

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

Complainant: "E"

Respondent: "F"

Constitution of the Tribunal: Chancellor Ruth Arlow (Chair)
The Revd Canon Heather Butcher
The Revd Andrew Cowie
Mrs Kashmir Garton
Mrs Michelle Tackie Obende

Appearances: Mr Benjamin Harrison, Counsel for the Designated
Officer
Mr Mark Ruffell, Counsel for the Respondent

DETERMINATION

An order has been made pursuant to rule 49 of the Clergy Discipline Rules 2005 which provides that the name and any other identifying details of the complainant and respondent must not be published or otherwise made public by any person. Anyone who fails to comply with these conditions (irrespective of what is contained in this Determination) may be sent to prison, or fined, or both.

1. This is the determination of a complaint dated 18 August 2022 brought by E ('the complainant') against F ('the respondent'). The complaint relates to a course of conduct alleged to have been perpetrated against the complainant by the respondent in the early to mid 1980s. On 13 October 2021 it was determined that the complainant was a vulnerable adult at the time of the alleged conduct, which was sexual, such that the complaint was not time barred under s 9(3) of the Clergy Discipline Measure 2003 ('the Measure').
2. On 25 July 2023 the Deputy President referred the following charge to this tribunal for determination:

The conduct of the respondent, F, was unbecoming or inappropriate to the office and work of a Clerk in Holy Orders within s 8(1)(d) of the Clergy Discipline Measure 2003 in that, on divers days between about March 1983 and January 1985 he, a married man, engaged in inappropriate sexual acts with E with whom he had a pastoral relationship, which involved:

- (a) Acts of exposure of his penis upon more than one occasion;
 - (b) Acts of anal penetration and attempted penetration of E by his penis upon more than one occasion;
 - (c) Acts of attempted vaginal sexual intercourse with E upon more than one occasion.
3. Directions for the progress of this matter to determination were given on 1 August 2023, 18 April 2024 and 21 August 2024. The hearing of this matter took place over 3 days between 30 September and 2 October 2024 with deliberations of the tribunal taking place on 3 October. At the hearing the complainant's case was presented on behalf of the Designated Officer by Mr Harrison and the respondent's case was presented by Mr Ruffell. The tribunal heard evidence from the complainant, the respondent, the respondent's wife and the respondent's daughter. A further witness statement from the priest who succeeded the respondent in his incumbency in the 1980s was taken as read by agreement between the parties.
 4. For most of 1983 the respondent was the Anglican chaplain at a school ('the school'), and in June 1983 was inducted as the incumbent in a local parish. He was aged around 40. Throughout the relevant period the complainant, a Roman Catholic, was a teacher at the school and aged around 25 years.
 5. Both parties accept that they met as a result of their work at the school. Neither party was able confidently to identify their first meeting, but the complainant described an occasion when she went into the school chapel in the Spring of 1983 and the respondent was already in there. She describes a conversation which took place in which the complainant told the respondent that she was struggling with the breakdown of a relationship and he suggested that he should visit her at her flat to talk about it. She describes that he visited her later that day and during the course of the visit he sat close to her on the sofa, placed his hand on her thigh and later exposed his partially erect penis to her. She responded angrily and he left.
 6. The respondent denies this incident and instead describes his earliest memory of the complainant as a conversation in a car park in which she told him of the breakdown in her relationship/engagement. He describes responding to her by indicating that it was inappropriate for him to have that conversation with her and directing her towards a Roman Catholic chaplain for support.
 7. After this time the complainant describes a number of incidents where the respondent, both at his home and at hers, inserted his penis into her anus and attempted to have vaginal intercourse with her over a period of around two years. Her evidence was that she did not consent to those acts but was unable to tell the respondent to stop. The respondent denies any sexual relationship or encounters with the complainant.

