Case No: AC-2024-LON-000163

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
[2024] EWHC 2924 (Admin)

The Royal Courts of Justice
Strand
London WC2A 2LL

Tuesday, 12 November 2024

BEFORE:
MRS JUSTICE LANG

BETWEEN:

THE KING

(on the application of REVEREND BERNARD CHARLES RANDALL)

Claimant

- and -

(1) CLERGY DISCIPLINE COMMISSION
(2) PRESIDENT OF TRIBUNALS

Defendants

- and -

RT REVEREND ELIZABETH JANE HOLDEN LANE

Interested Party

MR B QUINTAVALLE (instructed by Camerons Solicitors LLP) appeared on behalf of the Claimant.

MS H SLARKS (instructed by Sharpe Pritchard LLP) appeared on behalf of the Defendants.

THE INTERESTED PARTY did not appear and was not represented.

JUDGMENT
(Approved)

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MRS JUSTICE LANG:

1. The claimant renews his application for permission to apply for judicial review of the Decision of the second defendant ("the President") dated 15 February 2024, pursuant to section 17 of the Clergy Discipline Measure 2003 that there was no case to answer on the claimant's complaint of misconduct against the interested party ("the Bishop").

2. Permission to apply for judicial review was refused on the papers by Dan Squires KC, sitting as a Deputy Judge of the High Court, on 5 August 2024.

3. The defendants have raised some preliminary issues which were not addressed by Dan Squires KC. They are that the claim was not filed promptly; the statement of truth on the claim form was not signed, that there has been no valid service as only an unsealed copy of the claim form was served.

4. I have concluded that the Court has no jurisdiction to hear this claim as there has not been valid service of the claim form and, therefore, I propose to deal with that issue first.

Failing to serve a valid claim form

5. The claimant has difficult obstacles to overcome in regard to late service of the claim form and supporting documents, in the light of recent decisions of the Court of Appeal.

6. In *Ideal Shopping Direct Limited v Mastercard Incorporated* [2022] EWCA Civ 14, per Sir Julian Flaux C, at [137], [145] and [146], the Court of Appeal held that service of an unsealed claim form is not valid service and a claimant could not rely on CPR 3.10 to rectify the defect.

7. In *R (Good Law Project) v Secretary of State for Health and Social Care* [2022] EWCA Civ 355, the Court of Appeal held that the principles in CPR 7.6 should be applied to any application to extend time for service of a judicial review claim form made under CPR 3.1(2)(a). CPR 7.6(3) provides:

> "If the claimant applies for an order to extend the time for compliance after the end of the period specified by rule 7.5 or by an order made under this rule, the court may make such an order only if –
>
> (a) the court has failed to serve the claim form; or
>
> (b) the claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so; and
>
> (c) in either case, the claimant has acted promptly in making the application".

8. The Court of Appeal in *Good Law* held that the approach to an application for relief from sanctions set out in *Denton v TH White* [2014] EWCA Civ 906, and applied in public law claims in *R (Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1633, should not be applied to failures in service of originating process. This is because valid service of a claim form founds the jurisdiction of the court over the defendant. Parties who failed to take reasonable steps to effect valid service expose themselves to the very real risk of losing the right to bring the claim, per Carr LJ at [83].

9. The Court of Appeal considered that matters such as to the lack of prejudice to the defendant by the invalid service, because a claim form had been served by other means, the public interest in the claim and the merits of the claim were not relevant to determining whether the claimant met the requirements of CPR 7.6(3). There will be detriment to the defendant by reason of the loss of an accrued limitation defence, per Carr J at [36], [58], [64] and [65].

10. By CPR 54.7, the claim form must be served on the defendant and any interested party "within seven days after the date of issue". The claim form must be sealed. Here the claim form was issued by the court on 14 May 2024 and so the time for service expired on 21 May 2024.

11. Mr Smith, solicitor at Camerons, who acts for the claimant, states in his witness statement dated 11 November 2024 that he attempted to serve Sharpe Pritchard, solicitor for the defendants, by email on 16 May 2024, attaching the sealed claim form and supporting bundle. The subject line of the email includes the words "sealed

application". However, the claimant received an "undeliverable" message as the attachments were too large for the receiving mailbox, and therefore service was not effective. He then made arrangements for electronic service instead with Sharpe Pritchard and he was sent a link to their document upload centre. Sharpe Pritchard acknowledged receipt at 18.35 on 16 May (deemed service 17 May 2024). Mr Smith now admits that an unsealed copy of the claim form was uploaded at that time.

