IN THE COURT OF ARCHES

ON APPLICATIONS FOR PERMISSION TO APPEAL OUT OF TIME AND TO ADDUCE NEW EVIDENCE AND FOR LEAVE TO APPEAL

RE: THE REVEREND MS HELEN GREENHAM

DETERMINATION OF APPLICATIONS

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1. Summary of Decision

Permission to admit new evidence is refused, the Dean having directed that this application should be determined without a hearing.

Permission to appeal out of time is refused, the Dean having directed that this application should be determined without a hearing.

In the light of the decision to refuse permission to appeal out of time, there is no need to determine the application for leave to appeal, but, had it been necessary, leave would have been refused.

2. Introduction

2.1 Three connected Applications have been made on behalf of the Rev Ms Helen Greenham arising out of the Decision on Penalty of the Bishop's disciplinary tribunal for the diocese of Birmingham which was pronounced in public on 6th March 2023 and for which reasons in writing were issued on 11th May 2023 ("the Decision").

2.2 The Applications are:

(1) for leave to appeal against the Decision ("Application 1");

(2) for permission to appeal against the Decision out of time ("Application 2")

(3) for permission to rely at the hearing of the appeal on new evidence which was not before the tribunal ("Application 3").

2.3 By virtue of s.20 of the Clergy Discipline Measure 2003 and r.4D of the Clergy Discipline (Appeal) Rules 2005 ("the Rules"), the test is whether the Grounds disclose a real prospect of success or whether there is another compelling reason for allowing an Appeal to be made. When considering the prospects for an appeal against penalty, the test is whether there is a real prospect of establishing that the penalty was excessive: *Bulloch* (2021). Under r.4D(3), leave must be given if one of the judges is satisfied that there would be real

prospects of success on appeal or that there is some other compelling reason why the appeal should be heard.

2.4 By virtue of r.9 (5) of the Rules an application for permission to appeal out of time shall be determined by the Dean and one duly appointed judge and, if the Dean so directs, may be determined without a hearing. Permission shall be given if at least one judge is satisfied that:

(a) there was a good reason why the applicant did not appeal in time;

(b) there would be a real prospect of success on appeal or there is some other compelling reason why the appeal should be heard; and

(c) the other party would not suffer significant prejudice as a result of the delay.

2.5 By virtue of r.18 of the Rules, an application to admit new evidence may be determined by the Dean with or without a hearing. The Dean may decide to admit new evidence provided that she is satisfied that:

(a) the evidence was not available and could not reasonably have been obtained for the tribunal hearing;

(b) the evidence, if it had been before the tribunal, could have had an important bearing on the determination of the matters before it; and

(c) the evidence appears to be credible.

2.6 We deal with the Applications in reverse order.

3. Application 3

3.1 In accordance with the Rules, this Application was determined by the Dean alone.

3.2 Via the Registrar, the Dean consulted the Parties as to whether or not they consented to the determination of this Application being made without a hearing. It was agreed that the Dean should do so.

3.3 Having regard to the Overriding Objective, the Dean concluded that this Application could, proportionately, be considered and determined without a hearing. The Dean has read the report in respect of which permission is sought, together with full written submissions by Counsel on behalf of the Applicant and the Designated Officer. In the circumstances, the Dean did not consider that anything would be materially gained by an oral hearing, which would have added to the costs and caused delay.

3.4 The new evidence is the report of Dr Barton dated 13th June 2023 ("the second report"). The second report was, according to the Applicant's Grounds, produced in response to the production by the tribunal of the embargoed version of the Decision. Dr Barton had, in her first report, been asked by the Applicant's solicitors to *"assess Rev Greenham's current psychological condition and how the impact of previous experiences on her behaviour that has led to her misconduct"* (*sic*) (Skeleton Argument [5]). In her second report, she was instructed to consider the question: "*Do you have any comment on the Tribunal's treatment of the contextual caveats in your report that there may be 'other experts' who may have 'different opinions' to you or that there are a 'range of opinions'?"*