8. The parties provide very different descriptions of the extent of interaction between them throughout this period. The complainant describes regular contact between them throughout this time, including frequent visits to the respondent's home for meals and at least one period where, at the invitation of the respondent and his wife, she stayed there. By contrast, the respondent describes a much more limited relationship centred largely around the need to work together professionally in relation to their duties at the school. Whilst accepting that she had joined them for meals at their home from time to time, neither he, his wife nor his daughter can recall a period when the complainant stayed there.
9. It is not in dispute that throughout this period the complainant was suffering with serious mental health problems. She was voluntarily admitted as an inpatient at two psychiatric units between 15 July and 26 August 1983 and 5 December 1983 and around May 1984 respectively. She benefitted from the continuing support of mental health professionals either side of and between these periods of residential care.
10. Both parties accept that any contact or communication between them had stopped by the end of 1986 and, save for a card sent by the complainant to the respondent's family in 2001, there has been no further contact between them.
11. In 2019 the complainant disclosed the substance of this complaint to a Roman Catholic priest of the Scottish Bishops' Conference. Ultimately the case was referred to the police who, after investigation, decided in January 2021 to take no further action in relation to the matter as a result of concerns about the ability to prove a lack of consent by the complainant. Clearly very different considerations apply in the context of church safeguarding and discipline and at that stage the matter was also referred to the safeguarding team at the diocese in which the respondent was living. A further investigation was undertaken. The complainant's Form 1a complaint was presented in August 2022.

The Evidence

12. In this case we were faced with two directly contradictory versions of events: one from the complainant and one from the respondent. The oral evidence of the parties was supplemented by a bundle of the complainant's medical records from March 1983 to July 1986. The available documents were clearly not a comprehensive set of the complainant's medical records for that period, but were made up of those records which the police had been able to obtain as part of their initial investigation. The records appeared to include a complete set of records from her treating psychiatrist including during her second inpatient stay in December 1983 to around May 1984. They included a number of handwritten letters from the complainant to that psychiatrist. Mr Ruffell provided us with a useful chronological index of the available medical records to assist in managing the chronology of the documents relied upon for which we were grateful. It is a matter of regret for the Tribunal that a more complete set of medical records were not available for the relevant period and that independent expert evidence was

not available to assist us in navigating the mental health issues in this case. In addition to the medical records, we also had access to records of the investigations conducted by the police and the diocesan safeguarding officer between 2019 and 2021.

13. The complainant gave evidence over many hours and at times became visibly upset. She was taken through the available medical notes and described a history where she had spent a significant amount of time with the respondent and his family. As well as the sexual incidents referred to in the charge, she described having frequent meals at the respondent's home and staying there for a period on at least one occasion. She used the language of "grooming" to explain the way the respondent had behaved towards her, showing care and holding her at times and then showing anger or ambivalence towards her. She repeatedly stated that she had not been able to identify the nature of the manipulation that she described at the time as she was young and very unwell. She gave clear and repeated evidence that she had made full disclosure in relation to the association between herself and the respondent, including what was happening physically, to her psychiatrist and another medical professional (who she described as the Supervising Resident) whilst an inpatient between December 1983 and around May 1984. She also made those contemporaneous disclosures to the Abbot of a monastery whom she visited and regarded as her confessor.

14. The respondent also gave lengthy evidence and provided a very different description of the relationship between himself and the complainant. He denied any sexual contact between them. He remembered her and accepted that she may well have been invited to family meals at his home from time to time, but neither he, nor his wife or daughter, could recall the complainant ever staying at their home. He described a relationship which was primarily professional as a result of their work at the school and was adamant that no formal priestly pastoral relationship existed between them. He recalled a conversation (referred to at paragraph 6 above) where he said she had referred to personal matters and he had directed her, as a Roman Catholic, to a Roman Catholic chaplain for support. The respondent and his wife gave evidence that they were not fully aware of how unwell the complainant was at the time, although the respondent acknowledged that he was aware of her time at a residential psychiatric unit and her ongoing psychiatric support. As his oral evidence progressed the respondent seemed to concede that the relationship between the complainant and himself and his family was in fact mutually supportive and accepted the use of the word "friend" to describe the relationship. His wife was a little more reticent, saying the complainant was "between a friend and an acquaintance".

Approach of the Tribunal

15. The burden of proving the misconduct lies with the Designated Officer and he must prove that it occurred on the balance of probabilities (s 18(3)(a) of the Measure).

16. Our attention was briefly drawn to caselaw which addresses the question of how the burden of proof may be discharged in cases such as this where the allegations are particularly serious in nature. Specifically, we were directed to the decision of the House of Lords in *Re B* [2009] 1 AC 11 and the decision of Peter Jackson J in *Re BR (Proof of Facts)* [2015] EWFC 41. In addressing that issue we have been assisted by the wording of Baroness Hale in the *Re B* case at paragraph 70:

“... I would ... announce loud and clear that the standard of proof in finding the facts ... is the simple balance of probabilities, neither more nor less ... Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies.”

