

RESERVED JUDGMENT
Case No: 1602844/2006
EMPLOYMENT TRIBUNALS
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BETWEEN

Claimant

Respondent

MR JOHN GEORGE REANEY

and

**HEREFORD DIOCESAN BOARD OF
FINANCE**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: CARDIFF

**ON: WEDNESDAY & THURSDAY 4 & 5
APRIL 2007 MONDAY & TUESDAY
16 & 17 APRIL 2007**

CHAIRMAN: MR P DAVIES

**MEMBERS: MRS J KIELY
MRS B MAPSTONE**

Appearances

For the Claimant:

Ms S Drew of Counsel

For the Respondents:

Miss A Russell of Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

(1) (2)

The claim of harassment is dismissed;

The Respondents discriminated against the Claimant on the grounds of sexual orientation.

REASONS

1. By a claim received on 19 October 2006 the Claimant, Mr John George Reaney, claims direct or alternatively indirect discrimination pursuant to the Employment Equality (Sexual Orientation)

Regulations 2003. There is a further claim of harassment contrary to Regulation 5 of the 2003 Regulations. There is a reference to the Human Rights Act 1998 and to the Council Directive 2000/78/EC. The claim arises from a recruitment process and a decision not to employ the Claimant_

2. The Response contends that the claim should be dismissed on the basis the Claimant is not entitled to any relief under the 2003 Regulations whether as alleged or at all.
3. At a Pre-Hearing Review held on 6 March 2007 the name of the Respondents was amended to the Hereford Diocesan Board of Finance. The Tribunal gave directions for the Hearing which included: (1) the parties to provide a list of all the issues in the case, and (2) the parties to provide a statement of agreed facts and a statement of facts not agreed.
4. A statement of admitted or agreed facts and facts in issue was subsequently filed with the Tribunal on the 14 March 2007. An amended list of issues dated 20 March 2007 was also filed. The list of issues is as follows:

(1) Was the Claimant rejected for the post of Diocesan Youth Officer on the grounds of sexual orientation?

(2) Did the Respondent apply a criterion to the post of Diocesan Youth Officer that the post holder (a) should be married if he wished to be in a sexually loving relationship or (b) should comply with the teaching of the Church of England as articulated in 'Issues in Human Sexuality'?

(3) Was this criterion applied equally?

(4) Was it to the particular disadvantage of those of the Claimant's sexual orientation compared with persons not of his sexual orientation?

(5) Did it put the Claimant at that disadvantage?

(6) At the meeting on 19 July was there unwanted conduct which had the effect of violating the Claimant's dignity or the creating of a humiliating environment for him?

(7) Did the Respondent apply a requirement relating to sexual orientation so as to comply with the doctrines of the religion?

(8) Did the Respondent apply the requirement because of the nature of the employment and the context in which it was carried out, so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers?

Only if 7 or 8 decided as yes then issues 9 and 10 are to be decided.

(9) Did the Claimant not meet the requirement?

(10) Was the Respondent not satisfied (and in all the circumstances was it reasonable for him not to be satisfied) that the Claimant did meet the requirement?

(11) Should a reference be made to the ECJ for the reasons set out in the skeleton of the Claimant's Counsel?

(12) What is the value of the Claimant's claim?

5. The Tribunal's findings of fact are as follows. The Claimant, Mr John George Reaney, was born on 24 June 1965 and currently lives in Llandudno, Conwy. He is employed by an organisation called the Weston Spirit and is Area Manager for North Wales and has the management of all North Wales staff, Youth Centre, youth work development, finance, IT, health and safety, networking and contract management.

Application for employment as Diocesan Youth Officer

6. On 23 May 2006 the Claimant completed an application form for the position of Youth Officer for the Diocese of Hereford. On pages 90-93A is a copy of the application form. On page 91 the Claimant has stated that in respect of voluntary work from November 2004 until the present he has been a member of the St Asaph's Diocese Under 25s Team Committee and been working in the committee with Development of Diocesan Strategy for work with 0-25 year olds. The Claimant also states that from January 2005 to the present he is the Youth Group Leader overseeing the Parish Youth Group of St Paul's Church, Colwyn Bay. Under the heading of 'Previous Employment' beginning on page 91A the Claimant sets out his various employment from March 1989. It can be seen that his first job was as a Youth Worker at the St John the Baptist Church in Busbridge and he had full responsibility for youth ministries. Thereafter there is a succession of church related youth work, being a Diocesan Youth Officer with the Norwich Diocese from February 1997 to March 2001 and from March 2001 to July 2002 being a Diocesan Youth Officer for the Chester Diocese. The Claimant has left blank the column for the reason for leaving the Chester Diocese unlike filling in the reasons for leaving the other employment.
7. The Claimant returned to youth work in September 2004 for a secular organisation, Weston Spirit, which was and is his present employment. He states in the column 'Reason for Wanting to Leave' "Hopefully to return to Christian Youth Ministry!".
8. On page 91B under the heading 'Additional Information' the Claimant sets out a great deal of information about his activities in the field of youth work and on page 92 says:

"As a young person I had to deal with a number of difficult issues, ... I was also beginning to fully understand my sexuality and the dilemma of its conflict with parts of the church. This caused me to suppress much of my real self in order to use my God-given gifts in ministry amongst young people. Because of my personal experiences I am able to empathise and support people with an immense depth of understanding.

I was in a relationship during my time in Chester Diocese and this led to my premature departure. This caused me to struggle massively with the church structure for a time, but with the support of many clergy, friends and others I have been able to move forward. I have never lost sight of the love of God and his strength has prevailed".

He also says:

"I am committed to ministry among young people and hope that you will see beyond issues and consider me for this post".

The Claimant said that he felt that it was better to explain about his sexuality and the reason for leaving Chester Diocese in the additional information section of the application form.

9. The reference to sexuality and difficult issues regarding Chester refers to the fact that the Claimant was in same sex relationship at this time. As the Claimant said it had caused conflict with parts of the Church. It was this relationship which led to his premature departure. The relationship continued until it formally ended about the Easter time of 2006, that is mid April 2006 according to the Claimant. This would have been a few weeks before he made application for the job of Diocesan Youth Officer in Hereford. At the time the Claimant made the application he was and is single.
10. The Claimant gave the names of two referees, Mr Paul Glaze of Weston Spirit who is his Line Manager, and Mr Peter Ball of London who is the National Youth Officer for the Church of England.
11. The application forms for Youth Officer were to be sent to the Diocesan Director of Education Reverend Dr Ian Terry. On page 68 is the advertisement for the post with a form of wording inserted by the Diocesan Director of Education. The Church of England Diocese of Hereford Diocesan Board of Education was seeking a person "To work with young people in the Diocese of Hereford in a variety of settings, should be a communicant member of the Church of England or a church in communion with it", Mr John Anthony Chapman is and has been since January 2004 the Chairman of the Hereford Diocesan Board of Education. Mr Chapman could not recall whether Dr Terry had shown the advertisement to him before the advertisement was placed in the Church Times but Mr Chapman accepted that it would have had his approval as it was short and to the point. The advertisement indicated that the interview date would be 12

June 2006.

