

## In the Complaint of the Venerable Annette Cooper against the Reverend Andrew Gair

### Determination

The allegation against Mr Gair which the tribunal has to determine is whether:

“the following alleged conduct of the respondent the Reverend Andrew Gair, the Rector of Debden & Wimbish with Thunderly, amounted to conduct unbecoming or inappropriate to the office and work of a clerk in Holy Orders, in that in 2005 he formed an intimate personal relationship with Mrs X, the wife of Mr X, a parishioner who had turned to the respondent for help and pastoral care when difficulties arose in his marriage.” (201)<sup>1</sup>

In reaching that determination the tribunal has to apply the same standard of proof “as in proceedings in the High Court exercising civil jurisdiction”, namely, the complaint has to be proved on a balance of probabilities: see section 18(3)(a) of the Clergy Discipline Measure 2003 and paragraph 193 of the Code of Conduct.

The allegation of conduct unbecoming or inappropriate to the office and work of a clerk in Holy Orders depends in law primarily upon the provisions of Canon C 26, paragraph 2, of the Revised Canons Ecclesiastical. The relevant part of that Canon reads:

“A clerk in Holy Orders ... at all times ... shall be diligent to frame and fashion his life and that of his family according to the doctrine of Christ, and to make himself and them, as much as in him lies, wholesome examples and patterns to the flock of Christ.”

In our view the *Guidelines for the Professional Conduct of the Clergy* (53) referred to by the Designated Officer (48), and in particular paragraphs 2.9, 2.11, 3.4, 3.10 and 10.1 of those guidelines, do no more than spell out in particular terms the clerk’s duty under this Canon. In any event we are satisfied that, if the Designated Officer makes out the allegation in the terms set out above, he would necessarily have proved a breach of that Canon. In this regard we accept the submission of the Designated Officer that “an intimate personal relationship” in the context of this allegation means an intimate sexual relationship. Adultery, that is, the full sexual act of intercourse, would fall within such an intimate personal relationship but the Designated Officer makes it clear that he does not seek to put his case on that basis but, rather, upon a less (but nevertheless still serious) form of sexual relationship.

However, before turning to the evidence it is necessary first to address a number of formal matters:

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<sup>1</sup> Numbers in round brackets refer to the paginated bundle.

Preliminary Rulings:

1. The first preliminary matter is one that has been raised in correspondence by Mr Gair. In a letter dated the 14<sup>th</sup> June 2007 the President of Tribunals notified Mr Gair of the names of those persons he proposed to appoint as members of the bishop's disciplinary tribunal (191, signed on behalf of the President by Mr Stephen Slack). Pursuant to section 22 of the Clergy Discipline Measure 2003 he informed Mr Gair that he had 14 days from the receipt of that letter in which to make representations as to the suitability of any of the proposed members. In a letter dated the 25<sup>th</sup> June 2007 Mr Gair responded (189):

“I know none of these names but would ask two things:

1. Since the substance of the case in its initial stages rests on my holding to the integrity that does not recognise the validity of women's priestly orders, I would prefer for both clergy to be male;
2. Since my experience is that even most male clergy do not understand the views of those who see things in the way that I do, I would like one of the clergy to be a member of SSC.

I hope that this is acceptable.”

Mr Slack responded to this letter on the 25<sup>th</sup> July 2007 (185) setting out the relevant parts of paragraphs 180 & 181 of the Code of Practice and asking for clarification before the matter was placed once more before the President of Tribunals. In particular he said;

“It would be helpful if you could firstly please clarify in just what way the issue of validity of women's orders is relevant to the substance of the complaint against you. Additionally, it would be helpful if you could go on to clarify precisely why, if your view on women's ordination is relevant to the complaint, the gender of the clerical members of the tribunal is relevant. Are you suggesting that female clergy would inevitably not be able to consider the complaint against you in an impartial manner, and if so why? Or are you objecting to the validity of their priestly orders as such (and thus their entitlement to act as clerical members of the tribunal in the first place)?

