

CLERGY DISCIPLINE MEASURE 2003

REFERENCE OF A COMPLAINT TO A TRIBUNAL

(Diocese of Carlisle)

THE ARCHDEACON OF CARLISLE, THE VEN KEVIN T ROBERTS

Complainant

THE REVD KARL WRAY

Respondent

Appearances:

For the Complainant: the Designated Officer, Mr Adrian Iles

The Respondent appeared in person

DECISION

Introduction

1. This is the judgment and decision of a Clergy, or more properly, Bishop's Disciplinary Tribunal constituted under the provisions of the Clergy Discipline Measure 2003 ("the 2003 Measure") in respect of a complaint made by the Archdeacon of Carlisle, the Ven Kevin T Roberts ("the Complainant") against Revd Karl Wray ("the Respondent") formerly the incumbent of St Luke, Morton, Carlisle in the Diocese of Carlisle.
2. This decision is the unanimous decision of us all and reflects our combined and individual views in which we all concur.

The Complaint

3. The complaint, which was dated 11 March 2009 ("the Complaint"), initially alleged the following against the Respondent, namely:
 - Theft of monies due by law to the Carlisle Diocesan Board of Finance Ltd.
 - Theft of monies due by law to the Parochial Church Council of St Luke's Church, Morton, in the City of Carlisle¹.
4. The Complaint contained a statement in support of the above allegations together with a number of documents exhibited thereto by way of appendices².
5. Additional evidence was subsequently produced by the Archdeacon with the consent of the Bishop by letter dated 17 August 2009 together with accompanying documents. The request to admit the additional evidence was made by letter dated 11 August 2009 and consent was

¹ The complaint was correctly made in form 1a to the Clergy Discipline Rules 2005 ("the 2005 Rules") (see Rule 4 of those Rules); see pp. 3-110 of the hearing Bundle. The second complaint was eventually not proceeded with (see below).

² See Rules 6-7 of the 2005 Rules.

given by letter dated 12 August 2009³. Strictly speaking this evidence was out of time but no objection was made and if necessary we extend the time and waive any irregularity⁴.

The Respondent's First Answer

6. In the meantime the matter had been investigated by the police. After a lengthy interview of the Respondent under caution on 7 May 2009 and again under caution on 25 June 2009⁵ the Crown Prosecution Service indicated to the Complainant in a letter dated 10 September 2009 that *"it was clear that Mr Wray had been negligent in his handling of money he received and in his completion of the appropriate paperwork. However, [the CPS] was not satisfied that we could prove beyond reasonable doubt that he had been criminally dishonest"*⁶.
7. No doubt with this in mind, the Respondent, in his first Answer dated 19 November 2009, intimated that since the CPS had decided not to take the matter any further he did not feel it appropriate for a complaint to be pursued. He denied the criminal offences as set out in the complaint.⁷ He subsequently filed a second amended Answer dated 26 November 2010⁸ as mentioned below.

Referral to the President

8. The matter was then referred to the Designated Officer, Mr Adrian Isles, to investigate further. His report was then referred to the President of Tribunals for consideration.
9. By a letter dated 4 August 2010⁹ the President found the Respondent had a case to answer on two charges arising out of the first complaint above-mentioned, which he referred to the bishop's disciplinary tribunal, namely that the conduct of the Respondent was:-
 - A. Unbecoming or inappropriate to the office and work of a clerk in Holy Orders under section 8(1)(d) of the Clergy Discipline Measure 2003 in that, as Vicar of the Parish of St Luke, Morton, Carlisle and having by a deed of assignment dated 7 July 1992 (i) assigned to the Carlisle Diocesan Board of Finance Limited (the DBF) all fees payable to him under Parochial Fees Orders; and (ii) agreed to make an annual return of all such fees to the DBF; and (iii) undertaken to remit all such fees to the DBF, during the period January 1995 to December 2008 he dishonestly:
 1. made false returns of assigned fees to the DBF
 2. failed to remit to the DBF assigned fees estimated to be in the region of £21,000, which he kept for his own use.
 - B. Alternatively, the respondent's conduct was neglectful or inefficient in the performance of the duties of his office, contrary to section 8(1)(c) of the Clergy Discipline Measure, in that, as Vicar of the parish of St Luke, Morton, Carlisle and having by a deed of assignment dated 7 July 1992 (i) assigned to the DBF all fees payable to him under Parochial Fees Orders, and (ii) agreed to make an annual

³ See Bundle, pp. 111-139.