12. In my view, the fact that Mr Smith uploaded an unsealed copy of the claim form casts doubt on Mr Smith's assertion that he sent the sealed claim form as an attachment to his email earlier on the same day. If he had done so, why would he then have substituted an unsealed claim form when uploading the electronic file later the same day?

13. Mr Smith also states that he sent a hard copy of the claim form by post to the first defendant. It was posted on 16 May 2024 and the date of deemed service was 20 May 2024. He now accepts that that claim form was not sealed.

14. Mr Blunden, solicitor at Sharpe Pritchard, who acts for both defendants, states in his witness statement dated 11 November 2024 that neither defendant has been served with a sealed claim form. Mr Blunden states that, on 16 May 2024, the claimant served an unsealed and unsigned copy of the claim form on Sharpe Pritchard via an electronic file sharing platform. Deemed service was 17 May 2024. The unsealed and unsigned claim form is exhibited to his witness statement. I accept Mr Blunden's evidence on this point.

15. Mr Blunden also states that on 16 May 2024, the claim form and bundle was sent by post to the first defendant, but not to the President. The claim form was unsealed and unsigned: a photograph of it has been exhibited. Deemed service was 20 May 2024. I accept Mr Blunden's evidence on this point.

16. On 6 June 2024, Sharpe Pritchard filed the defendant's acknowledgement of service in which they raised these matters. There was an exchange of emails between the firms of solicitors afterwards. On 10 June 2024, Mr Smith stated a sealed copy of the claim form had been served and, although not signed, the relevant box on the claim form was

ticked. On 12 June 2024, Sharpe Pritchard replied and stated again that the claim form was unsealed and did not comply with the requirements for a signature.

17. I note that Mr Smith now accepts that an unsealed claim form was served on Sharpe Pritchard, so his email of 10 June 2024 was incorrect.

18. Mr Smith made no attempt thereafter to serve a sealed, signed copy of the claim form on Sharpe Pritchard or the first defendant or the President.

19. As regards service on the Bishop, Mr Smith states that he attempted to serve the claim by email on 16 May 2024 but it was too large and he received an "undeliverable" message. He states that he posted a hard copy to the bishop on 16 May (deemed service 21 May). He states that he believes that a sealed copy of the claim form was included. However, the Bishop's solicitors, Kingsley Napley LLP, state that only an unsealed claim form was served on the Bishop. I consider that the Bishop and Kingsley Napley are more reliable than Mr Smith on this issue. They have the advantage of being able to check the bundle sent to the Bishop, whereas Mr Smith no longer has it in his possession.

20. I am satisfied that the claimant has not served a sealed claim form on the first defendant or the President or the Bishop.

21. Yesterday, 11 November 2024, my clerk emailed the parties on my behalf asking for further details about service of the claim form. This prompted Mr Smith to draft an application for an extension of time to 12 November 2024 to serve a sealed copy of the claim form on the defendants and the interested party, and also to apply for relief from sanctions. He also applied for an order under CPR 22.4(1) allowing him to verify the claim form. However, the application notice, which was served on the defendants, was not signed. I do not know, therefore, if the application has been accepted for issuing by the court. Plainly, there has been extensive delay in making this application.

22. In my view, the claimant has not demonstrated compliance with CPR 7.6(3). Contrary to subparagraph (b), he has not taken all reasonable steps to comply with rule 7.5, but

been unable to do so. Contrary to subparagraph (c), he has not made a prompt application for an extension of time.

23. The claimant submits that these were innocent mistakes. He asserts that he did attach a sealed claim to the "undeliverable" emails. However, he was notified that they were undeliverable on the same day and knew that service had been ineffective. He did not take reasonable steps to effect service in other ways, as he failed to serve the sealed claim form either by way of document upload or by post.

24. The claimant submits that the defendants have not suffered prejudice or detriment as they received the unsealed claim form, but, in *Good Law*, the court held that lack of prejudice because a claim form had been served by other means was not relevant to determination of the question under rule 7.6(3).

25. In *Good Law*, the detriment to the defendant was identified as the loss of an accrued limitation right. Here the uncertainty surrounding the challenge to the President's decision, and the delay in pursuing it, has been prejudicial to the Bishop (see her witness statement at paragraphs 14 to 16).

26. Furthermore, the claimant failed to sign the statement of truth on the claim form. The sealed claim form in the hearing bundle has a box for a signature under the statement of truth, but it is blank. The claimant's solicitor has typed in his name and firm. CPR 22.1 provides a claim form must be verified by a statement of truth. Paragraphs 3.6 to 3.9 of Practice Direction 22 require the statement of truth to be signed with a signature. In my view, an unsigned claim form is invalid. The Administrative Court office should not have allowed it to be filed unsigned. Once the claimant appreciated his error, he should have made an application for permission to verify the claim form by adding his signature, but he only did so yesterday.