12. The Diocese of Hereford has an Equal Opportunities Policy (pages 69-89 of the bundle). On page 71 it is stated that the policy applies to employees of the Hereford Diocese as well as to volunteers, temporary agency staff and those with quasi contracts of employment. In the introduction it states in paragraph 1.1:

"We wholeheartedly support the principle of equality of opportunity in [employment](#). [UK](#) and European laws impose many requirements upon employers and employees in respect of equality of opportunity. In addition to recognising the need to meet our legal requirements, we believe that by acting according to the principle of equality of opportunity will benefit from a workforce drawn from a wide cross-section of the community. In this way we are able to recruit and retain the best staff. We believe that such a policy is also in the best interests of our employees":

In paragraph 2.2 it is stated:

"We and our employees will not discriminate in recruitment, selection and career development, directly or indirectly, between job applicants on the grounds of ... sexual orientation ..."

On page 72 of the policy there is a paragraph heading "Religious Affiliation Criterion" paragraph 2.4 which says:

"Given that all the parties to this policy seek in one way or another to serve the Church of England, it is lawful and may be appropriate to take account of the candidates' religious affiliation".

On that same page under the heading of "Recruitment and Selection" paragraph 3.1 states:

"All our recruitment and selection procedures 'are designed to recruit the most suitable available person for the post".

Under the heading of "Training and Raising Awareness of this Policy" paragraph 3.2 it is stated:

"The Diocesan and Board of Finance will take steps to raise the awareness of this policy and ensure its application among all members of staff, including providing suitable training".

On page 74 it is stated that:

"This policy and codes of practice form part of the terms and conditions of all of our staff".

In paragraph 7.1 it states:

"The Diocese and Bishop in consultation with the Equal Opportunities Steering Group appointed by Bishops Council will review this policy and its accompanying codes of practice at least every three years and, if necessary, make recommendations about change to the Bishops Council. Since this policy forms part of the terms and conditions of employment of staff employed by the Hereford Diocese and Board of Finance, any amendments will require the approval of the Executive Committee of the DBF prior to approval by the Diocese and Synod. Such approval shall not be unreasonably withheld".

Although there is no signature on that page it is common ground that this was the relevant policy in respect of the matters with which the Tribunal are concerned.

In annex 4 of the Policy under the heading "Code of Practice concerning other aspects of the Diocese policy and practice" and under paragraph 6 heading of "Sexual Orientation", paragraph 6.1 states:

"We shall not tolerate discrimination in respect of the sexual orientation or alleged sexual orientation of an existing or potential member of staff".

In paragraph 6.2:

"Harassment of a member of staff in respect of their sexual orientation or alleged sexual orientation is a disciplinary offence and may be unlawful (see annex 1)".

Finally in paragraph 7 on page 89 under the heading "Positive Discrimination" it is stated:

"We will make all decisions about the filling of a vacancy on the grounds of the candidate's suitability for the post. We will act at all times within the requirements of the law and will not countenance any positive discrimination".

Short-listing

13. On 30 May 2006 Mr Chapman chaired a meeting for the short-listing of applicants for the post of Diocesan Youth Officer. The Claimant was clearly a strong candidate on paper because of his varied and responsible background in youth work both Christian and secular. However because of what the Claimant had written in the additional information section, Mr Chapman considered that it was appropriate to take some advice before the short-listing process was completed. In Mr Chapman's view the fact that the Claimant was gay was not the problem but it was a problem that he had openly admitted to having been a non-celibate homosexual. Mr Chapman said that he did not realise that there was a distinction between celibate and single in the way it is used in certain church

documents.

14. The Bishop of Hereford, the Rt Rev Anthony Priddis, is President of the Diocesan Board of Finance. Mr Chapman knew that the Bishop had asked the Archdeacon to be his representative but the Archdeacon was too busy at the time and was not available for the short-listing meeting. Mr Chapman had hoped to have his view but the Director, Dr Terry, reported to Mr Chapman that they could consider all the candidates including the Claimant,
15. After considering all the applicants it was decided that four should be asked for an interview. One of the four was the Claimant. However two of the short-listing panel members were not available on 12 June because they had not been consulted about the dates for an interview and so the date for the interview had to be changed.
16. Before the interview, references were sought from the two persons named by the Claimant. On page 94 is the reference provided to Dr Terry from Mr Paul Glaze, National Manager (Wales) of the Weston Spirit, the Line Manager of the Claimant. This reference is dated 2 June 2006. In the reference Mr Glaze describes the Claimant as being "very enthusiastic, well informed, honest and trustworthy in character with a positive approach to and the appraisal of situations". Mr Glaze says that "In terms of the job for which John has applied, I have no doubt that he would be able to comply with the requirements". Mr Glaze says: "Although I would be loathe to lose John, I would not hesitate to recommend him to you". This reference praises the work and character of the Claimant.
17. The second reference dated 7 June 2006 is on page 96 of the bundle and is from Mr Peter Ball, National Youth Advisor, Training and Development Team of the Church of England. Mr Ball says: "I am delighted to be able to respond positively in support of John's application for the above position". Mr Ball says that he has known the Claimant for a number of years and has worked with him as a professional colleague including other work undertaken by the Claimant at a diocesan level. It refers to the Claimant having high personal expectations and that he would be able to engage positively at all levels "using his particular gifts of diplomacy and political awareness creatively for those he seeks to serve". Mr Ball says he has no hesitation in supporting the Claimant's application for the appointment and is confident that if appointed the Claimant will very quickly earn the respect of his diocesan colleagues, youth workers and the young he seeks to serve. In respect of the reference it is difficult to think of what else could be set out more positively in a reference on behalf of a job applicant.
18. On 20 June 2006 there was a meeting of the Bishop's staff. The minutes of the meeting are on pages 191-193. Under the heading of "Support Ministers - Youth Officer" the following extract appears:

"Ian Terry reported four candidates, three internal and one external (who + Anthony would not be happy to appoint). Cannot have one rule for laity which is different to that for clergy. Referred to house of Bishop's paper on Issues of Human Sexuality. Great care needed. +Anthony said the equivalent of a "safe to receive" reference will be required from the appropriate Bishop.

Letter of appointment will come from +Anthony, contract from DBE. + Anthony want to see the candidate before appointment.

Schools Officer and Youth Officer post already advertised. JC and IT to discuss how to arrange administrative support for these works."

Mr Chapman was not present at this Bishop's Staff Meeting because he was on holiday in June.

19. Bishop Priddis said that he did express concerns at the meeting as set out in the minutes of the Bishop's Staff Meeting. He said that the post was that of a Support Minister's post and in view of the fact that the Claimant had left the Chester Diocese and was in a committed same sex relationship at that time meant that great care was needed and there was a need to ask more about the Claimant's lifestyle. The reference to "safe to receive" was reflecting the approach of the Bishop in situations where there were matters to be discussed regarding clergy. The Bishop's concern emanated from what he considered to be the view of the Church regarding human sexuality and lifestyle. It was not the issue of sexual orientation by itself that caused the Bishop concern. It was lifestyle.

Invitation to Interview

20. On the 26 June 2006 Dr Terry wrote to the Claimant inviting him for an interview (page 89A). There was enclosed a schedule setting out how the day was structured (page 89B), It can be seen that the structure was that candidates would meet separately with the Chairman, Director and the rest of the panel around mid-morning and then each of them would have a presentation and formal interview, The Claimant was scheduled first,
21. Mr Chapman said that he became aware that as a result of the Bishop's staff meeting that the candidates should be asked about the future and for the panel to receive information about the candidates' compliance with "Issues". This is shorthand for a written document called "Issues in Human Sexuality -- a Statement by the House of Bishops of the General Synod of the Church of the England, December 1991". We will refer to this document more fully later in this Judgment. Each candidate was to be asked about their compliance with the document. Mr Chapman said that the panel were given clear guidance asked about this matter from the Bishop's staff meeting and they decided that it would be raised in the context of the individual meeting with the candidate.