Second, I should be grateful if you could also please explain why you would wish both clerical members of the tribunal to be members of “SSC” (which I take to be a reference to the Society of the Holy Cross). Again, are you suggesting that any male clergy who were not members of that Society could not be impartial in their consideration of the complaint, and if so why?”

Mr Gair did not respond until the 19<sup>th</sup> August 2007 (174). In this letter he raised the question whether the complaint against him was a pretext for removing him from

office because of his views about women's ordination to the priesthood. He then went on (176):

“You are right to ask the question about the connection between Mrs Cooper's complaint and my view on women priests \_ perhaps the enclosed letters, one from me to the Bishop of Colchester asking about the possibility of working in a larger team and the other from a churchwarden who later learned that I had tried to open up a discussion on the matter make it clear. ... [The letters referred to seem to be those at 243 & 251 of the bundle.]

As to the other points that you raise I have yet to meet one woman in orders who accepts 'my' integrity in the matter of believing her orders are invalid. To that extent I cannot believe that my view on this would fail to aggravate her impartiality. ....

And so to your last point \_ the reference to SSC. I had only intended to ask for one, not both, of the male clergy to belong to such a society. That would at least comfort me to know that they would not hold my perspective on women's orders against me.”

Then on the 5<sup>th</sup> November 2007 the Secretary to the Clergy Discipline Commission wrote to Mr Gair (169) stating:

“I write to let you know that having given your views on the proposed composition of the disciplinary tribunal ... careful consideration, the President of Tribunals has decided that no changes to the composition of the tribunal are required or justified.”

It is clear from section 22 of the 2003 Measure that the appointment of members of the tribunal is a question solely for the President of Tribunals, once he is “satisfied that there is no reason to question the impartiality of that person” and having considered any representations as to their suitability from the respondent. However, a bishop's disciplinary tribunal is a public authority within the meaning of section 6(3) of the Human Rights Act 1998 and it is therefore unlawful for it to “act in a way which is incompatible with a Convention right”: see *ibid*, section 6(1). The Convention is the Convention for the Protection of Human Rights and Fundamental Freedoms: see *ibid*, section 21(1). Article 6(1) of the Convention states:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law ....”

This tribunal has been established and duly constituted under the provisions of the Clergy Discipline Measure 2005 and, in any event, by reason of the ecclesiastical law

in relation to the ordination of women it is not open to Mr Gair, for example, to challenge the validity of the appointment of a woman priest's orders so as to preclude her from being a "person in Holy Orders" within the meaning of section 22(1)(c) of the 2003 Measure. Nonetheless, by reason of Article 6 of the Convention it is incumbent upon the tribunal to consider any suggestion of lack of impartiality levelled against the tribunal as a whole or against one of its members.

The tribunal as a whole, and the Reverend Jane Haslam in particular, therefore gave very careful preliminary consideration to the possible impartiality suggested by Mr Gair in his letters of the 25<sup>th</sup> June 2007 and the 19<sup>th</sup> August 2007. In so doing we were each careful to bear in mind that the complaint against Mr Gair is not in relation to his beliefs about the ordination of women to the priesthood but, rather, in relation to his alleged behaviour in relation to Mrs X. In our view the only possible relevance of Mr Gair's beliefs about the ordination of women to that complaint would be in relation to the stress that Mr Gair may have been acting under at the relevant time. That being so, we were each satisfied that neither the tribunal as a whole nor any individual member lacked any impartiality in relation to the complaint that we have to consider under Mr Gair. We were therefore also satisfied that the tribunal as presently constituted in no way leads to a breach of Article 6(1) of the Convention. What is more, we have been careful to bear the question of continued impartiality in mind throughout the hearing and our deliberations.

- 2 As intimated in a flurry of last minute e-mails to the Registrar of Tribunals (261A-273) the respondent failed to attend the hearing although he had had clear notice of it since July 2008. Rule 42 of the Clergy Discipline Rules 2005 states:

"The Registrar of Tribunals or the Chair may proceed with a hearing notwithstanding the absence of the complainant or respondent, provided the Registrar of Tribunals or the Chair is satisfied that the absent person has had notice of the hearing."

