

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

Complainant: THE VENERABLE ANDREW WOODING JONES

Respondent: THE REVEREND ROBERT LLOYD RYAN

Constitution of the Tribunal

HHJ Heather Norton (Chair)

The Venerable Kathryn Percival

The Reverend Canon Peter Walley

Mr Richard Hill

Prebendary Sue Lloyd

Appearances:

Mr Edward Dobson, Designated Officer

Ms Katherine Apps KC, Counsel for the Respondent

DETERMINATION ON PENALTY

In accordance with Rule 49, the Panel directs that neither the underlying complainant's name, nor any material that may identify her as the complainant in this matter should be published. She is referred to throughout this determination as, Person A

Introduction

1. Following a hearing heard over several days in December 2021, the Panel was satisfied by a majority on Allegation 1(b) that the Respondent, knowing that Person A was a married woman, had sexual intercourse with her on one occasion, said to have taken place on 5 June 2015.

2. The Panel was unanimously satisfied on Allegation 2 that the Respondent, knowing that Person A was a married woman, and being aware of mutual feelings of affection between himself and person A:
 - (a) Accepted small gifts from her;
 - (b) In or around December 2014, kissed her; and
 - (c) Accordingly failed to observe, or maintain, appropriate professional boundaries.
3. Having found these allegations proved, the Panel was satisfied that the conduct of the Respondent was unbecoming and inappropriate to the office and work of a clerk in Holy Orders.
4. The Panel was not satisfied on Allegations 1(a) and (c) which detailed two additional occasions upon which sexual intercourse was alleged to have taken place.¹
5. The Respondent subsequently successfully appealed the Panel's findings to the Court of Arches, which determined that this Panel had been wrong to disregard evidence, in the form of a doctor's report, about the appearance of the Respondent's genitalia when reaching conclusions about the respective veracity and credibility of the Respondent and Person A. The Court of Arches referred Allegation 1(b) back to the Panel with a direction that the Panel should hear oral evidence from the author of the report in order that the Panel should be able to, '*consider the doctor's evidence fully and then conscientiously to deliberate on its significance for the case.*'

In accordance with these directions, a remitted hearing was held on 29 June 2023 at the conclusion of which the Panel concluded that the evidence was consistent with, and supportive of, the evidence given by Person A. Accordingly, we found no basis upon which to alter our original determination. The penalty hearing was adjourned until 3 August 2023.

Material Received

6. The Panel has received a 'Penalty Submissions Bundle', which contains *inter alia*:
 - Written submissions on penalty from the Designated Officer, dated 18 February 2022;
 - Written submissions on penalty on behalf of the Respondent, dated 27 June 2022;
 - Further updated submissions on penalty on behalf of the Respondent, dated 12 July 2023;
 - A letter dated 3 February 2022 from the Bishop of Tonbridge, The Rt Rev Simon Burton-Jones, setting out the combined views of himself and the Bishop of Chelmsford, The Rt Rev Guli Francis-Dehqani, on the appropriate penalty;
 - A number of character references written in support of the Respondent;
 - Guidance on Penalties issued by the Clergy Discipline Commission.

¹ Ms App's assertion on behalf of the Respondent, at 14.d.x of her updated submissions on penalty, that, '*The Tribunal has found that some of the allegations of Person A did not occur*' is, as a matter of fact and law, incorrect.

7. The Panel has also been referred by the parties to statements and evidence given in the original hearing, as well as a number of authorities.
8. The Panel has heard oral submissions from the Designated Officer and from Ms Apps KC on behalf of the Respondent; we are grateful to them for the assistance they have given us both orally and in writing.

Relevant Guidance on Penalties

9. The Panel notes that the Guidance on Penalties has, in the course of this matter, been updated. The current Guidance is dated March 2023. The Panel agreed that it is this Guidance, in force at the date of the penalty hearing, that is to be applied.

