

IN THE COURT OF ARCHES ON AN APPLICATION FOR PERMISSION TO APPEAL
RE: THE REVEREND CLIVE ROGER EVANS

DETERMINATION OF APPLICATION FOR PERMISSION TO APPEAL

1. Summary of Decision

1.1 Leave to Appeal is refused.

2. Introduction

2.1 The Application for Leave to Appeal is made on a number of Grounds directed to the Tribunal's Determination dated 9th December 2021 and to its Decision on Penalty, dated 23rd February 2022, supported by submissions. By virtue of s.20 of the Clergy Discipline Measure 2003, the test which we must apply is whether the Grounds disclose a real prospect of success or whether there is another compelling reason for allowing an Appeal to be made. In the case of Grounds directed to the Determination, the jurisdiction to grant leave arises in relation to errors of law or fact and in the case of Grounds directed to the Decision on Penalty, the test is whether there is a good prospect of establishing that the penalty was excessive.

2.2 Reasons set out below address the Grounds rather than forming a detailed exposition of each particular or submission in support of or against the Grounds, but we have fully considered all the Parties' submissions.

2.3 References to:

- "the Determination" are to the Tribunal's written Determination dated 9th December 2021;
- "the Decision on Penalty" are to the Tribunal's written Decision dated 23rd February 2022.

3. Cherry Picking, Bias and Witnesses of Fact

3.1. The general approach of the Tribunal as set out at paragraphs 1 to 14 of the Determination was impeccable. In particular, at paragraph 11 the Panel recorded that they had considered carefully all the evidence, oral and written, which had been placed before them. They set out a general approach which was lawful, namely that, despite having considered the totality of the evidence and submissions, they confined themselves in their written Determination to their main conclusions.

3.2. The Tribunal's consideration of the oral evidence was in accordance with their general approach and lawful. They properly recognised that the challenge to Person 1's veracity, based on her conduct in other circumstances, was 'an important issue in the

assessment of the matters before the Tribunal'. For cogent reasons, explained, in particular, at paragraphs 21 and 23, the Panel rejected the attempts made via cross examination to discredit Person 1. Comments about cross examination did not display 'an unfortunate attitude', nor were they 'misplaced criticism'; rather, at paragraph 15, they referred to 'properly challenging cross examination' of Person 1. On the facts, however, having seen the witnesses, they rejected the lines put to Person 1 and were convinced by her reactions to them.

- 3.3. Similarly, the Tribunal reached proper conclusions as to the veracity of Person 2, placing weight on what she was reported as saying just after the alleged incident, as having 'the ring of truth'. These were, pre-eminently, matters for the Tribunal to judge, having heard the witnesses, including seeing them react to cross examination and forming their own lawful view as to the credibility and significance of those reactions. Their conclusion on Person 3's veracity was also lawful and reasoned, namely that 'his credibility was not, however, seriously called into question on any reasoned or evidenced basis'.
- 3.4. The Tribunal's assessment of the witness Ms Miller was balanced and lawful. It was open to them to find her to be simultaneously 'an honest witness' and 'overzealous'. The Panel rejected parts of her evidence as exaggerated, but were entitled to find that she relayed 'honest essentials'. This was neither perverse nor an indication of bias; rather, these findings demonstrated the forensic and careful approach properly taken by the Panel.
- 3.5. The Panel properly considered the points taken in cross examination of Ms McPhee and associated submissions on behalf of the Respondent (now Applicant): Determination paragraph 40. They rejected that line of argument for reasons set out in paragraphs 41 and 42 which were lawfully open to them.
- 3.6. Having regard to this lawful general approach and the detailed summaries and assessments of the evidence of the live witnesses of fact, we do not regard the submission that the Tribunal 'cherry picked' the evidence or displayed bias as having a good prospect of success because there is nothing to suggest that the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased (*Porter v. Magill* [2002] UKHL 67 at [103]).

