

**IN THE MATTER OF A COMPLAINT UNDER THE CLERGY DISCIPLINE  
MEASURE 2003**

**BEFORE THE BISHOP'S DISCIPLINARY TRIBUNAL FOR THE DIOCESE OF  
OXFORD**

**Complainant: KAREN GADD**

**Respondent: THE REVEREND CANON RICHARD PEERS**

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**RULING IN RESPECT OF PARAGRAPH 309  
CLERGY DISCIPLINE MEASURE 2003: CODE OF PRACTICE**

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Introduction

1. Paragraph 309 of the Clergy Discipline Measure 2003: Code of Practice (the “Code of Practice”) states as follows:

**“309.** Where an allegation has been referred for determination before a tribunal or court, the Chair may certify that an act or omission, in connection with the proceedings or an order, committed by *any person* is a contempt and refer the matter to the High Court.”<sup>1</sup>
2. During the hearing an issue was raised as to the possession and use of documents relating to the proceedings by third parties and the provision of these documents to them by the Complainant, Mrs Gadd. As a result of this, Geoffrey Haines and David Lamming were contacted by the Provincial Registrar on my behalf regarding documents said to be in their possession. Mr Haines responded stating that he had destroyed the documents and Mr Lamming wrote confirming that he held them but had not disseminated them. He subsequently provided a statement explaining the basis upon which he had been provided with the documents.
3. As a result of these matters, the parties were invited to provide me with assistance<sup>2</sup> as to whether there were any further steps that should be considered. The Designated Officer has indicated his view that there are no further steps required in this case. Mr Gau’s submissions (which he indicated were provided without input from his client) make two principal complaints. These are: (i) the possession and/or dissemination of confidential material by third parties and (ii) a wider complaint regarding interference with the CDM process. Mr Gau asks me to certify (under paragraph 309 of the Code of

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<sup>1</sup> This is repeated at page 15 of the Statutory Guidance issued February 2021 (the “Statutory Guidance”), paragraph 6.

<sup>2</sup> By 4pm on 5 April 2024.

Practice (“Paragraph 309”)) that these matters amount to a contempt of court and to make a referral to the High Court<sup>3</sup>.

Absence of guidance as to process

4. Although the Code of Practice allows the Chair to certify a contempt in respect of “any person”, including third parties to the proceedings, there is no procedure or guidance (in any of the Clergy Discipline Rules 2005 (as amended) (the “Rules”), the Code of Practice, Statutory Guidance or other material) setting out how such a contempt is either to be certified or referred under Paragraph 309.
5. It seems to me that some assistance can be drawn from the broadly analogous process by which the High Court determines whether or not to allow committal proceedings to be brought under the Civil Procedure Rules (the “CPR”) part 81. The following relevant principles can be distilled from the decision of Joanna Smith J. in *Frain & McKinnon v Reeves & Curnock*<sup>4</sup> (paragraph 19):
  - a. When considering the approach to be adopted by the court to applications for permission<sup>5</sup> the question at that stage is not whether a contempt of court has in fact been committed, but whether proceedings should be brought to establish whether it has or not;
  - b. Because proceedings for contempt of court are public law proceedings, when considering whether to give permission the court must have regard to the public interest. That includes consideration of whether the case is one in which the public interest requires that committal proceedings should be brought;
  - c. The applicable standard of proof in respect of contempt of court is the criminal standard;
  - d. In assessing the prima facie case the court will take account of all of the circumstances of the case;
  - e. The court must consider whether it is proportionate to allow committal proceedings to be brought; and
  - f. The court must also consider whether contempt proceedings would further the overriding objective (in civil proceedings this is the overriding objective of the CPR; in CDM proceedings an overriding objective is articulated in rule 1 of the CDM Rules).

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<sup>3</sup> The species of contempt is not specified. It appears that what is envisaged is either an alleged contempt by reason of breach of the Code of Practice and/or Statutory Guidance (akin to a contempt for a breach of an order or judgment) or a “contempt in the face of the court”, the essence of which is defined as “conduct that denotes wilful defiance of, or disrespect towards, the court or that wilfully challenges or affronts the authority of the court or the supremacy of the law itself” (*Robertson v HM Advocate* [2007] HCJAC, 2007 SLT 1153 at [29], relying on *HM Advocate v Airs* (1975) JC 64).

<sup>4</sup> [2023] EWHC 73 (Ch)

<sup>5</sup> Which in my view is closely aligned to the decision faced by a Chair under the Code of Practice as to whether or not to investigate for the purposes of assessing potential certification under paragraph 309.

