

THE BISHOP'S DISCIPLINARY TRIBUNAL FOR THE DIOCESE OF YORK

**IN THE MATTER OF A COMPLAINT UNDER THE CLERGY DISCIPLINE MEASURE
2003**

Complainant	Mr James Byrne
Respondent	The Reverend David Charles King

**DETERMINATION OF THE TRIBUNAL
Delivered on 23rd November 2007**

Introduction

1. This is the determination by the Tribunal of an allegation of misconduct made against the Reverend David Charles King ['the Respondent']. In all respects the Tribunal was unanimous in such determination.
2. The hearing before the Tribunal took place on 3rd and 4th October 2007. Mr Adrian Iles put forward the complaint and Mr John Lodge represented the Respondent. At the conclusion of the hearing the Tribunal reserved its determination.

The Parties

3. The Respondent was ordained in 1978. In 1994 he became Priest in Charge of Egton with Grosmont but he subsequently undertook additional responsibilities when in 1999 his parish was extended to include the Parishes of Goathland and Glaisdale and in 2000, following pastoral reorganisation, he became the incumbent of the United Benefice of Middle Esk Moor.

4. The Respondent married Anne King in 1978 but on 4th July 2005 he left the vicarage and shortly thereafter he told Mrs King that he wanted a separation. Subsequently Mrs King commenced divorce proceedings on the basis that the marriage had irretrievably broken down as evidenced by his unreasonable behaviour. A decree absolute was granted on 1st November 2006.

5. James Byrne and Tracy Byrne were married in 1986. Since 1989 they had run a business together [Esk Hall : a residential home for the elderly] but had planned to sell the business and emigrate to Australia. Although by August 2003 they had completed all the visa requirements, on 17th December 2004 Mrs Byrne left the matrimonial home. Although there were subsequent discussions between them which might have led to a reconciliation, there was no reconciliation. Mr Byrne commenced divorce proceedings in December 2005 and a decree absolute was granted on 7th August 2006.

6. The breakdown of each of these marriages has affected not only the adults involved : it has also affected their children. Evidence was given by or in respect of such children at the hearing and although we refer to some of such children below, we can but hope that our attempt to protect their identity will be respected by all those who read and consider this determination.

The allegation made by Mr Byrne

7. On 9th March 2006 Mr Byrne made a complaint against the Respondent of 'conduct unbecoming or inappropriate to the office and work of a clerk in Holy Orders'. He stated :

'Possibly beginning in 2003, but certainly by 2005, a relationship developed between my wife Mrs Tracy Byrne and the Revd David King, who is the vicar of the neighbouring benefice to that in which we live, on the basis of which I make a complaint on three related counts :

1. Mr King has behaved in a way that is inappropriate and unprofessional.

2. My wife has given me reason to believe that the relationship between herself and Mr King is or has been sexual in nature.
 3. I believe that Mr King's behaviour has removed any possibility of a reconciliation between my wife and myself, and has caused me great personal distress.'
8. Mr Byrne made a statement dated 9th March 2006 in support of his complaint.
9. By his Answer dated 3rd May 2006 the Respondent denied the misconduct alleged. He said this :

'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.

I deny that I have behaved in a way that is inappropriate and unprofessional.'

10. Sections 11 and 12 of the Clergy Discipline Measure 2003 provide for preliminary scrutiny of a complaint and for action to be taken by a Diocesan Bishop. In this case it was directed that the complaint be formally investigated pursuant to section 17 of the Measure.
11. After such formal investigation, pursuant to section 17(3) the President of Tribunals referred to this Tribunal the determination of the following allegation of misconduct under section 8(1)(d) of the Clergy Discipline Measure 2003 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.'

The nature of the offence alleged against the Respondent

12. Section 8(1) of the Clergy Discipline Measure 2003 provides that :

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

- (d) conduct unbecoming or inappropriate to the office and work of a clerk in Holy Orders.'

13. Although the Measure contains no definition of what conduct is 'unbecoming or inappropriate to the office and work of a clerk in Holy Orders', it seems agreed, and we accept, that it is of assistance to refer to the *Canons of the Church of England* and the *Guidelines for the Professional Conduct of the Clergy*.

14. Canon C26 of the *Canons* relates to the manner of life of ministers. Paragraph 2 provides that :

'A minister shall not give himself to such occupations, habits or recreations as do not befit his sacred calling, or may be detrimental to the performance of the duties of his office, or tend to be a just cause of offence to others ; and at all times he shall be diligent to frame and fashion his life and that of his family according to the doctrine of Christ, and to make himself and them, as much as in him lies, wholesome examples and patterns to the flock of Christ'

15. Paragraph 3.10 of the *Guidelines* states :

'In their personal life the clergy should set an example of integrity in relationships and faithfulness in marriage.'

16. Paragraph 10.1 of the *Guidelines* states :

'The clergy are called to a high standard of moral behaviour.'

17. We note that 'the response to a vocation to serve as an ordained minister signifies the voluntary undertaking of obligations of sacrificial self-discipline above and beyond the requirements of secular and ecclesiastical law' [see paragraph 1.3 of the *Guidelines*].

The application by James Moore

18. At the commencement of the hearing there was an application by James Moore [of North News and Pictures Limited] that, pursuant to Rule 47(f) of the Clergy Discipline Rules 2005, he should be permitted to attend the hearing.

19. After considering oral submissions by Mr Moore in support thereof and by Mr Iles and Mr Lodge in opposition thereto, we dismissed such application.

20. Rule 40 provides that the hearing shall be in private except where a tribunal is satisfied that it is in the interests of justice to have a hearing in public, or the Respondent

so requests. In this case the Respondent did not so request and the Tribunal, noting that, pursuant to Rule 50(2) the pronouncement of the Tribunal's determination of the complaint is in public, was not satisfied that it was in the interests of justice that there should be a hearing in public.