⁴ See Rules 7(2),(3); 102-103 of the 2005 Rules.

⁵ See Bundle, pp. 261-305.

⁶ Bundle, p. 307.

⁷ See Answer (in form 2 pursuant to Rule 17 of the 2005 Rules) at Bundle, pp. 140-143.

⁸ Bundle, pp. 144-158.

⁹ Bundle, pp. 1-2.

return of all such fees to the DBF, and (iii) undertaken to remit all such fees to the DBF, during the period January 1995 to December 2008, he:

1. failed to make accurate returns of assigned fees to the DBF
 2. failed to remit to the DBF assigned fees estimated to be in the region of £21,000.
10. We refer to these allegations as “Allegation A” and “Allegation B” respectively.
11. The second part of the Complainant’s complaint (relating to the alleged theft of monies due by law to the Parochial Church Council of St Luke’s Church) was expressly not referred to the disciplinary tribunal and we have accordingly, as we reassured the Respondent at the hearing, excluded it from consideration and it has formed no part of our deliberations.

The Tribunal

12. In consequence of the President’s letter we were duly constituted under ss 2 and 22 of the 2003 Measure to deal with the Complaint as thus formulated.

Directions Hearing

13. On the 8 November 2010 our Chair held a directions hearing at Leeds Combined Court Centre¹⁰. Present was the Designated Officer, the Respondent, and his then solicitor, Mrs Nicola Harding of Tunnard & Co and the Tribunal Registrar, Mr Lionel Lennox. The Respondent admitted Allegation B (in that he admitted he made false and inaccurate returns of assigned fees to the DBF by reason of neglect or inefficiency) but denied doing so dishonestly as alleged in Allegation A. Directions were made including provision for a further Answer (in light of the admission) and for a summary of the case against the Respondent and further evidence in answer by the Respondent and by the Designated Officer. The hearing timetable was fixed and directed to be heard in private. These directions were slightly varied by a further order made on 17 January 2011 to permit a later start on the first day¹¹.

The Hearing and Evidence

14. In the result we convened as a Clergy Disciplinary Tribunal at Leeds on 21 February 2011. The hearing was held in private. Present were the members of the Tribunal, the Designated Officer, the Complainant, the Respondent and the Provincial Registrar (as Registrar to the Tribunal) to whom we express our gratitude for making the administrative arrangements for the preparation of the hearing, including our hearing bundles, and the hearing itself.
15. A further, second Answer, was made and filed by the Respondent dated 26 November 2010. He also made and filed a statement dated 26 November 2010 exhibiting a number of letters. This, together with his previous Answer constituted the written evidence of the Respondent¹². He filed no further evidence in response to that subsequently made by or on behalf of the Complainant.
16. For the Complainant, we had the original complaint and exhibits, the additional evidence referred to above, a witness statement dated 15 December 2010 and exhibits (including a

¹⁰ Order at Bundle, p. 316.

¹¹ Order at Bundle, p. 318.

¹² See Bundle, pp. 140-158.

transcript of the Respondent's police interviews of 7 May and 25 June 2009 and the Statement of Case from the Designated Officer dated 20 December 2010 and his correspondence with the Respondent and his solicitor¹³.

17. In addition we had a bundle of evidence comprising the material presented to us on both sides and other relevant material and a bundle of legal material, guides and practice directions available to all. We also received in evidence a document entitled "*Confidential Note of Visit by KR to Karl Wray 25 February 2009*" being a note made by the Complainant very shortly after his meetings with the Respondent in February 2009 (the reference to "KR" being a reference to the Archdeacon, Kevin Roberts). This note had not been originally produced; no doubt this was because the Complainant probably felt it included matters wider than the scope of our determination, but made it available in consequence of the cross-examination of the Respondent who did not object to its production. We accept it as an accurate record of the matters contained therein¹⁴.
18. The case against the Respondent was presented by the Designated Officer, Mr Adrian Iles. The Respondent was by this time unrepresented (and unaccompanied) and he presented his case in person owing apparently to the fact that he was unable to obtain an extension of legal aid to the hearing (from which we drew no inferences at all). His second Answer and Witness Statement were however prepared under professional guidance. We wish to acknowledge that although the hearing must have been a considerable strain for the Respondent, he at all times conducted and presented his case moderately, politely and with skill. For example, it was apparent he had carefully, thoughtfully and diligently prepared his cross-examination.
19. We heard evidence under oath from the Complainant who was cross-examined by the Respondent, and from the Respondent who was cross-examined by the Designated Officer.
20. We accept the evidence of the Complainant. He gave his evidence in a measured, balanced, and fair way and, we thought, with genuine compassion for the Respondent. We had no hesitation in accepting his evidence as truthful.
21. Since it has had an impact on our decision we must record that although the Respondent answered all questions put to him, we did find some of his answers evasive. For example, he repeatedly declined even to attempt an estimate of the number of funerals at which he officiated refusing, as he put it, "*to speculate*". Nevertheless he also struck us as not unintelligent. He readily appreciated the meaning, significance and importance of all questions put to him.
22. In the result, however, where there was a conflict of evidence between that of the Complainant and that of the Respondent, we preferred the evidence of the Complainant.

