

IN THE CHANCERY COURT OF YORK

CLERGY DISCIPLINE MEASURE 2003

**In the Matter of an appeal against the decision of the Bishop's
Disciplinary Tribunal for the Diocese of York**

Concerning a complaint against the Reverend David Charles King

Appearances:

**Mr John Lodge for the Appellant, the Reverend David Charles King
Mr Adrian Iles as Designated Officer**

WRITTEN DETERMINATION OF APPEAL

1. This is an appeal against the penalty imposed on the Appellant on the 23 November 2007 by the Bishop's Disciplinary Tribunal for the Diocese of York.
2. Pursuant to section 17(3) of the Clergy Discipline Measure 2003 the President of Tribunals referred to the Disciplinary Tribunal for the Diocese of York an allegation of misconduct under section 8 (1) (d) of that Measure, namely

‘that the Respondent’s conduct was unbecoming or inappropriate to the office and work of a clerk in Holy Orders in that since about 2001 he has had an intimate and unprofessional relationship with Mrs Tracy Byrne at a time when she was married.’

3. The Tribunal heard this complaint on 3rd and 4th October 2007 and delivered its determination in writing on 23 November 2007. The members of the Tribunal were all satisfied

‘that between December 2004 and October 2006 the Respondent has pursued an improper, intimate and physical relationship with Mrs Byrne, which fell short of sexual intercourse, which began when they were both married to and living with their respective spouses. There is a risk which we are in no position to evaluate that such relationship has prevented two marriages from continuing with profound consequences for all the spouses and children of such marriages.’ (paragraph 160).

4. The members of the Tribunal unanimously agreed

‘that the Respondent’s aforesaid conduct constitutes conduct unbecoming and inappropriate to the office and work of a clerk in Holy Orders,’ (paragraph 161)

and they proceeded to impose a penalty

‘that the Reverend David Charles King be prohibited from exercising any of the functions of his orders for a period of four years from today [23 November 2007] and that he be removed forthwith from any office or preferment which he currently holds’.

5. On 14 December 2007, in accordance with rule 5 of the Clergy Discipline Appeal Rules 2005, the Appellant sent a notice of appeal to the Provincial Registrar appealing only against the penalty imposed by the Tribunal. By virtue of rule 10(1) the implementation of the penalty imposed by the tribunal was postponed pending the disposal of his appeal.
6. Under rule 27 (d) of those Appeal Rules this Court may confirm or set aside a penalty imposed by the tribunal, or substitute a greater or lesser penalty. Under rule 28 (1) (a) of the same Rules the Court may invite the bishop of the diocese concerned to express in writing his views as to the appropriate penalty. Since the facts were so fully and clearly set out in the written determination of the Tribunal, we decided not to exercise that power.
7. We heard the appeal on 10 March 2008. We are grateful to both counsel for the clarity of their arguments and the sensitive way in which they presented them. Mr Lodge said everything possible on behalf of the Appellant.
8. At the end of the hearing we unanimously concluded that the penalty imposed by the Disciplinary Tribunal should be confirmed, and we accordingly dismissed the appeal. In announcing the Court’s determination in open court in public with short reasons we said that our full reasons would follow in writing and we now set them out below referring to the Appellant (Respondent in the Tribunal) as ‘Mr King’.
9. Notice of Appeal
The Notice of Appeal contained three reasons why Mr King said that a different penalty should be imposed, namely
 1. ‘The sentence is manifestly excessive in all the circumstances.

2. The Tribunal failed to give due weight to the evidence before it in respect of the pastoral care offered by the Appellant over a length of period in this Benefice and in previous parishes.
3. The Tribunal failed to give sufficient credit for the time the Appellant had been suspended pending determination of the Tribunal.'

Mr Lodge dealt with points 2 and 3, as well as other points falling within the general point 1, and we consider them in turn.

10. Pastoral skills

At the hearing before the Disciplinary Tribunal three witnesses gave undisputed evidence about Mr King's pastoral skills, and this is recorded at paragraphs 98, 100 and 102 of the Tribunal's determination. Mr Lodge argued that the Tribunal had not attached sufficient weight to that evidence.

