IN THE COURT OF ARCHES

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

RE THE REVEREND ROBERT LLOYD RYAN

JUDGMENT

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1. INTRODUCTION

1.1. By Order dated 7th June 2022, the Dean of the Arches and Arlow Ch granted leave to the Reverend Robert Ryan to appeal against the finding of a Clergy Discipline Tribunal dated 29th December 2020 that he had been guilty of conduct 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 ("CDM 2003") in that he, knowing that Person A was a married woman, had sexual intercourse with her ... 'on a further and separate occasion on J's boat.'

1.2. We heard the Appeal in person on 24th November 2022. We are grateful to Counsel for the Appellant, Ms Katherine Apps, and the Designated Officer, Mr Edward Dobson, for their written and oral submissions.

1.3. Leave was granted on two points (contained in three different Grounds).[1] There were, therefore, two principal issues in the Appeal:

(i) whether the Tribunal dealt lawfully with the medical evidence which it admitted on the second day of the hearing and the related issue of Mr Ryan's intimate physical appearance; and

(ii) whether the Tribunal misdirected itself in holding that the dates and/or times on which the Appellant was alleged to have engaged in conduct unbecoming were not 'material averments'.

The reasons for granting leave were, in the case of the issue (i) Grounds, that there was a good prospect of success and, in the case of the issue (ii) Ground, that there was a compelling reason for granting leave, which was that the correct approach to the specifying of allegations is an important issue going to the fairness of tribunal hearings.

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[1] Issue (i) was contained in original Grounds 3 [10g] and 4/New Grounds B and C. Issue (ii) was contained in original Ground 2/New Ground A.

1.4. Counsel agreed that S.20 CDM 2003 provides for an appeal by the respondent in the Tribunal on a question of law or fact or both. In the absence of a statutory test under that section, Mr Dobson submitted that the approach of the Court in this jurisdiction should be the same as the approach in the faculty jurisdiction, namely, that an appeal will be allowed where the decision of the lower court was wrong or unjust because of a serious procedural or other irregularity in the proceedings in the court below[2]. Ms Apps did not argue otherwise, though she drew attention to the slight difference of standard between review and rehearing in some authorities dealing with irrationality. She relied on the approach of the General Medical Council in the case of *R (Dutta) v GMC* [2020] EWHC(Admin)CO/5041/2019, whereby the appeal court would deal with factual matters on the papers. Mr Dobson did not take issue with this proposition and this is the approach that we have adopted. We do not make any ruling on these submissions of the parties, however, since there was not full argument and, in view of our findings, nothing turns on the point.

1.5. In short, we have found that the Tribunal erred in its treatment of the medical evidence and the issue of the Appellant's intimate physical appearance. That error caused injustice. We therefore allow the Appeal on the Grounds comprising issue (i).

1.6. We do not find that the Tribunal misdirected itself with regard to the approach to dates and times and, further, find that the Appellant suffered no injustice in that regard. Accordingly, we dismiss the appeal on issue (ii).

1.7. As agreed with Counsel at the hearing, we invite submissions on relief, having regard to the powers of the Court under Rule 27 of the Clergy Discipline Appeal Rules 2015 (as amended).

2. FACTUAL SUMMARY

2.1. The allegations against the Appellant arose out of a relationship (we use this word neutrally) between himself and Person A. The Appellant was, at all material times, working as a pioneer priest in the Diocese of Rochester. Person A became involved in the pioneer ministry and took on some volunteer work within it. A friendship developed between the Appellant and Person A. He defended three allegations of adultery before the Tribunal, several other such allegations having been rejected by the President, as well as a less serious allegation of conduct unbecoming, essentially comprising a failure to maintain appropriate boundaries with Person A.

2.2. The relevant procedural preliminaries are included within the Agreed Chronology and were as follows:

25 April 2020	CDM complaint first sent to Appellant

[2] Faculty Jurisdiction Rules 2015, Rule 27(11)

18 June 2020	Person B[3] first statement
20 June 2020	JH first statement
Undated 2020	JK additional statement
24 June 2020	Person A response to Appellant's statement
26 October 2020	President Sir Mark Hedley's decision setting out the allegations
16 Nov 2020	Appellant suspended under CDM
30 March 2020	Designated Officer's statement of case
6 May 2021	Appellant's statement of case

2.3. As is usual, the President's decision did not set out dates, though it did allege the places where sexual intercourse between the Appellant and Person A was alleged to have occurred.