21. Rule 47 identifies those who are entitled to attend a hearing in private. Such persons are the parties, the legal representatives, the Bishop and the Archdeacon but sub-rule (f) refers to 'any other person with the tribunal's permission'.

22. Mr Moore readily conceded that he wished to be present at the hearing so that he could report the same. He submitted that it was in the interests of both parties and the Respondent's parishioners and in the public interest that there should be either a hearing in public or a private hearing which he could attend and report. We have already expressed our conclusion that it was not in the interests of justice that there should be a hearing in public and we further concluded that to grant Mr Moore permission to attend and report the hearing would frustrate our conclusion that there should be a private hearing, which is the approach set out in the Measure to apply unless the Respondent requests a public hearing [which he had not] or the tribunal concludes that it is in the interests of justice that there should be a public hearing [which it did not].

23. In so far as the media may be frustrated at their inability to report the evidence given to the Tribunal, we must stress that the interests of justice must prevail over any such inability or perceived public interest in favour of a public hearing. Moreover it is in the public interest that justice should be done. In our judgment any public interest is served by the requirement in Rule 50 that the Tribunal's determination, which here identifies the material evidence and sets out our views thereon, is pronounced in public and thereby available to the media.

The evidence before the Tribunal

24. Before setting out our conclusions of fact, we review the evidence adduced before the Tribunal.

James Byrne

25. Mr Byrne's evidence to the Tribunal may be summarized thus.

26. Mr Byrne spoke of being happily married for many years. Although he knew that the Respondent came to Esk Hall to visit former parishioners, he had never met him there and until January 2006 did not know who he was. At the initial suggestion of Mrs Byrne,

he and his wife had decided to emigrate to Australia and had begun the process of applying for visas in January 2002, which process was completed by August 2003.

27. From early 2003 he began to notice changes in Mrs Byrne : she became argumentative and would often go outside with a mobile phone at night, even in winter. Notwithstanding that she was already a fully-qualified coronary care nurse and their plans to emigrate, between 2003 and 2004 Mrs Byrne went on a resuscitation course.

28. In about October 2004 Mr Byrne mistakenly opened Mrs Byrne's post and discovered that she had made an offer on a nearby house. On 17th December 2004 Mrs Byrne left the matrimonial home, leaving behind the four children who were of school age. Thereafter Mr Byrne was unwell and depressed. Subsequently he emigrated to Australia where he now resides.

29. In February 2005 Mr Byrne went round to his wife's house. There was a Range Rover motor car parked outside. Looking from the back of the house into the living room he saw the back of the sofa with his wife and a man on it : 'they were kissing and cuddling and were obviously intimate with each other'. Although Mr Byrne had a good unobstructed view of the man [he was less than 10 yards away], he did not then know who he was. Mr Byrne went to the front of the house and after a long delay Mrs Byrne let him in. She was then wearing a dressing gown. He searched the house to find the man but the man had disappeared, as had the Range Rover motor car.

30. It was Mr Byrne's case that such man was the Respondent. He later identified him from photographs of the Respondent which he was subsequently given by Mrs King and by subsequent encounters with the Respondent. He told us that he was in no doubt that the man was the Respondent : 'there was no room for any possibility of mistake'. He was 'categorically 100% sure' in his identification of the Respondent.

31. In cross-examination Mr Lodge referred Mr Byrne to his statement dated 9th March 2006 in which he had said :

'In the early part of 2005 I went to Tracy's house and through the window I saw Tracy with a man kissing and cuddling. I only saw them for a brief moment and while I cannot be completely sure whether the man was Mr King, I now believe him to have been so. He certainly resembled Mr King.'

32. Mr Byrne answered any apparent inconsistency by saying that in March 2006 he had not previously seen the Respondent and that he was relying on what he had been told by a son O that his mother was seeing the Respondent and that his later identification was

based on the photographs subsequently received from Mrs King and his subsequent encounters with the Respondent.

33. Although at such time the Respondent drove a Range Rover motor car, he has always denied being the man seen by Mr Byrne.

34. On the next day Mrs Byrne came to see Mr Byrne. She was distraught, wanted him to forgive her and wanted to attempt a reconciliation between them. Mr Byrne said that he needed the complete truth in order to begin to trust her again. He asked who the man was. Mrs Byrne said that she could not reveal the identity of the man but she said that she had met him in a pub in Whitby and that he was married with 3 children. She said that she had had sexual intercourse with such man but that 'it was just a one off'.

35. Although Mrs Byrne's wish for a possible reconciliation seems to have diminished soon thereafter, Mr Byrne told us that he continued to attempt to talk to Mrs Byrne about their relationship and whether she was seeing someone else. On an occasion in December 2005 she told Mr Byrne that there was someone else and that she had slept with that man and was in love with him.

36. Mr Byrne spent Christmas 2005 in Australia with two of his sons. During such time his son O told him that the man his mother was seeing was the Respondent. On enquiry by O, his mother had told him that the frequent visitor to the house was the Respondent.

37. In early 2006 [Mr Byrne confirmed this was before March 2006] the Respondent kept observations on his wife's home. He saw a 4 wheel drive cream coloured motor car registration number P825 ... drive up. A man got out of the car with a suitcase, walked up to the front door. Although initially he said that the man let himself in with a key, in cross-examination by Mr Lodge he conceded that although he was pretty sure that the man had a key, he could be wrong.

38. Mr Byrne said that he recognized the man as the man whom he had seen on the sofa with Mrs Byrne in February 2005. At the time he again assumed that such man was the Respondent. Having now seen photographs of the Respondent and having met him, he was now 'certain that it was him'.

39. The Respondent conceded that at that time he drove a motor car as described by Mr Byrne and that it is possible that he went into Mrs Byrne's house, albeit that he stressed that he had no key to her home.