17. It is often not easy to reach findings about the truth of a witness’s evidence when there are such conflicting versions of events. We are mindful that the events evidenced took place approximately 40 years ago and that some of the memories and details recalled may have been affected by that significant passage of time. In seeking to reach such findings of fact in this case we were urged by Mr Harrison to follow the approach set out by Goff LJ in *Armagas Ltd v Mundogas SA (The ‘Ocean Frost’)* [1985] 1 Lloyd’s Rep 1 where he said:

“I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities.”

Whereas it is right that there is no legal requirement for corroboration before the evidence of a witness can be accepted, we have nevertheless been acutely aware of the fact that the medical records put before us were documents created contemporaneously with the events with which we have been concerned. They were not created for the purpose of any future proceedings. Given the passage of time, those contemporaneous documents have been an important source of evidence for us.

The findings of the Tribunal

18. This has been an extremely difficult determination to reach. Having carefully considered the papers and listened to the three days of evidence and argument placed before us, the panel deliberated for several hours before reaching this unanimous determination.
19. There were various facts which we were satisfied were clearly made out. Having particular regard to the medical records, especially those created by the medical professionals at the time, we were satisfied that the contact between the

complainant and the respondent at the relevant period went well beyond the rather distant and occasional contact described by the respondent in his witness statement and police interview (which was submitted as evidence in the bundle). Indeed, the respondent conceded in oral evidence that the relationship between the complainant and him and his family was akin to a friendship. It was quite apparent from the contemporaneous records that the complainant visited the respondent's home for meals and as a staying guest. Although we accept what the respondent said about his having no formal priestly pastoral responsibility for the complainant as she was a Roman Catholic worshipper from outside of the parish, nevertheless we find that the relatively frequent contact between them was such that a broad pastoral relationship existed. That relationship arose from her seeking support from him as a school chaplain and that support being offered by the respondent and his wife in the form of shared meals, lifts and welcoming her into the family home.

20. Whilst we find that the respondent and his family minimised the nature of that relationship before the Tribunal, much of their evidence indicated an inability to remember the detail of the complainant's presence in their lives and home. As is clear from the following, it was apparent that the relationship between the complainant and the respondent and his family was far more significant to the complainant than it appeared to be to the respondent's family. His wife and daughter gave convincing evidence of a warm and open family home in which very many people came and went, sharing meals and wider hospitality. We accept that that openness and welcome was offered both to the complainant and many others.
21. As well as finding that the relationship between the complainant and the respondent was more significant than he initially described, we find that that relationship was a problematic one for the reasons given below.
22. It was quite apparent from the evidence, in particular the complainant's medical records, that the complainant was suffering from serious mental ill-health at the time of the events with which we are concerned. It was also clear that whilst in that vulnerable state the complainant had a propensity to seek out and become fixated upon male relationships. The dependence which developed within those fixations included a persistent fear of anger or rejection and a strong desire for the attention and support of the man concerned. The complainant clearly developed such an attachment to the respondent as well as others, including her treating psychiatrist. The contemporaneous documentary evidence makes clear that at the time in question the complainant was seeking out the respondent's time and attention and that he was often trying to limit that contact and keep her at arm's length.
23. As far as the credibility of the respondent is concerned, we found the respondent to be a rather defensive witness who, initially at least, minimized the regularity of contact and depth of relationship between himself and the complainant. By the end of his oral testimony there had been a shift in his evidence from that described

initially in his witness statement and police interview and he had acknowledged that a friendship of sorts had existed. We were aware that that defensiveness and minimisation existed in the context of very serious allegations having been made against him.