The Legal Framework

23. The relevant provisions of the 2003 Measure are to be found in section 8(1)(c) and (d) providing as follows:

"Disciplinary proceedings under this Measure may be instituted against any ... priest ... alleging any of the following acts or omissions-

....

¹³ See Bundle, pp. 3-139,159-172, 173-315.

¹⁴ It was placed at pp. 315A to 315C of the Bundle.

(c) neglect or inefficiency in the performance of the duties of his office;
(d) conduct unbecoming or inappropriate to the office and work of a clerk in Holy Orders.”

24. We also had in mind:-

- the provisions of section 47(2) of the 2003 Measure permitting proceedings to be instituted in relation to misconduct committed before the date section 8 came into force. We were also satisfied that this was a case which would have constituted (if proven) misconduct under both this Measure and its predecessor, the Ecclesiastical Jurisdiction Measure 1963¹⁵;
- the duty to have regard to the role of the bishop in administering discipline as required by section 1 of the 2003 Measure and the overriding objective to deal with cases fairly and proportionately as set out in Rule 1 of the 2005 Rules; and
- that the burden of proving the Allegations was on the Complainant, the appropriate standard being the balance of probabilities applicable in civil proceedings¹⁶.

The Facts

25. The relevant facts as we find them are as follows.

26. The Respondent was born on 5 February 1951¹⁷. According to Crockford’s Clerical Directory he was ordained priest in 1979.

27. The Respondent was appointed the incumbent of the parish of St Luke, Morton, Carlisle in July 1992.

28. In the Respondent’s case, in common with all stipendiary clergy in the Diocese of Carlisle, the stipend was fixed by the Carlisle Diocesan Board of Finance Ltd (“the DBF”) in accordance with national guidelines.

29. One option in the Church of England is that part of the stipend is paid from central funds, and part from local sources in the form of the receipt of certain parochial fees under the Ecclesiastical Fees Measure 1986 (“the 1986 Measure”) e.g. for conducting weddings and funerals. This varies from year to year according to the number of weddings and funerals (and other occasional offices for which a fee might properly be charged) held. Accordingly the amount a stipendiary received each year might fluctuate.

30. As an alternative, and in order to avoid these fluctuations, most clergy engage in a system whereby they assign their right to receive these parochial fees to the DBF (and paid them over as and when received) in return for a fixed stipend from central funds.

31. The Respondent engaged in this alternative system from the outset of his incumbency. On 7 July 1992 he signed a Deed of Assignment¹⁸ in favour of the DBF, his signature being duly witnessed. Indeed the date of the Deed (a copy of which we have seen) was carefully amended by the Respondent (the amendment being initialled by him) from the 2nd to the 7th

¹⁵ See s 47(2) proviso to the 2003 Measure.

¹⁶ See s 18(3)(a) of the 2003 Measure. Note that para. 193 of the Code of Practice referring to a degree of flexibility seems based on *Re H (minors) (sexual abuse: standard of proof)* [1996] AC 563, at 586-587 per Lord Nicholls but see now *Re B (Children) (Care Proceedings: Standard of Proof)* [2008] 3 WLR 1 HL. The main and essential point is that the relevant standard of proof before the Tribunal is the civil not criminal standard, i.e. the Allegations must be proved on the balance of probabilities.

¹⁷ Bundle, p. 248.

¹⁸ Bundle, pp. 7-8.