The Bishops' Letter

10. As noted at paragraph 6 above, the Panel has received a letter from the Bishop of Tonbridge setting out his views reached in conjunction with the Bishop of Chelmsford. We are grateful to them for their submissions.
11. On behalf of the Respondent, Ms Apps KC makes a number of trenchant criticisms of the Bishops' letter, which she states in her written submissions, *'takes an unlawful approach to penalty.'* Because the Bishops letter was written before the latest Guidance was published, and because the Bishops do not, in their letter, work through and set out in writing a staged approach to explain how they reached their conclusion, in the way that this Panel must do and has done, she speculates that they have made an assumption that removal will be appropriate. In addition, she asserts that they have taken into account matters that did not form part of the allegations made and found proved.
12. We find her criticism of the Bishops to be misplaced and unfounded. In so far as her latter criticism is concerned, whilst, of course, a penalty cannot be imposed for, or founded upon, allegations that were either not charged or which were not found proved, when considering the harm caused and the culpability of the Respondent, the conduct that is the subject of the proven allegations must be considered in context and in accordance with the factual matrix as found and set out in the Panel's findings of fact. This will necessarily involve consideration of such matters as the length of time over which conduct took place, the relationship between the Respondent and the complainant, the circumstances in which the conduct arose, and many other factors – some of which may serve as aggravating factors, and others of which may provide mitigation. The two matters referred to in the Bishop's letter (misconduct over a prolonged period, and concealment of conduct) are given as examples of aggravating factors in the Guidance. The first of those, is also relied upon in his written submissions by the Designated Officer. More importantly perhaps, in accordance with our findings previously given, the Panel has independently found that both matters identified by the Bishops – each listed as aggravating factors in the Guidance – apply in this case.
13. In so far as Ms Apps' first criticism is concerned, it is pure speculation that the Bishops must have started in the wrong place and applied an assumption that only removal will be appropriate; we note in passing that the Bishops' view is aligned with paragraph 2.2 of the

Guidance on penalty for sexual misconduct, in which it is stated that, '*Removal from office and prohibition, either for life or for a limited time, are usually appropriate* [in cases of adultery]'.

14. The Panel is conscious of the fact that ministry is shared between incumbents and others and the bishop, and that it is important that the Bishop should have confidence in the exercise of that ministry. Nevertheless, we recognise that whilst due regard must be held to the views expressed by the Bishops, we are not bound by them.

Approach to Penalty

15. In deciding upon the appropriate penalty, the Panel considered all the material placed before it, and adopted a staged approach, applying the current Guidance on Penalties, always conscious of the need to act fairly, justly, and proportionately. As noted above, we accepted that the relevant Guidance was that in force at the date of the penalty hearing.
16. The Panel concentrated on the misconduct found proved in Allegation 1(b), an occasion of sexual intercourse that is said to have taken place on 5 June 2015, that being the most serious aspect of the misconduct with which we were concerned. We considered that misconduct in context; that context being the other proved or admitted misconduct as set out in Allegation 2, and the admissions made and factual findings reached in our initial determination on the facts.
17. Whilst the Panel agreed that penalty could only attach to the misconduct alleged and found proved, the Panel disagreed with the submission made by Ms Apps KC that the context in which that misconduct took place should be disregarded. That submission flies in the face of the approach set out in the Guidance which both parties agreed must be followed, and which specifically requires the Panel to consider context by determining not only the harm caused by and culpability of the Respondent, but also any aggravating and mitigating factors that might attach. It is the context that determines the level of seriousness of the misconduct, and to ignore context risks reaching unjustified conclusions to the prejudice of both sides.

Stage 1 - Harm

18. The Tribunal first considered the harm caused by the misconduct.

It was the unanimous view of the Panel that the harm caused was significant for the following reasons:

- a) The Panel found that Person A was, at the material time, vulnerable by reason of background, and mental health and, importantly, that this background was known to the Respondent². In addition, she had marital difficulties;
- b) Person A detailed in her evidence the deleterious effects on her of the Respondent's actions, which we accepted³;

² Email sent from Person A to the Respondent on 15/1/14. In evidence, the Respondent agreed that he had received this email.

³ See Person A's witness statement – 24/3/21 – paragraphs 40-47

- c) The Panel concluded that Person A was not the only victim of the Respondent's misconduct, which also had an adverse impact on others, in particular the spouses of both parties who the Panel concluded could also rightly be regarded as victims. In addition, the Panel found that misconduct of this type inevitably has a harmful effect on the Church: both the community in which and for whom the Respondent was called to serve, as well as the wider Church. As expressed by the Designated Officer in his written submissions, all misconduct undermines confidence in the public ministry of the Church and her clergy.