3.5 Turning to the statutory questions in Rule 18:

(a) To the extent that the second report comments on the tribunal's Decision, it could not have been obtained for the tribunal hearing. Having said that, Dr Barton's first report dealt with the same general matters which she covered in her second report, most significantly, underlying psychological reasons for the Applicant's behaviour which constituted the admitted misconduct and prospects for her psychological treatment and prognosis (Skeleton Argument [25], [27]). These were matters which Dr Barton could and did, within the stated limits of her expertise, deal with in her first report. If the Applicant's legal advisors had wanted her to deal with those matters in greater depth before the tribunal, they could have asked Dr Barton to do so; the tribunal properly noted (Decision [87]) that *"Dr Barton was not directly asked whether there was a realistic possibility of the Respondent being rehabilitated to ministry".* Indeed, whilst Dr Barton is qualified to express judgments on the Applicant's psychological condition and prospects, the restraint shown in the scoping and expression of the first report was appropriate, since Dr Barton does not hold herself out to be expert in understanding the particular considerations in relation to fitness for ordained ministry. The fact that proper restraint was shown by the Applicant's professional team in relation to the first report does not mean that the matters covered in the second report could not have been obtained, subject to the witness's expertise and the proper scope of expert evidence and admissibility. On the contrary, the expert witness was available to be asked by the Applicant's representatives to comment in writing on such questions as it was proper to put to her. The Dean agrees with the Designated Officer's characterisation of the second report as an attempt to take *"a second bite at the cherry"*; facilitating such an attempt is not the purpose of the limited jurisdiction to admit new evidence on appeal. The test in paragraph (a) is not met. As all three criteria in Rule 18 must be met, this failure is fatal to the application to admit new evidence but, for completeness, brief reasons are given under the other two paragraphs.

(b) Ultimately, the question of appropriate penalty was in the discretion of the tribunal, having regard to a range of matters. The Applicant's psychological condition and prognosis was only one such matter. The tribunal properly identified at Decision [91] – [93] highly relevant and important matters arising in relation to the trust which the public is entitled – and, indeed, invited by the Church – to place in ministers of the Church of England (Decision [49]). The second report, whilst containing further detail than the first report on the causes and effects of the Applicant's psychological condition during the period of misconduct, as well as greater detail on prognosis, including material derived from a second, post tribunal, interview, did not purport to address these important questions of public trust, nor could it have done. Given the decisive nature of the tribunal's assessment at [93] that *"even if we were of the view that the Respondent had a realistic prospect of developing a sufficiently robust mental health state, as well as the other skills required of ministry, we see no realistic prospect of her being trusted again with the Church and community, such that she be given the cure of the souls of any Parish or any other ministerial role"*, the admission of the second report could not have had an important bearing on the outcome had it been before the tribunal. In a case where *"the only live issue …was whether ..prohibition should be for a limited period or permanent"* (Decision [80] and Applicant's Skeleton Argument [5]), the second report would not have affected

the key question which was, ultimately, a judgment by the tribunal on public trust. The test in paragraph (b) is not met.

(c) There is no reason to doubt the credibility of the second report. The test in paragraph (c) is met but, since the tests under the other two paragraphs have not been satisfied, Application 3 fails.

4. Application 2

4.1 In accordance with the Rules, this Application was determined by both judges. Their determination is unanimous. For similar reasons to Application 3, the Dean determined that this Application should be determined without an oral hearing.

4.2 We have assessed this Application under the statutory criteria set out in Rule 9(5).

4.3 Under paragraph (a), we have taken 11th May 2023 as the relevant start date from which the 28 day period for seeking leave to appeal runs. We note, however, that the tribunal's decision was issued to the Parties in embargoed form on 28th April 2023 and, as set out in the Applicant's Skeleton Argument [40], it is clear that her professional team was thinking in terms of an appeal from 28th April. We note, from the same paragraph, that Dr Barton's second report was not received until 13th June, five days after the deadline for appealing; no explanation is given for that delay. Moreover, it appears from Skeleton [40] that work on drafting the Appeal papers did not commence until after the second report was received. The Appeal was lodged with the Registry on 27th June 2023, 14 days after the receipt of the second report. The first two Grounds of Appeal do not depend on the admission of the second report and could have been prepared in advance of 13th June, so that the only work remaining to be done after receipt of that report would have been that relating to the third Ground. Yet, apparently, according to Skeleton [40], this was not done; no explanation is given for that omission. Further, we agree with the Designated Officer's suggestion that the Appeal could have been lodged on the basis of the first two Grounds, and the Registry informed that it was anticipated that a further Ground might follow in an amended Appeal after receipt of the second report. No explanation has been given for the omission to follow these obvious ways of mitigating the delay in lodging the Applications. Accordingly, we find that the test in paragraph (a) is not met. As all three criteria in Rule 9(5) must be met, this failure is fatal to the application to admit new evidence but, for completeness, we also give our reasons in relation to the other two paragraphs of the Rule.