July 1992 indicating, we think, he paid careful attention to this Deed and its terms despite his verbal evidence to us to the effect he had not even read it. We found this surprising since he had then recently married, left the army (having been an army chaplain¹⁹) and expressed himself grateful for the offer of a job in the Diocese. In such a position and with such responsibilities we think it would have been more likely that he would have paid careful attention to such matters as the stipend he was to receive. This attention to the detail of the fees to which he was entitled is more than borne out by evidence from correspondence later in his career at St Luke's showing his keenness and aptitude at chasing up fees he felt were rightfully and properly due to him²⁰.

32. The Deed recited that the Respondent was entitled to receive certain fees, that he was required to make a return of all such fees to the DBF "*for the purposes of the calculation of his annual stipend*" and that he had agreed to assign all such fees as he may be entitled to receive whilst incumbent to the DBF. The operative part of the Deed contained an assignment by the Respondent to the DBF of "*all his right title and interest to such fees ... as may accrue or become payable*" and an undertaking "*to remit ... all such sums as he may receive in respect of such fees*". In return the DBF undertook that in calculating his annual stipend the DBF should "*have regard to the amount remitted ... under this Deed*".
33. None of this was disputed by the Respondent. Moreover the language is not complicated and the purpose, intent and effect of the Deed is clear:
 - In return for having the certainty of a fixed annual stipend calculated each year based on his returns for fees he received,
 - All fees to which he might otherwise be entitled by virtue of his office were to be assigned and paid over by the Respondent to, and were to belong to the DBF.
34. In our judgment the Respondent well knew this was the effect of the Deed not least from his admissions to Allegation B but also because this was spelt out to him in correspondence previously referred to²¹ and admitted and accepted by him in a letter dated 3 December 1998 to the then Bishop of Carlisle in which the Respondent wrote: "I, as the incumbent have the responsibility of passing on any fees owing to me, as it is me who has signed the Deed of Assignment."²² An earlier letter also to the Bishop, dated 30 August 1996 also demonstrated that he well understood the effect and impact of the requirement he was to make returns²³.
35. The amount of fees to be charged for occasional offices varied from year to year being fixed by annual Parochial Fees Orders made under the 1986 Measure which are distributed to all incumbents. Each order sets out a table of fees to be charged and payable to incumbent. The tables make clear that the fees are paid towards the stipend of the incumbent. In the years before 1999 the tables were prepared and published by the Church Commissioners. Since 1999 they have been prepared and published by the Ministry Division of the Archbishop's Council. The notes in the tables state that incumbents declare their fees to the

¹⁹ Bundle, p. 261.

²⁰ See, for example, letters at Bundle, pp. 117-133, 309-315.

²¹ See, for example, pp. 117, 119.

²² Bundle, p. 123.

²³ Bundle, p. 118.

diocese which takes them into account in determining the stipends paid to incumbents. This includes fees for services in a crematorium or cemetery²⁴.

36. Three types of return are relevant for present purposes:

- The monthly Fees Remittance Advice returnable by the stipendiary clergy (including the Respondent) to the DBF showing the breakdown of assigned fees. Each year a pack of forms for the year – one for each month - is sent to the incumbent to be completed and returned each month by the incumbent to the DBF together with an appropriate cheque (if such be the case) for the amount payable to the DBF.
- Statistics for Mission. Each year since 2000 the Archbishops' Council's Research and Statistics Department at Church House, Westminster, has published national statistics for the church providing statistics for baptisms, marriages, funerals, electoral roll numbers and church attendance. These are compiled from figures submitted annually on a "Statistics for Mission" form submitted by each parish (including that of the Respondent) to the diocesan office which makes a copy which is retained, the original then being passed on to Church House.
- Annual Returns to Church Commissioners. Each year clergy are required to fill in a form for submission to the Church Commissioners. It contains boxes for actual expenditure incurred on the upkeep of the house provided to the incumbent, for expenditure reimbursed by the parochial church council ("PCC") and statistics for local income, i.e. fees received for weddings, funerals, cremations and the like showing the amount retained of the fees and the amount assigned or passed to the DBF. It also records the amount of stipend paid centrally by the DBF and the adjustments, if any, which are then carried forward to the following year. Each form was accompanied by notes²⁵ giving guidance on the completion of the form expressly explaining that *"Your diocesan board of finance (or relevant funding body) uses this information in the calculation of your annual stipend."* It required all gross income for fees (before tax) to be included. Any amount entered as retained (which might be applicable where there was no assignment) would directly, therefore, affect the stipend paid the following year. Where an assignment was in place the implication was clear: no funds would be retained but the amounts passed to the DBF would be shown.

