

THE PUBLICATION OF ANY MATERIAL THAT IDENTIFIES OR LEADS TO THE IDENTIFICATION OF THE YOUNG PERSON REFERRED TO IN THIS DETERMINATION OR ANY MEMBER OF THE YOUNG PERSON'S FAMILY IS PROHIBITED.

**IN THE PROFESSIONAL STANDARDS BOARD**  
**OF THE ANGLICAN CHURCH OF AUSTRALIA**  
**DIOCESE OF NEWCASTLE.**

**Ref no: 01/20**

**IN THE MATTER OF:**

THE PROFESSIONAL STANDARDS COMMITTEE

Applicant

AND

REV DOUGLAS VAUGHN MORRISON-CLEARY

Respondent

**DETERMINATION**

- 1 This matter arises out of a Referral to the Professional Standards Board dated 20 April 2020 (the Referral), pursuant to s 64 of the Professional Standards Ordinance 2012 (the Ordinance).
- 2 The Referral followed an investigation by the Professional Standards Committee of conduct of the Reverend Douglas Vaughn Morrison-Cleary, Priest in Charge of the Parish of Beresfield - Thornton.
- 3 On 21 May 2020, the Respondent, pursuant to r 2, Appendix 1 of the Ordinance, consented to the President of the Board sitting alone to hear and determine the issues raised by the Referral.
- 4 In considering those issues the functions of the Board are to determine the following questions set out in s 64(1) of the Ordinance:
  - (a) *the fitness of a Church worker, whether temporarily or permanently to hold a particular or any office, licence or position of responsibility in the Church or to be or remain in Holy Orders or in the employment of a Church body;*
  - (b) *whether in the exercise of a Church worker's ministry or employment, or in the performance of any function the Church worker should be subject to certain conditions or restrictions.*

THE PUBLICATION OF ANY MATERIAL THAT IDENTIFIES OR LEADS TO THE IDENTIFICATION OF THE YOUNG PERSON REFERRED TO IN THIS DETERMINATION OR ANY MEMBER OF THE YOUNG PERSON'S FAMILY IS PROHIBITED.

5 In reaching a determination, it will be necessary for the Board to be comfortably satisfied on the balance of probabilities that the allegations set out in the Referral are established, having regard to the serious nature of the allegations and the gravity of the consequences flowing from a particular finding: *Briginshaw v Briginshaw* [1938] HCA 34; (1938) 60 CLR 336.

### Background Facts

6 [REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

10 [REDACTED]

THE PUBLICATION OF ANY MATERIAL THAT IDENTIFIES OR LEADS TO THE IDENTIFICATION OF THE YOUNG PERSON REFERRED TO IN THIS DETERMINATION OR ANY MEMBER OF THE YOUNG PERSON'S FAMILY IS PROHIBITED.

- 11 In consultation with the Acting Director of Professional Standards, the Respondent prepared a Safety Plan which he signed and dated 3 December 2019. The plan was also signed by the young person and the church warden. The plan stipulated:

***While resident at the Beresfield Rectory***

- (1) *[The young person] will not answer the rectory phone.*
- (2) *[The young person] will not be left in the rectory alone.*
- (3) *If children or vulnerable adults are present in the rectory for any reason, [the young person] is not to be in their immediate vicinity.*

***Anglican Parish of Beresfield - Thornton***

- (4) *[The young person] is not permitted to participate in any parish activities including worship, youth group activities and Sunday lunch.*
- (5) *[The young person] is not permitted to be on church property other than the rectory and the car park.*

- 12 On 5 December 2019, the Acting Director of Professional Standards prepared a risk assessment that recorded her understanding that the arrangement to accommodate the young person at the rectory extended to 20 December 2019, the end of the school term. The Acting Director of Professional Standards identified a number of risks in connection with the arrangement. They included the prospect that the young person might re-offend or interfere with the alleged victim in the course of the investigation. The risk assessment also addressed the welfare of the alleged victim, of the Parish and of the young person and the exposure of the Diocese. She rated the overall risk as high.

- 13 The Respondent was not provided with a copy of the risk assessment.

- 14 The young person remained in residence at the rectory beyond 20 December 2019. The Respondent did not seek approval to this extension.