Real Prospect of Success on Appeal

4.4 Three Grounds of Appeal are pleaded as follows:

(1) The Tribunal erred by failing correctly to assess the safeguarding risk posed by PG during the period covered by the complaint.

(2) The Tribunal erred by finding that the Appellant was *'actively complicit in misleading both Bishops'* and that her misconduct amounted to '*"shielding" or "protecting" a sexual offender.'*

(3) The Tribunal erred in its understanding of the clinical psychological report and failed to give it sufficient weight during its decision on penalty.

It is further submitted in the Grounds that in all the circumstances of the case, the appropriate penalty that ought to have been imposed was a removal from office and a limited prohibition.

4.5 The Applicant's Grounds of Appeal are supported in the Skeleton Argument. Our reasons do not purport to respond point by point to the Skeleton, but we have taken it and all the other materials fully into account in assessing the prospects of success.

Ground (1)

4.6 We agree with the Skeleton [20] that the safeguarding risk posed by PG during the lengthy period of 2011 – 19 is fundamental to understanding the seriousness of the admitted misconduct. We do not accept, however, that it was necessary or, indeed, possible for the tribunal to undertake its own safeguarding risk assessment; they were not equipped to do so and this was not legally required in order to come to a proper assessment of the gravity and implications of the misconduct for the purposes of considering an appropriate penalty, which was a different, judicial, exercise.

4.7 Nor can the seriousness of the misconduct or the imposition of penalty be based on the fact that no complainants of direct sexual abuse by PG have emerged from this period, since, as the Applicant's own experience demonstrates, disclosures of abuse may be prompted many years after they have occurred. One reason why the admitted conduct was so serious was, as the tribunal properly found (Decision [54] – [55]), because the assessment of risk by the Church authorities was impaired by the Applicant's lengthy non-disclosure and because of the consequent exposure to serious but improperly assessed risk of harm of children and young people coming into contact with the Applicant and, potentially, within the sphere of her husband, in the course of her ministry. We bear in mind that during the relevant period she was not only the Team Vicar but also Director of Children and Families Ministry in the parish of Solihull (Decision [29], [57]). The tribunal did not err in weighing the harm done to the parish community, the Second Complainant and the wider Church by the Applicant's breach of trust (Decision [56] [57]); harm and breach of trust were highly relevant and serious matters, to which they were entitled to attach significant weight. Moreover, Ms CD was properly characterised by the tribunal as a victim of the misconduct and it was lawful for them to take her Victim Impact Statement into account. The weight they gave to these matters was for them, unless some legal flaw can be demonstrated in their reasoning or conclusions. There is no real prospect of persuading the Court that Decision [51] is legally flawed; the tribunal noted the absence of any evidence of sexual abuse by PG during the relevant period, but properly went on to consider, amongst the factual matrix, the harm felt by those who now know that they were exposed by the Applicant to such risk.

Ground (2)

4.8 There was no error on the part of the Chair of the tribunal in raising with the Applicant's Counsel the questions of deliberate shielding and active protection of PG. Although these words and concepts had not been specifically pleaded, it was a proper line of enquiry for the tribunal to pursue because it was clearly germane to culpability and seriousness, and it was only fair to put the point to Counsel so that he could deal with it. Neither the Grounds nor Skeleton suggest that the Applicant's Counsel resisted the line of questioning at the time. The tribunal's findings at Decision [84] were fair, on the material before them; as a

matter of fact, the Applicant's conduct with the Bishop of Birmingham and subsequently in the parish did have the effect of concealing material information about PG and facilitating his presence in a setting which carried risks of serious harm occurring to vulnerable people. The underlying psychological reasons for the Applicant's failure to disclose, which they took into account as mitigation (Decision [60] – [73]), do not reduce the seriousness of the risk which her conduct occasioned. The tribunal properly noted that Dr Barton did not opine that the Applicant's treatment by her husband had *"rendered her an automaton"*. They also accurately observed that Dr Barton did not claim expertise in the specialised research area of coercive control (Decision [63]); no application was made for permission to adduce a second expert's report on this point – the case was not put on the basis of coercive control by the husband. The tribunal specifically discounted the meeting with the Bishop of Hereford and imposed the penalty on the basis of the Applicant's having misled the Bishop of Birmingham which, as they correctly found, had not been disputed by her. For reasons set out above, the result of this concealment was to deprive the Church authorities of the material necessary for undertaking a full and proper risk assessment, such assessments being central to good safeguarding practice, as the Applicant will have known from her prior work as a teacher and the safeguarding training she had received both in that profession and as a priest (Decision [57]).