22. On about the 29 June 2006 Mr Chapman had a conversation with Dr Terry at one of the regular meetings that he had with him. Mr Chapman was Dr Terry's Line Manager and they would meet regularly. Mr Chapman was told about what had been said at the Bishop's Staff Meeting and that no candidate could be appointed to be a Minister under the Bishop unless that candidate Agreed to live by the guidance given in the "Issues" document. Mr Chapman therefore agreed with Dr Terry that each candidate should be asked to give this assurance at interview and this would be done by Dr Terry himself on a one-to-one basis.
23. We accept the explanation given by Mr Chapman about postponement of the interview from the advertised date of the 12 June 2006 to the date of the 10 July 2006, namely, that it was due to the non-availability of panel members, who had not been consulted about the date when the advertisement was put in. We also accept the evidence of Mr Chapman that the reason why the Claimant did not receive a letter until late June was because of the delay by the Diocesan Director who is not noted, according to Mr Chapman, for doing things as quickly as Mr Chapman would have wished. We do not consider there was anything to be read into this other than an administrative delay.
24. As seen from the Bishop's Staff Meeting there was also consideration around this time about the appointment of a Schools Officer. Some interviews had been finished in respect of the School's Officer post but there was no candidate who was considered suitable for appointment. Of the four who were interviewed none of them was asked about compliance with the "Issues" document.

The Interview

25. On the 10 July 2006 the Claimant together with the three other candidates, two men and one woman, attended in Ludlow for interview. The Claimant first met Miss Yvonne Criddle, National Youth Advisor, one of the interviewers, together with Mr Chapman. That was an interview lasting between 10-15 minutes each. Then the Claimant had a meeting with Dr Terry. The Claimant raised his sexuality and asked what the Bishop's views were. Dr Terry said he did not want to speak for the Bishop but he thought he would be okay. The Claimant said they discussed the "Issues" document. The Claimant said to Dr Terry he was not in a relationship and for this post he did not intend to enter into a relationship.
26. After lunch the Claimant met the full panel which comprised eight persons, The Claimant made a presentation with slides as set out on pages 127A-C of the bundle. Mr Chapman's notes about who would ask questions after the presentation are set out on page 123 of the bundle. In the bundle there are some notes made by members of the panel either shortly before the interview or during the interview, for example, on page 122 a panel member noted "Vision of Youth Ministry in the Diocese?" Mr Chapman assumed someone asked the question because the major part of the

interview was geared to the Youth Ministry of the Diocese. Mr Paul Southern, a panel interviewer, made notes which are on page 120A. Mr Chapman believed that those notes were not jotted down during the interview but had been made beforehand by Mr Southern, however he had not asked Mr Southern about this matter. On page 121A are the notes made by Miss Criddle which include the Claimant answering that he was called to undertake "God's work and call(?) to do it". Mr Chapman is certain that the Claimant said he believed he was called by God to Christian youth work.

27. After discussions, the panel of interviewers decided unanimously that the best candidate was the Claimant and that the panel was resolved that no other candidate was suitable for the post. The second rank candidate, Reverend Mark Townsend, was described by Mr Chapman as coming a long way second. The panel's assessment of the Claimant is contained in a matrix set out on page 119 (the marks are all 'A's). It was agreed by the panel that Dr Terry should contact the Claimant and tell him that the panel recommended that he could be appointed subject to the agreement of the Bishop. The Claimant was telephoned at about 6.30pm on the 10 July by Dr Terry who had a conversation with him which lasted about 10 minutes. The Claimant was told that all the 8 members of the panel had unanimously recommended the Claimant and that the appointment just needed the approval of the Bishop. Dr Terry asked about when the Claimant could start and the Claimant said the 1 October in order to give his current employers two months' notice. The Claimant also asked about housing and if he could be provided with a diocesan house. Dr Terry said he would look into that. Dr Terry told the Claimant that the Bishop would in touch to meet with him. The Claimant asked if that was anything he should be worried about to which Dr Terry said that he did not think so. The Claimant was surprised that he would have to formally meet the Bishop before taking up an appointment since this had not been the practice in Norwich and the Chester Dioceses. The Claimant thought it was clear that the reason he was being called to meet the Bishop was to discuss his relationship status.

Post-interview

28. On the 12 July 2006 Bishop Priddis made two telephone calls, one to the Claimant's referee, Mr Peter Ball, and one to the Bishop of Birkenhead, Bishop Urquhart. On page 123C and D is the manuscript note of the conversation with Mr Peter Ball, and the typed version of the note is on page 61 which is part of an answer to a statutory questionnaire. On page 123E of the bundle is the manuscript note of the conversation with the Bishop of Birkenhead, Bishop Urquhart. The typed version is also on page 61 of the bundle.
29. Bishop Priddis has written in relation to the conversation with Mr Peter Ball "He has no hesitation in recommending J. John realises that he was not as circumspect/careful as he might have been in Chester (=?). PB believes

that he has learnt from that. He says what a good youth worker John is. PB would expect youth workers to sign up to Issues in Human Sexuality as Ministers of the Gospel".

30. In relation to the conversation with Bishop Urquhart, Bishop Priddis has noted that "David knew him in CYFA network 20 years ago. Issue in Chester Diocese was not so much that the partner was homosexual but that the partner simply turned up unannounced inappropriately (would have been difficult whatever the gender). He realised that he had behaved badly and let everyone down which is why he left - he had not expressed at that stage his sexual orientation to his father or parents. There was no 'scandal' involved - V. few knew the reasons.

Then Bishop Priddis writes down

" - David's issue was his lack of maturity in dealing with all this
- Had he thought through the cost of being single? (if he was in a 'relationship' up until Easter is he too raw to make a promise about his future?)
- if he had had any change of thought - would he agree to coming to see me to talk to me? no surprises please!"

31. On the 12 July 2006 Bishop Priddis wrote to the Claimant asking him to telephone his office and speak to one of his secretaries to look for a mutually-convenient time when they might meet (page 189). Bishop Priddis' concern was that if the Claimant had been in a committed relationship he needed reassurances about the future lifestyle of the Claimant. Bishop Priddis considered that questions needed asking and answering. If the Claimant had said to the Bishop that he had ended the relationship in order to be celibate then Bishop Priddis said in evidence he would 'rejoice', and that would change the scenario. Questions arose as a result of what had been said in the application form and the way that it had been said by the Claimant. The Bishop's concern was not what had happened in the past but it was future lifestyle and practice if the Claimant was confirmed as the Diocesan Youth Officer. Bishop Priddis said that he does not go exploring and challenging matters of sexuality but only when people raise it. In his mind, if the Claimant had lived for, say, about three years in celibacy then he would be happy to appoint him and would not have asked him any questions about such matters.
32. On the 13 July Bishop Priddis telephoned Mr Chapman and expressed annoyance or displeasure about how Mr Chapman had been informed of his position and the way in which the matter had been conducted. The Bishop felt that what had been discussed at the Bishop's Council had been watered down by the time that it reached Mr Chapman and not understood by the panel. Mr Chapman felt that what the Bishop was saying was that it was not a box to be simply ticked and that the Bishop felt that the matter had been shrugged off and taken too lightly. The Bishop was also critical of Dr Terry. The Bishop saw the question of lifestyle as a serious

impediment and made it clear as such to Mr Chapman, Later,

Mr Chapman met with Bishop Priddis. It was a very hot evening and the two of them were outside, This is the first time that Mr Chapman had met the Bishop since the Claimant was interviewed. They discussed what had happened at interview, their respective roles and how they should approach it. Bishop Priddis told Mr Chapman that the interview panel had not received an accurate picture of his opinion. Mr Chapman felt that he was responsible for mishandling the situation and felt that he was not doing as well as the Bishop wanted him to do. However the conversation on 13 July went on to consider how the Bishop would handle things and this was to write to the Claimant and go through "Issues" with him. In Mr Chapman's opinion, the Bishop did not have a fixed view at that time about the appointment and Mr Chapman did not know what the outcome of the Bishop's meeting with the Claimant would be. Mr Chapman had a clear recollection that he did not think that the Bishop would go through the motions of rejection. We consider that Mr Chapman was giving an accurate and honest account of what he remembered and that was the view of Bishop Priddis.