THE PUBLICATION OF ANY MATERIAL THAT IDENTIFIES OR LEADS TO THE IDENTIFICATION OF THE YOUNG PERSON REFERRED TO IN THIS DETERMINATION OR ANY MEMBER OF THE YOUNG PERSON'S FAMILY IS PROHIBITED.

- 15 On 29 January 2020, the Respondent and the young person were advised by an officer of the Department of Communities and Justice that no action would be taken in respect of the allegations and the young person could return to the family home. The young person remained in residence at the rectory.
- 16 On 5 February 2020, the Respondent attended a meeting with the Anglican Bishop of Newcastle, Dr Peter Stuart, when the continued accommodation of the young person was discussed. The young person returned to the family home on 5 February 2020.
- 17 On 6 February 2020, pursuant to s 37 of the Ordinance, the Respondent was suspended from his duties as the incumbent of the Parish of Beresfield - Thornton, including membership of the Diocesan Council and of the Synod.

### **The Referral**

- 18 The material that formed the basis for the Referral was set out in the investigation report of the Professional Standards Committee dated 13 March 2020.
- 19 The allegations arising out of the investigation were set out in detail in the Referral dated 20 April 2020. I have set out below the factual allegations that were not disputed. The allegation made in paragraph 43 of the Referral was not pressed. In respect of paragraph 44, the Respondent conceded that the Respondent was not asked to undertake a risk assessment. A number of the allegations were not admitted but have not been debated in this determination because they were no longer relevant to the outcome. Those allegations that were disputed or became the subject of debate arose out of paragraphs 10, 11, 12, 26, 27, 41 and 48 – 52.
- 20 The Applicant confirmed in the course of submissions that it made no complaint against the Respondent in the nature of sexual misconduct or grooming in relation to the young person.

THE PUBLICATION OF ANY MATERIAL THAT IDENTIFIES OR LEADS TO THE IDENTIFICATION OF THE YOUNG PERSON REFERRED TO IN THIS DETERMINATION OR ANY MEMBER OF THE YOUNG PERSON'S FAMILY IS PROHIBITED.

- 21 Evidence relied on by the Applicant in support of the Referral comprised the investigation report and its annexures, (Exhibit A), and affidavits of the Applicant's Professional Standards Officer – Investigator, and Acting Director of Professional Standards.
- 22 The unsigned and unsworn statements of the young person and his mother were annexed to the investigation report. No objection was made to the admission of these statements into evidence notwithstanding that the young person and his mother were not called to give evidence.
- 23 Evidence relied on by the Respondent comprised his affidavit and five character references (Exhibit 1) and the report of Dr Russell Hinton, psychiatrist, dated 22 August 2020 (Exhibit 2).
- 24 Hearings into the Referral took place on 4 August 2020 and 10 September 2020.

**Non Contested Allegations**

- 25 The following factual allegations contained in the Referral were admitted by the respondent:
- (1) He took the young person on outings both during the period when the young person resided at the Rectory and on prior occasions. Those outings included visits to Newcastle beaches and to the Newcastle Ocean Baths.
  - (2) One outing was a cinema visit in company with the Respondent's younger son.
  - (3) Only the Respondent and the young person were present during the majority of the outings.

THE PUBLICATION OF ANY MATERIAL THAT IDENTIFIES OR LEADS TO THE IDENTIFICATION OF THE YOUNG PERSON REFERRED TO IN THIS DETERMINATION OR ANY MEMBER OF THE YOUNG PERSON'S FAMILY IS PROHIBITED.

- (4) From time to time on those outings the Respondent shared with or purchased food and drink for the young person.
- (5) The Respondent instructed the young person in driving lessons in the Respondent's car, most frequently when only he and the young person were in the car.
- (6) The Respondent purchased an X-Box at a cost of approximately \$300 which he gave to the young person on 26 December 2019.
- (7) The Respondent allowed a friend of the young person to visit him in his bedroom at the Rectory in breach of the Safety Plan dated 3 December 2019.
- (8) The Respondent paid for recharges on the young person's mobile telephone and subsequently added that telephone account to the Respondent's family plan.
- (9) The Respondent allowed the young person to reside at the rectory after 20 December 2019 and without conducting a review or risk assessment of these living arrangements.
- (10) The Respondent informed Bishop Peter Stuart that his relationship with the young person had changed from that of priest-parishioner to one of mentor and carer.
- (11) While at Newcastle Ocean Baths, the young person was present on several occasions in an open area of the male change room where he saw the Respondent naked.