27. In my judgment, the consequence of the failure to serve a valid claim form on the defendants in time and a failure to obtain an extension of time to effect valid service is that the claim form has to be set aside and the Court has no jurisdiction to hear the claim.

28. This conclusion brings the claim to an end. However, I consider that it will be helpful to the parties and any appeal court for me to set out my conclusions on the other issues.

Failing to file the claim promptly

29. By CPR rule 54.5(1);

> "The claim form must be filed –
>
> (a) promptly; and
>
> (b) in any event not later than 3 months after the grounds to make the claim first arose".

30. Promptness is the primary requirement, the three-month period is a longstop (see *Mauritius Shipping Corp Ltd v The Employment Relations Tribunal* [2019] UKPC 42 at 8. So a claim may be out of time if it is not filed promptly even if it was filed within three months after the grounds to make the claim first arose.

31. Section 31(6) of the Senior Courts Act 1981 provides:

> "6) Where the High Court considers that there has been undue delay in making an application for judicial review, the court may refuse to grant —
>
> (a) leave for the making of the application; or
>
> (b) any relief sought on the application,
>
> if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration".

32. The authorities, which are helpfully summarised in paragraph 26.1(7) of the **Judicial Review Handbook**, Fordham (7th Ed.), indicate that the rationale of the strict time limits in judicial review claims is that "the public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision", per Lord Diplock in *O'Reilly v Mackman* [1983] 2 AC 237, at 280H to 281A.

33. In *R v Hammersmith v Fulham LBC, ex parte Burkett* [2002] 1WLR 1593 at 44, the House of Lords observed, per Lord Steyn at [44], that "there is a need for public bodies to have certainty as to the legal validity of their action". Furthermore, in *A v Essex County Council* [2010] UKSC 33 [2011] 1 AC 280 at 116, Lady Hale endorsed the proposition that there was a significant public interest in public law claims against public bodies being brought expeditiously since judicial review remedies are normally prospective aiming not only to quash the past but also to put right the future.

34. Despite judicial doubts about the lack of certainty in the promptness requirement, it remains a valid procedural requirement in CPR.

35. In this case the decision under challenge was made on 15 February 2024 and the claimant did not file his claim until 14 May 2024, which was the final day before the expiry of the three-month period. In my view, the claim was clearly not filed promptly as required. It is surprising and concerning that the claimant has not given any explanation for the delay in filing the claim.

36. The claimant has not applied for an extension of time under CPR 3.1(2). Despite that omission, I have considered whether to grant an extension of time, applying the guidance in *Maharaj v National Energy Corporation of Trinidad and Tobago* [2019] UKPC 5; [2019] 1 WLR 983, per Lord Lloyd-Jones at [38], where he stated that the factors to be considered when determining an application to extend time

> "include many considerations beyond those relevant to an objectively good reason for the delay, including the importance of the issues, the prospect of success, the presence or absence of prejudice or detriment to good administration and the public interest".

37. The Bishop describes in her witness statement the steps that she has taken to act on the recommendations in paragraph 17 of the Decision, (a) to look at the claimant's matter again and to consider commencing an independent process from scratch; and (b) to look at the way in which safeguarding is conducted in the diocese and how it is supervised. At paragraphs 14 to 16, she states:

> "14. These judicial review proceedings and in particular the fact that it was nearly three months after the decision before they were commenced

> will materially affect me and work being done in the diocese. I, along with senior colleagues, have spent considerable time taking action on the President's recommendations, primarily, on the basis that the 15 February decision was the final say on the matter. I have had conversations with numerous stakeholders to map out a way forward following the President's decision, including with the Archbishop of Canterbury, the Diocese of Derby's Diocesan Secretary, the Diocese of Derby's head of safeguarding, legal advisors, the church's national head of safeguarding and with potential independent leads for the new process.
>
> 15. All this has taken considerable time and attention which has had an impact on delivery of other aspects of my work. It has had an impact on my Diocesan colleagues who have been drawn into taking action on the recommendations of the President.
>
> 16. These judicial review proceedings have created uncertainty at a time when I am pressing on with acting on the President's recommendations. If Dr Randall did want to raise these concerns by way of judicial review proceedings, my view is that he should have done so sooner. Whilst I would still have expected to act on the recommendations made by the President, if a claim for judicial review had been filed promptly, I would have approached the issue differently and considered allocating the Diocese's limited resources, both in terms of time and money, differently."