Meeting with Bishop Priddis and the Claimant

33. On the 19 July 2006, the Claimant met Bishop Priddis at the Bishop's house in Hereford. Mr Chapman was also present. The meeting began about 8.00pm and lasted for about two hours. The meeting began by the Bishop asking the Claimant about the role of the Diocesan Youth Officer and what he would bring to it. The Claimant was pleased that that was the opening question. There was discussion of the Youth Forum and employment of youth workers. There was discussion about whether the Youth Officer would have a Bishop's licence, which was a licence for lay people to preach in churches within the Diocese. Bishop Priddis said that he would grant a licence to the post-holder. For about the first half an hour of the meeting, the discussion was about the role of the Diocesan Youth Officer. There was a significant amount of time spent discussing this matter.
34. The Bishop then asked about what had happened at Chester. The Claimant told Bishop Priddis that he had been required by the Diocese of Chester to choose between his partner and his job and that he had chosen his partner. The Claimant said that his relationship had ended formally at Easter time 2006, although there had been difficulties in the relationship before that. There is then a dispute about whether the Bishop asked the Claimant about future relationships. We think that, on the balance of probabilities, Bishop Priddis did raise the matter since this was a central issue that had been noted by him that he should ask of the Claimant.
35. The Claimant was aware of the "Issues" statement and the fact that the question of homosexuality was a "hot potato" as he described it in evidence. There were strongly-held convictions on both sides. The Claimant also understood the distinction between a life of celibacy and a

single life in which one restrained from sexual relationships. At the time of this discussion with Bishop Priddis the Claimant made an assurance to the Bishop that he would stay celibate. He said that he was not seeking a relationship and was able to exercise self-control. Bishop Priddis put it to the Claimant that the situation could change. The Claimant reassured the Bishop that he would stay celibate. The Bishop then asked "What would you do if you met someone?" to which the Claimant responded that, if a relationship might develop in the future, he would discuss it with the Bishop. Mr Chapman described how both the Bishop and the Claimant were talking relatively easily at this time about these matters. Although Mr Chapman did not think that the question of "what would you do if you met someone?" was asked by the Bishop, Mr Chapman in his evidence could not recall all the conversation. We prefer the Claimant's evidence of recollection on this matter for the reasons set out above which is that it was the Bishop who was concerned about future lifestyle and the different situations and pressures that could arise and, therefore, we find that it was the Bishop who asked this question of the Claimant. The Claimant reassured him that he would remain celibate for the duration of the post.

36. The Claimant did not suggest in evidence that the Bishop was aggressive in manner during the conversation and we find that he was not. Mr Chapman said care was taken in this conversation by the Bishop and the Claimant showed no signs of any wish not to discuss matters or discomfort except when the interview was over. There was no sense of humiliation of the Claimant at any time. The conversation continued along the lines of whether it was appropriate for a Youth Officer to have a homosexual relationship. The Claimant asked the Bishop what his stance was and the Bishop said words to the effect that, whilst many of his colleagues were becoming more liberal in the issue, he found himself becoming more conservative. It was at this point that the Claimant said "my heart sank". This was when the Claimant felt that there was little else he could say to the Bishop. The Claimant then considered that he was not going to be offered the post and so took the opportunity to discuss more widely why the Bishop held the opinion that he did. Bishop Priddis said that he was talking about head and heart and how he did not think that the Claimant at the present time could make a promise not to have a future relationship. This reflected the Bishop's own feelings which were that it was not clear to him that the Claimant, even though that he was saying the words that he would abide by Issues, would be able to. The Bishop was concerned about why the Claimant had said that he would talk to him if the situation changed. The Claimant responded to this way of thinking by saying "How would anyone know that clergy would not divorce in the future". The Bishop indicated that that was not the same situation to which the Claimant said "it surely is the same heart/head issue for everyone". The Bishop emphasised that there was a commitment shown in marriage. To the Bishop, commitment is not simply words which are said. The Claimant responded that gay people cannot get married.

37. The discussion continued about the biblical interpretation of sexuality because the Claimant wanted to discuss the wider views held by many members of the church that homosexual relationships are acceptable. The Claimant explained how he had got engaged to a girl in order to meet the need of other people but that felt unnatural for him and made his relationship with God more difficult. He also described that sharing had been more important than the sexual side of things in his relationship with his ex-partner. In short, the Claimant was expressing his personal point of view. The Bishop's standpoint was that the Church's position was different from the Claimant's own personal position. It was about this time that Mr Chapman asked the Bishop how this left the Claimant and the Bishop indicated that he had not made up his mind on the question of the appointment. The meeting then ended. At this time, the Claimant was feeling extremely upset and was noticed by Mr Chapman to sag in his body and had a lowering of the tone of his voice and, in the words of Mr Chapman, "When the interview was over, it cost him". Mr Chapman described how the Claimant's morale was dented at the end of the conversation with the Bishop. We accept the evidence of the Claimant that, when he was driving back home, he was so upset that he had to pull to the side of the road to cry and became sick. He felt very deeply about the situation and did not work for two days after the 19 July.
38. We find that whilst this was not an easy conversation between the Claimant and the Bishop, the Claimant did talk freely about his own feelings and views about matters and there were no long silences or anything of that nature in the conversation. They engaged in a dialogue about the Church and homosexuality.

Bishop Priddis' decision not to appoint the Claimant

39. After the conversation with the Claimant Bishop Priddis reflected upon matters and considered that there were two strands which led to his disquiet. One strand was the inconsistency about the Claimant's approach to celibacy which was to say that, if there was a change, he would talk to the Bishop; and the second strand was that, in the Bishop's opinion, the Claimant was very raw emotionally at that time. The Bishop drew upon his experience with a bereavement counselling organisation that he had helped to set up in his previous work which recognises that, for a period of time, someone would be emotionally fragile given a bereavement. Bishop Priddis said that he did not think he could let someone promise to be celibate if that person was emotionally raw. It is to be noted that the post that was being advertised would have lasted, on appointment, for about five to seven years.
40. After reflecting on the situation, Bishop Priddis telephoned the Claimant on the 22 July 2006. He told him that he would not be surprised to hear that he would not be offering him the post of Diocesan Youth Officer. The Claimant told the Bishop that he thought it was discrimination and was not a demonstration of God's love. The Claimant also told Bishop Priddis that

he was not getting a chance to use his gifts. This conversation took about 20 minutes.