40. Shortly thereafter Mr Byrne found a telephone number on a piece of paper in a

paperback book which belonged to Mrs Byrne. When he rang the number the Respondent answered and he could hear Mrs Byrne's voice in the background. It seems agreed that at such time the Respondent and Mrs Byrne were together. Although Mr Byrne conceded that he could not say where they were, he said that his children had said that Mrs Byrne was going to Scarborough.

41. Mr Byrne said that in March or April 2006 his children told him that Mrs Byrne had told them that she no longer saw the Respondent. Because he did not believe this, Mr Byrne drove to the Respondent's flat and minutes later saw his wife letting herself into such flat using her own key.

42. In May 2006 Mr Byrne's son D, who was then residing with Mrs Byrne, showed him a text message which he had found on a mobile telephone which Mrs Byrne had lent him temporarily. For reasons which were not explained to us, although the 'sent box' of such mobile telephone was empty, the message had not been deleted from the telephone's memory, enabling an enterprising child to retrieve it. The message had been sent to the Respondent's mobile telephone on a date prior to 17th December 2004 and read thus :

'Wot a true delight to see u for a while on a sun. My love for u grows each time I c u (not that I think its poss) I now just live 4 tomoro 2b with u. Lover u r my strength my breath my life without you I hav no life xxxXxxXXxxx'

43. Mr Byrne sent a copy of such text to Mrs Byrne who required D to return the mobile telephone to her.

44. In cross examination Mr Byrne could not explain how the text message had remained on the mobile phone when items in the 'sent box' had been deleted or how it had been discovered by his son D. He agreed that he did not know precisely when it had been sent. Although Mr Lodge complained that neither the church authorities nor the Respondent had had any opportunity to examine such telephone, Mr Byrne reaffirmed that the telephone remained in the possession of Mrs Byrne.

45. Mr Byrne contacted Mrs King. She showed him a picture of the Respondent. Mr Byrne told us that it was the same person as the man whom he had seen on the sofa with Mrs Byrne in February 2005 and letting himself into Mrs Byrne's home in early 2006.

46. In September 2006, after Mr Byrne had made his complaint, his son O gave him a birthday card and a letter sent to Mrs Byrne. It is agreed that they were sent by the Respondent to Mrs Byrne. They were found by O and his brother D at their mother's home.

47. Neither the birthday card nor the letter were dated but Mrs Byrne's birthday is 30th November so that it was either sent in November 2005 or on an earlier birthday.

48. The birthday card depicted an apparently naked muscular man with a gold rectangle covering his lower abdomen and genitalia. The message read :

'With very massive love to you today and everyday
Dave xxxxxx

Am v cross they using my photo without permission !'

49. The letter read thus :

'The sky has always been big for us, big and full of meaning,
but the moon and its beams, its form, its smile, has always been bigger.
But we've not done much moon! We've held back, we've stood back, we've just
watched.

I've wondered why it hasn't been even bigger, though we've always known it's
there.

But it's like the love, the relationship, a little (?) bit unbelievable.

I can look at the moon, I can look at Tracy, I can't touch the moon, and sometimes I
can hardly believe I can touch Tracy.

And I know it, I know the love, I feel it, I love her - I do, though, sometimes not
dare to believe it - it seems so big and I don't dare to lose it having known it.

Moral : aim high and believe it, believe me, believe you, believe us.'

50. In November 2006 when he was clearing out his home prior to emigration Mr Byrne found a copy of the *Whitby Gazette* dated 17th October 2003 which contained an article about the Respondent and a photograph of him. It had not been kept by him and he assumed that it had been kept by Mrs Byrne.

51. In cross-examination Mr Byrne agreed that in October 2006 he had contacted the *Whitby Gazette* and that there was an article in the *Whitby Gazette* of 13th October 2006 relating to his complaint. Some 3 days later he entered into a contract with *Pick Me Up*, a magazine, to 'put his side of the story'. He was not asked to disclose any details of such contract. Subsequently he had a discussion with a journalist and an article was published in *Pick Me Up* in February 2007. When shown that article in *Pick Me Up* he admitted that one detail was incorrect : it wrongly stated that in response to Mrs Byrne's telephone call to the vicarage [see paragraph 60 below] the Respondent had gone out to visit her. Mr

Byrne said that he had proof read the story only during an unarranged telephone call to him when he was in Australia.

Cecilia May Hunter

52. Cecilia May Hunter was employed by Mr and Mrs Byrne at Esk Hall.

53. She attended TENYAS training with Mrs Byrne, as did the Respondent. She described Mrs Byrne and the Respondent as being very friendly, although she observed that Mrs Byrne was friendly with most people. She said that it was obvious from the way they spoke to each other that they knew each other well. On one occasion when she was returning from such training with Mrs Byrne, she asked Mrs Hunter what she thought of the Respondent and added that he didn't get on with his wife, which Mrs Hunter thought odd. Mrs Byrne told her that she had known the Respondent for quite some time as he had counselled her after the death of her mother.

54. Mrs Hunter said that later there were rumours going round the village that Mrs Byrne was having an affair with a vicar. It is important that we immediately say that we regard any such rumour, by itself, as having no evidential value whatsoever and disregard it.

55. At some stage in 2004 Mrs Hunter left her employment at Esk Hall and a 'leaving do' was arranged for her by Mrs Byrne. Whilst it is not possible, on the basis of the evidence before us, to precisely determine the date of such event, it was whilst Mr and Mrs Byrne were still living together so that it was before 17th December 2004.

56. The event was held at a public house in Egton Bridge. On several occasions during the evening Mrs Byrne disappeared saying that she was trying to telephone Mr Byrne. Just after 9 pm the Respondent briefly visited the public house. Shortly after he had left, Mrs Byrne announced that she wanted to go home and because she had travelled with others, including Mrs Hunter, in a car driven by another, they all had to leave at the same time. Mrs Byrne insisted on being dropped off in Egton, near to the Respondent's home, and although she had said that she was meeting Mr Byrne he was not there when she was dropped off and she insisted that the others continue their journey. The next day Mrs Byrne left a message that, if asked, all were to say that she had been taken home and to not say that she had been dropped off in Egton.