## **DISPUTED EVIDENCE**

### **The extent of the risk**

26 The major area of dispute between the Applicant and the Respondent concerned the extent to which he opposed or resisted the attempts made by the Acting Director of Professional Standards to guard against the risks that she believed the young person's presence at the rectory posed to the safety and welfare of members of the Beresfield - Thornton Parish and the reputation of the Diocese.

27 The Acting Director of Professional Standards noted that the Respondent thought the Safety Plan was unnecessary and considered it likely that he would seek a review of its terms at the earliest opportunity and an extension of the arrangement beyond 20 December 2019 to avoid exposing the young person to homelessness.

28 [REDACTED]

29 The evidence left no doubt that the Acting Director of Professional Standards communicated her concerns to the Respondent and that he understood them. The evidence also left no doubt that the Respondent disagreed with the Acting Director of Professional Standards and that he believed her concerns to be overstated. The opposing positions taken by these parties continued throughout the proceedings.

### **30 Findings:**

(1) Later in this determination I deal at greater length with the matters raised with the Acting Director of Professional Standards and my reasons for rejecting the suggestion that she overstated the level of risk involved.

THE PUBLICATION OF ANY MATERIAL THAT IDENTIFIES OR LEADS TO THE IDENTIFICATION OF THE YOUNG PERSON REFERRED TO IN THIS DETERMINATION OR ANY MEMBER OF THE YOUNG PERSON'S FAMILY IS PROHIBITED.

- (2) Having reviewed the evidence in this matter, I find the concerns of the Acting Director of Professional Standards to be well founded.

**The nature of the accommodation arrangement**

31 The Acting Director of Professional Standards said that she initially understood that temporary accommodation was to be provided by the Respondent to the young person until 20 December 2019, the last day of the school term. She contacted the Respondent early in 2020 when she learned that the young person continued in residence at the rectory. She continued to contact the Respondent on a number of occasions, repeating her opinion concerning the high level of risk involved and urging the Respondent to remove the young person from the rectory.

32 The evidence raised two issues. The first was whether the arrangement was necessary at all, the second related to the term of the arrangement.

33 [REDACTED]

[19] ...I did have other options like my parents, and I told Doug this.

THE PUBLICATION OF ANY MATERIAL THAT IDENTIFIES OR LEADS TO THE IDENTIFICATION OF THE YOUNG PERSON REFERRED TO IN THIS DETERMINATION OR ANY MEMBER OF THE YOUNG PERSON'S FAMILY IS PROHIBITED.

34 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

39 **Findings:**

- (1) The arrangement to accommodate the young person at the rectory was initially made in circumstances of emergency to avoid placing him with strangers until the end of the school term;

THE PUBLICATION OF ANY MATERIAL THAT IDENTIFIES OR LEADS TO THE IDENTIFICATION OF THE YOUNG PERSON REFERRED TO IN THIS DETERMINATION OR ANY MEMBER OF THE YOUNG PERSON'S FAMILY IS PROHIBITED.

- (2) Thereafter the arrangement was no longer urgent or essential;
- (3) The Applicant withdrew the allegation contained in paragraph 43 of the Referral, conceding that the Respondent had not agreed to review living arrangements. However, the Respondent, having been fully informed of the concerns of the Acting Director of Professional Standards, ought at that stage to have recognised the need to review the arrangement.
- (4) At some point between 20 December 2019 and 30 January 2020, the Respondent formed an intention to continue the arrangement indefinitely, and, on 5 February 2020, he informed Bishop Peter Stuart that he had taken on the role of mentor and carer.
- (5) I did not accept that it was unnecessary to consult with the Acting Director of Professional Standards or, indeed, some other person in the Diocesan office, if he considered her to be misguided, concerning the adoption of a long term caring role for the young person.
- (6) The development of the relationship of mentor and carer was inappropriate and demonstrated a breach of professional boundaries.