The failure of this rule to mention the tribunal might indicate that the rule is only intended to refer to a preparatory hearing (see Part VI of the Rules). However, rule 42 appears in Part VIII dealing with determinative hearings and, if there were no power by which a tribunal might proceed in a determinative hearing in the absence of the complainant or respondent, the whole process would be open to be thwarted by an unscrupulous party. We therefore accepted the Designated Officer's submission that rule 42 permitted the Chair of the tribunal to make a decision whether or not to proceed.

It is clear from the e-mails themselves that the respondent had notice of the hearing and therefore the Chair was satisfied that he had indeed had notice of the hearing. As to the substance of the respondent's application that the hearing ought to be postponed until he had received adequate responses to various requests that he had made, the Designated Officer argued that:

- In relation to the Bishop of Colchester : although the respondent did not like or accept the responses given by the bishop, he had in fact adequately given answers to the questions the respondent had asked: see (122, 109 & 100). In any event the respondent could himself have called the bishop to give evidence or requested that the bishop should be ordered to attend: see rule 33(1)(i);
- In relation to the Archdeacon of Colchester: although the respondent did not like or accept her response, she had in fact adequately answered the respondent's questions: see (128 & 116A);
- In relation to the Designated Officer: that the respondent misunderstands the duties of that officer and, in any event, the Designated Officer had answered the questions asked in so far as he was able to do so: see (94, 267 & 143).

The Designated Officer also argued that the respondent had had two months' notice of the hearing and that there would be difficulties in finding a date in the near future upon which the tribunal might again sit.

Having considered all these arguments, together with the fact of the costs incurred if there were to be an adjournment, the Chair decided that the hearing ought to proceed in the respondent's absence. It was the respondent's own decision not to attend and no injustice would be done if the hearing were to proceed.

- 3 In spite of various letters from the Registrar of Tribunals encouraging Mr Gair both to employ a legal adviser and to file written statements in support of his case Mr Gair has failed to do so. It is therefore necessary for us to consider the evidential status of the various documents that he has asked to be placed before us. His Answer to the complaint appears at page 41 of the bundle; it is in the format provided by Form 2 in the Clergy Discipline Rules 2005 and concludes with a signed statement of truth (43). In the margin next to a heading 'The written evidence in support of my answer is attached and consists of the following statements' there is a printed note that states:

'You may provide evidence in support of your answer. This evidence could be your own signed statement, which can be set out in this form or be in a separate document attached to it. ... All statements should be in form 3 of the Clergy Discipline Rules....'

However, under that heading and next to the marginal note Mr Gair has written: 'A four page typed script relating my perspective of events'. That script (44-47) is signed and dated by Mr Gair but does not have a statement of truth.

Form 3 of the Rules makes it clear that a statement of truth is required for any such witness statement, as does rule 35(3) of the Clergy Discipline Rules 2005. Moreover rule 44 makes it clear that the provisions of rule 35 apply to any respondent wishing to give evidence before a tribunal. It might, therefore, be argued that on a strict application of the 2005 Rules Mr Gair is not entitled to put in the typed script as a

witness statement before the tribunal, although we note that the marginal note may be slightly misleading in that a respondent might feel that the 'signed statement' is indeed 'set out' in the form by incorporation. In these circumstances, and bearing in mind the Overriding Objective to deal with the complaint fairly (see paras 14 & 15(i) of the Code of Practice), the tribunal decided that it should treat the typed script as being incorporated into the actual form itself. That being so, that typed script amounts to a written statement to be considered by the tribunal as part of the evidence before it.

