents had not been made on oath or tested in evidence; and
 - b) It was open to us to draw an adverse inference from the Respondent's failure to co-operate with the proceedings.

The Evidence

12. At all material times the Respondent (SL) was the Vicar of St Aidan Parish Church, New Parks, Leicester. Person 1 started worshipping at St Aidan's in December 2012. Person 1 quickly became a regular attender (4 times a week) and decided to get confirmed. Individual instruction was provided for him by SL, and on 10 February 2013, Person 1 was confirmed. Shortly afterwards, Person 1 began exploring whether he had a vocation for ordination, and discussed this with SL

who suggested that he should act as Person 1's Spiritual Director and Confessor. Person 1 spent Holy Week living with SL at the vicarage, and in April 2013, moved into the vicarage as SL's lodger. When he gave evidence, Person 1 was asked why he chose to move into the vicarage, and he stated that it was more convenient, it was quieter than his former accommodation, he was thinking about ordination, and that – at least initially – he and SL had a very positive relationship

13. For the majority of the period during which Person 1 lived at the vicarage, both he and SL were in relationships: Person 1 with Person 2, another member of the congregation who he subsequently married; and SL with his long-term partner, [Leighton] John Mead who principally resided in Nottingham: SL spent several nights a week in Nottingham with Mr Mead who also visited the vicarage.
14. At this time, SL was undergoing a period of stress, as a result of which it was common ground that he developed what were described as 'night terrors'. When in the grip of one of these night terrors, which Person 1 stated occurred on a nightly basis, SL would scream out.
15. Person 1 gave evidence that when SL had a night terror, he would get up from his own bed, go to SL's room, and wake him up; on occasions he would have to do this several times a night. Person 1 said that SL wanted to be comforted, and that he would sit on his bed and hug him. Physical contact progressed to sitting in his bed with him, and from there to sleeping in his bed with him. Person 1 stated that he felt that it was necessary for him to do this in order to be supportive of a friend.
16. By November 2013, Person 1 agreed that he was sleeping in SL's bed with him every night. He stated that this arrangement was expected of him by SL, and that he felt 'conflicted', but also agreed that he acquiesced in the sleeping arrangements
17. Person 1 stated that when sleeping in the same bed together, SL would often put his arm around him; and on three occasions between November 2013 and March 2014, Person 1 stated that SL put his hand on Person 1's genitals. Person 1 stated that he was 'deeply uncomfortable, however my body reacted.' When questioned he agreed that both he and SL were probably intoxicated at the time.

18. The Panel asked Person 1 why he did not move out of the vicarage. He replied that he believed that he had to be there for SL, that he had no choice and nowhere else to go. He said that he was spending all his non-working time at St Aidan's, and didn't feel that he could leave the Church community. He was asked whether he told anyone, and he stated that he did not.
19. By March 2014, the relationship between SL and Person 1 had deteriorated. It would seem that the two men had a number of alcohol fuelled arguments, in particular about Person 1's relationship with Person 2, and in March 2014 Person 1 moved out of the vicarage. Thereafter, he did not meet privately with SL again.
20. In due course, Person 1 was selected for ordination training and was enrolled as a student at an Anglican Theological College.
21. On 7 February 2019, Person 1 was involved in a confrontation with another student, following which he was spoken to by the Principal. In the course of that conversation, Person 1 disclosed that he had been the victim of sexual abuse by a priest during his discernment process, although he did not at that stage name SL as the perpetrator. The Principal reported the disclosure to Person 1's Diocesan Director of Ordinands and to Rachel Spiers the Diocesan Safeguarding Adviser (the DSA). Ms Spiers spoke to Person 1 in March 2019, however he did not want to make a complaint at that time. In September 2019 however, Person 1 contacted Ms Spiers and asked for a meeting, in which he made further disclosures and, in April 2020, he made a formal complaint.

The Respondent's Case

22. As stated above, the Respondent did not engage with the process or attend the hearing. The Panel did however have available a short and longer response set out in Form 2, together with multiple Form 3 witness statements, all of which the Panel read and took into account.
23. In his responses, SL stated that:
 - He considered that Person 1 was a friend; he trusted and relied on him;
 - Person 1 moved into the vicarage at his suggestion;
 - At the material time, SL was undergoing a period of stress and anxiety, as a result of which he experienced night terrors;
 - When having a night terror, Person 1 would come into his bedroom, wake him and comfort him;

- It was Person 1's suggestion to stay with him in his bedroom, not his; SL believed that he made this suggestion out of kindness;
- The allegation that he had sexually touched Person 1's genital area, was untrue;
- The allegation made by Person 1 was a self-serving allegation made following a physical assault that Person 1 had committed on another student.

The Panel's approach to the evidence

24. The Panel directed itself on the following matters of law:

- (i) **The burden of proof** – which rests on the Complainant throughout;
- (ii) **The standard of proof** – which is the balance of probabilities. The Panel reminded itself that the more serious the allegation, the more cogent the evidence needed to be before we could conclude that it was more likely than not than an allegation had been made out;
- (iii) **Our approach to evidence** – we reminded ourselves that we had to approach the evidence calmly, objectively and analytically, without emotion, sympathy or bias. We were at this stage only concerned with whether or not the allegations were proved and not penalty. We adopted a structured approach to the evidence applying the standard of proof to decide in order: a) the factual matrix; b) the individual allegations; c) whether the allegations individually or collectively amounted to misconduct;
- (iv) **We must not speculate** – we could only decide the case on the evidence placed before us;
- (v) **Delay and the passage of time** – the matters complained of took place many years ago. We took into account the fact that the passage of time a) may have affected the memories of witnesses ; and b) may have made it harder for SL to meet the case against him. If we considered that SL had been seriously prejudiced by the passage of time, that was something we should take into account in his favour when deciding whether the allegations had been proved;
- (vi) **Delay and sexual allegations** – In his responses, SL pointed out that Person 1 had had many opportunities to make the allegations but did not do so. He suggested that that Person 1 only made the allegations when he did because of the incident in which he was involved at an Anglican Theological College. The Panel reminded ourselves that whilst the timing of the allegations was a matter to be considered, we must not assume that because they were delayed they are untrue; different people react to situations in different ways.