### **Newcastle Ocean Baths**

40 The outings to the Newcastle Ocean Baths raised two issues. The first concerned the circumstances in which the young person came to be present in the change room when the Respondent showered and changed. The second concerned the Respondent's responses to questions raised by Bishop Peter Stuart in the meeting held on 5 February 2020.

THE PUBLICATION OF ANY MATERIAL THAT IDENTIFIES OR LEADS TO THE IDENTIFICATION OF THE YOUNG PERSON REFERRED TO IN THIS DETERMINATION OR ANY MEMBER OF THE YOUNG PERSON'S FAMILY IS PROHIBITED.

- 41 The Respondent said the change room at the Newcastle Ocean Baths was a busy open space and it was *impossible* to shower in privacy. He subsequently conceded that the layout of the change room was such that privacy was available and that he could have avoided appearing naked in front of the young person.
- 42 He stated in cross examination that the young person's presence in the change room was inadvertent and that he tried to avoid it by buying the young person a milkshake and directing him to wait outside. That the young person subsequently entered the change room was outside his control. He indicated that the young person had seen him naked on two occasions only.
- 43 The Respondent subsequently said that the young person had been in the change room 'a few times' or somewhere between two and ten times.
- 44 The direction to wait outside was not mentioned in the Respondent's affidavit or in the young person's statement. The young person did not suggest that there was anything inadvertent or unusual in his presence in the change room. In respect to visits to the beach, he said:

*[17] For the past two summers Doug has been taking me for a drive into the beach. Usually we go to Newcastle Baths but sometimes it's Newcastle Beach, Bar Beach or Mereweather [sic] Beach. Usually when we go it's just us. Sometimes another kid might jump in on it and come with us but usually it's Doug and me.*

*[29] I have seen Doug naked a few times really. Mostly at the beach I suppose. I can remember seeing him naked a few times last summer and this summer at Newcastle Ocean Baths changeroom after he had a swim. I don't ever get changed I stayed in my wet clothes and travel home in them. But not Doug. He always gets out of his wet swimmers in the changerooms. He takes his wet swimmers off and dries himself and that's when I have seen him naked. Then he gets dressed in dry clothes. Then usually I grab the car keys and we drive home. Sometimes there have been other people around when Doug is naked other times there aren't it's just us.*

THE PUBLICATION OF ANY MATERIAL THAT IDENTIFIES OR LEADS TO THE IDENTIFICATION OF THE YOUNG PERSON REFERRED TO IN THIS DETERMINATION OR ANY MEMBER OF THE YOUNG PERSON'S FAMILY IS PROHIBITED.

- 45 The parties agreed that at the February meeting the Respondent told Bishop Peter Stuart that the young person had seen him naked.
- 46 He admitted that he initially told the Bishop that the young person had not been present in the male change room at the Newcastle Ocean Baths. He admitted that this statement was incorrect and said that he immediately corrected it by informing the Bishop that the young person had seen him naked when he was showering in the change room.
- 47 The Acting Director of Professional Standards, who was present at the meeting, disputed the assertion that the Respondent corrected this statement immediately. As a consequence, the Applicant alleged that the Respondent deliberately lied to Bishop Peter Stuart in the course of this interview.
- 48 The Respondent denied any lie deliberate or otherwise. He offered as explanations for this initially incorrect statement that the meeting was called at short notice, without details of its purpose or the opportunity to have a support person present. The Respondent said that he suffered from Attention Deficit Hyperactivity Disorder (ADHD) that caused him to struggle to think and articulate coherently when under pressure. He considered that he was 'ambushed' at the meeting.
- 49 The Respondent relied on the report of Dr Russell Hinton, psychiatrist, dated 22 August 2020 (Exhibit 2) in support of this explanation. Dr Hinton confirmed his diagnosis of ADHD made in April 2013, which, he said, was consistent with the diagnosis of ADD made by another practitioner in 2007.
- 50 Dr Hinton reported three consultations with the Respondent in 2013. There was no evidence of any further treatment of the condition after this date.
- 51 Dr Hinton set out in his report details of the two criteria against which his diagnosis of ADHD was made. The first was directed at inattention and dealt with symptoms such as inattention to details, inaccuracies in the course of