- 4 Moreover, it is in our view clear that the only evidence that the tribunal is normally entitled to consider is evidence that fulfils the requirements of rules 35 & 36, unless the tribunal waives any relevant irregularity or error of procedure, or gives directions to cure it, under rule 103. In our view Mr Gair has been given every opportunity to deal with his response to this complaint under the Rules and to allow Mr Gair to rely on any other matters at this late stage would be unfair to the Designated Officer and to the complainant. It would therefore be inappropriate for the tribunal to waive any other irregularity or error of procedure in addition to that which it has done already; it is also in our view too late to give any directions that might lead to a cure. It follows that the other matters raised in correspondence by Mr Gair, and which are not included in that typed script, are not themselves evidence that the tribunal is entitled to take into consideration (although appearing in the bundle before us), save and except in so far as they amount to admissions by Mr Gair. In this regard we accept the argument of the Designated Officer that by implication rule 43 demonstrates that an admission does not have to be in the form of a written statement bearing a statement of truth. No doubt this is because any such admission is necessarily a statement made against the interests of the admitting party. Nonetheless, although falling short of evidence, those other matters do amount to submissions, or arguments, put forward by the respondent and we have therefore taken them into consideration in that way.
- 5 In his Statement of Case the Designated Officer summarises the evidence upon which he seeks to rely in making out the case against Mr Gair (49-19). He then goes on to argue that the respondent's own case "proves conduct unbecoming or inappropriate" (51). Moreover, he continues:

"[The respondent] alludes to an agreement he had with Mrs X that they would *"spend less time talking with each other unless our own circumstances should change of their own accord"* i.e. if he and Mrs X were to separate from their respective spouses then they would get together \_ such an agreement between priest and parishioner is clearly unbecoming and inappropriate, and undermines their respective marriages."

We accept that such an alleged agreement may be relied upon by the Designated Officer in support of the case that he seeks to make out. However, the only allegation of misconduct with which we are concerned is that which has been referred to us for

determination by the President of Tribunals. This is clear from the wording of rule 29(2):

“Where there is a case to answer, the President shall refer the case to the tribunal and shall specify in the written decision which allegation or allegations of misconduct are to be determined.”

This being so, it is not within our remit to consider whether the alleged agreement, or indeed any other conduct, may amount to unbecoming or inappropriate misconduct other than that specified by the President of Tribunals.

6 The tribunal has the power under rule 49 of the 2005 Rules to order that:

“the name and any other identifying details of any person involved or referred to in the proceedings must not be published or otherwise made public, if satisfied that such an order \_

- (a) is desirable to protect the private life of any person;
- (b) is desirable to protect the interests of any child; or
- (c) is otherwise in the interests of the administration of justice.”

Moreover, rule 50(1)(4) states:

“The tribunal may omit from the written determination the name and any other identifying details of any person, if satisfied that such an order \_

- (a) is desirable to protect the private life of any person;
- (b) is desirable to protect the interests of any child; or
- (c) is otherwise in the interests of the administration of justice.”

In this case Mr and Mrs X have four young children aged between approximately 8 to 15 years of age (60). Bearing in mind the ages of these children we have no doubt that any publicity in relation to this matter would cause those children deep distress and embarrassment and we have satisfied that it is desirable to protect their interests as best we may. In these circumstances we have ordered that neither the name, nor any other identifying details, of either Mr or Mrs X or of any of their children may be published or otherwise made public. We also decided that for the same reasons the name and identifying details of the Xs should also be omitted from this written decision.

We have also considered whether, bearing in mind the interests of the respondent’s own children whom we infer to be a similar age to those of Mr and Mrs X, we should make similar orders to anonymize the name of the respondent himself. With deep regret, however, we have decided that it would be inappropriate to do so bearing in mind the wider picture of the administration of justice set out in paragraph 4 of the Code of Practice.

## The Evidence

It is undisputed that in about the year 2000 Mr and Mrs X and their children started to attend church at Debden where the respondent was the rector (60). It is also undisputed that by about 2004 the Xs' marriage was under stress and that they were discussing the health of their marriage (61); it also seems that the respondent was meeting Mrs X at about this time without her husband's knowledge (61).

When his wife stated that she wanted "to split", Mr X turned to the respondent as his parish priest in February 2005. However, when he sought to persuade his wife to join him in talking to the respondent she asked why he was turning to him because he was more her friend than his (62). At this time Mr X was seeing the respondent quite often and Mrs X was seeing him separately. However, these latter meetings took the form of long walks in the countryside rather than meetings at the church or rectory; they also visited the respondent's old school and inspected boats with a view to purchase by the respondent (63).