37. The diocese retained copies of the Respondent's monthly returns by way of Fees Remittance Advice from 2000 onwards, these being produced in evidence. Earlier records were in the form of a manuscript ledger made by the DBF from 1992-2000 showing the amounts remitted (also produced in evidence, as was a schedule summarising the assigned fees received)²⁶.

38. As to the Statistics for Mission forms, the diocese retained copies of those submitted by the Respondent, for the years 2000, 2003, 2004, 2005, 2006 and 2007²⁷. For these six years the Respondent declared one marriage and 17 funerals, including funerals at crematoria.

39. In relation to the Annual Returns to the Church Commissioners, copies signed by the Respondent for the years 2004-2009 inclusive were before us in evidence²⁸. Each form is

²⁴ Copies of the Parochial Fees Orders from 1992-2009 are in the Bundle at pp. 28-63.

²⁵ See Bundle, p. 253 for a sample.

²⁶ See Bundle, pp. 64-67, 183-235.

²⁷ Bundle, pp. 17-27.

signed and dated by the Respondent alongside a declaration by him in which he confirms that the figures provided were correct. Earlier forms were not retained but the figures for fees assigned and retained going back to 1999 were entered on a computer data base and print outs were produced in evidence²⁹. The effect of these forms and computer records is to show that the Respondent declared he had retained no fees at all but had passed such fees as he received to the DBF. Had he (notwithstanding the assignment) declared fees retained there would have been two possible consequences: either the DBF would have asked (pursuant to the terms of the Deed of Assignment) for the retained fees to be remitted, or his stipend for the following year would have been adjusted accordingly.

40. In addition to the above returns, the incumbent is obliged to keep a register of all services taken at his or her church, including weddings and funerals. As we were told by the Respondent in evidence, these were inspected every few years and signed off (as inspected) by the Archdeacon during his visitation. There was and is no requirement to keep a register of funerals conducted in a crematorium but there is a requirement to make a return of the numbers of funerals through the forms above-mentioned.
41. The Respondent admitted and accepted that all his three types of returns above-described were inaccurate. They did not contain a true and accurate reflection of the fees he had in fact received.
42. These matters came to light in February 2009 in the following way. The Complainant took up his post as Archdeacon of Carlisle in January 2009. Almost immediately his attention was drawn to pastoral and governance concerns at St Luke's, Morton. It appeared that there were few or no serving churchwardens, that there were only five members of the PCC including the Respondent and his wife both of whom it was thought were co-signatories on PCC cheques. He decided he needed to investigate and arranged to see the Respondent.
43. As part of his preparation for the meeting he decided to check his diocesan returns. He expected in a parish of the size of St Luke's to see about 40 funerals a year but was surprised to see the returns of funerals were lower than expected.
44. He saw the Respondent on 25 February and suggested he be (and was) shown round the parish. They discussed throughout the visit his experience as a minister in the parish (which the Respondent described as a "nightmare"). The Complainant at one stage asked the Respondent if he took many funerals to which the Respondent replied not many, more from outside the parish than within. On their return to the vicarage he pointed out, amongst other things, that the Statistics for Mission forms had listed only 3 funerals for the whole of 2005-2007. He asked him what had happened to the fees. During their ensuing conversation according to the Complainant the Respondent gave various explanations as follows:
 - That he had returned the fees to the diocese through the parish share;
 - That he had used some of the fees to pay for work on the church grounds;
 - That he had paid cheques for the fees into his own account and put cash in the Sunday plate;
 - That he had retained fees in his own account on occasions;
 - That he had kept fees on occasions for his own personal use.

²⁸ Bundle, pp. 237-242.

²⁹ Bundle, pp. 243-251.