11. We have not only read those paragraphs with care but we have also studied the written statements of Peter Godbold, Charlotte Wykes and John Bell. They do indeed reveal that Mr King has been a hardworking and caring priest. All three statements emphasise the pastoral support he gave to farmers in the area during the 'foot and mouth' outbreak, his numerous visits within the parish, his general 'hands on' approach and his particular care for the elderly and infirm. This evidence is encapsulated in paragraph 116 of the Tribunal's determination, which says

"We readily accept that he was a conscientious hard working priest who devoted much time to his parishioners, those in need and the wider community and that many in the church held him in high regard. We have had such matters at the forefront of our deliberations."

We consider that this passage demonstrates that the Tribunal had proper regard to this character evidence.

12. In the Tribunal's remarks when imposing the penalty the subject of his character was specifically referred to again when it was said

"Our determination has expressly recognised that much could be said about you to your credit."

We can find no error in the way in which this matter was handled by the Tribunal.

13. We, in turn, have taken account of the evidence about Mr King's good qualities and have no doubt that his ministry will be missed in the benefice. As we said in announcing our determination on 10 March 2008, these proceedings constitute a personal tragedy for Mr King in the light of his past service to the Church and his care of all those parishioners to whom he has ministered with diligence for many years. But this character evidence is only one factor to be taken into account in determining the appropriate penalty for his proven misconduct.

14. Suspension

It was argued that in determining the appropriate penalty the Tribunal should have taken account of the fact that Mr King had been suspended from his duties as incumbent since February 2007. We do not accept this argument. Suspension is merely an interim step taken by the diocesan bishop pending consideration of a formal complaint under the Clergy Discipline Measure 2003, and it has no bearing on the penalty later imposed upon a priest when a finding of misconduct has been made against him.

15. The prescribed form expressly states that 'suspension does not mean any view has been formed as to whether the complaint of misconduct is true or likely to be true' (Form 12a the Clergy Discipline Rules 2005). The same form emphasises that 'any right to a stipend and housing will not be affected during any period of suspension.' It is true that the notice of suspension prevented Mr King from exercising the duties of his office so that his parishes ceased to have the benefit of his ministry. However, his personal position in terms of stipend and housing remained as before.

16. The discretionary power of a bishop to suspend a priest or deacon during proceedings under the Clergy Discipline Measure 2003 is a useful one, which can helpfully take the priest or deacon out of a stressful situation thus affording him/her breathing space. Conversely, depending upon the circumstances, it may be appropriate to use the power of suspension to alleviate a stressful or potentially stressful situation for members of the congregation where their priest is subject to disciplinary proceedings.

17. A penalty, in contrast, has the sole purpose of expressing the Church's disapproval of the conduct of the priest or deacon by imposing a personal penalty for proven misconduct. For these reasons we do not consider that a period of suspension should be

taken into account when a Disciplinary Tribunal, or this Court, is determining the appropriate penalty in a particular case.

18. Guidelines on Penalties

Mr Lodge submitted that the penalty should be less than for adultery as the Tribunal made no finding that Mr King had committed adultery with Mrs Byrne. He also submitted that the sexual misconduct found by the Tribunal did not occur with a person for whom at the relevant time (between December 2004 and October 2006) Mr King had any pastoral responsibility.

19. The subject of adultery is specifically mentioned in the Guidance on Penalties issued by the Clergy Discipline Commission in March 2006. It is suggested in section 5 that ‘Removal from office and prohibition either for life or for a limited time are usually appropriate in cases of adultery.’ It does not, however, follow that sexual misconduct falling short of adultery should automatically attract a lesser penalty. The same section 5 opens with the important words ‘Sexual misconduct is usually a deliberate and damaging failure to comply with the high standards of Christian behaviour required of the clergy.’