Mr X became concerned about the relationship between his wife and the respondent and, although his wife assured him that it was nothing and she was just spending time with a friend, Mr X raised the matter with the respondent (63). The respondent told Mr X that there was nothing untoward about his relationship with his wife and that he had behaved similarly with other women (64). However, Mr X then came across some e-mails passing between his wife and the respondent. One of these e-mails was dated the 12<sup>th</sup> May 2005 and, having arranged a meeting together with their respective children, read:

"What good news about the house and plot. If they are really sold by the end of June that will be marvellous, although the idea of using your pool, if you can accommodate us, is a very enticing thought too. But I couldn't selfishly hope for anything other than what you want. Happy birthday to [X's daughter], I'll buy her some plain iced buns for tea \_ no chocolate (for her at least). As you would say to me, please just bring yourself. ... Lisa [the respondent's wife] went off to work at Addendbrookes this morning for all the day, as she will tomorrow and on Monday. Just like old times, except everything is different now. I feel that I am here, but not here; playing out for time and waiting to move on. Somehow it's not quite the same typing it onto a computer as telling you; but there's lots to tell you so when there is time, I will. Nothing to worry about, just to confirm your hunch about being allowed out for the day. Having it confirmed made me rather sad, it doesn't seem to put you first and however much that is covered over it keeps re-appearing."

The e-mail then goes on to discuss the purchase of a boat and its structural report, it concludes:

"Some things have been put right but once uncared for, it can be difficult to retrieve, as we know. ... Love, Andrew"



Mr X did not disclose to the respondent that he had seen this e-mail but did ask him whether he confided in Mrs X about his own marital issues. He replied that, particularly given the circumstances between Mr and Mrs X, it would be inappropriate and unprofessional of him to do so (64).

Later that same month Mr X was also concerned about a visit made by the family to the rectory when the respondent lent Mrs X a video of the film *Notting Hill* and suggested that she should pay special attention to the words as they had a deep meaning. Later again that month Mrs X also told her husband that she felt that the respondent was an issue and a cause of the problems they were having; she was therefore going to tell him that they should distance themselves from each other (66). Mrs X did thereafter visit the respondent but her husband then found a list of dates in the respondent's handwriting of days in June when his wife could be relied upon to be at work (67).

In August the Xs went away on a camping holiday and Mr X found a text message on his wife's mobile phone which he then forwarded to his own phone. It was sent to the respondent's phone and said:

"cold camping doing breakfast dremt of u don't text back love" (*sic*)

Later that same month the respondent also went away with his family. On this occasion the respondent sent a text to Mrs X that her husband read (68) which stated (78):

"Dear Mrs X,  
The computer does not seem to be accepting e-mails because we still have received nothing. Maybe they'll come through in a flood whilst we're away!  
Just packing up now and the will drive down to Kent ready to cross tomorrow at 11:15 out of Dover. Will text you at various points on the way just to let you know.  
Miss you already,  
love,  
Andrew"

By this time Mr X was receiving counselling at St Luke's Hospital for the Clergy (69).

Mrs X's mobile phone records for the period of May to September 2005 demonstrate that she phoned or texted the respondent on frequent occasions (33 *et seq.*, 70).

In fact in August Mr X had visited Canada with a friend in order to give his wife space to think things through (69). Mr X informed the respondent that this was his intention in an e-mail dated the 9<sup>th</sup> September 2005 (80) and in his reply (81) the respondent stated *inter alia*:

"...as I've always said, I don't think that you should give up hope. My own belief is that when houses are sold, Mrs X's new job worn in a little, a renewed pattern of living together as a family will be established."