45. The Complainant warned him that this could mean disciplinary action might be taken and the police involved. The Respondent indicated he understood the severity of what was being said. He admitted very little of the assigned fees had been returned to the diocese over the previous 10 years.
46. At some stage the Respondent voluntarily handed over his diaries from 1992 – 2008 inclusive to the Complainant in which he recorded funerals he was to take. We have seen an analysis of these entries³⁰ recording dates and entries such as “funeral”, “crem”, “ashes”, “funeral in church”.
47. The matter was subsequently referred to the police for investigation during which, as previously indicated, the Respondent was interviewed twice under caution. During the course of the interviews the Respondent’s answers seemed to us on occasions not always to be consistent or coherent. Significantly amongst the matters he disclosed (as we understood the transcripts³¹, read fairly) was the following (as summarised):
- He had some 10 years previously maintained a fees account into which he paid fees received;
 - He received cheques and cash for funerals and cash for weddings;
 - He felt under no obligation to assign fees for funerals conducted at crematoria;
 - The funerals conducted were all entered in his diaries
 - His returns were not accurate, he was so (to use his word) “ramshackled” that he just stuck anything down and he did not take much care over their accuracy. He did not check the records;
 - Some of the moneys he received were spent on gardeners;
 - He had not remitted any fees due to the diocese for more than 10 years;
 - His registers were checked by the Archdeacon every three years and no query had ever been raised;
 - He did not dispute that he had received something in the region of £27,000 from fees [this was a mistake put to him by the interviewing officer but he said he wouldn’t dispute that];
 - He denied any dishonesty;
 - Between 1992 and 1993 he appears to have paid over fees for funerals conducted at crematoria to the DBF (his explanation was he did not need the money and only changed the practice on the arrival of his first child when he became short of cash);
 - He could not explain why his registers showed weddings had taken place the fees for which he had not documented on his returns or remitted beyond attributing it to his careless manner of completing the returns.
48. Both before the police and before us he maintained that his exchange of correspondence with the Bishop or Archdeacon had led him to believe that fees for funerals need not be disclosed, returned or remitted to the diocese. The correspondence disclosed some justification for this train of thought³² but it is our firm view that in this the Respondent was being selective. In a letter dated 4 September 1996³³ from the then Archdeacon of Carlisle

³⁰ Bundle, pp. 10-16.

³¹ Bundle, pp. 261-305.

³² See Bundle, pp. 117-133, 309-315

³³ Bundle, p. 309.

he was told that “ a stipendiary minister in [the Carlisle Diocese] does not benefit personally from fees since they are either assigned to the diocese, or wholly taken into consideration for the purpose of calculating the amount of stipend augmentation”. His reply did not challenge this since he was more concerned that someone else conducting the funeral should remit the fees to him³⁴. In any event, despite his attempts to resile from this before the police, before us and in later correspondence, he showed his complete understanding in a later letter dated 3 December 1998 to the bishop in which he wrote “I, as the incumbent have the responsibility of passing on any fees owing to me, as it is me who has assigned the Deed of Assignment.”³⁵ This point was confirmed by the Bishop in his reply dated 28 January 1999³⁶.

The Case for the Complainant

49. The Complainant produced a reconciliation based on the published tables for statutory fees, the Banns book for St Luke’s, the Marriage Register for St Luke’s, and the Respondent’s own diary entries showing funerals he had conducted or was at least due to take as noted above³⁷. Between 1992 and 2009 these demonstrated that the Respondent had paid over a total of £6,547.90 in respect of assigned fees but would have received over £27,000 of fees³⁸. The reconciliation demonstrated a deficit of over £21,000 for fees the Respondent failed to pay over to the diocese.
50. Mr Iles submitted that if the Tribunal thought the Respondent was trying his incompetent best to pay over what was legally due then he could not have been dishonest. If, on the other hand, he was not, then he invited us to infer (as the only reasonable inference we could draw) that he was dishonest. He submitted:
- That the fact that he knew and admitted in his second Answer that he had completed the returns without checking the records showed he had no intention of making a genuine and honest return;
 - That the fact that he told the police he just stuck anything down (again without referring to the records) again showed he had no intention of making a genuine and honest return;
 - His reliance on the correspondence as entitling him to keep fees for funerals at crematoria was weak and inconsistent with his returns in the first years in which he returned and paid over such fees to the diocese;
 - He told the Complainant he did not do many funerals (which was incorrect) and amounted, it was submitted, to an attempt to hide the truth;
 - He admitted he had paid fees into his own account and had kept some of the money so paid in;
 - He admitted he had paid little over in the previous 10 years;
 - His own letters showed that he knew fees for funerals at crematoria belonged to the diocese;

³⁴ Letter 6 September 1996 at pp. 310-311.

³⁵ Bundle, p. 312.

³⁶ Bundle, p. 313. The Respondent also sent a letter dated 17 Dec 00 (p. 192) in which he enclosed a cheque for £315 “for funerals”.