38. The Bishop's solicitors have also provided an update for this hearing in a letter dated 7 November 2024.

39. The claimant's response to the complaint of lack of promptness is in paragraph 4 of counsel's skeleton argument, which states:

> "This claim was brought within 3 months. In the circumstance, it is not accepted that the nature of the claim is one in which delay has caused administrative prejudice to either the second defendant or the interested party … The objection to a lack of promptness is, therefore, without foundation."

40. In the light of the Bishop's evidence, I am satisfied that the delay was prejudicial to the bishop and her colleagues, particularly as there is such a lengthy history to this complaint which was first made on 6 July 2022. However, if I had jurisdiction in this claim, I would have extended time for filing the claim form because of the importance of the issues to the claimant and the absence of any other means of redress, unless he manages to overturn the dismissal of his Employment Tribunal claim on appeal.

Failure to serve the renewal notice

41. Following the refusal of permission on 5 August 2024, the claimant applied to renew his application for permission by filing a renewal notice (Form 86B) on 8 August 2024. Form 86B states that the claimant must serve a renewal notice on the defendant and any interested parties who were served with the claim form within seven days of being served with the order refusing permission.

42. In his witness statement, the claimant's solicitor states that he did not serve the renewal notice on the defendants or the interested party. His only explanation is that it was an oversight.

43. On 15 August 2024, the court made standard directions for the renewal application. The court's order was not successfully served on the defendants and interested party, apparently because their email addresses were misspelt.

44. Pursuant to the order for directions, the claimant's solicitor served the hearing bundle for the renewal application on the defendants and the interested party on 29 August 2024. This was the first occasion upon which they became aware of the renewal application.

45. On 5 September 2024, the claimant filed an application for an extension of time to serve the renewal notice and for relief from sanctions. Kingsley Napley stated in their email of 13 September 2024 that they still had not been served with the renewal notice.

46. Applying the guidance for relief from sanctions in *Denton* and *Hysaj*, the first stage in the three-stage approach is to identify the seriousness and significance of the failure to serve. In my view, this was both serious and significant. The delay was lengthy.

47. The second stage is to identify the cause. Here the cause is the carelessness of the solicitor, which is not usually a good reason for an extension of time.

48. The third stage is to evaluate all the circumstances of the case so as to enable the court to deal justly with the application. As I have already said, there was a lengthy delay. It should have been obvious to the claimant's solicitor that he was required to serve the

renewal notice as it said so on the form. The other parties will have assumed that the claim for judicial review was concluded when, in fact, it was not. For the reasons set out in the Bishop's witness statement, the uncertainty and delay associated with this claim is prejudicial to her and the diocese. However, the parties will have had sufficient time to prepare for today's hearing.

49. If I had jurisdiction, I would have concluded that it would be disproportionate to prevent the claimant from pursuing his claim by reason of this default. I would, therefore, have deemed service to have taken place when the hearing bundle was served and I would have granted an extension of time to file to 29 August 2024.

50. I turn now to consider the merits of the application for permission to apply for judicial review.

The legal framework

51. The discipline of those in Holy Orders within the Church of England is a matter of ecclesiastical rather than secular law. The regulation of discipline within the Church of England is addressed (so far as relevant to the present claim), through:

(1) The Clergy Discipline Measure 2003 ("the Measure")

(2) The Clergy Discipline Rules 2005 ("the Rules") and

(3) The Clergy Discipline Measure 2003: Code of Practice July 2022 ("the Code of Practice").

52. A detailed legislative structure for the regulation of discipline within the clergy is established in the Measure. The Measure created the Commission in section 3 and the office of President in section 4.

53. The Measure applies "for the purpose of regulating proceedings against a clerk in Holy Orders who is alleged to have committed an act or omission other than one relating to matters involving doctrine, ritual or ceremonial": section 7(1).

54. Section 8 explains the concept of misconduct as it applies under the Measure and subsection 1 provides that:

> "(1) Disciplinary proceedings under this Measure may be instituted against any archbishop, bishop, priest or deacon alleging any of the following acts or omissions—
>
> (a) doing any act in contravention of the laws ecclesiastical;
>
> (aa) failing to comply with the duty under section 5 of the Safeguarding and Clergy Discipline Measure 2016 (duty to have due regard to House of Bishops' guidance on safeguarding children and vulnerable adults);
>
> (b) failing to do any other act required by the laws ecclesiastical;
>
> (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".

55. By section 10 of the Measure, disciplinary proceedings are commenced by the making of a complaint in writing by "a person who has a proper interest in making the complaint" and, where the subject of the complaint is a Bishop, the complaint is laid before the relevant archbishop.