Ground (3)

4.9 The tribunal's approach to the expert evidence and the weight which they gave it were within the legally permissible range. The extracts from the Decision highlighted in Skeleton [28] contain conclusions which, whilst unwelcome to the Applicant, were ones at which the tribunal were entitled to arrive; they had clearly read the report thoroughly and taken it carefully into account in their deliberations. It is not for Dr Barton to opine on the legal question of whether or not their approach to the report was proper. They did not misunderstand the report; they fairly highlighted aspects of it in their Decision, in particular Dr Barton's proper caveats (Decision [63]) about the potential range of expert opinion, the content of the interview and the limit of her expertise (Decision [60]-[71]).

4.10 The tribunal were entitled to take into account the chronology of the ending of the Applicant's relationship with her husband and her reporting of his crimes (Decision [65], [69]). The complaint on their handling of this element is headed in the Skeleton 'stereotypes in sexual complaints' and it is suggested that the tribunal fell into error by not making allowances for the variety of circumstances which accompany disclosures of sexual offences. At Decision [70] – [71], the tribunal fairly considered the evidence of the Applicant's psychological condition as part of their assessment of this passage of her conduct; they did not reject Dr Barton's report but noted the proper professional caveats which the report contained. At Decision [59] the tribunal gave the Applicant credit for eventually reporting her husband's history of sexual abuse to the Church and the role that this might have played in his subsequent conviction and imprisonment. Their overall conclusion on culpability at Decision [72] – [73] discloses no legal error.

Penalty Excessive?

4.11 Given the nature of the misconduct and its implications for public trust in the clergy of the Church of England, we are unable to conclude that there would be real prospects of persuading the Court that the penalty was excessive. Whilst it is a very severe penalty, the seriousness of the risk posed to vulnerable people over a period of some 8 years, together

with the responsible position which the Applicant held, both generally as Team Vicar and specifically as Director of Children and Families Ministry, places the misconduct at the upper end of the spectrum. The Church rightly takes safeguarding breaches extremely seriously, as it must, if it is to ensure a safe church as the setting for its ministry and outreach, especially to young people. The Applicant's own psychological condition, which has been affected by the abuse which she suffered as a child and its after effects in adult life, is a cause for profound sympathy, but it cannot erase the seriousness of what happened. The penalty was proportionate to the misconduct and we do not find that there are real prospects of persuading the Court that it was excessive.

Other Compelling Reason

4.12 No other compelling reasons for allowing an appeal out of time have been pleaded. However, we have carefully considered whether there might be such a reason. We are unable to identify one. This case is highly fact-specific and we do not consider that entertaining an appeal would give the Court the opportunity to deal with any wider points of general importance.

4.13 Accordingly, paragraph (b) of the Rule is not satisfied.

Prejudice

4.14 We do not accept that there would be prejudice to the other Parties in the conduct of an appeal (litigation prejudice). The factual basis of the misconduct is admitted and an appeal would take the form of legal submissions on the basis of the admitted facts and documentary material.

4.15 We do, however, accept the Designated Officer's submission to the effect that finality in litigation is an important consideration in general and, specifically, in this case where the Second Complainant has suffered harm as a result of the misconduct, along with the worshipping community of the parish, as well as the reputational damage to the Church as a whole. On balance, we do not accept that these harms mean that any other Party would suffer 'significant prejudice' as a result of granting permission for an appeal to be brought out of time. If we had felt able to find for the Applicant under paragraphs (a) and (b), therefore, we would not have rejected Application 2 on the basis of paragraph (c).

Application 1

4.16 For the reasons set out at paragraphs 4.4 – 4.12 above, we refuse Application 1.

19 September 2023

MORAG ELLIS KC
Dean of the Arches

LYNDSEY DE MESTRE KC
Chancellor of York and St Albans