

IN THE MATTER OF S.13(3) OF THE CLERGY DISCIPLINE MEASURE 2003

AND IN THE MATTER OF CLERGY DISCIPLINE RULES 2005 RULES 21 AND 22

Complainant: MR GAVIN DRAKE

Respondent: THE RIGHT REVEREND PAUL WILLIAMS

DECISION

1. By an application in Form 5 dated the 22nd October 2021, Mr Gavin Drake ('the complainant') requested review of the decision of the Archbishop of York whereby the Archbishop, by a letter of the 7th October 2021, determined that it was not appropriate to take any further action under section 8(1)(c) of the Measure ('neglect or inefficiency in the performance of the duties of his office') against the Rt Revd Paul Williams, Bishop of Southwell and Nottingham ('the Bishop').
2. The background to the complaint, which related to the appearance of the Revd Anthony Richard Giles on the National Register of Clergy, is to be found in an earlier review decision of the 28th July 2021 made on behalf of the President by His Honour Judge Eyre QC, as he then was, now the Hon. Mr Justice Eyre.
3. By an earlier decision of the 6th July 2021, the Archbishop had dismissed the complaint.
4. The judge, rightly careful not to express any view of his own on the merits, concluded that the Archbishop may have gone too far in descending into a fact finding exercise in respect of at least one aspect of the Bishop's alleged failure. The matter was remitted for reconsideration, in part at least, upon fuller information.
5. The substantive complaint of (admitted) misconduct against Mr Giles was determined at a tribunal on 6th October 2021 and a penalty imposed. The tribunal's determination is, as is usual, publically available.
6. The Archbishop had available for his reconsideration not only the original complaint but also the Bishop's Form 3 statements of the 18th December 2020 and 1st March 2021, a timeline document prepared by or on behalf of the Bishop running from 5th December 2019 to 5th November 2020, the report of the Provincial Registrar, Mrs Connacher, of the 16th June 2021, the complainant's request for review in Form 4 dated the 16th July 2021, Judge Eyre

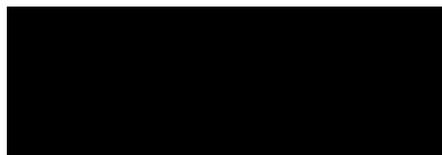
QC's decision and the Bishop's Form 2 Answer and Form 3 statement in support, both dated the 14th September 2021.

7. Anxious no doubt to explore as thoroughly as possible the issue which had troubled the judge, namely whether the Bishop had been a source (and culpably so) of the entry relating to Mr Giles on the Register, and whether that amounted to neglect or inefficiency, the Archbishop wrote on the 28th September 2021 both to the Bishop and to the complainant inviting further clarification.
8. The Bishop replied by letter of the 29th September and the complainant by e mail of the 1st October 2021.
9. The Archbishop expressly confirmed in his 7th October 2021 decision that he had received, and presumably considered, those latter communications. He had also considered the People Support System National Register Guidance of July 2021.
10. He did 'not accept' the Bishop's 'argument' that he, the Bishop, did not know that the new Regulations had come into force.
11. He concluded the Bishop did indeed 'have a duty' under Reg. 4(1) to provide registration information within five days of receiving a request from the Archbishops' Council.
12. However, he continued: *'I am not satisfied that there was a direct request from the Archbishops' Council to Bishop Paul or his office to provide registration information. Moreover, I accept that Bishop Paul and his team had not received training or login details prior to Mr Drake's allegation of misconduct, to enable them to manage entries in the People system, which is the means by which the National Clergy Register is updated. I also consider that the Answer submitted by the Bishop, together with the letter of clarification dated 29th September, make it clear that the Bishop and his office were not the source of the information supplied to the Archbishops' Council for inclusion in the National Register of Clergy. In the circumstances, and for the reasons set out above, I have decided that it is not appropriate to take any further action on the allegation that Bishop Paul is guilty of misconduct under s 8(1)(c) of the Measure through neglect or inefficiency in the performance of the duties of his office. I conclude that the cause of the entry on the national Register of Clergy was not an act or omission on the part of the Bishop and that the Bishop was not negligent or inefficient in the performance of the duties of his office.'*
13. The Archbishop did, however, consider there were *'lessons to be learnt concerning the manner in which this legislation has been implemented, and in particular the delay in providing training and login details to Bishops'*. He also considered there are *'lessons to be learnt by Bishop Paul'*.