THE PUBLICATION OF ANY MATERIAL THAT IDENTIFIES OR LEADS TO THE IDENTIFICATION OF THE YOUNG PERSON REFERRED TO IN THIS DETERMINATION OR ANY MEMBER OF THE YOUNG PERSON'S FAMILY IS PROHIBITED.

activity, and difficulties in maintaining focus. The second related to hyperactivity and impulsivity and related to various activities in which a sufferer engaged to an excessive level.

52 The symptoms the Respondent reported to Dr Hinton mostly fell within the first of these criteria.

53 The opinion offered by Dr Hinton was that persons with symptoms of ADHD could experience significant cognitive dysfunction. The resulting impairments, he said, could be exaggerated in situations of pressure so that such a person would have difficulty processing information in an orderly and timely manner.

54 In response to this opinion, the Applicant pointed out that the Respondent had, for many years, functioned at high levels not only within his Parish but in senior positions within the Diocese, and in positions within other churches and in other countries, attending and chairing meetings, and making important decisions without apparent impairment.

55 **Findings:**

(1) In permitting the young person to see him naked in the change room of the Newcastle Ocean Baths, the Respondent breached Parts 5.30 and 5.35 of the Faithfulness in Service Code.

(2) I rejected the Respondent's assertion that he directed the young person to wait outside the change room. It was inconsistent with the young person's statement and the Respondent's subsequent evidence and it was inconsistent with the Respondent's attitude as expressed in his affidavit:

*[17] There was absolutely nothing inappropriate about showering in front of ... the young person.*

THE PUBLICATION OF ANY MATERIAL THAT IDENTIFIES OR LEADS TO THE IDENTIFICATION OF THE YOUNG PERSON REFERRED TO IN THIS DETERMINATION OR ANY MEMBER OF THE YOUNG PERSON'S FAMILY IS PROHIBITED.

- (3) Dr Hinton's report was not adequately convincing on the question of whether the ADHD from which the Respondent suffers was responsible for the inaccuracy in the Respondent's initial denial that the young person had been in the change room.
- (4) The Applicant conceded that at some stage during the February meeting, Bishop Peter Stuart was informed that the young person had seen the Respondent naked in the change room. In those circumstances, I accepted that it was conceivable that initial denial was inadvertent.
- (5) I was not satisfied to the required level of comfort that this denial was a deliberate lie or made with the intent of misleading or deceiving the Bishop.

## **OTHER ISSUES**

- 56 There were other issues arising out of conduct admitted by the Respondent that needed to be addressed because of the explanations he provided or because they were significant to the outcome.

### **The driving lessons**

- 57 The Respondent said that his intention was to allow the young person to complete the required 120 hours of driving while a learner in circumstances where there was no other responsible adult who was available to assist him. The Respondent said that he enjoyed driving and teaching others to drive and he intended to pursue this activity as part of his ministry in assisting disadvantaged members of the Parish.
- 58 The Respondent agreed that the young person was the first person to whom he had provided driving lessons, and he had not, to the date of the hearing, pursued his intention to teach other members of the Parish

59 **Findings:**

- (1) The Respondent acknowledged that in conducting these lessons in his car in the absence of a third person he breached the provisions of Parts 5.33 and 5.40 of the Faithfulness in Service Code.

**Favouritism**

60 This concern arose out of the gift of the X-Box, the assistance with the expense of a mobile telephone, and the assertion both to the young person's high school staff and to Bishop Peter Stuart, that the Respondent had adopted the role of mentor and carer.

61 The X-Box, the Respondent said, was a gift from his family to the young person at a time when the family was exchanging Christmas gifts. He did not want to cause distress to the young person by excluding him. The Respondent said that gift cards were also given to the young person's siblings, the cost of which was shared equally by the Respondent's family and the young person.