2.4. The Registrar made a Directions Order on 2nd March 2021 providing, amongst other matters, that *"No party may rely upon any statement of case or witness statement that is not served in accordance with this order without the permission of the Tribunal"*. Provision was made for permission to be sought from the Registrar to vary the directions in accordance with Rule 31, within 14 days. There was no direction about expert evidence. No variation was sought from the Registrar by either party.

2.5. Pursuant to the Registrar's direction, the Designated Officer lodged and served his Statement of Case. Allegation 1 - sexual intercourse - was particularised as follows:

"(a) on an occasion on Justine's boat;

1. The boat in question is owned by JW. At the material time the Respondent was living on the boat, away from the marital home. Person A's evidence is that after a Burns' Night party held on the boat on the 23 January 2015 she stayed overnight in the Respondent's room and sexual intercourse took place.

(b) on a further and separate occasion on JW's boat;

2. Person A's evidence is that a further instance of sexual intercourse on the boat occurred on the afternoon of Friday 5 June 2015.

(c) on a further and separate occasion at the Premier Inn hotel in Brighton.

[3] Retained initials from the Chronology represent witnesses, including Person A.

3. Person A's evidence is that during a planned trip to Brighton with the Respondent that took place at some point between February and May of 2015 they stayed at a Premier Inn in the city centre and engaged in sexual intercourse in the hotel room."[4]

2.6. In his Statement of Case, the Appellant denied that he had sexual intercourse with Person A on any of the occasions (a) – (c). He accepted that some of the actions relied on under Allegation 2, the lesser charge, had occurred but disputed whether they amounted to conduct unbecoming, as alleged.

2.7. On 24th June 2020, Person A had responded in writing to the Appellant's statement in reply to the complaint. She made a specific allegation as to the appearance of the Appellant's genitalia (the details of which are not reproduced to protect his privacy and bodily autonomy) and that she said the Appellant had joked about it in terms which referred to the Appellant's father's ethnicity. The Appellant and his wife stated that there was no such difference of skin tone. In the words of the Determination "*Each side relied upon Person A's ability, or inability (as the case may be) accurately to describe an intimate part of [the Appellant's] anatomy*".[5]

2.8. At the hearing, a preliminary application was made by Ms Apps, described by the Tribunal as follows:

> *"Ms Apps on behalf of the Respondent:*
>
> *a) Made an application for an Order under Rule 49 prohibiting publication of any description of RR's genitals; and*
>
> *b) Requested assistance from the Panel how this issue may be resolved.*
>
> *The Panel agreed to make an Order that any reference to this issue should be redacted from any publication of this determination. The Panel further suggested that the only proper way in which the issue in dispute could be resolved would be for the Respondent to consent to a medical examination".*

2.9. On the second morning of the hearing, the Appellant's solicitors brought a doctor's letter and Ms Apps applied to submit it as evidence. Mr Dobson confirmed to us that he had not objected to its submission; nor did he seek the attendance of the doctor for cross-examination. Ms Apps did not apply to call the doctor and the Panel did not require his attendance, as they were empowered to do under Rule 46 of the Clergy Discipline Rules 2005. The letter was admitted in evidence.

2.10. The Determination continued:

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4 Initials have been used in this Judgment

5 Determination, Legal Submissions (v)

"This the Respondent acceded to and the Panel in due course received a short report from a medical practitioner that he 'could not find that his [anatomy] was abnormally darker in colour than the rest of his body.'
The Panel took the view that the wording of the GP's report was equivocal. The Panel accordingly made no findings about this issue which we ignored entirely when reaching our determination".[6]

2.11. The Determination summarised the evidence, the allegations and subsequent events ("the aftermath"). In a section[7] entitled *"The Panel's approach to the evidence"*, they listed twelve matters of law, including directions as to the burden and standard of proof. In this section they stated:

> *"(ix) Dates are not 'material averments'; what has to be proved is what happened rather than where or when; people get dates wrong. However, any inaccuracies or confusion about dates or locations would be matters that we could take into account when deciding whether we were more satisfied than not that an event had occurred".*

Other directions in this section concerned the inherent nature of the allegations, namely that one or other of the two protagonists must be lying and that they were the only people who could give direct evidence as to the truth of the allegations.

2.12. The Determination recorded that the Panel had found Person A and her husband to be "credible and accurate witnesses"[8].

