

that all of their staff were apprised of the content of the regulations and that funeral directors are expected to have a full and proper understanding of the faculty jurisdiction and the nature and extent of the authority delegated to ministers concerning the erection of memorials. He ordered the funeral directors to pay 75 per cent of the faculty costs and the priest 25 per cent, and required the funeral directors to reimburse the petitioner monies paid for the erection of the memorial. The chancellor required the memorial to be removed. [RA]

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Byrne v King

Disciplinary Tribunal, Diocese of York, November 2007

Clergy discipline – conduct unbecoming – procedure

The complainant brought an allegation of misconduct against the respondent, an incumbent in the Diocese of York, under the Clergy Discipline Measure 2003. The allegation was that the respondent was guilty of ‘conduct unbecoming or inappropriate to the office and work of a clerk in holy orders’ (section 8(1)(d) of the Measure) and centred on an alleged sexual relationship between the respondent and the former wife of the complainant whilst both were still married. The respondent admitted to having had what was described as a ‘boyfriend/girlfriend’ relationship with the complainant’s former wife after their respective separations but denied that the relationship had been sexual or that his conduct had been in any way improper. The tribunal referred to Canon C 26 (which states, inter alia, that a priest should ‘fashion his life . . . according to the doctrine of Christ’) and the *Guidelines for the Professional Conduct of the Clergy* (sections 3.10 and 10.1 of which require clergy to be faithful in marriage and exhibit a high standard of moral behaviour) in determining whether the conduct of the respondent had been unbecoming or inappropriate. The tribunal heard evidence from a number of witnesses in order to establish the facts of the case. In conclusion, the tribunal unanimously found that ‘between December 2004 and October 2006 the Respondent has pursued an improper, intimate and physical relationship with Mrs B, which fell short of sexual intercourse, which began when they were both still married to and living with their respective spouses.’ This was found to constitute conduct unbecoming and inappropriate to the office and work of a clerk in holy orders. The improper behaviour was compounded by the respondent’s refusal to accept that his behaviour had been wrong. The tribunal ordered that he be removed forthwith from his post and that he be prohibited from exercising the ministry of his orders for four years. During the course of the hearing, the chairman rejected an application from a journalist to attend the hearing. He stated that rule 40 of the

Clergy Discipline Rules 2005, SI 2005/2022, states that hearings are normally to be in private and that the public interest would be satisfied by the requirement of rule 50 that the tribunal's determination be pronounced in public. The chairman also ruled that written evidence of the child of the complainant be admitted without the child being called under Rule 35(4)(c) of the Clergy Discipline Rules. In coming to this decision he had regard to the fact that most of this evidence was agreed by both sides and that the child had a medical condition that would make his appearance difficult. However, the tribunal's weighing of the evidence would take into account the inability of the complainant's solicitor to cross-examine the witness. In March 2008, the Chancery Court of York dismissed the appeal of the respondent against the penalty imposed by the Tribunal. [WA]

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Green v City of Westminster Magistrates' Court

Administrative Court: Hughes LJ, Collins J, December 2007

Blasphemous libel – freedom of religion – freedom of expression

G applied for a judicial review of the District Judge's decision to refuse to issue summonses for blasphemous libel against the producer of *Jerry Springer: the opera* and against the Director General of the BBC. In refusing the application, the Court set out the two elements of the offence of blasphemous libel, namely:

- i. The need for contemptuous, reviling, scurrilous and/or ludicrous material relating to God, Christ, the Bible or the formularies of the Church of England; and
- ii. The need for the publication to be such as tends to endanger society as a whole, by endangering the peace, depraving public morality, shaking the fabric of society or tending to cause civil strife.

The court observed obiter that a commission of the offence was unlikely to amount to a breach of a person's right to freedom of religion under Article 9 of the European Convention on Human Rights, as a person's right to practise his religion was generally unaffected by insults to that religious belief. Further, the court observed that the offence was compatible with the right to freedom of expression under Article 10 of the Convention as the basis for the offence was best found in the risk of disorder amongst, and damage to, the community generally. An appellate committee refused leave to appeal to the House of Lords in March 2008. [RA]

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