57. On 1st November 2006 Mrs Hunter received a text message from her daughter who had herself received a text message from her brother saying that the previous day he had seen the Respondent and Mrs Byrne in Flowergate Whitby holding hands.

Anne King

58. Mrs King first met Mrs Byrne in late 2002 when Mrs Byrne came to the vicarage for counselling with the Respondent after her mother's death. Although she thought it was strange that Mrs Byrne had not consulted her own parish priest, it seems that the Respondent had conducted the funeral of a resident at Esk Hall. Mrs King remembered this visit because she could hear no voices coming from the study which was very unusual : the walls were so thin that she could always hear voices of people in the study, albeit that what they said could not be heard.

59. Mrs King knew that Mrs Byrne ran Esk Hall. Notwithstanding that she acknowledged that the Respondent was a devoted priest who always seemed to find time for his parishioners, she thought it odd that subsequently on two separate Christmas Days the Respondent visited Esk Hall when they usually enjoyed a family time on Christmas Day.

60. At about 11.00 pm one evening in 2003 Mrs Byrne telephoned the vicarage. Mrs King conceded that she could not remember the exact time and that it might have been earlier. Mrs Byrne was distressed and told Mrs King that she must see the Respondent immediately. Although the Respondent spoke to her, he did not go to visit her and instead went to bed. Mrs King regarded this as unusual behaviour by the Respondent who would normally have gone to visit in such circumstances. She was worried that the Respondent must know Mrs Byrne very well not to acquiesce in her request.

61. Before the Respondent left the vicarage he would increasingly spend Friday evening and Saturday with his frail mother. Mrs King now believes that such may have provided an opportunity for the Respondent to meet Mrs Byrne and perhaps stay with her. On one occasion she found an advertisement for a bed and breakfast establishment in Scotland in the bottom of an overnight bag.

62. On 5th April 2003 Mrs King received a telephone call from the Arundell Hotel in Whitby. They wanted to speak to the Mrs King who would be staying at their hotel that evening. She thought this odd but did not say that the Respondent was away from home that evening.

63. Other behaviour of the Respondent concerned Mrs King. The Respondent used his mobile telephone [on which Mrs Byrne's telephone number was stored] very early in the morning and secretly and would panic if anyone picked up his telephone. Moreover whenever Mrs King was away at her sister's, the Respondent would telephone her under

some pretext. She now believes that he did this to establish precisely where she was and whether he would be disturbed at home.

64. The Respondent left on 4th July 2005. Mrs King says she tried to save the marriage and went to counselling for 6 weeks but she does not believe that the Respondent wanted the relationship to improve and now suspects that this was because he was in another relationship.

65. In June 2006 Mrs King was contacted by Mr Byrne who informed her that he had made a complaint about the Respondent being in a relationship with his wife.

66. After an altercation in the street between Mr Byrne and the Respondent on 6th September 2006 the Respondent's daughter H offered to telephone Mr Byrne to ask him to keep away from her father. Although the Respondent and Mrs King persuaded her against so doing, Mrs Byrne telephoned H and told her how wonderful the Respondent was and advised her not to telephone Mr Byrne. This telephone call upset H and Mrs King was surprised that the Respondent had disclosed H's telephone number to Mrs Byrne.

67. In cross-examination Mrs King confirmed that she had never spoken to *Pick Me Up* and did not have any contract with them.

68. Mrs King said that 'the last thing I wanted was a divorce' and that she would have 'done anything to save the marriage'. She said that the divorce was very painful for both her and the children.

O

69. O is the son of Mr and Mrs Byrne. He emigrated with his father to Australia but has recently returned to reside with his mother.

70. Notwithstanding that on 3rd July 2007, when he still resided in Australia, O had made a witness statement in these proceedings, he did not attend the hearing. It was suggested by Mr Iles, but not conceded by Mr Lodge, that O had been prevented by his mother from attending to give evidence to the Tribunal. Mr Iles referred to his failed efforts to persuade Mrs Byrne to allow O to give evidence. It was common ground that O suffers from Asberger's syndrome.

71. Had O remained in Australia, such statement would have been admissible pursuant to Rule 35(4)(b). Now that O was not overseas, his evidence was inadmissible unless the Chairman of the Tribunal directed, pursuant to Rule 35(4)(c) that Mr Iles was

not required to call him to give oral evidence. So it was that an application was made to the Chairman by Mr Iles that O's evidence be admitted without the necessity to call him.

72. The Chairman ruled that O's evidence be admitted without the necessity to call him. He had regard to the fact that almost all the evidence given by O was agreed. Given the circumstances of his agreed medical condition, he concluded that it was appropriate to admit the evidence but stressed that the weight which the Tribunal gave to such evidence would reflect the inability of Mr Lodge to cross-examine.

73. O said that he had resided with Mrs Byrne for 3 weeks at Christmas 2005 whilst his father was in Australia. During such time the Respondent, whom Mrs Byrne described as a delivery man from the Co-op, delivered and fitted a washing machine. He also helped O mend his bike. He stayed and had tea. After he had left O asked his mother why she was having tea and laughing and giggling with the Co-op man, to which Mrs Byrne replied that he was a friend. About 5 days later he came to wash the windows.

74. O knew that this man was the Respondent because Mrs Byrne told him his name.

75. Subsequently on about ten occasions O rode to see his mother without prior warning and on each occasion the Respondent's car was outside her house so he returned home. He asked his mother why the Respondent was 'always there' and she said that it was because he was a friend and came over for a drink.

76. O described his brother D finding the birthday card and letter and later giving them to his father.

The Respondent

77. In his evidence in chief the Respondent re-affirmed that there had been nothing improper or inappropriate in his friendship with Mrs Byrne.