56. The initial stage of the process is scrutiny of the complaint by the Archbishop's registrar "as to whether or not there is sufficient substance in the complaint to justify proceeding with it in accordance with the following provisions of this measure": see section 11(1)(b). The Archbishop may dismiss the complaint on receipt of the registrar's report, or he may take one of the courses provided for in section 12.

57. If the Archbishop dismisses the complaint, the complainant has the right to refer the dismissal to the President under section 11(4) who may reverse or remit for reconsideration the decision if it is "plainly wrong". On reconsideration, the Archbishop may again dismiss the complaint and the section 11(4) process becomes available again: see section 11(4)(a).

58. The formal investigation of a complaint is regulated by section 17 of the Measure which is the provision relevant to this claim. It provides that:

> "(1) Where the bishop directs that the complaint is to be formally investigated, he shall refer the matter to the designated officer and it shall then be the duty of that officer to cause inquiries to be made into the complaint.
>
> (2) After due inquiries have been made into the complaint the designated officer shall refer the matter to the president of tribunals for the purpose of deciding whether there is a case to answer in respect of which a disciplinary tribunal or the Vicar-General's court, as the case may be, should be requested to adjudicate.
>
> (3) If the president of tribunals decides that there is a case for the respondent to answer he shall declare that as his decision and refer the complaint to a disciplinary tribunal or the Vicar-General's court, as the case may be, for adjudication.
>
> (4) If the president of tribunals decides that there is no case for the respondent to answer he shall declare his decision, and thereafter no further steps shall be taken in regard thereto.
>
> (5) The president of tribunals shall reduce his decision to writing and shall give a copy of it to the complainant, the respondent, the bishop and the designated officer."

59. The procedures prescribed by the Measure are supplemented by the rules. Section 39(1) of the Measure makes provision for a Code of Practice.

60. The role of the President following the investigation by the designated officer is at paragraphs 230 to 232 of the Code of Practice.

61. The handling of safeguarding concerns in relation to members of the clergy is governed by the Safeguarding and Clergy Discipline Measure 2016. Section 5 imposes a duty to have due regard to the safeguarding guidance issued by the House of Bishops. The two relevant guidance documents are: (i) "Practice Guidance: Responding to, assessing and managing safeguarding concerns or allegations against church officers ("the Responding to Guidance"); and (ii) "Key roles and responsibilities of church officeholders and bodies' practice guidance ("the Key Roles Guidance"). The claimant submits that, ultimately, the responsibility for safeguarding within a diocese rests with the Bishop.

62. A claim for judicial review may be made in respect of a decision of the President of Tribunals under section 17(4) of the Measure. However, the defendants contend that the supervisory jurisdiction is limited to the grant of mandatory and prohibitory orders. It does not include a quashing order: see *R v Chancellor of St Edmundsbury and Ipswich Diocese, ex parte White* (1948) 1 KB 195 and *R v Chancellor of the Consistory Court, ex parte News Group Newspapers*, The Times, 15 July 1991.

63. It is common ground that the Administrative Court should afford respect to the expertise of a specialist decision-making body applying ecclesiastical law.

The claimant's complaint

64. The claimant was the chaplain at Trent College, a private school for pupils aged 11 to 18, from 2015 to 2020. He gave sermons to the pupils, expressing his views on the interaction between the Church of England and LBGT+ rights which led to complaints and safeguarding concerns. He was suspended and then dismissed in August 2019 for gross misconduct, but reinstated on appeal and given a final written warning. Trent College made a referral to the diocese and safeguarding team in Derby in July 2019. In December 2020, he was made redundant. He is currently not authorised to exercise ordained ministry.

65. On 6 July 2022, the claimant brought a complaint of misconduct under the measure against the Bishop, because of the handling of the safeguarding concerns about him. He complained that the Bishop did not have due regard to the Church of England's own policy documents.

66. On 21 December 2022, the Archbishop of Canterbury dismissed the claimant's complaint. The claimant requested a review and, on 5 June 2023, it was reversed in part by Gregory Jones KC, appointed to act on behalf of the President.

67. On 20 July 2023, the Bishop provided a written response to the remaining allegations. On 26 July 2023, the Archbishop again determined that no further action be taken. The claimant sought a review of that decision and, on 2 September 2023, Gregory Jones

KC, again acting on behalf of the President, upheld the Archbishop's decision in part only. The aspects of the complaint which remained were as follows:

(i) the Bishop had not met with Dr Randall to outline the nature of the allegation as required by the Responding to Guidance;

(ii) the Bishop accepted a recommendation for a risk assessment on the basis of the concern not being "unsubstantiated", which was an impermissible reason under the Responding to Guidance;

(iii) there was a failure to follow the investigation summary report procedure in contravention of the Responding to Guidance;

(iv) allegations relating to discrimination on grounds of religion and belief, engaging Articles 8, 9, 10 and 14 of the ECHR.