41. On the 22 July 2006 Bishop Priddis also wrote to the Claimant setting out the basis for his decision (page 134-135). The Claimant received this letter on 25 July. In that letter Bishop Priddis says "The issue is not about sexual orientation but rather about practice and lifestyle and the evidence of those from a long enough period of stability in one's life." Bishop Priddis says that, while he was fully respected and honoured, the Claimant's intention to lead a celibate life from here on in, he found himself wondering whether his heart and his emotions could deliver what the Claimant's head said. It would be potentially extremely destructive for the Claimant, as a youth worker, for the Diocese, to have to withdraw from the work should he wish to enter into a future committed relationship. It would have the echoes of the situation of Chester a few years ago, according to what the Bishop wrote, and would compound the experience in a way that, would seem to the Bishop to cause further damage to the Claimant let alone others. Bishop Priddis said that if they were having the conversation that they did have in two, three or five years' time, with evidence of a settled and stable life, then he would have had far greater confidence in the Claimant's head and heart being able to pull in the same direction. He referred to the fact that he knew when a committed relationship ended there was bereavement, emotional turmoil, a deep sense of loss, pain and sadness. It was therefore very difficult to make a permanent decision about life from within that pain and hurt. The Bishop said:

"Because so much is at stake for your personally and for the ministry among young people and therefore the whole work of the Diocese, I do not feel able to invite you to come as Youth Officer where that stability has not been lived out and where the evidence of it is simply not available because the time interval from the ending of your relationship is too short.

I realise that what I have written and said to you will not have been easy to hear and I very much hope and pray that your present youth work will not only continue to develop well but that you may, in due course, find the right way back into full-time, committed Christian youth work ...".

42. On the 27 July Bishop Priddis again telephoned the Claimant and asked how he was. The Claimant was annoyed with the Bishop because the Bishop knew that he was upset as a result of the discussion and, anyway, how did he expect the Claimant to be feeling? The Claimant said, in evidence, that the Bishop had made him feel a waste of space. Although the Claimant made a commitment to abide by the "Issue" statement in this telephone conversation the Claimant made clear to the Bishop that he felt the Bishop had lost touch with the perception of a loving God and that, if he had a loving relationship with his wife, how could he deny someone else the right to love and be loved by someone. The Claimant said to him that he Bishop had "someone to cuddle with and other things and to whom you can come home to and unload at the end of a grim day and yet you deny

me that". What the Claimant wanted to know was why deny people that particular right. This conversation lasted for about 20 minutes. The Claimant told Bishop Priddis that he was denying him his rights. The tenor of that conversation made Bishop Priddis feel that the decision that he had made was the right one.

The nature of the post of Diocesan Youth Officer

43. The post of Diocesan Youth Officer within the structure of the Hereford Diocese Organisation can be seen in a flow chart on page 124. The post of Youth Officer is categorised in the key to the chart as being a "Support Minister". What is meant by the term Support Minister has been the subject of considerable disagreement between the parties. We will set out later in the Judgment our findings in relation to this matter. At this stage, however, it is useful to note that the term Support Minister is not used in every Diocese. In some cases, the term Sector Minister or Parish Advisor is used. In the Hereford Diocese the term Support Minister was used. The role of Support Ministers is to offer advice and support but with no particular authority over individual parishes or churches. In broad terms the post of Diocesan Youth Officer involved work for the Church of England.
44. The job description documents for the post of Diocesan Youth officer were sent to the Claimant with the application form. On page 128 are the conditions of service. The post was a full-time post for an initial period of five years, at which point there would be a review of the post. There would be a probationary period of six months. The Line Manager would be the Diocesan Director of Education. For a lay person, the salary would be in the region of £25,000. It contains other statements including travelling expenses and pension. On page 129 under the heading full-time "Diocesan Youth Officer; a Support Minister" the following appears:

"The Diocesan Vision

- The Diocese of Hereford seeks to share God's love in community and world through
- Worshipping God and praying for his help and guidance
- Caring for and serving people in all life's situations
- Recognising and responding to the needs of our communities
- Inspiring and learning through each other's strengths and gifts

so that in all our activities we show Jesus Christ to those around us".

The structure is that the Diocesan Board of Education is responsible to its President (the Bishop of Hereford) and to the Diocesan Synod for

promoting the Christian nurture, spiritual growth and religious education of children and young people in the Diocese, and the Christian service to children, young people and all those who work with and follow them through statutory and voluntary groups. There is then reference to the future shape of the Diocesan Board of Education - on page 129A.

45. Bishop Priddis described the vision statement as being crucial. The Bishop made the point that the conditions of service on page 128 must be read within the Diocesan Vision, which is a leadership role with and to promote the Church and represent the Diocese to outside organisations and liaise with them.

46. The job specification is more particularly set out on page 130 where it says that the nature of the task and the person:

"We are seeking a committed Christian of articulate faith who is part of a collaborative team enabling adults of varying confidence and skills across the Diocese to

- Face the context of youth without fear
- To reach out to young people
- Discover and rejoice in the worth of young people
- Help young people in the journey towards and with our Lord".

The job specification goes on to say that the person they seek must be a communicant member of the Church of England and that person may be ordained or lay, male or female. What matters is there is the right outlook, commitment, experience and enthusiasm. The specification then goes on to say:

"Although the main task of the DYO will be to recruit, inspire, co-ordinate and support adults in the field of youth work, the job will naturally involve its own face-to-face youth work...". The job specification goes on to state:

"The Diocese is looking for someone who will assist the local church with the vision and practice of varied Christian youth work. They need a person whose instinct is co-operative and collaborative team work, who recognises and encourages the gift and ministries of others. We need someone who will work easily with others in the field of evangelism, social responsibility and ministerial training, one who can blur the boundaries of the voluntary and statutory spheres, applying the insights of one to the other; and one who has an all-age approach".

It is stated that it is important that the Diocesan Youth Officer continues to

further links with other denominations and faiths. There is then a reference to the variety of ways in which youth work may be delivered, such as for small groups, and large Diocesan events. The mission and service of the Church is to all young people and particularly to the disadvantaged. There is a reference to the Diocesan Board of Education having valuable and creative contacts with non-church based organisations. There will be a need to nurture and develop links. It is said that the post is spread over a wide locality, and this reflects the fact that the Diocese of Hereford comprises a large rural area.

47. On page 132 further particulars of the post include the fact that the Diocesan Youth Officer is part of the education team placed within the Board of Education. The Diocesan Director of Education is the Line Manager and has responsibility for the Diocesan Youth Officer. Under the heading 'Strands within the Ministry', the following is stated amongst other things:

"Importantly this Ministry is seen within a context of all age development and nurture both inside and outside the church structures.

- (a) The DYE must have a care for their own spiritual development, professional development, personal and family life and that of their colleagues ...
 - (c) The strategy may be delivered through Local Ministry Development Groups where they exist in our 14 Deaneries. The Diocese has a number of Support Ministers whose task increasingly lies in co-ordinating efforts to assist these LMDGs and their Deaneries ...
 - (i) Work with secondary and further education establishments, statutory youth service and voluntary organisations on issue based activities for adolescents which may be in response to government initiatives.
 - (j) Work with other organisations to address the issues that are facing young people including rural isolation ...
 - (q) Work within Diocesan and structures such as Diocesan Synod or Bishops' Council to develop understanding and work with and for young people. "
48. Part of the background to the local Ministry in the Diocese of Hereford is to be found on page 133A and 133B. That states that the local Ministry scheme is a way of recognising that "the Ministry of the local church" involves everyone not just the vicar. The scheme has two main aims. (1) to encourage every Christian disciple to use his/her gifts for the benefit of the whole Church, to serve the local community, to share the good news of Jesus Christ and (2) to encourage parishes to set up local ministry teams - a partnership of young people and clergy, sharing leadership and

responsibility, co-ordinating the worship, witness and pastoral care of the local churches. The Diocese provides each parish team with a ministry consultant, training adviser and spiritual adviser to be alongside the team in the parishes. It is to be noted that the use of the word 'ministry' on page 133A -B is to involve everyone but where the term 'Minister' is used it is in the context of ordained local Ministers.