78. The Respondent said that he had first met Mrs Byrne in June 2001 at the time of the funeral of one of his parishioners who had been a resident at Esk Hall. It was at the funeral that Mrs Byrne had spoken to him of the recent death of her mother and this led to Mrs Byrne attending the vicarage on two occasions for bereavement counselling.

79. The Respondent confirmed that he had attended Esk Hall when he had parishioners who were resident there but he had visited on no more than 15 to 20 occasions in 7 years. He had never been there on Christmas Day but had twice attended Christmas teas at Esk Hall which were held approximately 2 weeks before Christmas.

80. By mid 2003 the Respondent believed that his relationship with Mrs King was deteriorating and he said that there were constant arguments. In December 2003 he first sought legal advice about a separation but decided that he wanted to try and make the marriage work. However matters continued to deteriorate and the Respondent left home on 4th July 2005 when he went to reside temporarily with his mother. He regarded a divorce as inevitable and thus did not contest divorce proceedings instituted by Mrs King, albeit that he did not accept all the allegations contained in her Petition which did not include any contention that he was in an adulterous relationship.

81. The Respondent agreed that on an occasion in 2003 Mrs Byrne had telephoned the vicarage but contended that the telephone call was made at 9 30 pm as he was coming to the end of a PCC meeting. He believed that Mrs Byrne was with others and had been drinking and he told her that he had no intention of going to visit her.

82. In response to matters raised by Mrs King's evidence, the Respondent said that he had not visited Scotland since the early 1990's and had never stayed in a hotel in Whitby.

83. The Respondent admitted that he had been in contact with Mrs Byrne since early 2004 because they were both involved in the 1st Responder scheme.

84. The Respondent denied that he was the man Mr Byrne saw on the sofa with his wife in February 2005 but he confirmed that he then owned a Range Rover motor car.

85. The Respondent admitted sending to Mrs Byrne the birthday card referred to in paragraph 48 above at the end of November 2005 and the letter referred to in paragraph 49 above at about the same time. About such documents he said this :

'I now see this as a silly action on my part, but I was in an emotional state following the break up of my marriage. I was feeling quite down and had nowhere permanent to live. Both Tracy Byrne and I had recently received our respective divorce papers. I was not thinking clearly, and possibly misread the situation. We supported each other but there was nothing unprofessional in our friendship.'

86. In the following months the Respondent said that he and Mrs Byrne remained friends and he helped her with practical tasks around the house. On one occasion he delivered a washing machine, on another he fixed one of her son's bike. He did not believe that there was anything unusual in helping a friend with practical tasks. He had never had a key to her house, nor had she a key to his.

87. The Respondent confirmed that since such time he and Mrs Byrne had seen each other regularly and had been out for meals and a drink.

88. On the occasion when Mr Byrne telephoned him [see paragraph 40 above] the Respondent had taken Mrs Byrne with him to York. He was visiting his mother who was in hospital in York and Mrs Byrne had business to do there. By that time Mr and Mrs Byrne had been separated for more than a year.

89. In cross-examination a fuller picture of the Respondent's relationship with Mrs Byrne emerged.

90. The Respondent admitted that he had been seeing Mrs Byrne in a social, as opposed to a professional, capacity. He said that their friendship 'began properly in October 2005'. Between October 2005 and the end of 2005 their friendship grew. They saw each other regularly about twice a week : they played tennis or squash, went out for meals and drinks together and visited each other's homes. They occasionally held hands and occasionally kissed each other on the lips but were not sexually intimate. He agreed with Mr Iles that in October 2005 there was a boyfriend/girlfriend relationship between Mrs Byrne and himself and that he thought such relationship would go further, although in fact it didn't.

91. The Respondent said that since the end of 2005 he had seen Mrs Byrne only occasionally, by which he meant about once a week, although it was much less at the moment.

92. Mr Iles pointed out to the Respondent that such a picture was not apparent from his Answer or his witness statement in these proceedings. To this, the Respondent responded that he did not believe that such omissions from such documents were important and that at all times his relationship with Mrs Byrne had been a professional one, albeit that he conceded that he had acted foolishly.

93. Mr Iles referred the Respondent to the *Guidelines for the Professional Conduct of the Clergy* which the Respondent conceded that he had received and represented common sense. Whilst he agreed that he was not setting an example of integrity in relationships [see paragraph 3.10 of the *Guidelines*] and that holding hands with and kissing a married woman was not in accordance with such *Guidelines*, he said that he believed that he had always achieved a high standard of moral behaviour [see paragraph 10.1 of the *Guidelines*].

94. Although Mr Iles pressed the Respondent to concede that he had behaved in an inappropriate and unprofessional way, the Respondent made no such concession. Whilst

he conceded that sending the birthday card and letter to Mrs Byrne were lapses on his part, he maintained that his behaviour had complied with appropriate standards of morality and behaviour.

95. When the Respondent was reminded of Mrs King's unchallenged evidence that she would have done anything to save their marriage, the Respondent said that after he had separated from her she had not contacted him.

96. The Respondent agreed that people with marital difficulties were vulnerable and in need of pastoral support and care. He agreed that in December 2004, when she left her husband, it was possible that Mrs Byrne would have been vulnerable and that it would have been inappropriate for him to become romantically involved with such a person. He agreed that in cases of marital difficulty or breakdown it was his responsibility as a priest to uphold marriage and to encourage those who were separated to be reconciled. He denied that he had done the opposite.

97. Mr Iles put to the Respondent that he was in an intimate relationship with Mrs Byrne well before 2005 but the Respondent adamantly denied such suggestion.

Peter Godbold

98. Peter Godbold is a Churchwarden at Egton. He spoke highly of the Respondent whom he described as having a commendable 'hands on' approach and superb pastoral care. No part of such description was disputed by Mr Iles.

99. As village postmaster, Mr Godbold said that he was well aware of what was happening in the village and that he had never heard any gossip to suggest that the Respondent was in a relationship with Mrs Byrne or had acted inappropriately. When Mr Iles told him of Mrs Hunter's evidence [see paragraph 54 above], he expressed surprise.