2.13. Having found allegation 2 proved (as to which no complaint is made on Appeal) they turned to the three limbs of allegation 1, stating:

> *"The Panel was also unanimously satisfied that, taking into account the length and nature of the relationship and the repeated breaches of boundaries in contravention of the Bishop's very clear instructions, that it is more likely than not that sexual intercourse took place between RR and Person A on at least one occasion".*[9]

2.14. The Panel then considered each of the alleged instances of sexual intercourse in turn. They unanimously found the first in time not to be made out, on the strength of alibi evidence produced by the Appellant. The second limb of allegation 1 was also found, by a majority, not to be made out.

2.15. Turning to the third limb of allegation 1, the Determination stated:

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6 Determination paragraph 4(v)
7 Determination paragraph 27 (i)-(xii)
8 Paragraph 28
9 Determination paragraph 32

"c) Finally the Panel considered the last alleged occasion of sexual intercourse on the boat in June 2014. Again, the primary evidence came from Person A and RR alone; however, the Panel were assisted by additional persuasive details:

- *RR maintained that Person A had only been on the boat on one occasion in December 2014, and then very briefly; however, Person A stated that she had been on the boat many times and was able – even at a distance of many years – to give a detailed and accurate description of the layout of the interior;*
- *Person A was able to recall the date of the intercourse by reference to the fact that she said that exactly a week later, she and RR went for a walk on the beach in Upnor, and he told her that he wanted to accept a new job in Greenwich and that it was not the right time for them to have a relationship. RR denied that this ever happened, but the Panel were satisfied that Person A was giving a truthful account and accepted her evidence;*
- *Person B stated that on 13 June 2014, the day after the walk on the beach, he and Person A had travelled to Bristol for her brother's birthday, and that on the journey she had been inconsolable with grief. She 'opened up' to Person B about her relationship with RR, told him that they had slept together – including on the boat, told him that RR had ended the relationship and that he was moving to a new position in Greenwich;*
- *The Panel, by a majority, accepted JK's evidence that RR had admitted to her in a phone call that he had had sexual intercourse with Person A on the boat.*

Taking all of the above into account, the Panel concluded by a majority, that it was more likely than not that RR had had sexual intercourse with Person A on the houseboat in June 2015. The Panel further concluded that this was conduct unbecoming or inappropriate to the office and work of a clerk in Holy Orders within s.8(1)(d) CDM 2003".

The confusion with dates exhibited in this paragraph, whilst criticised by Ms Apps as betraying inattention to important details, is not relied on as constituting a legal error.

3. ISSUE 1

3.1. We note that it was Person A who raised the question of the Appellant's physical appearance during the exchange of documents prior to the hearing. Apparently, the rationale was that this detail demonstrated her veracity, as the Tribunal realised in the passage set out at paragraph 2.7 of this Judgment.

3.2. Given the particular nature of allegation 1 – that sexual intercourse had occurred – it was clearly relevant to deciding about veracity to establish who was telling the truth on this point. Obviously, the issue was not one which

could appropriately be the subject of demonstration during the hearing. Yet, having regard to the correct observations at paragraph 27(x) and (xi) about the centrality of the evidence of the Appellant and Person A to making determinations under allegation 1, and having admitted the doctor's report, we find it surprising that the Tribunal declined to make any findings at all about the issue of the colour of his anatomy and a related alleged lovers' joke about it. They clearly stated that the issue had been *'ignored entirely when reaching our determination'*.

3.3. The stated reason for excluding the issue was that *"the Panel took the view that the wording of the GP's report was equivocal"*.

3.4. The doctor's letter is in the following terms:

> *"This is to confirmed* (sic)*, that I examined the [anatomy] of Reverend Robert Ryan today and could not find that his [anatomy] was abnormally darker in colour than the rest of his body. I could also not find any other abnormal distinguishing features about his [anatomy]".*

3.5. We heard that the description of the letter as *"equivocal"* arose initially in the Designated Officer's closing submissions. Ms Apps responded on behalf of the Appellant. As we have noted above, however, the Panel did not require the doctor to attend so that any ambiguity which they considered that the letter contained might be explored, either by the advocates or by the Panel themselves.