Stage 1 - Culpability

19. The Panel found that the Respondent bore a high level of culpability for his actions. The Panel took into account the points made by Ms Apps KC about the Respondent's own mental health and difficult marital circumstances; however, it was the Respondent who was in a position of power and trust in relation to Person A. Not only should he have recognised professional and pastoral boundaries, but it is clear that he did know where the boundaries lay. Importantly, it is also clear that he himself recognised the dangers of stepping over those boundaries as when he became aware of the reciprocity of feelings between himself and Person A, he reported those feelings to Jean Kerr, Director of Community and Mission Engagement for the Diocese of Rochester, and to his Bishop in May 2014. On his own evidence, he was advised by his Bishop at this time to create space between him and Person A. Contrary to that advice however, and notwithstanding the help and support available to him from both Jean Kerr and his Bishop, he deliberately chose to disregard that guidance and to breach those boundaries by accepting small gifts from Person A, by meeting with Person A in private on a friend's houseboat in December 2014 when he kissed her, and again in June 2015 when sexual intercourse took place. This deliberate disregard of professional and pastoral boundaries, particularly when viewed in context of the guidance that he had been given, was of great concern to the Panel.
20. In addition, although by the relevant time the Respondent had not been in ministry for a particularly lengthy period (he was ordained deacon in 2008 and priest in 2009), he was a married man in his 40s with a background in education; we have no doubt therefore that he not only should have been aware of appropriate boundaries and the risks attached if they were overstepped, but that he was so aware.

Stage 2 – Aggravating and Mitigating Factors

21. The Panel next considered the aggravating and mitigating factors.
22. The Panel found that many of the aggravating factors listed in the Guidance were present in this case⁴. Most of these aggravating factors informed our conclusions about the levels of harm and culpability, and we were very conscious of the importance of not double-counting. Nevertheless, given the relative positions of the Respondent and Person A, this was a clear

⁴ The misconduct alleged and found proved lasted between March 2014 and June 2015 and thus took place over a prolonged period of time; there was a breach of a position of trust, power and pastoral relationship; there were attempts to conceal the misconduct from his wife, person A's husband and Jean Kerr; his age and experience were such that he should have known (and did know) the seriousness of his misconduct.

breach of a position of trust and power. Moreover, although we were told that The Gathering was disbanded in October 2014, we are satisfied that to all intents and purposes the Respondent remained in a pastoral relationship with Person A throughout the period with which we were concerned.

23. In so far as mitigating factors are concerned, the Panel took into account a degree of insight displayed by the Respondent after the complaint came to light. Firstly, he made a voluntary admission that he had kissed Person A; secondly, when Jean Kerr contacted the Respondent after the CDM process had begun (notwithstanding that she had been advised not to do so), and offered to delete messages that were potentially relevant to the investigation, he appropriately asked her not to do so, and not to contact him. We also take into account in this regard, the statements of – in particular – Jeremy Fraser⁵, and Elwin Cockett⁶, both of whom detailed discussions that they had had with the Respondent after the complaint was raised about his understanding of safeguarding and boundaries.
24. This insight shown, as set out above, suggests that the Respondent may be able to learn from his past errors, and with appropriate support, training and supervision, resume public ministry in the future.
25. In addition, we took into account the character evidence provided to us, the fact that there have been no previous findings of misconduct recorded against the Respondent, and the fact that no further allegations have been made.
26. The Panel is pleased to note that it would appear, in respect of both parties, that they are reconciled with their spouses.

Stage 3 – Penalty

27. In determining the appropriate penalty, the Panel applied the principle of proportionality. In order to do so, the Panel considered each available penalty in turn, starting with the lowest, and only moving to the next level of penalty if a lower level was insufficient to mark the misconduct and/ or protect from future risk.
28. The Panel gained assistance from the Guidance in the sections dealing with Sexual Misconduct – para 2.2, and Personal Misconduct – para 4.2, and (as noted above) paid due regard to the views on penalty expressed by the Bishops.
29. The Panel considered that had the misconduct been limited to that set out in Allegation 2 (gifts and a single kiss) then, notwithstanding the failure to maintain professional boundaries, it *might* have been possible to deal with the misconduct with a rebuke and injunctions given the low value of the gifts, as it is unlikely that the threshold for prohibition would have been crossed. However, the Panel was primarily concerned with the more serious sexual misconduct with Person A who, like the Respondent, was married, who was vulnerable, and with whom the Respondent had a pastoral relationship.