³⁷ Bundle, pp. 68-70.

³⁸ This may explain where the police figure of £27,000 came from.

- The deed of assignment and the forms themselves which he completed made it quite plain what he was supposed to return and what was the correct amount of fees for the period in question;
- The returns did not include the fees he had queried in his correspondence.

51. All this, Mr Iles submitted, showed the Respondent was dishonest not merely inefficient.

The Respondent's Defences

52. The Respondent's principal defence, as reflected in his second Answer dated 26 November 2010³⁹ and in his written statement⁴⁰, was that whilst he accepted incompetence and inefficiency, he had not been dishonest. He accepted, with hindsight, that fees he should have paid over were not. He did not think he had profited financially.

53. This was put forward in three ways:

- He did not know that the fees to be assigned included fees for funerals held at crematoria;
- He had failed to pay the correct amount because of his bad record keeping. His returns were, he accepted, inaccurate but not false and not dishonest or fraudulent;
- The funerals recorded in his diary were not necessarily conducted by him.

Discussion

54. We have to say we were not impressed by any of these defences.

55. As to the first, we have already explained above that we consider he knew, and certainly ought to have known that the fees to be assigned included fees for funerals conducted at crematoria. This is borne out not only by his understanding as demonstrated by the correspondence as previously noted, but also by the returns themselves which showed that he had included in some years such fees. He had paid over fees in the first years on taking office. He knew wedding fees should have been paid over to the DBF but he did not (as we develop below).

56. As to his excuse that his records and returns were inaccurate a repeated refrain was that he was "ramshackle" in his approach and could not really be bothered. He also told us he resented filling in the forms. A lot went in the bin. In fact it seemed to us he made no attempt even to find out if his returns were anything like accurate. Whilst his evidence disclosed he had sent letters asking for help and assistance in his ministry he did not once, so far as we can tell, request help and assistance with his administration. In short he made no or little effort after the first few years to ensure his returns were accurate yet he confirmed on the forms they were and by completing them he must have known that they were of importance to the diocese and to the central authorities. Indeed, he also repeatedly stated or implied that his Church Registers were accurate since they were checked by the Archdeacon and never queried yet in filling in the forms he never bothered to check his records, whether in the form of the Church Registers, his diaries or whatever. Particularly telling was his omission of weddings when he must have known (in at least one instance) these had recently taken place (below).

³⁹ Bundle, pp. 144-147.

⁴⁰ Bundle, pp. 148-154.

57. As to his assertion that the funerals were not necessarily conducted by him, this not only contradicted his statement to the police, this assertion really only emerged in his evidence to us. He was repeatedly asked for an estimate of the funerals he did conduct and steadfastly refused to "*speculate*".

58. As to the assertion he had not profited financially, he told us he had retained some of the fees he should have remitted, had expended moneys on items such as gardeners, photocopier, a computer (for use in the parish, but also by him) and other unidentified things.

Decision

59. We are firmly of the view and find that his admission to Allegation B is amply justified on the evidence.

60. Although Allegation B was expressed as an alternative to Allegation A, we also find on the balance of probabilities that Allegation A (dishonesty) is also made out.

Reasons

61. Our reasons are reflected above. Specifically:

- We accept the submissions of the Designated Officer that the only reasonable inference to be drawn, for the reasons advanced by him, is that the Respondent was dishonest in his completion of the returns and in his failure to remit the amounts properly due to the diocese. We accept that the figure of over £21,000 as shortfall is an estimate but we find it a not unreasonable one based on the records that are available including the Respondent's own diaries.
- Although we took account of his admissions (particularly in relation to Allegation B), we did not find the Respondent a wholly credible or believable witness in terms of his evidence to us. We found him, as previously stated, evasive in his answers particularly over the number of funerals he had in fact conducted. It would be perfectly reasonable not to remember each and every one, but we found his refusal even to attempt an estimate despite repeated opportunities unimpressive. More important were his early admissions to the Complainant at their first meeting in February 2009 as set out above.
- We find he did know what his duties and responsibilities were as regards the fees he had assigned to the DBF from the following at least:
 - i. The deed of assignment itself. He told us he had probably not even read it, yet he was careful enough to correct the date;
 - ii. The forms he was required to complete and accompanying notes made clear what his responsibilities were and even listed the types of fees and amounts;
 - iii. He adhered to the terms of the deed for the first few years correctly;
 - iv. He was aware of the need for accurate records since he knew that his Church Registers, e.g. of weddings, would be inspected every three years by the Archdeacon;

v. He officiated at two weddings in 2006⁴¹ yet failed to include them in his returns for that year or in his monthly returns, in the latter case omitting two weddings held in the month of July (12th and 18th) on a monthly return signed on the 28th July 2006⁴².