3.6. Whether or not the letter is properly described as equivocal, as to which we make no finding, we unanimously hold that the Panel fell into legal error in deciding to 'ignore entirely' an issue which was material to the central question of whom to believe in relation to the allegations of sexual intercourse. Similarly, having admitted the doctor's evidence (presumably on the basis that it was of relevance), to exclude it from their minds when deciding which of the two main witnesses was telling the truth was irrational, perverse and/or constitutes a failure to take account of material evidence. We do not accept Mr Dobson's submission that the doctor's evidence was such a small element in a 'sea of other evidence' as to be immaterial to the outcome of the case. The approach of the Panel was contrary to the overriding objective enshrined within Rule 1 of the Clergy Discipline Rules 2005 because a relevant – potentially highly relevant – matter which had been put in issue by Person A and addressed (albeit late in the day) by the doctor's evidence was simply *"ignored"*; in this regard, the Panel did not *"enable formal disciplinary proceedings brought under the Measure to be dealt with justly, in a way that is both fair to all relevant interested persons and proportionate to the nature and seriousness of the issues raised"*. The matters grouped under allegation 1 were extremely serious in nature for the Appellant, his wife and family, Person A and her husband and the Church. The Panel's failings led to unfairness and, hence, a breach of natural justice owing to a serious procedural irregularity which invalidated their evaluation of evidence and reasoning.

3.7. Accordingly, we allow the Appeal on issue (i). The Appellant's Counsel argued a number of points in relation to issue (i). They were set out in her Updated Grounds of Appeal[10] and addressed in her Skeleton Argument and oral submissions. In the light of our finding that the Tribunal fell into error, thereby breaching the principles of rationality and natural justice, it is not necessary to consider her points on burden of proof and Human Rights in detail. In brief, however, we add that we do not find that the Tribunal erred in relation to burden of proof; they correctly directed themselves at paragraph 27(i) and (ix). Nor do we find that the Panel required the Appellant to undergo a medical examination, thereby acting in breach of his rights under Article 8 of the European Convention on Human Rights; the Appellant and his legal advisers arranged for the medical examination, presumably on the basis that this presented a practicably decent way of responding to the issue which Person A had raised. Where matters went legally awry was in the Tribunal's procedural and substantive handling of the issue once the medical evidence had been admitted.

4. ISSUE 2

4.1. The phrase 'material averments', used at paragraph 27(ix) of the Determination, is derived from criminal law. An extract from Archbold Criminal Pleading Evidence and Practice[11] was included within the Bundle of Authorities and referred to in oral submissions at the hearing. Generally, the rule is that it is unnecessary for the date shown on an indictment to be proved by evidence unless time is of the essence of the offence, although Archbold adds:

> *"Amendment of the indictment is unnecessary, although it will be good practice to do so provided there is no prejudice ... where it is clear on the evidence that if the offence was committed at all it was committed on a day other than that specified"*.

Where the date is relevant to an element of the offence (such as the age of the victim), however, time will be material: see *Radcliffe* [1990] Crim LR 524 CA.

4.2. Because leave was granted on the basis of a 'compelling reason', namely *"that the correct approach to such matters is an important issue going to the fairness of tribunal hearings"*, Counsel addressed the Court on the principle of this issue. They both referred to other jurisdictions. Mr Dobson referred to the origins of clergy discipline in the pre-Reformation Law on Benefit of Clergy and the quasi-criminal nature of the jurisdiction under the 1963 Measure which was in force for some 40 years before the current Measure. Ms Apps, for the Appellant, argued that clergy discipline tribunals should adopt principles applied in other professional disciplinary jurisdictions.

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10 New Grounds B and C

11 2023 edition, paragraphs 1-222 – 1-224

4.3. Clergy discipline is a unique system, governed by its own Measure and two sets of Rules - the Clergy Discipline Rules 2005 and the Clergy Discipline Appeal Rules 2005. Whilst we were grateful for the wide-ranging submissions, comparative exercises cannot be determinative. The current statutory regime is not a criminal one; fundamentally, the standard of proof is the civil standard of the balance of probabilities whilst the mechanism for making and investigating complaints, deciding which complaints should proceed to tribunals (or in other ways or not at all) and the interlocutory procedural requirements are very different from the machinery of the criminal courts. Similarly, comparisons with other professional regulatory regimes are not exact; for example, as Ms Apps' supplementary research[12] revealed, the Solicitors Disciplinary Proceedings Rules 2007 required *"a Statement setting out the allegations and the facts and matters supporting the application and each allegation contained in it"*. Therefore the case of *Kiani v Solicitors Regulations Authority* [2015] CO/5118/2014 in which Laing J (as she then was) helpfully and comprehensively surveyed the regulatory territory, is of limited usefulness in the jurisdiction which we are considering because the Clergy Discipline Rules 2005 do not contain such provisions.