- (vii) **Distress** – Distress is not necessarily a guide to truthfulness; there is no ‘right’ or ‘wrong’ way for a victim of sexual misconduct to behave or to present themselves. The Panel accordingly disregarded the comments in the statement of the DSA, Ms Spiers, about the way in which a victim of trauma presents; she was not an expert witness.
- (viii) **Corroboration** – Although there was no dispute that SL did suffer from night terrors, and that Person 1 came into his bedroom, there was a dispute whether Person 1 remained in the bedroom at SL’s request, and whether SL touched Person 1 in a sexual way. The Panel noted that there was no independent evidence of what took place in the privacy of the bedroom. However the Panel reminded itself that there is no legal requirement for corroboration; if we are satisfied that a witness is giving truthful and reliable evidence then we are entitled to act upon it.
- (ix) **Complaints to other people** – The Panel read evidence from the Principal of the Anglican Theological College and Ms Spiers and heard the oral evidence of Person 2 about what SL told them about the alleged touching, and the circumstances in which he gave each of them that information. We took that evidence into account as part of the narrative, and when considering whether Person 1 was consistent or inconsistent; however we noted that evidence of complaints made to others is not independent evidence of the truth of the allegations.
- (x) **Previous allegations** – In the papers provided were a number of references to previous allegations made against SL. We disregarded these allegations which had no bearing on our decisions. We considered that we were entitled to, and indeed must look at the allegations that have been referred in context; however, whilst we were entitled to take into account all relevant evidence (even where that evidence might suggest an additional or alternative form of misconduct), we reminded ourselves that we must be careful only to take into account that which was truly relevant, and to disregard any other matters which did not have immediate bearing upon the questions that we had to determine, and which had not been tested in evidence.

The Panel’s findings

25. The Panel did not find this case straightforward for two principal reasons:

- i. Firstly, the nature of the allegations reflects conduct alleged to have been committed over a period of time many years ago and in private. There was, therefore, little corroborative evidence available to us, save for SL’s own admissions in his Form 2 Responses. Although corroboration is not required and, in cases of this kind, rarely available in any event, when

examining the cogency of evidence, the absence of corroboration inevitably makes the task more difficult.

- ii. Secondly, although we had the Form 2 responses from SL, in which he set out his position and denial of the allegations, he chose not to engage with the proceedings and did not attend or call evidence in support. Although his Form 2 responses each contain a declaration of truth, neither were made on oath, and they were not tested in cross-examination. The Panel's attention was drawn to CDR 2(2), that any failure by a party to co-operate may result in an adverse inference being drawn. Where issues were finely balanced, we found that SL's failure to attend lent some limited support to the Designated Officer's case.

26. The Panel considered Allegation b first. We unanimously concluded that SL had repeatedly allowed Person 1 to enter his bedroom at night, and remain there. We reached this conclusion on the evidence of Person 1 which we accepted on this point, as well as the admissions by SL in his Form 2 response that Person 1 had indeed repeatedly come into his bedroom and offered to stay with him until he fell asleep, which offer he accepted. In addition, we took into account the evidence of Person 2 that Person 1 had told her that SL had night terrors and that he would enter his bedroom to comfort him, albeit that she did not know that Person 1 was sleeping in his bed; and the written Form 3 statement of Richard Hume, that he had heard SL having a night terror and had witnessed Person 1 going into SL's bedroom.

27. Although the Panel unanimously found this allegation proved, we were not satisfied that this was something that was either imposed or forced upon Person 1, and overall the Panel concluded that staying in SL's bed was something that Person 1 consented to. The Panel formed the view that there was a degree of mutuality in the relationship which the Panel agreed was, on the evidence available to us, an intimate friendship. Nevertheless, the Panel were in no doubt that to allow Person 1 to repeatedly enter and remain in his bedroom was, in context, a breach of appropriate and professional boundaries. SL was in a position of authority: he was the ordained minister and the responsibility of ensuring that boundaries were not only in place but were adhered to, rested with him.

28. The Panel then considered Allegation a. The Panel concluded by a majority that this allegation was proved. The majority accepted Person 1's evidence on this issue, although in context took the view that it was more likely than not that the touching was consensual; the minority considered that in

the absence of any other supporting evidence, the absence of any complaint for many years, and the circumstances in which the complaint was made, that the burden of proof had not been discharged.

29. Having found both allegations proved, and taking into account the Guidelines for the Professional Conduct of the Clergy: in particular, paragraphs 2.8, 2.9, 2.17 and 10.1, the Panel were satisfied that the conduct of the Respondent was unbecoming and inappropriate to the office and work of a clerk in Holy Orders.

Penalty

30. The Panel concluded their determinations late on the final day allotted for these proceedings. There being insufficient time to receive further submissions, the hearing was adjourned until a later date when submissions will be invited on penalty.

16 January 2022