

PROFESSIONAL STANDARDS REVIEW BOARD OF THE ANGLICAN DIOCESE OF NEWCASTLE

IN THE MATTER OF:

THE PROFESSIONAL STANDARDS COMMITTEE

Applicant

AND

REVEREND CHRISTOPHER CHARLES BIRD

Respondent

Decision subject of the review: Determination part 1 and Determination part 2 issued on 18 August 2022.

Decision date: 14 March 2023

Review panel members: Audrey Mills LLB, The Venerable Canon Rod Bower Clergy Member, Richard Turnbull Lay Member.

DECISION

The Determination of the Review Board pursuant to s. 104 of the Professional Standards Ordinance 2012 is as follows.

The Review Board confirms the decision of the Professional Standards Board made up of Determination Part 1 and Determination Part 2 and dismisses the application for review brought by the Reverend C.C. Bird.

Representation

Respondent: Rev. C.C. Bird is represented by K.P. Tang, Barrister who provided written submissions on behalf of the Respondent.

Introduction

Referral to the Review Board

1. The Respondent applied to the Secretary of the Board for a review of the Determination on 9 September 2022 in accordance with the Professional Standards Ordinance 2012 s. 100 and paid the required fee pursuant to s. 102 of the Ordinance.
2. The Review Board determined that the review would proceed on the papers without the need for any oral submissions.
3. The Review Board considered the written submissions made on behalf of the Respondent by his Barrister and the following documents:
 - a. the Determination being Part 1 and Part 2 of the Professional Standards Board;
 - b. the referral to the Professional Standards Board; and

- c. the Professional Standards Committee's outline of submissions.
4. The Review Board also had access to the documents marked as exhibits and referred to in the Determination which were listed in appendix B to the Determination.

Nature of the review

5. The review of the Determination is limited to the specific grounds listed in s. 94 of the Ordinance. This means that the review is limited only to those grounds. It is not rehearing of the merits or a rehearing de novo.
6. Based on the Respondent's application for review and submissions, the only relevant grounds for the review are as follows:
 - a. s. 94(a) – a breach of the rules of natural justice happened in relation to the making of the reviewable decision which materially affected the decision;
 - b. the availability of fresh and compelling evidence or further and compelling evidence which, if available at the time, would be likely to have materially affected the Board's decision;
 - c. (f) – that the Board seriously misdirected itself as to the applicable law; or
 - d. (g) – that in the light of the evidence and submissions, the recommendation is manifestly excessive.

Grounds of review

The Respondent seeks a review on 7 grounds as follows:

- (a) Ground 1 – denial of natural justice and procedural fairness in that the Respondent was not given a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Board, because of the Board's decision to proceed with the matter in the face of the Respondent's diagnosed mental illness and inability to participate in the proceedings;
- (b) Ground 2 – misdirection as to the applicable law in that the Board failed to properly apply the appropriate test for the standard of proof applicable to proceedings before the Board, with respect to the allegations raised by Witness A in the Referral at [34]-[38];
- (c) Ground 3 – misdirection as to the applicable law, in that the Board failed to properly apply the appropriate test for the Standard of Proof applicable to proceedings before the Board, with respect to the allegations raised by Mr Smith at Synod;
- (d) Ground 4 – failure to take into account relevant considerations, in that the Board failed to obtain evidence from a relevant eye witness, with respect to the allegations by Mr Smith at Synod;
- (e) Ground 5 – misdirection as to the applicable law, in that the Board failed to properly apply the appropriate test for the standard of proof applicable to proceedings before the Board, with respect to the allegations raised by Witness B at the then Newcastle Girls Grammar School (NGGS);

- (f) Ground 6 – misdirection as to the applicable law, in that the Board failed to provide adequate reasons for its findings with respect to the allegations raised by Ms Torok; and
- (g) Ground 7 – the recommendation contained in Determination part 2 is manifestly excessive in the light of the evidence and submissions.