4.4. Ms Apps argued that it is not necessary to have an express rule providing for particulars if the relevant legislation provides a power to direct that a statement of case be provided and one is provided. That statement, she submitted, unless amended by consent or by order of the Tribunal, becomes the case which the Designated Officer must prove. She said that such a requirement is to be implied into the statutory scheme on the basis of natural justice and/or the overriding objective. In this case, she went on to submit, the Registrar's direction of 2nd March 2021, specifically the paragraph set out at paragraph 2.4 above, was the trigger for such implication.

4.5. She described part of paragraph 32 of the Determination as *"unfairness in action"*. The relevant passage reads:

> *"The Panel was also unanimously satisfied that, taking into account the length and nature of the relationship and the repeated breaches of boundaries in contravention of the Bishop's very clear instructions, that it is more likely than not that sexual intercourse took place between RR and Person A on at least one occasion.*
>
> *The Panel considered each of the alleged instances of sexual intercourse in turn".*

4.6. The paragraph continued with the Panel's reasoning on the three limbs of allegation 1. The first two limbs of the allegation were found not to be proved, partly on the basis of alibi evidence put forward by the Appellant. The third limb comprised an allegation that sexual intercourse occurred on a friend's

[12] Appellant's note dated 25.11.2022 submitted in answer to the Dean's request. The 2019 Rules are not materially different.

boat on 5th June 2015 (wrongly rendered on two occasions as 2014 by typographical error).

4.7. On the general point, we must first consider the legislation. The 2005 Rules set out three introductory principles: the overriding objective; the duty to co-operate with any person, tribunal or court exercising any function under the Measure *"in order to further the overriding objective"*; and the application of the Rules. There is then provision for the making of complaints and their consideration. Rule 29 provides for consideration by the President whether there is a case to answer. If s/he concludes that there is, s/he shall refer it to the tribunal and *"shall specify in the written decision which allegation or allegations of misconduct are to be determined"* (Rule 29(2)).

4.8. Part VI deals with directions preparatory to a hearing before the tribunal. Rule 30(1)(b) provides that the Registrar *"shall give directions for the just disposal of the proceedings in accordance with the overriding objective"*. Separate provision is made for variation and/or referral of matters to the Chair of the tribunal.

4.9. Rule 33 provides as follows:

> *"(1) Directions may be given in respect of all procedural matters and in particular—*
>
> *(a) for the exchange of witness statements (notwithstanding that the complainant and the respondent may already have respectively supplied statements in support of the complaint form and the respondent's answer),*
>
> *(b) for the exchange of copies of documents intended to be relied upon at the final hearing,*
>
> *(c) to direct the complainant and the respondent to disclose and produce at or before the hearing of the complaint any specified documents in their possession or control which may reasonably be required by another party,*
>
> *(d) to permit written questions to be put by one party to the other, and to require those questions to be answered by the other party,*
>
> *(e) in relation to any expert evidence, including the number of expert witnesses,*
>
> *(f) to exclude evidence that would be irrelevant or unnecessary, or which should otherwise be excluded in the interests of justice in accordance with the overriding objective,*
>
> *(g) to direct any party to prepare a written outline argument and to send or deliver a copy of it to the Registrar of Tribunals, the Chair, and to the other party, together with photocopies of any authorities relied upon,*

(h) to provide for the preparation of bundles of documents for a hearing, and for them to be sent or delivered to the tribunal and each party,

(i) to require the attendance of any person at the hearing of the complaint for the purpose of—

(i) giving evidence, or

(ii) producing documents for inspection,

(j) to order two or more complaints against the same respondent to be heard on the same occasion,

(k) to order complaints against more than one respondent to be heard on the same occasion,

(l) to order any part of any proceedings to be dealt with separately.

(2) A direction may be given that if a document has not been disclosed to the other party, that document may not be relied upon at the hearing of the complaint unless the Chair gives permission".

4.10. That Rule is undoubtedly wide enough to authorise the giving of directions requiring the parties or one of them to provide a written statement of case to particularise the allegations. Rule 1 makes it clear that powers under the Rules are to be exercised in furtherance of the overriding objective. Rule 2, the duty to co-operate, is also relevant.