14. Perhaps unfortunately, the Archbishop does not further amplify the lessons he has in mind.
15. The Bishop had argued that there had been no 'neglect or inefficiency' on his part but, if there had been, any misconduct was '*in the circumstances not sufficiently serious to engage the Clergy Discipline Measure*'.
16. He continued: '*Although the Register of Clergy was left showing an incorrect position in relation to [Mr Giles] for a matter of a few weeks, no one was misled by it; I corrected the entry as soon as I became aware of it; [Mr Giles] did not in fact take advantage of the incorrect register entry to resume his ministry; the error was an administrative oversight arising from the way in which the new Regulations and the register came into being without proper notice or explanation, not a deliberate or negligent misrepresentation by me of [Mr Giles] status*'.
17. The Bishop set out the chronology as he saw it. He described staff in his office responding in April 2021 to what he termed '*simply a routine check to update the list of clergy in the diocese*', unaware, he said, the '*list would be used to populate the national register*'.
18. The complainant was robustly, and justifiably, critical of the Bishop's claim not to be aware of the coming into force of the Regulations. As he said, 'ignorance of the law is no defence'.
19. The legislative history, press releases and notes of discussion at House of Bishops' meetings were carefully, and persuasively, documented.
20. It was unsurprising to me that the Archbishop did not accept the Bishop's argument in that regard. That said, I cannot agree with the complainant's Form 5 contention that the Archbishop had 'effectively found that Bishop Paul lied to him' in his written responses. To reject an 'argument' (the Archbishop's word) in the evaluation of a position is, in my judgment, somewhat different to a conclusion an individual has lied.
21. The complainant is on stronger ground in the argument that the April corrections made by the Bishop's staff had evidently not embraced Mr Giles' true ministerial status.
22. That, it was argued by the complainant, plainly revealed the lack of an effective system to deal with errant clergy who, like Mr Giles, had 'stepped back' or were suspended and, thus, to record clergy status accordingly.
23. This was, it was argued, self-evidently an important part of a bishop's safeguarding obligation under previous law as well as the new Regulations.
24. In the circumstances, that was the diocesan Bishop's responsibility. He was the person with responsibility to know and disclose which clergy were authorised or not authorised for ministry and, not for the first time, this Bishop, it was said, had failed to ensure accurate data was properly and publically recorded.

25. The complainant had earlier protested at Mr Giles' continued presence on the diocesan website as 'Area Dean of Gedling', despite his removal from that position. Again, that too had, it was said, been characterised by the Bishop as 'administrative oversight'.
26. Of the essence of the complainant's protest is that the Archbishop has failed sufficiently or at all to recognise that ultimate responsibility for the dissemination of accurate information about any member of the clergy rests with the diocesan Bishop who, by definition can, in practice and common sense, be, ultimately, 'the ONLY [complainant's emphasis] source of data about whether or not a priest is authorised'.
27. As the complainant put it in Form 5: '*An extract of the diocesan database was sent to his [the Bishop's] office on 19th April and the status of the Revd Anthony Giles was not checked. This is misconduct*'.
28. I confess I have not found this matter altogether easy.
29. My sole task here is to review the Archbishop's decision to take no further action, which was, clearly, one open to him.
30. The sole question in such a review is whether or not I consider his determination 'plainly wrong' in all the circumstances (s13(3)).
31. For a decision to be plainly wrong it must either be unlawful (that is, there was no power under the Measure to make it) or, it was a decision no reasonable Archbishop could have made on the evidence available.
32. I am confident the present complainant understands the relative narrowness of the test.
33. I may not substitute my own view of the merits for the Archbishop's. I can uphold the Archbishop's decision, overrule it, or (as happened in July) remit the matter back with a direction that the Archbishop is to reconsider the decision, now one to take no further action (see paragraphs 162-168 of the Clergy Discipline Measure 2003 Code of Practice).
34. A dismissed review does not necessarily signal that the President would have reached the same decision, merely that it is acknowledged that the Archbishop made a decision reasonably open to him on the evidence available.
35. Rule 1 of the Clergy Discipline Rules 2005 requires the 'overriding objective' to be well in mind. That requires proceedings to be dealt with justly, in a way that is fair to all - and proportionate to the nature and seriousness of the issues raised.
36. Concepts such as 'neglect or inefficiency in the performance of the duties of office' are not further defined, are always context-specific and may be infinitely variable.

37. I have sought to evaluate any failure by the Bishop in the context of what appears to have been an arguably unsatisfactory 'roll-out' of an unquestionably important tool in the church's safeguarding processes.
38. I have reviewed the available chronologies and comment.
39. I have reminded myself that essentially discretionary decisions may not always be easy to take, the more so where some issues of fact and even credibility may remain untested and unresolved.
40. I bear in mind that an Archbishop is entitled to take account of the apparent quality of evidence in terms of what might be proved and the broader picture of what is just, proportionate and reasonable in allowing CDM proceedings to continue. A decision to take no further action does not signal that any account of events has necessarily been accepted – or rejected – in full or in part.
41. I have concluded it was open to the Archbishop to find himself not satisfied a direct request for registration information was received by the Bishop or his office, or that information provided was **the cause of the entry** (my emphasis) in this case on the National Register.
42. Procedures and practice relating to the National Register were, it seems to me, at an early and somewhat unsatisfactory stage when these events arose. The Archbishop's decision that the Bishop ought not, in all the circumstances, to be the subject of further misconduct proceedings in respect of (in many respects unfortunate) events is, I have concluded, within the possible range of decisions the Archbishop could reach.
43. It follows that I cannot conclude here that the Archbishop was 'plainly wrong' – even if other decisions might have been possible.
44. The Archbishop's decision is therefore upheld.
45. I respectfully express the hope that any lessons the Bishop (or indeed others) need to learn may be spelt out by the Archbishop without delay, given the obvious importance of the concern underlying the complaint.



His Honour Judge David Turner QC

Deputy President