62 The Respondent displayed no appreciation of the issue of the appropriateness of providing a relatively expensive gift to one child in a family said to be struggling financially. Questioned on this aspect, he said the X-Box was intended to be shared by all the children in the family. It was not clear from the young person's statement that he understood this intention. He said:

[16] ... *He gave me an X-Box on boxing day as a late Christmas present. They cost about \$300.00. I brought it home with me. ...*

63 The recharges for the young person's mobile telephone were paid before the young person moved to the Rectory. Thereafter the account was moved to the family plan with the approval of the Respondent's wife.

THE PUBLICATION OF ANY MATERIAL THAT IDENTIFIES OR LEADS TO THE IDENTIFICATION OF THE YOUNG PERSON REFERRED TO IN THIS DETERMINATION OR ANY MEMBER OF THE YOUNG PERSON'S FAMILY IS PROHIBITED.

64 The extent to which the Respondent provided funding for the telephone was described in the young person's statement:

*[15] ...He also pays for my mobile phone. ... Doug has been paying for my mobile phone for ages. Like all of last year he was. Dunno why but it's good*

65 Further:

*[27] Doug spends a lot of time with me. Doug is also at my school a lot. I like seeing him at school and I like him buying me stuff and taking me places. I would hear from Doug most days either by text or he calls my mobile. I don't know of Doug being this close a friend with any other boys like me.*

66 There was no evidence that the Respondent gave any such specific attention to the young person's siblings, in particular, to his sister who was the victim of the sexual assault that was the reason for the young person's move to the rectory.

67 **Findings:**

- (1) These instances provided clear evidence of favouritism towards the young person and of the extent to which the Respondent's conduct extended beyond professional boundaries.
- (2) The Respondent acted in breach of Part 4.16 of the Faithfulness in Service Code.

### **The Acting Director of Professional Standards**

68 The Acting Director of Professional Standards was criticised both in submissions and through lengthy cross examination concerning her role in dealing with the young person's move to the rectory and in the investigation that followed.

69 It was suggested that she overstated the level of the risk and that, in this regard, she was influenced by her background in the Police Force where she was exposed to matters of child sexual abuse and by concern to protect the reputation of the Diocese which she placed ahead of the need to provide care and support to the young person. These suggestions she denied.

70 **Findings:**

- (1) The evidence provided by the Acting Director of Professional Standards was objective and straightforward. It reflected her clear understanding of her role within the Diocese and her appreciation that safeguards had been introduced to avoid repetition of the damage to vulnerable members of the community, particularly children, that had occurred in the past.
- (2) I rejected any suggestion that the attitude of the Acting Director of Professional Standards provided justification for the breach by the Respondent of his commitment to the Faithfulness in Service Code when he was of the opinion that its strictures were being applied too severely.
- (3) The criticism of her conduct displayed a lack of appreciation that the roles of the Acting Director of Professional Standards, and of the Faithfulness in Service Code, were directed at the protection of the public, including children, when dealing with Diocesan personnel as well as the protection of the reputation of members of the clergy and the Diocese itself.

## CREDIT

71 While I was not satisfied that the Respondent lied deliberately as alleged in paragraph 27 of the Referral, given the nature of these proceedings, I felt compelled to express my concerns regarding the Respondent's credit in defending the matter.

72 I did not accept his evidence that he was unaware of the details of the alleged sexual assault on the young person's sister.

73 The Acting Director of Professional Standards set out in detail the nature of the alleged assault in paragraph [13] of her affidavit. The serious nature of these details prompted her to express her views to the Respondent that he was entering into a dangerously unwise arrangement. The Respondent was aware of the involvement of the Child Abuse Squad and Department of Communities and Justice. I concluded that it was highly improbable that in this context he would not have known of the nature of the allegations.

74 This conclusion was reinforced by the following paragraph in the young person's statement:

*[21] I have to see [a psychologist] because I sexually abused [his sister] a few years back. Mum and Doug know, everyone knows. ...*

75 The Respondent's evidence concerning the circumstances in which the young person entered the change room at the Newcastle Ocean Baths was clearly false. In suggesting that the young person disobeyed his direction to wait outside, he attempted to transfer the responsibility for his presence in the change room to the young person himself.

76 The Respondent acknowledged, when shown photographs, that his assertion that it was not possible to shower in privacy in the change rooms was also false.