On his return Mr X learned that the respondent had taken her to visit his old theological college for the day (69). He therefore arranged to meet the respondent on the 4<sup>th</sup> October 2005 in church. There, according to Mr X (70), the respondent admitted that he and Mrs X had become intimate; he allegedly also went on to say that "it just happens". Mr X then told the respondent that this was entirely unacceptable and the respondent agreed not to see Mrs X except at services (70). Indeed, on the 6<sup>th</sup> October 2005 Mr X e-mailed the respondent at length saying *inter alia* (85):

"It is not possible for you to entirely make amends for your behaviour over recent months. Your position as a senior member of the clergy means that you are acutely aware that people are vulnerable at times of emotional distress and so I don't accept that the intimacy that you developed with Mrs X is something that 'just happens' as I think you put it on Tuesday evening. Here, in Mrs X, you found a person vulnerable on account of a marriage in difficulty having been through a protracted period of high external stress, and you have actively sought Mrs X's attention whilst at the same time offering words of support to me."

He then went on to set out what he felt should be the distance between the respondent and his wife (85-86).

The respondent replied the following day and said *inter alia* (84);

"Thank you for this. I know your position clearly and understand your perspective. Mrs X's limited contact with me and vice versa had no 'end date' so that should you go your separate ways, by our mutual agreement some while ago now, it would simply run on. I know that you will try your very best to make her happy and it is for that purpose that we agreed to it."

This e-mail made no denials of the matters raised in the e-mail dated the 6<sup>th</sup> October and ended by suggesting that Mr X himself might have "a vocation to the church".

On the 14<sup>th</sup> and 15<sup>th</sup> December 2005 Mrs X's parents came to stay. According to Mr X, on the 14<sup>th</sup> after they had left his wife told him that she had spoken to them about the respondent and that they had told her to persevere with her marriage. Further, according to Mr X, she admitted kissing the respondent and that they had touched intimately; she said that there had not been penetrative sex and that was a material matter in her eyes. This had happened many times and that it had occurred in the rectory. She also, allegedly, said that she loved the respondent and that he had expressed his love for her (71).

In addition Mr X alleges that his mother-in-law told him that her daughter had confessed to having an affair with the respondent and that both his in-laws told him that in January 2006 the respondent had turned up unexpectedly at their home and told them that his own marriage was a sham and that their daughter had a good future with him. This occurred while the Xs

were still living together (71); they actually separated on the 19<sup>th</sup> May 2006. In February Mr X sent the respondent two angry e-mails (88-89) but received no reply (72).

The Xs are now to be divorced (73). As is evidenced in a letter from Mr X's solicitor to Mrs X's solicitor (91), it was initially agreed that she would accept a divorce petition on the basis of her adultery although the third party was not to be named. However, Mrs X went back on that agreement and the divorce is now to proceed on the basis of two years separation (73).

As well as the Archdeacon of Colchester Mr X was called to give evidence by the Designated Officer. In each case their witness statements were taken as evidence in chief pursuant to rule 35(5). In addition Mr X answered some questions put by the tribunal. He told the tribunal that he was still under medication to a degree because of possible clinical depression; he was managing not to take anti-depressants and took sleeping tablets as little as he was able. He is still undergoing counselling arranged by his GP.

Mr X was asked about the respondent's suggestion at (263, see below) as to the manner in which his wife had made admissions to him (see (70) paragraph 30). He said *inter alia*:

"My wife was suffering from not sleeping properly as I was. What was said was the last thing that I wanted to hear. I wouldn't think my questions were 'badgering'; I always made an attempt at normality. I'd attempt not to mention Mr Gair's name for days and weeks; I did everything to make our marriage stronger and not to have him appear frequently. That occasion was very shortly, I think, after my parents-in-law visited and she'd explained to them her association with Mr Gair. I think I wasn't sleeping and probably to my wife's frustration I was still hopeful. I think she agreed a degree of association [with the respondent] to explain there was no recovery in our own association. It certainly wasn't the culmination of hours of bombardment. It wasn't like that at all. I think that the manner of detail in which she described it; it's hard to imagine that such detail would be fabricated: that they'd kissed and touched intimately but not engaged in full sexual activity. I can't imagine such a picture would be construed (sic) if not true."

In his Answer to the complaint (41) the respondent denies the allegations made against him. At page 42 he states:

"Mrs X and I have always been very good friends. In early 2005 we shared confidences about our difficult marital relationships. This brought us into even closer, but not adulterous, relationship.

In the Autumn of 2005 we agreed to spend less time talking with each other unless our own circumstances should change of their own accord."