68. The complaint was passed to the Designated Officer for investigation. His report was provided to the President on 5 February 2024. The President then decided that there was no case to answer under section 17(4) of the Measure.

Grounds of challenge

Ground 1

69. Under Ground 1, the claimant submits that the President erred in law and/or misdirected herself in concluding that, based on the evidence before her and/or her own findings, there was no case to answer in relation to alleged misconduct by the Bishop. The definition of "misconduct" in section 8(1) of the Measure is very wide. The logic of the decision strongly indicates that the President adopted an unduly narrow definition of "misconduct". The President was critical of the handling of the claimant's case by the safeguarding staff in paragraphs 13, 14, 15 and 17 of the Decision. The Bishop was ultimately responsible for ensuring good safeguarding arrangements and practice in accordance with the House of Bishops policy and guidance. There was a *prima facie* case of neglect and inefficiency in the performance of her duties and a failure to have regard to the House of Bishops guidance.

70. In my view, Ground 1 is unarguable and has no realistic prospect of success at a substantive hearing. The term "misconduct" denotes an act or remission by the individual concerned and the wording of section 8(1) of the Measure reflects that.

71. Whilst the Bishop had ultimate responsibility for the safeguarding team, she did not have day-to-day involvement in cases managed by the Diocesan Safeguarding Team. Indeed, the Practice Guidance stated at section 1.1 that the Bishop should remain distanced from the process in case intervention was required, for example, in the event of disciplinary action, claims against the church or a pastoral breakdown. On the evidence, there was no finding of neglect or inefficiency on the part of the Bishop.

72. The President's task was to consider the specific complaints made against the bishop. The President carefully examined the evidence and, where appropriate, she identified the extent of the Bishop's involvement. For example, under complaint (iii), at paragraph 14, the President found that the complaints or allegations related to actions by the safeguarding staff. They were not complaints or allegations against the Bishop. In my view, the President did not even arguably err in her application of section 8(1) of the Measure when concluding that, therefore, there was no case to answer.

73. In his skeleton argument dated 5 November 2024, the claimant's counsel significantly expanded his grounds of challenge. He ought to have applied to amend the statement of facts and grounds to add the new ground, but failed to follow the correct procedure. His new point was that the President erred in considering whether the alleged misconduct was sufficiently serious as to warrant referral, because, under section 17 of the Measure, the statutory test was limited to the question of whether or not there was a case to answer.

74. In my view, the claimant's interpretation of the statutory scheme is unarguable and has no realistic prospect of success at a substantive hearing. A threshold of seriousness is implicit in the definition of "misconduct" in section 8 of the Measure and the measure is supplemented by the Rules and the Code of Practice which expressly require consideration of the seriousness of the allegation.

75. Rule 1 provides:

> "The overriding objective of those rules is to enable formal disciplinary proceedings brought under the measure to be dealt with justly in a way that is both fair to all relevant interested persons and proportionate to the nature and seriousness of the issues raised …"

76. Paragraphs 10 to 11 of the Code of Practice set out the overriding objective of the disciplinary framework to deal with all allegations justly, which includes, so far as reasonably practicable, dealing with the allegation of misconduct in ways which are proportionate to the nature and seriousness of the issues raised.

77. Paragraph 13 provides:

> "This Code of Practice gives guidance for the purposes of the Measure. The measure is concerned with formal disciplinary proceedings which have been instituted in accordance with the law. It is not a 'complaints procedure' and it deals only with allegations of misconduct which are serious in nature."

78. Paragraph 34 reiterates the point in the following terms:

> "Minor allegations not amounting to serious misconduct are not covered by the measure. It is not possible to give a definitive list of what might be a 'minor allegation' but, generally speaking, grievances, disagreements and all minor acts or omissions, however genuine, are likely to fall outside the scope of the measure.

79. Paragraph 230 of the Code of Practice provides:

> "The President of Tribunals will consider the Designated Officer's report and decide whether there is a case for the respondent to answer. The President will take into account whether the alleged misconduct is sufficiently serious for referral to a bishop's disciplinary tribunal. If there is a case to answer and the alleged misconduct is sufficiently serious, the President will refer the matter to a disciplinary tribunal".

80. In the Decision, the President directed herself to the relevant provisions of the Measure, the Rules and the Code of Practice, at paragraph 4. At paragraph 5, the President correctly applied the test that she had to apply, namely, "whether there is a case to answer in relation to which it would be appropriate to convene a tribunal". She then applied that test to each complaint in turn. The President's approach does not, in my view, disclose any arguable misdirection in law.