THE PUBLICATION OF ANY MATERIAL THAT IDENTIFIES OR LEADS TO THE IDENTIFICATION OF THE YOUNG PERSON REFERRED TO IN THIS DETERMINATION OR ANY MEMBER OF THE YOUNG PERSON'S FAMILY IS PROHIBITED.

## FINDINGS

77 In summary, I find that the factual elements and allegations set out in the Referral have been proved to the required standard with the exception of those set out in paragraph 41. The allegation made in paragraph 43 was withdrawn.

78 I find that the allegations of unprofessional or inappropriate conduct set out in paragraphs 48, 49, 50, and 51 of the Referral have been proved to the required standard.

79 I find that the Respondent failed to adhere to the following provisions of the Faithfulness in Service Code of the Anglican Diocese of Newcastle:

Part 4.16 – relating to favouritism

Parts 5.30 and 5.35 – relating to nudity and privacy

Part 5.33 – relating to work undertaken alone or in isolation with a child

Part 5.40 – relating to the failure to avoid being alone in a motor vehicle with a child.

80 I find that the following allegations of breach of the Code have not been proved:

Part 5.33 – relating to the provision of external professional supervision

Part 6.11 – relating to the making of false, misleading or deceptive statements as alleged in paragraph 27 of the Referral.

THE PUBLICATION OF ANY MATERIAL THAT IDENTIFIES OR LEADS TO THE IDENTIFICATION OF THE YOUNG PERSON REFERRED TO IN THIS DETERMINATION OR ANY MEMBER OF THE YOUNG PERSON'S FAMILY IS PROHIBITED.

## **FITNESS FOR OFFICE**

- 81 The Respondent provided five character references, two of which were provided by his wife and his son. The references spoke of the Respondent's strong commitment to his ministry and his care and concern for the underprivileged in his community. These were characteristics that were demonstrated by the attention that the Respondent paid to the difficult circumstances of the young person's family.
- 82 All referees denied any observation of conduct that might be considered to be improper. They confirmed my impression of the Respondent as an experienced and committed church worker. His record of service was otherwise unblemished.
- 83 In these circumstances, it was contended on the Respondent's behalf that I should determine that his suspension from the position of Priest in Charge of the Parish of Beresfield - Thornton should be revoked. He did not seek to be restored to any other position that he formerly held within the Diocese.
- 84 The Respondent also suggested that conditions be imposed for the purpose of providing support and closer supervision of his ministry.
- 85 The Applicant considered the Respondent's conduct to be of such a serious nature as to warrant a determination that he was permanently unfit to remain in Holy Orders.
- 86 In reaching my determination I have taken into account two features that, in my view, seriously affected the Respondent's fitness to continue his ministry within the Diocese.

THE PUBLICATION OF ANY MATERIAL THAT IDENTIFIES OR LEADS TO THE IDENTIFICATION OF THE YOUNG PERSON REFERRED TO IN THIS DETERMINATION OR ANY MEMBER OF THE YOUNG PERSON'S FAMILY IS PROHIBITED.

**Reliability**

- 87 The findings that I have made established that the Respondent displayed intransigence to the point where he felt justified in disregarding his obligations under the Faithfulness in Service Code.
- 88 He rejected the advice of the Acting Director of Professional Standards. Her previous professional experience in the field of child protection qualified her to provide that advice. The Respondent preferred his own opinions and wishes.
- 89 Further, the Respondent demonstrated that he could not be relied upon to tell the truth in circumstances where he believed the truth might be prejudicial to his interests.
- 90 Reliance upon the word of a minister, and upon his or her compliance with the principles and codes established within the church, I regarded as fundamental to that person's fitness to remain in Holy Orders.

**Insight**

- 91 At the directions hearing that took place on 24 August 2020, I specifically requested that the parties address the matter of insight in their submissions.
- 92 The Respondent did not do so. It was conceded that perhaps he was misguided or stubborn but, as a counterpoint, I was asked to take into account his motive of helping a person in distress. It was submitted that, in the absence of a finding of grooming or sexual misconduct, the Respondent's conduct amounted to minor, technical breaches committed with the best of intentions in providing sanctuary and care to the young person.
- 93 With respect to the Respondent and those representing him, those submissions did not address the clear absence of insight by the Respondent into the real reasons for his appearance before this Board.