24. We were grateful for and accepted the evidence of the respondent's wife and daughter and found them to be essentially transparent and honest witnesses who painted a credible picture of a warm and welcoming home into which many, including the complainant, were welcomed.
25. Turning to the credibility of the complainant in the giving of her evidence, we do not accept the argument which was put to the complainant that the allegations were vindictive or malicious and a result of her feeling spurned by the respondent after her attentions were not returned by him. We find that the complainant was not an intentionally dishonest witness. Nevertheless, it was apparent during her oral evidence that the complainant acknowledged a risk of filtering her evidence about past events through her current knowledge and experience of safeguarding. She had clearly sought to achieve an understanding of her experiences over the intervening years and had overlaid her current knowledge to explain that context and in order to answer questions about what had happened back in 1983-85. In those circumstances and given the extreme mental health difficulties with which the complainant was suffering at the time, we relied heavily upon the contemporaneous documents in the form of the medical records to understand and assess the oral evidence given.
26. Our conclusion as to the veracity of the complainant's evidence was that she may well have experienced abuse much as she described, but we needed to be satisfied on the balance of probabilities that it was the respondent who was the perpetrator of that abuse.
27. Relying heavily upon the contemporaneous records, we noted that there was some support within them for the respondent being the person with whom the complainant had been having a sexual relationship. An early letter to her GP from June 1983 records that she had told a Senior Registrar that she had become entangled with two men, one of whom she was having sexual relations with for comfort. No names are given although the complainant indicated in oral evidence that that latter man was the respondent. Another letter to the GP a few days later suggests that the complainant is anxious about the circumstances of her liaison and feels that it may lead to "a scandal". Those letters, when read together with a letter from the complainant to her psychiatrist whilst an inpatient on 5 January 1984, are consistent with that relationship being with a married priest and could provide some support for the suggestion that those sexual relations were with the respondent.
28. Nevertheless, as was urged upon us by the advocates at the hearing, we have endeavoured to look at the evidence holistically, and there were equally parts of the medical records which cast real doubt upon the suggestion that the

respondent was the person with whom the complainant had had sexual encounters. The complainant gave clear and consistent evidence that she had made a full disclosure of the details and extent of her association with the respondent to her consultant psychiatrist and another medical practitioner whilst resident at a residential psychiatric unit. Despite this, though there is repeated reference to the complainant's contact with and dependence upon the respondent, there is no mention of a sexual relationship with the respondent in the almost 200 pages of medical evidence available to us. We found that a very striking omission. In particular, we noted the letter of discharge from the residential unit in July 1984 which comes from one of the professionals to whom the complainant said she had made a full disclosure of the abuse she suffered. That letter seeks to address the reasons for her admission, progress made whilst admitted and her prognosis and future treatment. There is mention of her "difficulty separating from mother and a great deal of fear and of exhaustion" and of challenges to her faith from her teaching work, but no mention at all of a problematic relationship, whether with the respondent or anyone else, nor of any troubling sexual experiences. This was not consistent with the complainant having made the disclosures she claimed.

29. The complainant also gave clear and consistent evidence that she had been encouraged by the two medical practitioners to whom she had made her disclosures to take a day trip out from the inpatient unit to visit the respondent in order to tell him that the problematic relationship between them must stop. She states that she undertook that visit. We find it inconceivable that two such medical professionals would have encouraged such a visit by the complainant, alone and to the respondent's home at a time when she was clearly in an extremely vulnerable state if they had been told of the sexual assaults and abuse described by the complainant. All of the medical notes from that period make no reference to anything other than a problematic relationship between the complainant and the respondent consistent with our findings at paragraph 22 above.
30. Further, there is a striking piece of evidence in a letter from her treating psychiatrist dated 21 November 1984, several months after the complainant says she had made a full disclosure of the respondent's conduct to him. In that letter he is encouraging the complainant to remind herself of the wisdom of advice given to her by the respondent to rebuild her self-esteem and confidence. Again, we find it inconceivable that such advice would have been given by the psychiatrist if he had been told of the sexual assaults and abuse described by the complainant.
31. The serious concerns about the Designated Officer's case which those pieces of contemporaneous evidence give rise to were further strengthened by the complainant's evidence, both to the Tribunal and also to the police in 2020, that she had told others about the abuse. This included telling someone closely involved in work with a psychotherapy centre in or around the time of her marriage in the latter part of 1986. When the police contacted that person in 2020, although he clearly remembered the complainant, he had no recollection of being told

“anything along those lines” by her at that time or at all. Again, given the significance of what was said to have been reported and the involvement of that person in a psychotherapy centre, we find it hard to accept that he would have simply forgotten about such an important disclosure.

32. As has already been mentioned above, we have not found this an easy case to determine. After much care and consideration we have concluded that we cannot be satisfied on the balance of probabilities that the respondent was the perpetrator of any abuse which the complainant may have suffered. The discrepancies between the evidence of the complainant and the facts demonstrated within the medical records were too great for the burden on the Designated Officer to have been discharged. It follows from the above that the complaint against the respondent shall stand dismissed.

29 October 2024