20. Mr Lodge properly acknowledged that the Guidelines are simply guidance and that no case has identical circumstances. It is for this reason that the Introduction in section 1 says ‘Any penalty imposed should be in due proportion to the misconduct, having taken into account and given due weight to all material circumstances including the particular facts of the misconduct.’ It also points out that ‘By virtue of their office great trust is placed in the clergy by members of the church and by the wider community. Clergy are expected to be worthy of this trust and are required to uphold Christian values in their pastoral ministry, in performing other duties, and in the conduct of their private lives.’ The latter passage reflects Canon C26 relating to the manner of life of ministers, which was referred to by the Tribunal at paragraph 14. The Canon makes it clear that
‘at all times he shall be diligent to frame and fashion his life
.....according to the doctrine of Christ.’

21. Against this background the Tribunal told Mr King when imposing the penalty upon him

“ Your relationship with Mrs Byrne was plainly wrong, inappropriate and wholly inconsistent with your life and obligations as a priest in Holy Orders”.

We consider that this wording was entirely apt in the light of the Tribunal's findings of fact.

22. As to the suggestion that the sexual misconduct occurred at a time when Mr King did not have any pastoral responsibility for Mrs Byrne, we do not consider that a relationship which started as a professional one can simply be compartmentalised to suit the member of the clergy.
23. On his own evidence Mr King met Mrs Byrne in June 2001 at a funeral he was conducting for one of his parishioners who had been resident at Esk Hall, a Care Home for the elderly run as a business by Mr and Mrs Byrne. Mrs Byrne subsequently attended his vicarage on two occasions for bereavement counselling, so he was clearly brought into a direct professional relationship with her. She no doubt turned to him as a person whom she could trust when she was in emotional distress following her bereavement. No criticism can be made of Mr King for seeking to help her, but he should have been alert to the fact that, having seen her professionally at a vulnerable point in her life, he must be careful not to let the professional relationship with a married woman develop into a personal one.
24. We note that in his Answer dated 3 May 2006 (paragraph 9 of Tribunal's Determination) Mr King not only denied the misconduct alleged against him but said
" I have known Tracy Byrne professionally since 2001. I have been a visitor in Esk Hall, the Care Home which Tracy manages. Latterly I have worked with her in the development of the 1st Responder scheme (TENYAS). Our relationship has been at all times professional."
As he viewed himself as acting professionally in relation to Mrs Byrne it is all the more serious that, in fact, he breached the standards set for the conduct of the clergy.
25. Mr King was ordained in 1978 and became the incumbent of the United Benefice of Middle Esk Moor in 2000. He was an experienced priest who should have been well aware of the expectations of him contained in Canon C26. He had been married since 1978 and should also have been well acquainted with the Church's doctrine of marriage as set out in Canon B30.
26. Furthermore, he had received a copy of the Guidelines for the Professional Conduct of the Clergy published in October 2003

(paragraph 93 of Determination). Paragraph 10.1 of these Guidelines emphasises

‘The Clergy are called to a high standard of moral behaviour’ and paragraph 11.1 reminds the clergy of the wider implications of their position within the Church, namely *‘The reputation of the Church in the community depends to a great extent on the example of its clergy, who should recognise their role as public representatives of the Church. Their lives should enhance and embody the communication of the gospel’*.

27. The Tribunal referred to paragraph 3.10 of these Guidelines *‘In their personal life the clergy should set an example of integrity in relationships and faithfulness in marriage’*, but we also take account of paragraph 3.9 *‘The clergy should thankfully acknowledge their own God-given sexuality. They should be aware of the danger of seeking sexual advantage emotionally or physically in the exercise of their ministry’*. If Mr King had followed the advice of the Archbishops of Canterbury and York in the foreword, that the Guidelines *“need to be kept readily available for reference,”* he might have been persuaded to keep a tighter rein on his own feelings of attraction towards Mrs Byrne.