Ground 1

7. The Review Board considers that Ground 1 falls within s. 94(a) of the Ordinance.
8. The Board decided that the hearing was to proceed to be decided on the papers. The Professional Standards Committee relied on evidence that was substantially in affidavit form and the Respondent relied on his responses to letters of allegations dated 11 September 2020 and 2 December 2020 in which he denied all allegations of misconduct.
9. The Respondent was initially represented by Mr Tang, Barrister, who appeared on behalf of the Respondent at three directions hearings where the evidence was discussed and considered. The Respondent provided a table of pleadings dated 14 April 2021 containing the same denials with some modifications to the letters referred to above.
10. On 19 August 2021 the Respondent advised the Board that he was not going to engage any legal representation and on medical evidence he was not participating in the proceedings.
11. The Board's Secretary continued to provide the Respondent with a transcript of the directions hearings before the Board.
12. The Respondent emailed the Board's Secretary from time to time responding to queries and to request to provide medical opinions as to his capacity to appear at a hearing. The Respondent authorised the Board's Secretary to contact his GP and a treating Psychologist and Psychiatrist.
13. It is clear from the Board's Determination that the President carefully considered the medical evidence provided by the Respondent including the report from Mr Stephen Peate, Psychologist, and Dr Tang.
14. Requests were also made by the Board to secure independent expert opinion but this had to be abandoned when it became apparent that extensive delays were being caused as a result of the Covid-19 epidemic and appointments were not able to be obtained with the medical profession.
15. The Board set out in the Determination that there was careful consideration of the medical evidence which in summary was that the Respondent was unfit to appear before the Board but that the Respondent's Psychologist was unable to give a firm estimate as to when the Respondent might be fit to appear in the future.
16. The Board decided that there were only 2 options, in summary, either a permanent termination of the proceedings without hearing or determination of the issues. The other was to allow the Respondent and all other persons involved in the proceedings to have the certainty of an outcome of the Inquiry before the Board. The Board took into account its concern for the effect on the lives and mental health of the witnesses who provided evidence to the Board as well as the Respondent. The Board decided to proceed to

determine the matters raised by the Referral to determine the matter on the papers in two stages by determining first the factual issues, then allowing the parties the opportunity to address the Board further on the answers it should provide to the questions posed by the Referral.

17. The Respondent was kept informed of these deliberations.
18. The President of the Board requested the consent of the parties to proceed to determine the issues raised in the reference on the papers before the Board. On 27 October 2021 the Respondent informed the Board that he left to the President the question of whether to proceed on the papers. The Applicant consented to this proposal to proceed on the papers.
19. The Respondent was provided with copies of all the documents relied on by the Board and had the opportunity to make written submissions. The Respondent did not provide any written submissions but relied on his earlier denials of the allegations.
20. The Review Board determines that the Board correctly considered all relevant matters and gave the Respondent every opportunity to participate and provide his answers to the matters raised in the Professional Standards Committee's Referral. The Board correctly weighed the balance between interests including the mental health of the witnesses and the Respondent.
21. It is clear that the Respondent was fully on notice of all the evidence being put forward by the Professional Standards Committee and was provided with every opportunity to provide responses in writing either himself or through other representatives.
22. The rules of natural justice do not require that in every case a Respondent should have the opportunity to appear at a hearing. Procedural fairness needs to be awarded to all parties and merely to have adjourned the proceedings indefinitely for what could be years waiting for the Respondent to be declared fit as the Respondent now asserts was unreasonable.
23. The Review Board finds that there was no breach of the rules of natural justice in relation to the making of the reviewable decision which materially affected the decision. Ground 1 is dismissed.

Ground 2

24. The Review Board has determined that this ground falls within s.94(f) of the Ordinance, namely that the Board seriously misdirected itself as to the applicable law.
25. The Determination makes it clear that the Board proceeded by following the well accepted principles in the Briginshaw case as to the standard of proof applicable to the proceedings before the Board. This is the correct legal standard of proof.
26. The Respondent submits that it was not possible to make findings as the Board did with respect to Witness A's evidence without being satisfied that the allegations that Witness A made about Mr Lawrence were true.

27. In considering the Board's reasoning it is clear that the Board took into account the full context of the evidence of Witness A and his conduct before and after the alleged assault took place. There was evidence from several other persons as to Witness A's disclosures.
28. The Review Board has carefully reviewed the detailed reasoning of the Board, and the Review Board finds that the Board did not seriously misdirect itself as to the applicable law. This ground is dismissed.