Charlotte Rose Wykes

100. Charlotte Rose Wykes is a Churchwarden at Lealholm Church. She too praised the Respondent : he was 'an ordinary, hard working down to earth man' with excellent pastoral skills. Again such was not disputed by Mr Iles.

101. Mrs Wykes said that there was no local gossip about the Respondent and Mrs Byrne.

John Clifford Bell

102. John Clifford Bell is the Treasurer for the Benefice of Middle Esk Moor and for St Matthew's Grosmont. He spoke very highly of the Respondent's qualities as a church leader and priest and said that the Respondent found time for everyone and thrived on hard work. The Respondent had achieved much in the united Benefice and in the wider community. Again such was not disputed by Mr Iles.

103. Mr Bell said that he had never seen the Respondent behave inappropriately and had not heard anyone say anything bad about him.

Raymond James Walker

104. Raymond James Walker, a retired senior NHS employee, did not attend the hearing. That part of his statement which praised the Respondent was agreed by Mr Iles.

105. Mr Walker also spoke of seeing both Mrs Byrne and the Respondent at meetings and said that he had not seen any inappropriate or untoward behaviour by either.

Overall impressions of the witnesses

106. Before we set out our findings of fact, it is important that we should record our general impressions of some of the witnesses

James Byrne

107. We have no doubt that Mr Byrne is aggrieved and angry as to what he believes to be improper behaviour on the part of the Respondent which he believes has ruined his marriage. In cross-examination by Mr Lodge he agreed that he had entered into a contract with *Pick Me Up*. He was not asked about the terms of such contract and what, if any, payment he had received but we believe that the existence of such contract requires us to scrutinize his evidence with considerable care.

108. Both Mr Byrne and the Respondent referred to subsequent encounters between them. The Respondent said that on 19th May 2006 Mr Byrne threatened him on the telephone and that on 6th September 2006 Mr Byrne behaved aggressively to him. Whilst it is unnecessary for us to make any findings of fact in relation to these incidents, one version of these events clearly casts Mr Byrne in an adverse light.

109. Such matters notwithstanding, we ask ourselves whether we found Mr Byrne generally to be an honest and credible witness. Having carefully considered not only his

evidence, but also the manner in which he gave it and his demeanour when giving it, we are satisfied that we should regard him as an honest and credible witness. During much of his evidence he seemed upset and uncomfortable but we are convinced that such derived from his embarrassment and upset at events and that there was no intention on his part to exaggerate matters to put the Respondent in a worse light than was justified.

Cecilia May Hunter

110. We found Mrs Hunter to be an honest and dispassionate witness.

Anne King

111. Whilst we found Mrs King to be an honest and straightforward witness, we each formed the view that there was a degree of bitterness in relation to the ending of her marriage to the Respondent. Whilst we do not criticize her so feeling, we think that in so far as her evidence was based on inferences to be drawn from the Respondent's behaviour she may subconsciously be choosing a more adverse inference against the Respondent than may in fact be justified.

The Respondent

112. Although we have made allowances for the Respondent in that it must be a continuing worry for him to be the subject of a disciplinary complaint, we have to say that overall his evidence gave rise to more questions than answers. We found his failure to give the full account of his relationship with Mrs Byrne [see in particular paragraph 90 above] at an earlier stage very difficult to understand. Moreover, we found his failure to acknowledge that it was inappropriate for him, a priest, to hold hands and kiss Mrs Byrne, when at such time both she and he remained married, albeit separated from their respective spouses, very disturbing. We believe that either he had no real understanding of the responsibilities of a priest, which given his ministerial experience we very much doubt, or he was simply giving evidence which he knew was untruthful.

113. Whilst we readily acknowledge that the Respondent has many gifts and is respected by many, we are driven to say that the overall impression we had of him was that his credibility was impaired, particularly by the fact that he only made admissions when faced with evidence which he could not challenge.

The Tribunal's findings of fact

114. We remind ourselves that the burden of proving allegations lies on the Designated

Officer and that although the standard of proof is that of the balance of probabilities, such is a flexible standard according to the seriousness of the complaint and the implications for a respondent of its being proved. We regard the allegation made against this Respondent as a serious one which, if proved, will have profound implications and we have thus sought for cogent evidence before concluding that we are satisfied on the balance of probabilities.

115. On such basis, we now make our findings of fact.

116. At the outset, we recognize that much has been said to the Respondent's credit. 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.

117. We start with the common ground in this case. The Respondent admits that for some 3 months commencing in October 2005 he had a relationship with Mrs Byrne which involved him being in a boyfriend/girlfriend relationship in which they saw each other regularly about twice a week, went out for meals and drinks together as a two-some, visited each other's homes, held hands and occasionally kissed each other on the lips. Moreover the Respondent hoped that such relationship would go further.

118. At that time both the Respondent and Mrs Byrne were still married and we have no doubt that such was an improper relationship for a priest to pursue. We believe that the Respondent well knows that such is the case, notwithstanding his protestations to the contrary.

119. Whilst there is other evidence as to the relationship between the Respondent and Mrs Byrne in this 3 month period commencing October 2005, namely the birthday card, the letter and the conversation which Mr Byrne had with Mrs Byrne in December 2005, we consider such evidence below.

120. However the major matter which we have to consider is whether any such improper relationship between the Respondent and Mrs Byrne existed longer than the period of 3 months contended by the Respondent and was of a more intimate nature than the relationship conceded by the Respondent. We will consider such matters in turn.

The duration of the relationship as opposed to a mere friendship

121. We firstly consider whether the improper relationship between the Respondent and Mrs Byrne ended at the end of 2005.

122. In early 2006 Mr Byrne said that he saw the Respondent letting himself into Mrs Byrne's house and was pretty sure that the Respondent had a key but could be wrong : see paragraphs 37 and 38 above.