49. On page 164 is an employment contract which is used by the Hereford Diocesan Board of Finance, and which would have been used in the case of the Claimant had he been appointed. It sets out the basic terms of a contract of employment and refers to the Staff Handbook.
50. The post of Diocese and Welfare Office continues to remain vacant. Bishop Priddis explained that part of the reason for that was because of this Tribunal application. The Respondents did not want to end up in a Tribunal position.

The Church of England's teaching with regards to homosexuality

51. It is an agreed fact that the teaching of the Church of England with regard to homosexuality is to be found in the following documents:
 - "(a) a resolution of the general Synod dated 14 July 1997,
 - (b) a resolution of the general Synod dated 11 November 1987,
 - c) resolution 1.10 of the Lambeth Conference 1998 (page 145 of the +bundle). Of note it is stated in the "resolution 1-10 (b) in view of the teaching of scripture, (the Conference) upholds faithfulness in marriage between a man and a woman in lifelong union, and believes that abstinence is right for those who are not called to marriage ... (d) while rejecting homosexual practice as incompatible with scripture, calls on all our people to minister pastorally and sensitively to all irrespective of sexual orientation and to condemn irrational fear of homosexuals, violence within marriage and any trivialisation and commercialisation of sex."
 - (d) Issues in Human Sexuality, a statement by the House of Bishops of the General Synod of the Church of England, dated December 1991 (publication handed to Tribunal, not in the bundle).
 - (e) Some issues in Human Sexuality, a guide to the debate (2003) and
 - (f) A Companion to Some Issues in Human Sexuality 2003".
52. In addition to these admitted facts, the Tribunal was referred to a summary of the General Synod February 2007 (page 160 of the bundle) and in particular under the heading of 'Human Sexuality', to the fact that the motion which was carried welcomed the opportunities offered by the

Lambeth resolutions, including for the Church of England to engage in an open, full and godly dialogue about human sexuality and affirm that homosexual orientation in itself is no bar to a faithful Christian life or to full participation in an ordained ministry in the church and acknowledged the importance of lesbian and gay members of the Church of England participating in the listening process as full members of the church. The Tribunal was also referred to the General Synod Members Motions dated 11 November 1987 and the 14 July 1997 (page 146 of the bundle).

53. Although not part of the teaching of the Church, reference was also made to the Presidential address of the Archbishop of Canterbury on 26 February 2007 to the General Synod of the Church of England and to the Archbishop's thinking on the future of the Anglican communion on 27 June 2006 (page 151 of the bundle).
54. A great deal of the evidence concerned what was set out in what can be termed the key document namely, "Issues in Human Sexuality". The Tribunal was invited to read, and has read the whole of that publication. It is right that we should seek to summarise some parts of it, whilst at the same time realising it will be unnecessary to refer to everything that it is contained in the document. We have noted the following strands of thought and guidance which appear in the publication.
55. The preface to Issues in Human Sexuality makes plain that the statement is partly in response to a call for all the Bishops of the Anglican Communion to undertake a deep and dispassionate study of the question of homosexuality as well as being a reflection on the pastoral situation Bishops face in their own church and society. The preface says that the Bishops cannot expect all to agree with the conclusions and, in their own discussions encountered a wide variety of opinions and benefitted from vigorous debate, but the statement in Issues, which they do not intend to be the last word on the subject, will do something to help forward a general process of quest and reflection on the subject of human sexuality.
56. In paragraph 1.2 it is stated that there are questions in which deep levels of the personality, feelings and fears, often unconscious or unexamined come into play affecting the way each person thinks and argues, speaks and behaves. At paragraph 1.9 it is said that the primary aim has been to promote an educational process as a result of which Christians may both become more informed about the understanding of certain human realities and also enter more deeply into the wisdom of their inheritance of faith in the field. What follows, whilst fulfilling the responsibility of the Bishops to address certain practical questions in the immediate situation of their own church, is also able to do something to help forward a general process marked by greater trust and openness of Christian reflection on the subject of human sexuality.
57. In Chapter 3, The Christian Vision For Human Sexuality, in paragraph 3.12 the following is stated.

"Our own day is much too ready to interpret any intimate friendship as no more than a disguise for hidden homosexual or heterosexual involvement, a tendency which can only inflict hurt but also actively inhibit the development of friendship in general".

Paragraph 3.15 says

"It is important to distinguish the single state in general from that of celibacy, with which in common parlance it is today often confused. The single state may be an individual's preference or it may not be. It may be at the time before marriage, or after being widowed or, increasingly in our own contemporary culture, after being divorced. The single state becomes a celibacy only where it is freely and deliberately chosen 'in order to devote oneself completely to God and his concerns'. . To prescribe celibacy, therefore, for all those for whom marriage, for whatever reason is impossible, is a misuse of the term. Celibacy cannot be prescribed for anyone. What is needed is that the single should live in the form of chastity appropriate to their situation." Then immediately in paragraph 3.16 "All three ways of life which we have described - the married, the single and the celibate - are ones which by the grace of God can help to transform our fallen human nature".

- 58, In Chapter 4, The Phenomenon of Homosexual Love, the last sentence says in paragraph 4.19:

"The task that surely faces both individual Christian homophile and the Church is to work out together how his or her sexuality can best find an expression within the discipleship to which every human being is called".

59. Chapter 5, The Homophile in the Life and Fellowship of the Church, is an important chapter. A great deal of emphasis was placed on the whole of this chapter by the parties' representatives. The Bishops state in the chapter that they now consider what guidance for pastoral practice can be offered to the Church in the present state of Christian understanding of the issue. There are set out two fundamental principles of equal validity and significance, The first is that homophile orientation and its expression in sexual activity do not constitute a parallel and alternative form of human sexuality as complete within the terms of the created order as the heterosexual. The second fundamental principle is that homosexual people are in every way as valuable to and as valued by God as heterosexual people. The Bishops indicate that some homophiles embrace self-denial and lead a life of abstinence. Others do not and believe that they have more hope of growing in love for God in a relationship which includes the physical expression of their attachment. The second form of belief is not commended as a way of life as, in itself, as faithful a reflection of God's purpose in creation as the heterophile, those that do believe it as God's call to them are not to be rejected. It is therefore said to be important that in every congregation, such homophiles should find fellow

Christians who will sensitively and naturally provide friendship and understanding. However, it is noted that they would not countenance promiscuous, casual or exploitative sex for the homophile, or for the heterophile. "The ideal of chastity holds good for all Christians; and homophiles who do not renounce all physical sex relations must nevertheless be guided by some form or that ideal appropriate to them".

60. It is of some importance that in Chapter 5, paragraph 5.11 begins:

"We come now to the question of the homophile clergy" ..