⁵ Statement dated 7/5/21; original hearing bundle p.153

⁶ Statement dated 6/5/21; original hearing bundle p.158

30. As is noted in paragraph 2.2 of the Guidance on Sexual Misconduct:

‘Adultery is destructive of marriages and is hurtful and disturbing for the children of the families affected. If the adultery is with a person within the cleric’s area of pastoral responsibility, that is a significant aggravating factor, particularly if issues of vulnerability, exploitation and abuse of position arise. Removal from office and prohibition, either for life or for a limited time, are usually appropriate.....Sexual conduct outside of marriage is contrary to the Church’s teaching and should also be dealt with firmly.’

31. The Panel concluded that taking into account the levels of harm and culpability as found by us, together with the Guidance on Sexual Misconduct as set out above, neither a rebuke nor an injunction, whether individually or in combination with each other, would be adequate to meet the seriousness of this misconduct.

32. The Panel next considered whether Removal from Office would be an appropriate and proportionate penalty. The Panel took into account the fact that the Respondent’s present position is in a different diocese, and that he is therefore removed from Person A and the area of ministry in which the misconduct arose; however, the seriousness of the misconduct is such that in our view, Removal from Office on its own would be insufficient, but that Removal from Office, coupled with a limited prohibition would be appropriate, proportionate and necessary.

33. Our conclusion was reached on our analysis of all the material as detailed above, but it concurs with that reached also by the Bishops and concurs with that identified as the appropriate penalty in the Guidance.

34. Given the length of time for which the Respondent has had limitations attached to his ministry, or has been suspended, the Panel concluded that a limited prohibition of 6 months was proportionate.

35. The Panel was concerned that because of the length of suspension whilst these proceedings have been ongoing, the Respondent has undertaken little if any formal training with regard to maintaining boundaries, or safeguarding (within the Church) since at least 16 November 2020⁷. The Panel therefore consider that an injunction is necessary to ensure that the Respondent has training in these areas that were central to the misconduct before resuming ministry. The Panel is further of the view that if and when the Respondent returns to active ministry, he should be subject to supervision (which appeared to be absent in his ministry in Rochester) and would benefit from pastoral support. The Panel consider that an injunction in these terms – which is intended primarily to be rehabilitative and not punitive, should be administered by the Diocesan Bishop in whose diocese the Respondent is to serve. As it is important that the Diocesan Bishop should have confidence in the exercise of ministry by those that serve in their diocese, and as the Diocesan Bishop will be in the best position to assess when the Respondent no longer requires active supervision or support, the Panel do not specify a period of time for the operation of this injunction, which should remain in place for as long as the Bishop considers it necessary.

36. Accordingly, the Panel impose the following injunctions which are intended to protect against future risk and assist with rehabilitation:

⁷ The date of his suspension

- (a) An injunction that prior to the recommencement of ministry, the Respondent must undertake, and complete, training courses relating to (i) the safeguarding of vulnerable adults; and (ii) pastoral and professional boundaries; as directed by the Diocesan Bishop of the area where he is to exercise ministry, having regard to the findings and concerns set out in the Panel's decisions;
- (b) An injunction that the Respondent is to cooperate with the supervision of his ministry and with appropriate pastoral support. The supervision and support is to be provided by such person, for such fixed length of time and in such respects as the Diocesan Bishop of the area where he is to exercise ministry may determine, upon the grant of any authority to minister in his or her diocese.

Conclusion

37. The penalty imposed with effect from pronouncement on 3 August 2023 is, therefore:

- (a) Removal from Office (as priest in charge of the benefice of Little Ilford in the diocese of Chelmsford);
- (b) A limited prohibition preventing the respondent from exercising any ministry for a period of 6 months;
- (c) Injunctions as set out at paragraph 36 above.

Dated 4 August 2023