THE PUBLICATION OF ANY MATERIAL THAT IDENTIFIES OR LEADS TO THE IDENTIFICATION OF THE YOUNG PERSON REFERRED TO IN THIS DETERMINATION OR ANY MEMBER OF THE YOUNG PERSON'S FAMILY IS PROHIBITED.

- 94 He appeared to be unable to comprehend the reasons for the concerns expressed so forcefully by the Acting Director of Professional Standards at his decision to accommodate a young person accused of serious sexual misconduct. Her concerns extended beyond the needs of the young person to those of other parishioners or victims and survivors of sexual assault.
- 95 Although he was not qualified or requested to prepare a risk assessment, his decision to continue the arrangement to the point where he decided that it should be long term and based upon the role as mentor and carer did not prompt him to recognise the obvious requirement for a review in consultation with the appropriate Diocesan authorities.
- 96 He failed to acknowledge any element of favouritism in his relationship with the young person.
- 97 His attitude to nudism in the presence of the young person was particularly disturbing. The Respondent continued to deny that his behaviour in the change room at the Newcastle Ocean Baths was sexually inappropriate in relation to the young person. He did so while acknowledging that the layout of the change room was such that he could have avoided the issue of nakedness and that in not doing so he was in breach of Part 5.30 of the Faithfulness in Service Code.
- 98 Finally, I received no expression of regret or contrition from the Respondent. He gave no indication that he recognised that he had overstepped professional boundaries in his dealings with the young person and he offered no apology for his admitted breaches of the Faithfulness in Service Code.

## **DETERMINATION**

- 99 In the absence of reliability and insight I was unable to accept that imposing conditions on the Respondent's continuing as a Church worker would serve any purpose.

THE PUBLICATION OF ANY MATERIAL THAT IDENTIFIES OR LEADS TO THE IDENTIFICATION OF THE YOUNG PERSON REFERRED TO IN THIS DETERMINATION OR ANY MEMBER OF THE YOUNG PERSON'S FAMILY IS PROHIBITED.

100 I therefore determined that the Respondent was currently unfit to hold any office, licence or position of responsibility in the Church.

101 I am reluctant to accept that a minister of the Respondent's experience, capacity and commitment should be deprived permanently of his career in the Church and I therefore recommend as follows:

- (1) An order be made prohibiting the Respondent from holding any licence or authority or office that he currently holds as a Church worker; and
- (2) The prohibition order remain in effect until such time as the Respondent establishes to the satisfaction of the Acting Director of Professional Standards that:
  - (a) he recognises the objectives of protection of the vulnerable, of Church workers, and of the Church itself, that are embedded in the rules and principles under which he would be required to operate; and
  - (b) he was clearly and absolutely committed to the observation of those rules and principles.

102 I wish to make it clear that I have not arrived at this determination in order to provide an example to other Church workers. I have done so because I considered it the appropriate remedy for this individual case.

## **RECOMMENDATION**

103 Pursuant to s 82(a) of the Ordinance, I am satisfied that the Respondent is unfit to hold any office, licence or position of responsibility in the Church.

THE PUBLICATION OF ANY MATERIAL THAT IDENTIFIES OR LEADS TO THE IDENTIFICATION OF THE YOUNG PERSON REFERRED TO IN THIS DETERMINATION OR ANY MEMBER OF THE YOUNG PERSON'S FAMILY IS PROHIBITED.

104 Pursuant to s 82(h) of the Ordinance, I recommend that:

- (1) An order be made prohibiting the Respondent from holding any licence or authority or office that he currently holds as a Church worker; and
- (2) The prohibition order remain in effect until such time as the Respondent establishes, to the satisfaction of the Acting Director of Professional Standards, that:
  - (a) he recognises the objectives of protection of the vulnerable, of church workers, and of the Church itself, that are embedded in the rules and principles under which he would be required to operate; and
  - (b) he was clearly and absolutely committed to the observation of those rules and principles.

Dated: 24 September 2020

Margaret Sidis  
President of the Professional Standards Board