4.11. There is no suggestion that either the Registrar or the Designated Officer acted in breach of the overriding objective in relation to the giving of directions or compliance with them. As a result of the Designated Officer's Statement of Case (together with the witness statements) the Appellant knew the case which he had to meet. Based on this, he reviewed his own records and was able to produce documentary evidence wholly or partially to establish alibis in relation to two limbs of allegation 1. There was no documentary evidence in relation to the third limb, so the Panel were faced with the difficulty which they articulated at paragraph 27 (x) and (xi) – a familiar difficulty in cases of this type.

4.12. It will be recalled that the Determination dealt with allegation 1 as follows:

"The Panel then considered the Allegation 1, that RR had sexual intercourse with Person A on 3 separate occasions: twice on the houseboat and once at the Premier Inn in Brighton.

The Panel were unanimously satisfied on all the evidence that there was an inappropriate relationship between RR and Person A, and that that relationship continued through to the summer of 2015.

The Panel was also unanimously satisfied that, taking into account the length and nature of the relationship and the repeated breaches of boundaries in contravention of the Bishop's very clear instructions, that it is more likely than not that sexual intercourse took place between RR

and Person A on at least one occasion.

The Panel considered each of the alleged instances of sexual intercourse in turn ."

On the third limb of the allegation, they said:

" c) Finally the Panel considered the last alleged occasion of sexual intercourse on the boat in June 2014. Again, the primary evidence came from Person A and RR alone; however, the Panel were assisted by additional persuasive details:

- *RR maintained that Person A had only been on the boat on one occasion in December 2014, and then very briefly; however, Person A stated that she had been on the boat many times and was able – even at a distance of many years – to give a detailed and accurate description of the layout of the interior;*
- *Person A was able to recall the date of the intercourse by reference to the fact that she said that exactly a week later, she and RR went for a walk on the beach in Upnor, and he told her that he wanted to accept a new job in Greenwich and that it was not the right time for them to have a relationship. RR denied that this ever happened, but the Panel were satisfied that Person A was giving a truthful account and accepted her evidence;*
- *Person B stated that on 13 June 2014, the day after the walk on the beach, he and Person A had travelled to Bristol for her brother's birthday, and that on the journey she had been inconsolable with grief. She 'opened up' to Person B about her relationship with RR, told him that they had slept together – including on the boat, told him that RR had ended the relationship and that he was moving to a new position in Greenwich;*
- *The Panel, by a majority, accepted JK's evidence that RR had admitted to her in a phone call that he had had sexual intercourse with Person A on the boat.*

Taking all of the above into account, the Panel concluded by a majority, that it was more likely than not that RR had had sexual intercourse with Person A on the houseboat in June 2015. The Panel further concluded that this was conduct unbecoming or inappropriate to the office and work of a clerk in Holy Orders within s.8(1)(d) CDM 2003."

4.13. We have already decided that the Panel's finding on the third limb cannot stand for other reasons. We are, however, unable to accept that their approach to dates set out at paragraph 27(ix) worked injustice. Ms Apps submitted that the Panel were too lax in their approach to what had to be proved and that they focussed on whether sexual intercourse took place, rather than whether it took place on the boat on 5th June. The reasons set out at paragraph 32(c) do engage with the date of 5th June 2015 by reference to Person A's marker date of 13th June and the contemporaneous evidence of Person A's husband, Person B, which they heard and we did not . The

Appellant's case on the third limb, however, did not turn on the precise date. He simply denied that Person A had been on the boat at all in 2015 and further denied that the walk and discussion on the beach at Upnor ever happened. Therefore the precise date of 5th June 2015 was immaterial legally and in fairness terms: legally because it was not, for example, the case that Person A was married at one date, but not at another or that the Appellant was in Holy Orders at one date but not another; and in fairness terms because the Appellant's case was a plain denial of the relevant events, not, for example, an alibi defence. Moreover, contrary to Ms Apps' complaint, the Panel did focus on the place alleged, finding persuasive Person A's description of the boat in her oral evidence, which they heard and we did not. The second sub-paragraph of paragraph 32 could, perhaps, have been better expressed, but the Panel considered each limb under allegation 1 separately and rejected the two where they accepted that there was alibi evidence and too much uncertainty. We have found that they should have considered the issue (i) question before finding the third allegation of adultery proved, but there is no additional legal fault based on their approach to 'material averments'. There is no connection between paragraph 27(ix) and the reasoning at paragraph 32; if anything, the Panel's findings on the first two limbs demonstrate an approach to the evidence which did treat dates as material on account of their treatment of the alibi/partial alibi evidence and it is clear that they also engaged with date and place when considering the third limb of allegation 1.