- We found his defences unconvincing and inconsistent. In substance he wilfully refused to take any care or attention over the completion of his forms, yet he was (as he himself admitted) close to obsessive about ensuring he collected the correct fees as due to him from persons conducting funerals in his parish.
- He knowingly shut his eyes to the detail of the forms he was required to return and to the notes accompanying those forms telling him what to fill in.
- In respect of his claim that he was ramshackle or could not be bothered he attempted to evade his responsibilities and certainly did not exercise or demonstrate proper stewardship of matters under his control or for which he was responsible.
- We had the distinct impression that he hoped that by shutting his eyes to those details and responsibilities he would not in some way be morally culpable. We were not convinced.
- Also telling was his explanation to the police for abandoning his early (correct) practice as being a need for money particularly with the arrival of his first child.

62. We should add that during his closing submissions the Respondent admitted he had opened a second account into which he paid fees he should have remitted and which he used to pay his nephew's school fees. There was some evidence to support this in that there was evidence of a second account mentioned to the police⁴³. However, since this was not developed during his evidence under oath we wish to state clearly that this is not something we felt we could properly take into account. Accordingly this admission formed no part of our conclusions.

63. The Respondent also challenged the accuracy of the transcripts of his police interviews in that they were incomplete. How, was not clear but we did not understand him to challenge the accuracy of what was before us. He attempted to explain away some of his answers but we did not find these explanations convincing.

Mitigation

64. Before consideration of any appropriate penalty we propose to afford the Respondent the fullest opportunity to make further submissions. We feel, however, it right at this stage, to recognise that the Respondent presented a somewhat despairing figure. It appears he suffers from depression (though we saw no medical evidence), his marriage (he has a wife and four children) has apparently failed and the couple have now recently separated, and his ministry also appears to have failed. He has now, we understand, resigned or retired and no longer living in the vicarage.

65. He is plainly a person in need of help and assistance. He complained to us that he had not had the assistance and support from the diocese to which he felt he was or might be

⁴¹ Bundle, p. 9.

⁴² Bundle, pp. 21, 220.

⁴³ Bundle, p. 262.

entitled. He certainly appeared before us unassisted by anyone. Whether this was and to what extent it was in fact the situation (beyond his appearance before us unaccompanied by any supporter or assistance) we do not know.

66. Nevertheless we recognise our findings are bound to increase the stress and strain upon him in respect of which we feel some compassion. We mention these matters in the recognition that part of our consideration in due course as to the appropriate penalty must not only reflect the interests of justice and ensure the clergy continue to be worthy of the great trust placed in them as ordained ministers but also *“putting right that which is wrong, attempting reconciliation, and moving on constructively from the past”*⁴⁴

Conclusions

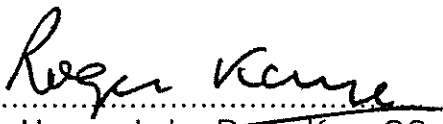
67. We unanimously find Allegations A and B proved. We shall at some future date to be fixed consider the appropriate penalty.

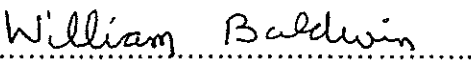
Members of the Tribunal:

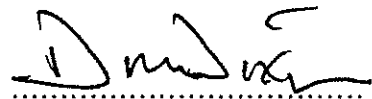
⁴⁴


See Guidance on Penalties published by the Clergy Discipline Commission.

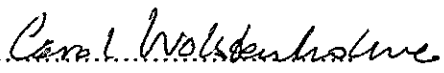
Members of the Tribunal:



His Honour Judge Roger Kaye QC
(sitting in York
7 April 2011)


The Revd Dr William Baldwin
Tribunal Member


The Revd David Dixon
Tribunal Member


Mrs Carole Park
Tribunal Member


Miss Carol Wolstenholme
Tribunal Member


Mr Lionel P M Lennox, Registrar of Tribunals

Dated 7 April 2011