6. I would add to these that, in the case of an alleged contempt said to be based on breach of rules, codes of practice or guidance materials, the mere fact of a breach of the rules (etc) is not, of itself, enough. More intentional conduct would need to be proven, akin to the “*wilful defiance or disrespect*” required for contempt in the face of the court.
7. Furthermore, in my view the relevant rules would need to be sufficiently clear as to what is and is not permitted in order for a person alleged to be in contempt to know clearly what he or she had done was or was not permitted.

Applying the principles to this case

8. Although I have been invited to certify, without more, a contempt of court in this case, I consider that the question before me at this stage is not whether a contempt of court has in fact been committed, but whether further steps should be taken to establish whether it has or not. If I consider that they should, those steps would plainly include, as a minimum, contacting the relevant third parties and providing details and particulars of the alleged contempt, ensuring that they are given a fair chance to answer the allegations and/or to purge the contempt and arranging a process by which they could be heard. If I consider that they should not, then the matter is at an end.
9. With this in mind, I will deal with each of the issues raised by Mr Gau in turn.

*Possession and/or dissemination of confidential material*

10. As to the possession and/or dissemination of confidential material, it seems to me that the starting point is the fact that there is some inconsistency in the Code of Practice and the Statutory Guidance as to the precise use to which documents can be put.
11. Paragraphs 306 and 307 of the Code of Practice state:

“**306.** Allegations of misconduct under the CDM are private and confidential. This is to ensure that matters are dealt with fairly and that the process is not prejudiced. It extends to complainants, respondents and witnesses.

**307. All matters should be kept strictly private and confidential.** This includes written documents and material which, save for legal representatives, should not be shared with third parties.”

and page 15 of the Statutory Guidance states:

“1. Allegations of misconduct under the CDM are private and confidential. This is to ensure that matters are dealt with fairly and that the process is not prejudiced. It extends to complainants, respondents and witnesses...

...4. **Accordingly, all matters relating to an allegation should be kept strictly private and confidential.** This includes written documents and

material which, save for legal representatives, should not be shared with third parties.”

12. However, the following page of the Statutory Guidance (“Frequently Asked Questions”) states as follows:

**“Can I share documents with others, for example, witnesses I may wish to call?”**

Yes, documents such as the allegation of misconduct or answer can be shared with those who have a legitimate reason for seeing them. For example, legal professionals, witnesses, healthcare professionals or others providing support during the disciplinary processes. Documents should not be used in such a way which may prejudice the proceedings and the parties’ expectation of privacy and confidence.”

13. In these circumstances there is, in my view, ambiguity as to the limits on the dissemination of documents and the precise use to which such documents can be put, such that I do not consider there to be a realistic prospect of demonstrating the required elements of contempt to the appropriate standard.
14. It may be necessary in another case to investigate the precise ambit of the Code of Practice and the Statutory Guidance (and the Rules) and how they interact but that is not warranted here. Mr Lamming has stated that he has not shared documents with any other person. Mr Haines has confirmed that he has destroyed documents he was previously holding. The proceedings are now at an end with the complaint having been dismissed. In these circumstances I consider that it would be disproportionate to investigate further the questions of possession, dissemination and/or use to which documents have been put and it is neither in the public interest nor in furtherance of the overriding objective to do so.

*Interference with the CDM process*

15. In terms of the wider concern raised as to interference with the CDM process, although Mr Gau touched on this in his closing submissions, in respect of the question of certification under paragraph 309 this is a new point upon which no potential contemnor has been asked to comment.
16. There are no findings by the Tribunal that would amount to contempt of court on this basis. In so far as there are references in the Tribunal’s decision to evidence it received regarding the involvement of third parties, those relate to the Tribunal’s assessment of the reliability of the evidence that was given and the circumstances in which it was produced. They do not amount to findings of wilful defiance, disrespect or challenge or other such interference with the process. Any such allegations would have to be properly particularised and investigated through an *ad hoc* process determined by me in order to certify a contempt.
17. Taking account of all of the circumstances of this case - including the fact that the proceedings have now concluded with the complaint being dismissed and that the complainant does not appear to wish to pursue any further action - in my judgment it

would be disproportionate to conduct any such investigation. There is no public interest in doing so in these circumstances nor is it in furtherance of the overriding objective to prolong this matter – to the contrary, there is a significant need for finality in these proceedings. I therefore do not intend to set that process in train.

Conclusion

18. For the reasons given above, I do not consider that there are grounds to justify any further steps being taken under paragraph 309 of the Code of Practice and I decline to do so.

**Lyndsey de Mestre KC**

**Tribunal Chair**

**08.04.24**