81. Therefore, I would have refused permission on ground 1 even if the claim form had not been set aside.

Ground 2

82. Under Ground 2, the claimant submits that the President's conclusions on the complaints were irrational and she failed to give adequate reasons. The claimant relies in particular upon the fact that the President departed from the earlier decisions of Gregory Jones KC. However, the statutory scheme was a multi-stage process and Gregory Jones KC and the President were performing different functions, at different stages. Gregory Jones KC, acting on behalf of the President, was tasked with determining reviews of the Archbishop's initial dismissals of multiple complaints under section 11(4) of the Measure, which is headed "Preliminary scrutiny of complaint": the statutory test as to whether the dismissal was plainly wrong.

83. Following the second review, the Archbishop then directed a formal investigation of the remaining complaints under section 17 of the Measure, which is headed "Formal investigation". Once the investigation was concluded, the Designated Officer referred the matter to the President for the purpose of considering whether there was a case to answer under section 17. The President determined there was no case to answer under section 17(4). Obviously, at that stage, the President was in a different position to Gregory Jones KC, as she had the benefit of the findings of the investigation conducted by the Designated Officer and she was applying a different statutory test. She was required to look at the complaints afresh and she was not bound by the earlier decisions of Gregory Jones KC, nor was she required to set out the reasons why and to what extent she disagreed with his conclusions.

84. The claimant also complains that the Designated Officer's report was not disclosed. The report has not been disclosed pursuant to paragraph 229 of the Code of Practice, which provides:

> "The contents of the Designated Officer's written report to the President are confidential and the report will not be disclosed to the complainant, respondent, bishop or any other person."

85. The President confirmed in her decision that the report was to be treated as confidential. In the light of the Code of Practice and the fact that the Designated Officer prepared this report in the expectation that it would remain confidential, I do not consider that disclosure of the report is appropriate. The decision under challenge is the reasoned decision of the President, not the designated officer's report.

86. I turn to consider the grounds of irrationality and failure to give adequate reasons as pleaded in the statement of facts and grounds. I observe that the threshold for a finding of irrationality is a high one.

Complaint (i)

87. The only pleaded ground is that the claimant submits that there was no evidential basis for the finding in paragraph 8 of the Decision that "it is clear that the complainant was fully aware of the nature of the allegations prior to the meeting. Furthermore, the notes of the meeting make it clear that the concerns were discussed in some detail at the meeting itself".

88. The claimant relies upon his own witness statement at paragraphs 14 to 19 and the review decisions of Gregory Jones KC. At the hearing before me, the claimant also sought to add an unpleaded challenge to the President's finding of no case to answer on the basis that the Bishop did not meet with the claimant to outline the concerns.

89. A claim for judicial review only lies in respect of errors of law. It is not an appeal against findings of fact. The President had the benefit of evidence/submissions from the claimant and the Bishop and the findings of the investigation by the Designated Officer. There was documentary evidence available (the meeting notes). The President expressly considered whether sufficient detail about the concerns or allegations had been given to the claimant and concluded that it had been. She found that the claimant had met with the Assistant Diocesan Safeguarding Adviser in place of the Bishop. In the light of the unclear practice guidance, she concluded that there was not a case to answer that was sufficiently serious to be referred to a disciplinary tribunal.

90. These assessments and conclusions do not disclose any arguable public law error by the President. In particular, there is no basis for an irrationality challenge and the President's reasons are adequate for a decision of this nature.

Complaint (ii)

91. The claimant submits that the Bishop's decision to commission a risk assessment was erroneously based on a finding that the concerns were "not unsubstantiated", which was a departure from the Responding to Guidance which refers to "substantiated" or "unsubstantiated". The essence of the complaint was that the safeguarding concern lacked any rational or evidential basis. The claimant also states at paragraph 36 of the statement of facts and grounds:

> "36. It is submitted that the distinction drawn in paras 10-12 of the Decision between (a) "not unsubstantiated", (b) "unable to conclude that the concerns were unsubstantiated" and (c) "could not dismiss the possibility that the Complainant posed a potential safeguarding risk" is a distinction without a difference. The decision is premised on the fact that the Bishop relied on (b) and (c) rather than (a) is irrational and unfair."