4. Expert Witness

- 4.1. The Grounds do not plead the breach of any Rule in relation to the Complainant Archdeacon's evidence, nor do the Grounds substantiate any misdirection on the law or set out what the consequences of the claimed misdirection were for the Determination.
- 4.2. The Tribunal firmly rejected the submission made at the time in objection to the Archdeacon's evidence, namely that it was usurping their decision making function (Determination paragraph 44). At paragraph 45 and evidently at the hearing, the Panel demonstrated proper caution as to the status of the Archdeacon's evidence, gave permission (if required) for the admission of expert evidence and heard submissions on law from the Respondent's counsel. There is no good prospect of establishing that the Determination was unsound in respect of this evidence or the Panel's understanding of the law and practice of baptism.

5. Approach by the Panel to the Respondent (now Applicant)

- 5.1. The Determination dealt with the Respondent's good character impeccably at paragraph 47. At paragraphs 46 to 55, they considered the principal material points of his evidence, drawing reasoned and balanced conclusions as to his accuracy, balance and fairness in many matters but properly finding that his evidence 'in limited areas' was untruthful. These findings were, classically, open to them as the tribunal of fact.
- 5.2. The Tribunal was therefore entitled to prefer the evidence of other witnesses on the three allegations to that of the Respondent. The fact that they rejected Counsel's lines of cross examination and submissions and / or, notwithstanding these, preferred the evidence of other witnesses does not give rise to a good prospect of success on appeal.

6. Burden of Proof

- 6.1. The Panel did not reverse the burden of proof. At paragraph 10 they properly set out the burden and standard of proof and applied these in their consideration of the allegations. Specifically, on Allegation (c), the Panel dealt at paragraphs 78 and 79 with the details of where the Respondent's hand touched Person 1's body. There was a majority finding and both of these paragraphs demonstrate that the Panel had well in mind the appropriate burden and standard of proof in considering the evidence central to this Allegation. The fact that there was a majority verdict in this respect was not unlawful; rather, it illustrates the care with which the Panel dealt with the matter of proof.

7. Penalty

- 7.1. We accept the submission of the Designated Officer that the proper test is whether or not the penalty was excessive, rather than 'wholly disproportionate', as pleaded in the Grounds: see *Re the Reverend William Bulloch* (Court of Arches) (2021) at [4.8], citing *Huntley* (Chancery Court) (2016).
- 7.2. The Panel's penalty was a rational response to the three allegations, all of which had been found to be proved on the basis of their assessment of the evidence which was properly open to them, for reasons set out above in relation to the Determination on liability. The word 'violation' to describe the incident underlying Allegation (b) does not display any unlawful 'views of the Tribunal'. They were entitled to treat seriously such touching of a child aged 15 at the time and it was open to them to make a clear and strong statement about the Church of England's attitude to such conduct.
- 7.3. There was no error of law in relation to the Bishop's letter. The Panel properly directed themselves as to the Bishop's role under the 2003 Measure and, at paragraph 8 of the Decision on Penalty, they directed themselves that they were 'not under any duty to receive the bishop's views with an uncritical eye, or to proceed as though bound by them.' They recorded the criticisms of the letter made on behalf of the Respondent (now Applicant) at paragraph 9, disregarding parts of them as they found that they were unsupported by evidence or unjustified in law (alleged sexual assault), making their own judgment as to the weight to give the letter on the facts as properly found by them and reflecting this in their reduction of the period of prohibition as explained at paragraph 36.1.
- 7.4. The Panel's comments with regard to character witnesses were not improperly 'critical'. At paragraph 36, they recorded the fact that there was not 'strong support from a faithful, intact congregation'. They took into account the six character references but it

was appropriate for them also to consider the position in the parish, which they did fairly.

- 7.5. There are not good prospects of demonstrating that the penalty was an excessive response to all the circumstances of the case, properly set out in the Decision on Penalty.

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Dean of the Arches

DAVID PITTAWAY QC
Chancellor of Peterborough

15 August 2022