61. It seems to us that what then is set out in paragraph 5.12 and 5.13 is directed towards the Ministry of Homophile Clergy who believe that the right way of life for them is an exclusive and permanent but also sexually active partnership. A distinction is made in the case of ordained Ministers whereby certain possibilities are not open to the clergy by comparisons with the laity "which is something that in principle has always been accepted"

62. Paragraph 5,14 talks on restrictions on what the clergy may do. In paragraph 5.17 the Bishops state:

"We have therefore to say that in our considered judgement the clergy cannot claim the liberty to enter into sexual active homophile relationships. Because of the distinctive nature of their calling, status and consecration, to allow such a claim on their part would be seen as placing that way of life in all respects on a par with heterosexual marriages as a reflection of God's purpose in creation. The Church cannot accept such a parity and remain faithful to the insights which God has given it through scripture, tradition and reasoned reflection and experience".

We also note that in paragraph 5.18 it is said some may propose Bishops should be more rigorous in searching out and exposing clergy who may in an active homophile relationship. That approach is rejected. There are two reasons given for that namely that it is a grossly unfair assumption to regard two people of the same sex who choose to make their home together as being some form of erotic relationship. Secondly, it has always been the practice of the Church of England to trust its members, and not to carry out intrusive interrogations in order to make sure that they are behaving themselves. Any general inquisition into the conduct of the clergy, it is said, would not only infringe their right to privacy but would manifest a distrust not consonant with the commission entrusted to them, and likely to undermine their confidence and morale.

It goes on to state:

"Although we must take steps to avoid public scandal and to protect the Church's teaching we shall continue, as we have done hitherto, to treat all clergy who give no occasion for scandal, with trust and respect and we

expect all our fellow Christians to do the same';

63. In paragraph 5.19 the question of those clergy who feel it is their duty to come out is considered. Those that are homophile in orientation but are committed to a life of abstinence should not be rejected by parishes but in respect of those who are in active homophile relationships the Bishops' duty is to affirm the whole pattern of Christian teaching on sexuality and to call upon all clergy to live lives that respect the Church's teaching.
64. In paragraph 5.23 there is summed up the essential points of guidance that they are seeking to give in the chapter. Whilst it is right there should be an open and welcoming place in the Christian community both for homophiles who follow the way of abstinence, and also for those who are conscientiously convinced of a faithful, sexually-active relationship with another is the way of life God wills for them, the Bishops have judged that they themselves and all clergy as consecrated public and representative figures entrusted with the message and means of grace have a responsibility to show the primacy of the truth by striving to embody it in their own lives.
65. In paragraph 5.24 there is reference to the requirements of different standards for the clergy and laity. It is clear that what is being discussed in the latter part of Chapter 5 is related to the special position of ordained ministers, the clergy. The final sentence says "If we are faithful to our Lord God, then disagreement over the proper expression of homosexual love will never become rejection of the homosexual person".

The Law

66. The Employment Equality (Sexual Orientation) Regulations 2003 were made for the purpose of implementing the Council of the European Union's Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation so far as it relates to discrimination on grounds of sexual orientation (see bundle 1 tab 1). The regulations came into force on 1 December 2003. Regulation 3 is headed 'Discrimination on grounds of sexual orientation'. It states:

"(1) For the purposes of these Regulations, a person ("A") discriminates against another person ("B") if -

- (a) On grounds of sexual orientation, A treats B less favourably than he treats or would treat other persons; or
- (b) A applies to B a provision/criterion or practice which he applies or would apply equally to persons not of the same sexual orientation as B but
 - (i) which puts or would put persons of the same sexual orientation as B at a particular disadvantage when compared with other persons,

- (ii) which puts B at that disadvantage and
- (iii) which A cannot show to be a proportionate means of achieving a legitimate aim.

- (2) A comparison of B's case with that of another person under paragraph (1) must be such that the relevant circumstances in the one case are the same, or not materially different in the other."

67. Regulation 5 is headed 'Harassment on Grounds of Sexual Orientation'. It states.

"(1) For the purposes of these regulations, a person ("A") subjects another person("B") to harassment where, on grounds of sexual orientation, A engages in unwanted conduct which has the purpose or effect of

-

- (a) violating B's dignity; or
 - (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- (2) Conduct should be regarded as having the effect specified in paragraph (1) (a) or (b) only if, having regard to all the circumstances, including in particular the perception of B it should reasonably be considered as having that effect."

68. Part II is concerned with discrimination in employment and vocational training. Regulation 6 entitled 'Applicants and Employees' contains provisions making it unlawful for an employer to discriminate against a person by refusing to offer him employment, and also to subject to harassment the person who has applied to him for employment.

69. Regulation 7 is headed 'Exception for General Occupational Requirement etc'. Regulation 7(3) says:

"This paragraph applies where -

- (a) The employment is for the purposes of an organised religion;
- (b) the employer applies a requirement to sexual orientation -
 - (i) so as to comply with the doctrines of the religion or
 - (ii) because of the nature of employment and the context in which it is carried out, so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers; and
- (c) either -
 - (1) the person to whom that requirement is applied does not meet it, or
 - (ii) the employer is not satisfied and in all the circumstances it is reasonable for him not to be

satisfied, that that person meets it."

70. Part V of the Regulations is headed 'Enforcement' and Regulation 29 headed 'Burden of Proof: Employment Tribunals'. It states:

"(1) This regulation applies to any complaint presented under Regulation 28 to an Employment Tribunal.

(2) Where, on the hearing of a complaint the complainant proves facts from which the Tribunal could, apart from this regulation, conclude in the absence of an adequate explanation that the Respondent -

- (a) has committed against the complainant an act to which Regulation 28 applies; or
- (b) is by virtue of Regulation 22 (Liability of employers and principles) or 23 (Aiding unlawful acts) to be treated as having committed against the complainant such an act,

The Tribunal shall uphold the complaint unless the Respondent proves that he did not commit, or as the case may be, is not to be treated as having committed; that act"

71. As part of the background to the regulations, the Tribunal was referred to the House of Commons Standing Committee on Delegated Legislation. At this time the draft regulations were before Parliament. There were questions and answers concerning Regulation 7(3). Mr Russell Brown asked Mr Sutcliffe 'Why does Regulation 7(3) not specify Minister of Religion if that is what it really means?' Mr Sutcliffe responded "We had Minister of Religion in mind when drafting the provision but a small number of posts outside the clergy exist entirely to promote religion. Examples include senior employees of the Archbishops' Conference and the General Synod of the Church of England, and they will be covered by Regulation 7(3)." Mr Sutcliffe says at another part of the recorded questioning "When drafting Regulation 7(3) we had in mind a narrow range of employment - Minister of Religion, plus a small number of posts outside the clergy that exist entirely to promote and represent religion. The wording clearly reflects our intentions". He says Paragraph (3) reads:

"This paragraph applies where ... the employment is for the purposes of an organised religion.

I must point out that that is not a blanket exception, and it is clear that paragraph (3) does not apply to all jobs in a particular type of organisation. On the contrary, employers must be prepared to justify any requirement related to sexual orientation on a case by case basis. Furthermore, it only applies to employment that is for the purposes of organised religion not religious organisations. There is a clear distinction between the two: a religious organisation could be any organisation with any ethos based on

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religion or belief, but employment for the purposes of an organised religion means a job, such as a Minister of Religion, and involves work for a church, synagogue, mosque or whatever.

A care home run by a religious foundation may qualify as a religious organisation. Under the regulations, however, it will be very difficult to show that the job of a nurse in a care home exists for the purposes of an organised religion. The situation is exactly the same for a teacher at a faith school. Such jobs exist for the purpose of healthcare and education.

Regulation 7(3) does not stop there. Even if an employer can show that the job exists for the purposes of an organised religion - a significant hurdle - it may only apply to a requirement related to sexual orientation, and only if one of two further tests is passed. The requirement must be applied to comply with the doctrines of the religion or because of the nature of the employment and the context in which it is carried out, in order to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers.