92. In her decision at paragraphs 10 to 13, the President found as follows:

> "10. In this regard, first, the Core Group considering the Complainant's position did use the term "not unsubstantiated" in the minutes of their meeting of 15 June 2021. Secondly, there is no dispute that the phrase does not fall within the Practice Guidance. Thirdly, it is not in dispute that the Core Group went on to recommend to the Respondent that she consider commissioning an independent risk assessment in relation to the Complainant.
>
> 11. However, in my judgment, there is no case to answer in relation to the Respondent herself in this regard. The further enquiries made by the Designated Officer make clear that the Respondent had not seen the Core Group minutes or the investigative report when she decided to accept the recommendation to commission a risk assessment. She could not have relied upon the phrase "not unsubstantiated", therefore.
>
> 12. In fact, it appears that she relied upon an email from her Diocesan Safeguarding Adviser, Ms Hogg, dated 22 June 2021. In that email, Ms Hogg states that the "meeting members were unable to conclude that the concerns were unsubstantiated". Ms Hogg went on to state

> that the recommendation from the CMM (the Core Group) was "that an independent risk assessment should be considered as part of Dr. Randall's application for PtO / licence, . . .". It appears that the Respondent sought further oral clarification from Ms Hogg about what was meant and was informed that the Core Group could not dismiss the possibility that the Complainant posed a potential safeguarding risk.
>
> 13. In the circumstances, there can be no case to answer in relation to reliance by the Respondent upon the phrase "not unsubstantiated". The position is far from satisfactory, however."

93. The Responding to Guidance provides:

> "In conclusion, there are three possible outcomes:
>
> 1. The initial investigation finds the concern or allegation was unsubstantiated and there are no ongoing safeguarding concerns – in this scenario for church officers who are ordained, licensed, authorised, commissioned or holding permission to officiate the DSA should recommend to the bishop that the respondent is returned to work. For other church officers the core group should decide that the respondent should be returned to work and inform the person responsible for them.
>
> 2. The initial investigation finds the concern or allegation was unsubstantiated but there are ongoing safeguarding concerns – in this scenario a risk assessment is required, for church officers who are ordained, licensed, authorised, commissioned or holding permission to officiate the DSA should recommend to the bishop that an independent risk assessment is undertaken. For other church officers, the core group should inform the DSA who will either carry out a standard assessment or make arrangements for it to be carried out;
>
> 3. The initial investigation finds the concern or allegation to be substantiated – in this scenario a risk assessment is required, for church officers who are ordained, licensed, authorised, commissioned or holding permission to officiate the DSA should recommend to the bishop that an independent risk assessment is undertaken. For other church officers, the core group should inform the DSA who will either carry out a standard assessment or make arrangements for it to be carried out."

94. In my judgment, the President's assessment was careful and fair. It acknowledged that the Core Group's categorisation of the concern did not accurately follow the Responding to Guidance. However, the President found on the evidence that the Bishop was unaware of this error made by the Core Group. The Bishop approved the recommendation on the basis of the information given to her, namely, that the Core

Group recommended a risk assessment and could not dismiss the possibility that the claimant posed a potential safeguarding risk.

95. In my view, it is unarguable that this was an irrational/unfair conclusion to reach on the evidence, or that the reasoning was inadequate for a decision of this nature. This is essentially an impermissible challenge to the President's findings of fact and her exercise of judgment.

Complaint (iii)

96. The claimant submits that the President's reasoning in paragraph 4 is irrational because the Bishop was personally responsible for the decision to rely on the recommendation to refuse a PTO to the claimant without satisfying herself that the correct procedure had been followed.

97. This submission is made further or alternatively to the submission under ground 1. I consider I have dealt with this issue fully under Ground 1. It follows from what I said under Ground 1 that I do not consider the findings in paragraph 13 are arguably irrational, or inadequately reasoned. Again, this is essentially an impermissible challenge to the President's findings of fact and exercise of judgment.

Complaint (iv)

98. The claimant submits that there is a *prima facie* case of discrimination on the grounds of the claimant's belief as found by Gregory Jones KC. In my judgment, paragraph 15 of the decision is a complete answer to this ground of challenge. It states:

> "(iv) **Discrimination on grounds of theology**
>
> Having considered all the evidence and documentation before me, in my judgment, there is no case to answer by the Respondent in relation to this ground. There is no cogent evidence that the Respondent was influenced in her decisions by theology in any way. To be clear, nor is there cogent evidence of discrimination on grounds of theology at all. In fact, the evidence suggests that this matter was extremely poorly handled and that the Respondent took a very limited part in it. "

99. It is clear that the President reached her conclusions following a careful consideration of all the evidence. In my view, these conclusions are not even arguably irrational, nor are they inadequately reasoned.

100. For all of these reasons, I would have refused permission on Ground 2 even if the claim form had not been set aside.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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