He also states (41):

“I believe that I have become the scape-goat for Mr X as he comes to terms with the anger unleashed within him through the separation from his wife, Mrs X.”

Thereafter in the typed script attached to the Answer he denies both the abuse of his pastoral relationship with Mr X and also an ongoing relationship with Mrs X (44). He goes on to relate how he came to know Mrs X better than her husband due principally to their children’s involvement in the church. He continues (44):

“When I wrote a ‘round robin’ letter at the beginning of January 2005 to announce our family’s intentions to take up a new post in Norfolk, Mrs X’s reaction (she later told me) was to break down in tears. This natural water-shed in my own life brought to the fore, as we spoke one day, the un-happiness of her own domestic situation. A situation, she also later told me, she had contemplated leaving on more than one occasion and one that was not unknown to Mr X ... Mrs X’s confidence in me was one that encouraged me to share something of my own difficulties with her, difficulties that had rumbled on over the years. They were confidences shared as friends and shared in the knowledge that I was moving within four weeks.”

This move in fact did not take place because of the respondent’s views on the ordination of women being unacceptable to some in the new parish (44). This not unnaturally left the respondent feeling in despair; he also felt that he had been virtually abandoned (45). Towards the end of February Mr X went to see the respondent as his wife wanted to leave him whereas he wanted her to stay. The respondent describes the position in this way (45):

“Mrs X and I acknowledged that we shared a burden that had weighed on both of us for many years and this made the situation a little awkward with regard to Mr X but I was resolute in ensuring that I did not favour either above the other and whilst I never encouraged either of them to speak with me because of this awkwardness I never refused to spend time with either if they requested it.

I recognised that I was not the one to work with them in exploring where they could take their marriage and encouraged them to seek counsel elsewhere ... It was not a situation that I felt comfortable with but I was sure, then and have been since, that if their relationship was to come to an end it would only be as a last resort, no stone having been left unturned. I never did and never have broken any confidences that they shared with me.”

The respondent believed his own life was going nowhere and he was on the point of a nervous collapse (45). He continues (45):

“What Mrs X and I had first shared with each other in the Spring we had a need to talk about and this we did in May and June before the school summer holidays began. As the paperwork suggests our means of ‘talking’ once the school holidays began, became telephone conversations and more commonly text messages. After the

holidays finished Mrs X began work and I set about earnestly looking for posts elsewhere. We had come to the decision that if our enjoyment of one another's company were ever to develop then it would be under circumstances different from those we presently inhabited."

In relation to the e-mails the respondent acknowledges that he had agreed to distance himself from Mrs X (46):

"This was to give her space to consider her situation as well as his and that of their children. These I have never wavered from and I believe, flatly contradict the archdeacon's complaint made against me that there is an ongoing relationship.

Since then we have led our lives as we did before we exchanged confidences.... I have been scrupulously careful, as has she, that whenever we have met, either in church or publicly, to avoid giving any impression that would arouse suspicion or give any grounds for scandal in any way, shape or form. Neither of us have sought the other out."

In relation to "particular comments made against [the respondent in the paperwork] submitted with the complaint" he says (46):

"I would like to make reference to the following as examples of how, I believe, the information presented has been skewed and put in the worst light possible. Perhaps that is inevitable, given the nature of the proceedings, but it does not perhaps accord with a 'truth statement' as normally understood.

- Mr X asked to be put on reading & sidesman rota for the church. Since they operate on a four monthly cycle that had to wait until the next set of rotas were drawn up. When they were, Mr X was included as he requested.
- He asked me not to talk to Mrs X or the children at the Christmas Fair. I did not.
- He makes reference to a hamster cage \_ a pet that our respective children between them agreed to arrange for. I specifically telephoned Mrs X to check that she would not be at home when I brought the cage to their house and she agreed to deliver it, with the said hamster, at a subsequent church service, so as not to give cause for concern.
- The reference to the film Notting Hill was a reference to some words that I had used recently in a sermon, a sermon Emily had heard \_ a sermon Mr X had not been present for, nor known about \_ and they were words about 'perspectives' and nothing to do whatsoever with song lyrics.