123. We have absolutely no doubt that the man entering Mrs Byrne's home was the Respondent. The Respondent concedes that it may have been him and we regard it as too much of a coincidence that a man other than the Respondent got out of a 4 wheel drive creamed coloured motor car with an almost identical registration number to that then driven by the Respondent. In so concluding we accept that Mr Byrne correctly identified the man as the Respondent.

124. Given that Mr Byrne himself conceded that he could have been wrong about whether the man used a key, we are not satisfied that the Respondent let himself into Mrs Byrne's house with a key.

125. We also accept Mr Byrne's evidence that in March or April 2006 Mrs Byrne visited the Respondent's home : see paragraph 41 above. Although Mr Byrne said she let herself in with a key, we think that he may be mistaken about that, particularly given that it would be difficult to see any such key and that the Respondent said that the outer door was left unlocked.

126. We note that it is common ground that on one occasion Mr Byrne telephoned the Respondent when he was with Mrs Byrne : see paragraph 40 above.

127. We believe that these findings are consistent with a continuing relationship between the Respondent and Mrs Byrne in early 2006 and not merely a friendship. We note that O said that in early 2006 the Respondent's car was frequently at his mother's house and, notwithstanding that he was not able to be cross-examined, we think that such offers some small support to such belief.

128. We note that Mrs King referred to Mrs Byrne having telephoned her daughter H : see paragraph 66 above. We are unclear from the evidence whether this telephone call was made to H's mobile telephone or a landline and since we cannot thus exclude the latter, which Mrs Byrne could have obtained without reference to the Respondent, we do not think this is of any significance.

129. On 31st October 2006 Mrs Hunter's son texted his sister, who in turn texted Mrs Hunter, that he had seen the Respondent and Mrs Byrne holding hands in Whitby : see paragraph 57 above. We can see no reason why we should reject such evidence and, albeit

that it is indirect evidence, we accept it.

130. For the Respondent to have been holding hands with Mrs Byrne in Whitby, particularly when it was so soon after the publication of the article in the *Whitby Gazette*, was completely inconsistent with the Respondent's account of his relationship with Mrs Byrne as having ended at the end of 2005 when they resumed a friendship.

131. Considering all these matters, and in particular the two visits to respective homes and the holding of hands, we have no doubt that the relationship of boyfriend and girlfriend continued to exist in October 2006.

132. We now consider when such improper relationship began ?

133. In February 2005 Mr Byrne said that he saw the Respondent sitting on Mrs Byrne's sofa kissing and cuddling her : see paragraphs 29 to 32 above.

134. We have asked ourselves whether this account was fictitious and simply invented by Mr Byrne. We are satisfied that it was not and that Mr Byrne sincerely believes, from his identification of the Respondent in early 2006 and his subsequently seeing photographs of and meeting the Respondent, that the man he saw on Mrs Byrne's sofa in February 2005 was the Respondent.

135. We are satisfied that the man seen by Mr Byrne was in fact the Respondent. On any view he was then a friend of Mrs Byrne and had a motor car of a similar make to that which we accept was parked outside and disappeared at the same time as did the man. We do not regard it as a mere coincidence that the next day Mrs Byrne told her husband that the man whom Mr Byrne had seen her with was married and had three children, as does the Respondent. We add that we do not accept that this was just a 'one off' with a man Mrs Byrne had met in a public house in Whitby. Most importantly, although we have reminded ourselves of the dangers inherent in identification evidence, having listened to the detail of Mr Byrne's evidence and observed his demeanour, we are satisfied that his identification of the Respondent was an accurate one.

136. If, as we accept, the Respondent was kissing and cuddling Mrs Byrne in February 2005, it necessarily follows that their improper relationship existed at such date. If this was merely a platonic friendship there would have been no reason for the Respondent to make the dramatic exit which he did from Mrs Byrne's home. If he was there for a legitimate purpose, such as counselling a woman with marital difficulties, he could have stayed to explain to Mr Byrne such reason for him being there.

137. In respect of 2005 Mrs King gave further evidence relating to the Respondent's use of his mobile phone and him telephoning her when she was away at her sister's : see paragraph 63 above. Although these matters were neither challenged nor explained by the Respondent, we believe that there could be innocent explanations for them. Although in our judgment they could offer some support for the existence of a relationship earlier than October 2005 and give rise to some concern as to what was going on, we are satisfied that it would be wrong for us to infer anything adverse to the Respondent from such matters.

138. Mr Byrne said that in May 2006 his son D found a text message on the mobile telephone which his mother had temporarily lent him : see paragraph 42 above.

139. Although such telephone is not available for independent examination, we accept that Mr Byrne saw such text and that it was sent at some time prior to 17th December 2004 by Mrs Byrne to the Respondent. We reject any possibility that such evidence has been fabricated by Mr Byrne.

140. Whilst we believe that the content of such text gives rise to much suspicion that there was a relationship between the Respondent and Mrs Byrne and note that the Respondent gave no evidence as to whether he had received such text or the circumstances in which it was received, we have to bear in mind that this text was sent by Mrs Byrne and not the Respondent and applying the high standard of proof which we have set out above, we are unwilling to rely on this evidence alone to justify any relationship between the Respondent and Mrs Byrne existing before February 2005.

141. Mrs Hunter referred to her 'leaving do' at a public house in Egton Bridge : see paragraphs 55 to 56 above. This took place before 17th December 2004 but we shall assume that it was immediately before Mrs Byrne separated from her husband because such an assumption is the least adverse to the Respondent.

142. We accept Mrs Hunter's evidence that shortly after the Respondent had visited the public house Mrs Byrne wished to go home. She was dropped off near the Respondent's home in Egton. Although Mrs Byrne had said that she was meeting her husband, he was not there when she was dropped off and we believe that the only inference which can be drawn from her requiring others not to say that she was dropped off in Egton is that she was meeting someone else whose identity she wished to conceal.

