

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

Complainant: THE VENERABLE PHILIP ANDREW WILLIAMS

Respondent: THE REVEREND ANTHONY RICHARD GILES

Constitution of the Tribunal:
Chancellor Ruth Arlow (Chair)
The Reverend Canon Kathryn Fitzsimons
The Reverend Canon Karen Smeeton
Canon Linda Ali
Canon Linda Jones

**DETERMINATION OF APPLICATION TO SET ASIDE AN ANONYMITY ORDER
UNDER RULE 49 OF THE CLERGY DISCIPLINE RULES 2005**

1. This is the determination of an application by the Designated Officer to set aside an anonymity order made under rule 49 of the Clergy Discipline Rules 2005 ('the Rules'). The application is made on instruction from the Complainant, the Ven Philip Williams, but originates with Mrs Catherine Drake, who can be termed the '*de facto* complainant'.
2. The anonymity order with which we are concerned was made by this tribunal at the conclusion of the penalty hearing for this complaint on 6 October 2021. It was made on the application of the Designated Officer at the request of Mrs Drake and ordered that Mrs Drake's name or other identifying details must not be published or otherwise made public.
3. On 26 January 2023 Mrs Drake sent an application in Form 8 to the Registrar of Tribunals seeking the setting aside of the order. She wishes to speak to a newspaper about her experiences and the newspaper has requested that the anonymity order is set aside before any details are published.
4. Mrs Drake was not, of course, a party in these proceedings. Instead, she was a witness. This gave rise to the issue of whether the Tribunal could entertain an application by a non-party. That issue was clearly a procedural one and accordingly it was put before the Chair. The Tribunal is a creature of statute and bound by the distinct legal framework creating it. Observing that there is no provision in the Rules equivalent to rule 40.9 of the Civil Procedure Rules which provides that "[a] person who is not party but is directly affected by a judgment or order may apply to have the judgment or order set aside or varied", the Chair accepted the submissions of the Designated Officer that that there is no mechanism

under the Rules for a non-party to make an application within the proceedings. Equally, there is no mechanism under the Rules to join Mrs Drake as a party to the proceedings. Accordingly, the Chair determined that it was not possible for the Tribunal to entertain an application from Mrs Drake.

5. Expressing the view that it was unsatisfactory that Mrs Drake was unable to apply to set aside an order which was made to protect her, named her and directly affected her Article 10 right to freedom of expression (which includes the right to impart information), the Chair observed that Mrs Drake was, nevertheless, a “relevant interested person” for the purposes of the overriding objective set out in Rule 1 and that the Tribunal was obliged to act in a way which was fair to Mrs Drake (as well as other “interested persons”). The Chair gave directions which encouraged Mrs Drake to invite the Complainant Archdeacon to instruct the Designated Officer to make the application in her behalf. The Designated Officer has received those instructions and now makes this application.
6. Under rule 49, the making of an anonymity order may be made only by the full Tribunal. Although the matters set out in paragraphs 4 and 5 above were procedural matters and accordingly determined by the Chair sitting alone, she was clear that the decision whether to set aside the anonymity order was not a procedural decision and accordingly a meeting of the full tribunal was convened to determine the substantive application. Both Mrs Drake and the parties were content that the matter could be dealt with without a hearing.
7. The meeting of the full Tribunal took place on 15 May 2023 and, at its conclusion, the outcome of the determination of this application was communicated to those concerned by the Registry with written reasons to follow. This determination constitutes those written reasons.
8. The Designated Officer took a neutral position in relation to the application, having made the application at Mrs Drake’s request in order to further the overriding objective under rule 1 that proceedings should be conducted justly and in a way that is fair to interested persons and is proportionate. The Respondent chose not to make any representations in relation to the application save to deny any allegations that he had ever referred to Mrs Drake publicly outside of the proceedings.
9. The application is not to be treated as an appeal against the original decision to make the order under rule 49. The Tribunal, nevertheless, must retain jurisdiction to revisit its own order. Accordingly, the Tribunal considered that a change of circumstances was required before it could consider whether to set aside the order made in October 2021. Further, the Tribunal must be satisfied on the balance of probabilities that the setting aside of the order was required in the interests of justice.
10. Mrs Drake has filed a statement indicating that her circumstances have changed. In particular, she has moved away from the parish where the events with which the complaint was concerned had occurred. She states that her identity has become widely known within the parish, in part as a result of the social media comment and other correspondence of other individuals. She no longer seeks the protection that the order

sought to provide and argues that her right to freedom of expression under the European Convention on Human Rights are being curtailed by the continuation of the order.

11. The Tribunal was satisfied that there has been a relevant change of circumstances such that it could revisit its order under rule 49. When the order was made in October 2021, the Tribunal determined that the order was desirable to protect the private life of Mrs Drake. Although Mrs Drake was found to be a vulnerable adult at the time of the misconduct admitted in 2015, there is no suggestion that that vulnerability has continued after that time. Mrs Drake is a legally competent adult who seeks to exercise her Article 10 rights and whose identity has, at least to some degree, already been made known. The Tribunal could see no reason why the continuation of the order was desirable to protect Mrs Drake's private life and had particular regard to the fact that Mrs Drake no longer sought the protection of the order.
12. In light of the above, the Tribunal directs that the anonymity order made under rule 49 on 6 October 2021 should be set aside.

24 May 2023