- The ‘rosy’ future for Mrs X and I is a corruption of my telling her parents that should we ever come together I would do all that I could to provide for her.”

The respondent goes on to state that he does not wish to go through each item levelled against him in the same way as the five previous examples. He then continues (47):

“I was shocked to receive the e-mail written on the 26<sup>th</sup> February ... with its wild accusation of ‘seducing Mrs X into a physical relationship’. This is an accusation loaded beyond measure and since any meeting between Mrs X and I ceased many months previously, as the archdeacon’s notes verify, it was as untrue as the accusation of adultery or having some scheme that we were consciously working on in order that we might get together.”

Finally, the respondent states (47) that it is unfair for Mr X to blame him by suggesting that he has betrayed his trust or that he was engaged in an ongoing relationship with his wife. He then expresses the view that it would not be appropriate to ask Mrs X to write in support of his account as, at the very least, it would exacerbate the division already existing between them. Nonetheless, he believes that if she were to do so it would underline why he denies the complaint.

In his e-mail dated the 2<sup>nd</sup> October 2008 (273) the respondent wrote to the Registrar of Tribunals:

“I had written what I wrote yesterday in the hope that it would now render the tribunal superfluous for the reasons that I have referred to, namely, Mrs X’s exposure. I had thought that to admit a complaint would empower this.”

Indeed, in another e-mail to the Registrar of Tribunals dated the 1<sup>st</sup> October 2008 (262) he had written *inter alia* (263):

“I cannot admit to unbecoming conduct as spelt out in the complaint [*scilicet* the original complaint of the Archdeacon] ... What I can admit and have always been willing to admit in this procedure is finding myself falling in love with Mrs X in the Spring of 2005. By the summer of that year we both recognised that this was not right and so ... we took separate paths. In the course of those months the charge of adultery is untrue as is the charge that we were planning to plan a future together. It is true that I spoke with her parents and said that if we did end up together I would do what I could to provide for her but that is not the same as saying we were positively planning to carry out an action.

I have alluded to the duress that Mrs X was placed under in my correspondence. Why she admitted such things as are recorded in the complaint I do not know. Her answer to me, when asked that question some two years ago when the complaint was first made, was that being deprived of sleep and badgered with questions by her husband

she just wanted to get away from him and so answered in the manner he wanted to hear.”

He continued at (264):

“So, you see, whilst I am and always have been willing to acknowledge my falling in love with Mrs X the description of the complaint, ‘conduct unbecoming’, if expressing what is recorded in e-mails and text is such, then I can admit it to be true, but I cannot if it is focused on adultery or on plans to run away.”

### Determination

We have carefully examined all the evidence before us both on behalf of the Designated Officer and the respondent. In addition we have borne in mind the submissions made on behalf of the respondent, although in our view many of them are not relevant to the determination that we have had to reach.

In particular we find that the respondent has admitted those matters that are “recorded in e-mails and text” and we find that this is an admission to an “intimacy that developed with Mrs X” such as, according to the respondent, “just happens” (85). Bearing in mind the whole tenor of those e-mails, we find on a balance of probabilities that such intimacy was of a sexual nature.

As to the extent of that sexual intimacy, we accept the evidence of Mr X in relation to what Mrs X told him, namely, that she and the respondent had kissed and that they had touched each other intimately; moreover, this had happened many times and had occurred in the rectory (72). We found Mr X to be an impressive and quietly dignified witness. We bear in mind what the respondent says about this admission at (263) but we do not accept that any duress was used upon Mrs X; indeed, we note that admissions may well be true even when made by a person feeling under pressure. In this regard we accept the evidence of Mr X that the picture described by his wife had too many details merely to be manufactured. That being so, we find on a balance of probabilities that the respondent on many occasions kissed and touched Mrs X intimately in a sexual manner.

We therefore find that the allegation of misconduct referred to the tribunal by the President of Tribunals has been proved and that the respondent has committed conduct unbecoming or inappropriate to the office and work of a clerk in Holy Orders.