143. Given the totality of the evidence here, together with the evidence of the text found by D, we have concluded that we should infer that Mrs Byrne was dropped off in Egton so that she could meet the Respondent and that at such time there was an improper relationship between the Respondent and Mrs King.

144. From the analysis as set out above we are satisfied that the Respondent pursued an improper relationship with Mrs Byrne between December 2004 and October 2006. It necessarily follows that when this relationship began not only were the Respondent and Mrs Byrne still married but they had not separated from their respective spouses. Moreover there were subsequent discussions between Mr and Mrs Byrne which might well have given rise to an attempted reconciliation.

145. We have considered whether any of the evidence before us would justify a conclusion that the improper relationship began earlier than December but have concluded that it cannot.

146. We attach no significance to the fact that in autumn 2002 Mrs King could hear no voices from the Respondent's study : see paragraph 58 above. We can see no legitimate basis for inferring improper conduct from the absence of noise even though it may have been unusual.

147. Whilst we are prepared to accept Mrs King's evidence that the Respondent did visit Esk Hall on two Christmas Days [see paragraph 59 above], on the basis that we believe that such is the behaviour of a pastorally caring priest such as the Respondent, we attach no significance to that.

148. Although Mrs Hunter thought that it was odd for Mrs Byrne to ask what she thought of the Respondent and to reveal that he didn't get on with his wife, we attach no significance thereto.

149. It is common ground that Mrs Byrne telephoned the vicarage one evening in 2003 : see paragraph 60 above. We do not think anything turns on the precise time. We accept the Respondent's evidence that Mrs Byrne seemed to have been drinking and with others and that in such circumstances it was not then appropriate for him to visit her. We are not prepared to infer, merely from the fact that his refusal to go to visit was contrary to his normal practice, that he was then pursuing an improper relationship with Mrs Byrne.

150. Finally we have concluded that the evidence by Mrs King as to the bed and breakfast establishment advertisement and the Arundell Hotel Whitby [see paragraphs 61 to 62 above] is of no evidential significance.

The nature of the relationship

151. Having established that there was an improper relationship between the

Respondent and Mrs Byrne between December 2004 and October 2006, it is important that we should set out our views as to the nature of such relationship.

152. A number of matters are relevant to this issue : what the Respondent said to Mrs Byrne, what Mrs Byrne said to the Respondent and their behaviour to each other.

153. We can see what the Respondent said to Mrs Byrne in the birthday card and letter : see paragraphs 48 and 49 above. We do not know when they were written or sent but suspect that they are not contemporaneous and reveal a developing relationship which, at the very least was aiming to be a sexual one. Whilst it is possible that the birthday card can be seen as a grotesque error of judgment even by a mature man, we can only read the letter [and in particular the words 'I can hardly believe that I can touch Tracy'] as indicating some ongoing physical relationship, albeit not necessarily one which includes sexual intercourse.

154. We accept Mr Byrne's evidence that in December 2005 Mrs Byrne told him that she was in a relationship with someone else and that she had slept with that man and was in love with him.

155. Given the fact that at such time the Respondent was meeting Mrs Byrne very often and that no one, including the Respondent, has suggested that Mrs Byrne was also associating with a second man, we have no doubt that the man to whom Mrs Byrne was referring was the Respondent.

156. We have to ask ourselves whether we can be satisfied from such indirect evidence that sexual intercourse was taking place between the Respondent and Mrs Byrne, as was suggested by Mrs Byrne to Mr Byrne. We are not so satisfied. We have not heard any evidence from Mrs Byrne. At the time of this conversation Mrs Byrne had been living apart from her husband for a year and Mr Byrne was about to, or had just, commenced divorce proceedings. After careful consideration of these matters we cannot exclude the real possibility that Mrs Byrne's reference to sleeping with the other man was untrue and merely a taunt said in the context of her impending divorce from Mr Byrne.

157. However, we are satisfied on this evidence that the relationship between the Respondent and Mrs Byrne involved some acts of physical intimacy albeit not sexual intercourse and went far beyond merely holding hands or kissing, as is suggested by the Respondent. We expressly reject the Respondent's evidence on this issue. In our judgment it was a relationship with a high degree of inclination towards sexual activity and with an overtly expressed sexual desire.

158. We believe that such conclusion is supported by the incident in February 2005 when Mr Byrne saw the Respondent kissing and cuddling Mrs Byrne. When, after a long delay, Mrs Byrne answered the door she was wearing a dressing gown. In all the circumstances we think that it is highly unlikely that Mrs Byrne would have changed into her dressing gown after Mr Byrne had knocked on the door and we are driven to assume that she was wearing a dressing gown during the Respondent's visit. That itself reveals something about the nature of the relationship, as does the fact that the Respondent made good his escape from Mrs Byrne's home so as to conceal his identity.

The Tribunal's conclusion

159. We are only too well aware of the serious nature of the allegation made against the Respondent and the potential consequences for him of such allegation being proved.

160. That notwithstanding, each member of the Tribunal is satisfied that between December 2004 and October 2006 the Respondent has pursued an improper, intimate and physical relationship with the Respondent, which fell short of sexual intercourse, which began when they were both still 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.

161. We unanimously agree that the Respondent's aforesaid conduct constitutes conduct unbecoming and inappropriate to the office and work of a clerk in Holy Orders.

162. Having considered the facts of this case, we have many concerns. Firstly, that the Respondent was unable to recognize the impropriety of what even he admitted had occurred. Secondly, that he failed to acknowledge the gravity of his impropriety. Thirdly, that he has deceived himself into believing that what he has done is permissible and proper.

163. The alternative is that the Respondent well understands that his behaviour has been improper and inappropriate, but has been untruthful in his evidence to the Tribunal in an attempt to avoid conclusions adverse to him. That would also give rise to concern.

164. It necessarily follows that to the extent set out above we adjudge that the complaint is well founded and that the case against the Respondent is proved.