Ground 3

29. This ground also falls within s.94(f) of the Ordinance, namely that the Board seriously misdirected itself as to the applicable law.
30. The Respondent submits that the Board failed to properly apply the appropriate test for the standard of proof applicable to the proceedings before the Board with respect to the allegations raised by Mr Smith at Synod.
31. It is clear from the Board's Determination that the standard it applied was the standard according to the Briginshaw principles which is the correct standard.
32. The Review Board has considered the Board's reasoning with respect to the allegations raised by Mr Smith at Synod. The Board considered not only Mr Smith's evidence but the evidence of other persons which indirectly corroborated Mr Smith, namely early reporting of the matter by Mr Smith to Mr Elliott during the morning tea break and the reporting to Bishop Thomson.
33. The Review Board finds that the Board did not seriously misdirect itself as to the applicable law. Ground 3 is dismissed.

Ground 4

34. The only possible basis which this ground could be considered is if it falls within s.94(e) of the Ordinance. This requires that it be "the availability of fresh and compelling evidence or further and compelling evidence which, if available at the time, would be likely to have materially affected the Board's decision".
35. The Respondent asserts that the Board failed to obtain evidence from a relevant eyewitness with respect to the allegations of Mr Smith at Synod. The Respondent does not state who the relevant eyewitness is. The Respondent does not refer to any fresh evidence but to a witness whose evidence could have been provided to the Board by the Respondent in written form but was not.
36. Having reviewed the reasoning and the outline of the evidence contained in the Determination, the Review Board has found that this ground does not amount to that set out at s. 94(e) and therefore is not a valid ground for review. It does not come within the grounds of s. 94 of the Ordinance.

Ground 5

37. This ground of review comes within s.94(f) of the Ordinance.

38. The Respondent submits that the Board did not apply the appropriate test for the standard of proof applicable to the proceedings before the Board with respect to the allegations raised by Witness B at the then Newcastle Girls Grammar School (the School).
39. No further submissions have been included in the submissions on behalf of the Respondent with respect to this ground 5.
40. The Review Board has considered the evidence outlined in the Determination with regard to Witness B and the reasoning for the findings by the Board.
41. The Board's reasoning and findings are clearly consistent with the application of the Briginshaw test as to the standard of proof required to make those findings.
42. It is noted that Witness B's evidence was confirmed in part by another person (a school mate) and also by Witness B's mother. The Respondent admitted he taught divinity at the School and the School records confirmed Witness B's assertion that she was excused from what would otherwise have been the compulsory divinity class for the second half of 1986.
43. The Review Board finds that the findings and reasonings of the Board have been made in accordance with the proper principles, namely the Briginshaw principles.
44. The Review Board finds that the Board did not seriously misdirect itself as to the applicable law. Ground 5 is dismissed.

Ground 6

45. This ground comes within s.94(f) of the Ordinance.
46. The Review Board has considered the Board's consideration of the evidence and its reasoning and findings with respect to the allegations raised by Ms Torok.
47. The Respondent has made no further submissions in respect of ground 6.
48. The Review Board has considered the findings and the reasoning of the Board in respect of the allegations raised by Ms Torok and notes that there is corroborating evidence relied on by the Board including that Ms Torok made a record of the incident and reported it to her supervisor and to the Diocesan Business Manager.
49. The Review Board is satisfied that the Board applied the correct standard of proof, namely the Briginshaw principles, to its Determination.
50. The Review Board finds that the Board did not seriously misdirect itself as to the applicable law. Ground 6 is dismissed.

Ground 7

51. Ground 7 comes within s.94(g) of the Ordinance and states that in the light of the evidence and submissions, the recommendation is manifestly excessive.
52. The Review Board carefully examined all the evidence relied on by the Board and notes that the Board even without direct submissions from the Respondent considered the

mitigating factors which could apply to the Respondent and which are set out at paragraph 17 of Part 2 of the Determination.

53. The Board noted the seriousness of the allegations and the findings but did give the Respondent the opportunity to take appropriate steps towards rehabilitation in its recommendation rather than finding him permanently unfit for any role within the Diocese. The Respondent has been given the opportunity to take appropriate steps towards rehabilitation.
54. The Review Board finds that having regard to the Board's reasoning that the recommendations could not be considered manifestly excessive. It is noted that the recommendation to remove the Respondent from holy orders will only take effect if he fails to rehabilitate.
55. In those circumstances, the Review Board finds that in the light of the evidence and submissions the recommendation is not manifestly excessive. Ground 7 is dismissed.

Dated: 14 March 2023

Review Board constituted pursuant to the Professional Standards Ordinance of the Anglican Diocese of Newcastle



Audrey Mills LLB

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Rod Bower
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The Venerable Canon Rod Bower
Clergy Member

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Richard Turnbull
Lay member