28. What happened was that his relationship with her changed from that of a colleague on the 1st Responder scheme to one in which he was behaving in an intimate manner towards her. He was kissing and cuddling her in February 2005 (paragraph 136 of Tribunal’s Determination) only weeks after she had left her husband in December 2004. Whatever the rights and wrongs within the Byrne’s marriage it is clear that Mrs Byrne was in a vulnerable state in December 2004, and it was inappropriate for him to become emotionally involved with her (paragraph 96 of Determination).

29. On his own admission the relationship developed further during 2005 and they went out “for meals and drinks together as a two-some” (paragraph 117). Although they were both then living apart from their spouses they were still married and this was, as the Tribunal found, “an improper relationship for a priest to pursue.” We add that it was not only improper in terms of his calling to “a high standard of moral behaviour” (paragraph 10.1 of Guidelines referred to above) but a poor example to the community of how the clergy should conduct their lives (paragraph 11.1 of Guidelines).

We agree with the Tribunal's conclusion that this was a serious case of misconduct.

30. Limited Prohibition

Mr Lodge pointed out that although the Guidance on Penalties suggested that this is a suitable penalty 'where there is a realistic prospect that the respondent with appropriate pastoral and other support, could in the future resume normal duties of ministry' (paragraph 2 (b)), the effect of a four year prohibition would be to take Mr King to the age of 60, thus defeating this prospect. Whilst it is a matter of profound sadness that he should find himself subject to a penalty for misconduct at this stage in his life and in his ministry, this Court has to mark the seriousness of the matter whatever the age of the person concerned.

31. Personal difficulties, which may result from a penalty, are not a test as to what is an appropriate penalty. Mr Iles drew our attention to *Bolton v Law Society* [1994] 1 WLR 512 at p. 519 where the Court of Appeal stated in relation to the suspension from practice of a solicitor that in deciding upon a penalty "the reputation of the profession is more important than the fortunes of any individual member." The same principle is true of the clergy as otherwise the reputation of the Church in the community, which we have already referred to (paragraph 26 above), would be taking second place to the personal interests of the member of the clergy on whom a penalty is to be imposed. However, depending upon the circumstances, in particular, the nature of the misconduct, and the degree of repentance, the age of the respondent may be a material factor (for example youth and inexperience) in arriving at an appropriate penalty. That does not apply here.

32. Remorse

Important mitigating factors in relation to a penalty are 'whether a respondent has readily admitted the misconduct and demonstrated repentance, remorse and willingness to learn from past errors' (Introduction to Guidance on Penalties). Even if Mr King can be forgiven for refusing to admit his misconduct prior to or at the hearing before the Tribunal, we are surprised and disappointed that since the Tribunal's determination he has continued to show no repentance or remorse. Certainly Mr Lodge was unable to indicate any change of heart on the part of Mr King. That being so, there is nothing to be put in the balance under this heading. Repentance and forgiveness are basic Christian tenets, and due credit should

always be given by a Tribunal, and an Appellate Court, to genuine expressions of repentance and remorse. Regrettably we have no opportunity to do so in this case.

33. Conclusion

Mr Lodge argued that a rebuke would be the appropriate penalty but we do not consider that a rebuke would adequately reflect the serious nature of Mr King's misconduct. His long and much appreciated service as a priest does not outweigh the gravity of the Tribunal's findings of fact and in the absence of any indication of remorse either to the Tribunal or, despite our direct invitation, to this Court, there is no other mitigating factor which can be taken into account. As to the length of the prohibition, we are conscious that the Tribunal had the advantage of seeing and assessing the witnesses and we have no reason to regard the period of four years as excessive in all the circumstances of this case. Mr King's behaviour was undoubtedly damaging to the trust placed in him as a priest as well as being in breach of his canonical duty to frame and fashion his life according to the doctrine of Christ.

34. Since we confirmed the penalty on 10 March 2008 it took effect from that date. We hope that Mr King will be able to seek advice and accept direction and thus use the period of prohibition constructively for reflection and spiritual re-invigoration, so that he can equip himself for such future opportunity as may arise for him to use his pastoral skills again.

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Dated 7 April 2008