4.14. There is no additional reason for allowing the Appeal based on issue (ii).

4.15. We wish to return, briefly, to the general question of 'material averments', in the light of its wider importance. When the President frames one or more allegations to go to the Tribunal s/he may or may not include dates; there is no statutory requirement to do so. Where, as in this case, the Designated Officer particularises the allegations in the Statement of Case, this, together with the serving of witness statements, provides the means of sufficiently clarifying the details of the allegation(s). The Rules make provision, through application to the Registrar or Chair, for more particulars. Clearly, absence of specificity may form a defence to allegations, the weight to be given to that matter being for the Tribunal to consider on its merits and/or, in an extreme case, founding an abuse of process submission.[13] This statutory scheme provides for procedural fairness in accordance with the principles of natural justice. None of the caselaw cited by Ms Apps on the implication of the principles of natural justice when construing legislation arose in this statutory framework, but there is no conflict with the principles enunciated in it. The *Bishop of Hereford's Case in respect of T* (1852) 2 Rob Ecc 596, 163 ER 1425 concerned an alleged ecclesiastical offence under a nineteenth century disciplinary statute, but the reason why the date was material was because T raised a defence of limitation. This, therefore, is an example of the sort of exception considered above, where dates are legally relevant to jurisdiction or liability.

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[13] The recent case of *Sizer* provides an example of abuse of process submissions being made (albeit not on grounds of lack of specificity).

4.16. Whilst it is fundamental to the overriding objective that a respondent must know the case which s/he has to meet, there are strong public interest reasons for not generally treating dates, times and places as matters which must be proved. Unfortunately, the clergy discipline jurisdiction sometimes has to deal with allegations involving children or vulnerable adults and/or allegations of historic abuse. Clearly, in weighing evidence, tribunals need to be astute to the difficulties posed in these cases, but to require precise dates, times and places to be proved as a generality could render it virtually impossible for such complaints to be brought. This would be wholly unjust, contrary to the overriding objective and would constitute a severe systemic weakness in the Church of England's disciplinary process. Ms Apps, faced with this point, referred to the European Court of Human Rights decision in *Mattoccia v Italy* [2003] 36 EHRR 47. This case concerned a criminal prosecution for rape of a mentally handicapped child. The Court found that there had been a violation of Mr Mattoccia's right to a fair trial under Article 6 of the Convention. There had been many changes in the particulars of time and place alleged, including at a late stage in proceedings at the hearing itself; the applicant had not been given adequate time to deal with them, or access to relevant documents or the opportunity to call alibi and other witnesses. The catalogue of unfairnesses in *Mattoccia* could all be avoided in Clergy Discipline Tribunals by application of the case management powers of the Registrar and Chair in pursuit of the overriding objective. The Italian case does not establish that it is a requirement of the Convention for times, dates and places to be proved in all cases. It illustrates that close attention must be paid to case management in child / vulnerable witness and historic cases in order to prevent unfairness, but this is possible under the Rules without implying into them a general requirement that times, dates and places must be specifically alleged and proved in all cases.

4.17. Whilst there are no grounds for implying such a general requirement, there may be specific cases in which the date is an element going to the substance of the offence, as discussed above. The most frequent example is likely to arise in the context of the age of a sexual partner but other date-sensitive questions as to status could arise, for example, whether or not a respondent had pastoral responsibility for a parish and its inhabitants at a particular date. In such cases, proper legal analysis of the elements of the allegation will establish whether or not such details have to be proved.

5. CONCLUSION

5.1. Accordingly, we now invite the parties to consider the question of relief, as agreed at the hearing. The relevant provision is Rule 27 of the Clergy Discipline Appeal Rules 2015. As the Dean made clear at the hearing, questions concerning the Appellant's suspension are for his diocesan bishop, not the Court.

12 December 2022

MORAG ELLIS KC
The Venerable Steven Betts
The Revd Pamela Ogilvie
Dr Judith Dale
Mr Michael Elsom