I hope that my emphasis will convey that employers must meet a series of tough criteria. They must satisfy the terms of Regulation 7(3)(a) and 7(3)(b). They cannot pick and choose"

72. The Respondents also refer to an extract from Hansard which is an exhibit AP1 to Bishop Priddis' further witness statement. Lord Leicester of Hern[e] Hill asked Her Majesty's Government:

'Whether the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 would require a printing shop run by a Christian to print flyers promoting gay sex. Lord Rooker (Minister of State) Sustainable Farming and Food, Department of Environment, Food and Rural Affairs answered 'no it would entirely within the spirit of the regulations for a printing shop run by a Christian to refuse to print flyers promoting gay sex, so long as that printer also refused to print flyers promoting heterosexual sex outside the realm of marriage'."

73. In addition to the background material and legislation, both parties referred in their written submissions to a number of reported cases confirming burden of proof, and principles containing direct and indirect discrimination, and harassment. We do not intend to repeat here all the references made by the parties in these written submissions. Apart from the regulation, the question of burden of proof was considered comprehensively in the well known case of Igen -v- Wong [2005] IRLR 258 as well as in the Court of Appeal case of Madarassy -v- Nomura International Plc [2007] IRLR 246. In Brown -v London Borough of Croydon [2007] IRLR 259 Lord Justice Mummery said at paragraphs 40 and 41:

"I agree with the reasoning of the Employment Appeal Tribunal but it was not necessary in this case for the Employment Tribunal expressly to

address sequentially the two stage test in Igen -v- Wong.

In general it is good practice to apply the two stage test and to require the Claimant to establish a prima facie case of discrimination before looking to the adequacy of the Respondent's explanation for the offending treatment. But there are cases, of which this is one, in which the Claimant has not been prejudiced in matters of proof or discrimination by the Tribunal omitting express consideration of the first stage of the test, moving straight to the second stage of the test and concluding that the Respondent has discharged the burden on him under the second stage of the test by proving that the offending treatment was not on a proscribed ground".

74. One of the most important cases that the Tribunal was asked to consider in great detail, because it is one of the few cases that deal with the regulations, is the case of Amicus --v- Secretary of State for Trade and Industry[2004] IRLR 430. That case concerned a challenge to the implementation of the framework employment directive by the sexual orientation regulations. It is instructive to consider the approach adopted by Mr Justice Richards. In paragraph 90 Mr Justice Richards says:

"Regulation 7(3) was not included in the detailed draft regulations originally published for the purposes of consultation. It was added as a result of representations from the Churches, including in particular, it would seem, the Archbishops' Council of the Church of England. The rationale is explained as follows in the witness statement of Ms McCarthy-Ward '...Regulation 7(2) simply sets out criteria of general application and leaves it to the Courts and Tribunals to determine in individual cases if those criteria are met. This was not done in relation to employment for purposes of an organised religion in Regulation 7(3), because the government was concerned it would lead to litigation in Tribunals about the extent to which requirement is dictated by doctrine or the religious convictions of followers could legitimately limit working for an organised religion, and to what extent those requirements, and by extension, the doctrine or convictions giving rise to them, can be said to be reasonable or proportionate. The government was engaged in striking a delicate balance between employment rights of gay and lesbian people, and the right of religious groups to freedom of religion. The government took the view that it was not appropriate for Courts or Tribunals to make such judgments, that the balance should be identified in the regulations themselves'."

75. Mr Justice Richards then sets out in detail in paragraph 91 of his judgment the statement of the Minister of State, Lord Sainsbury of Turville, in replying to the debate on the regulations in the House of Lords. Amongst comments made by Lord Sainsbury the following is included:

" ... Even if an employer can show that the job exists for the purposes of organised religion, and that is a significant hurdle, he may only apply a requirement related to sexual orientation if one of two further tests are met. In the first test the requirement must be applied to comply with the

doctrines of the religion, We do not believe that that test will be met in relation to many posts. It would be very difficult for a church to argue that a requirement related to sexual orientation applied to a post of cleaner, gardener or secretary. Religious doctrine rarely has much to say about posts such as those. If the first test is not met, what about the second? ... Both elements are to be satisfied before the second test can be met. It is therefore a very strict test and one that can be met in very few cases. The position of a cleaner, librarian, which has been raised many times, must be judged against those strict criteria. They are strict criteria and one cannot say in any specific case what the situation will be. In such cases one has to apply the criterion and see whether or not they are fulfilled ...".

76. Then in paragraph 92 Mr Justice Richard says:

"Reference should also be made to evidence indicating that one reason for the different terms of Regulation 7(3) is to encompass occupational requirements related not to sexuality as such but to sexual behaviour. In a letter dated 9 June 2003 from the Secretary General of the General Synod and the Archbishops Council to the Parliamentary Joint Committee on Statutory Instrument states: (Paragraph 13):

'The difficulty is that Regulation 7(2) applies only where being of a particular sexual orientation is a genuine and determining occupational requirements. As explained above, we have no posts or offices where there is a requirement to be heterosexual (or indeed homosexual). Our requirements are in relation to behaviour not sexuality itself. That is why the new Regulation 7(3) and 16(3) refer to a (requirement related to sexual orientation)', "

77. In paragraph 103 Mr Justice Richards sets out the case for the Secretary of State:

"The Secretary of State's case was that concerns expressed about the width of Regulation 7(3) were misplaced. The exception has a very narrow scope. The criteria are tightly drawn and are to be construed strictly since this is a derogation from the principle of equal treatment. The exception represents a proportionate striking of the balance between the competing interests involved. For example it is stressed that Regulation 7(3)(a) provides that the employment must be "for purposes of an organised religion" not for purposes of a religious organisation. Secondly the provisions of Regulation 7(3)(b) are likewise very restrictive because of the formidable hurdles for an employer to overcome. It is said that "a significant number" in Regulation 7(3)(b)(ii) is an ordinary English expression which Courts or Tribunals should have no difficulty in applying in practice. In paragraph 106 Counsel for the Secretary of State suggested that Regulation 7(3) is wider than Regulation 7(2) in that it applies to a requirement related to sexual orientation (Regulation 7(3) (b)) as opposed to a requirement of "being of a particular sexual orientation" (Regulation 7(2)(a)). It was suggested that the choice of wording was deliberate so as

to meet the representations made by some churches as to the effect they were concerned not with sexual orientation per se but with sexual behaviour that was related to sexual orientation. A broader point was made that in the case of employment for purposes of an organised religion Regulation 7(3) itself makes clear where the balance is struck rather than leave this extraordinary difficult area for determination by Tribunals on a case by case basis (with the burden of deciding for example whether doctrines of a particular organised religion can themselves be justified). To this extent it was suggested that legislation recognised that a requirement meeting the conditions of Regulation 7(3) is necessarily a genuine and determining occupational requirement and has struck the balance in a manner that is submitted to be proportionate."

78. The conclusion of Mr Justice Richards begins in paragraph 114. In general he accepted the submissions for the Secretary of State. The main question it appeared to Mr Justice Richards was that concerned with the scope of the exception. The Learned Judge says:

"I think it clear from the parliamentary material that the exception was intended to be very narrow; and in my view it is, on its proper construction, very narrow. It has to be construed strictly since it is a derogation from the principle of equal treatment; it has to be construed purposely so as to ensure, so far as possible, compatibility of the directive. When its terms are considered in the light of those interpreted principles, they can be seen to afford an exception in only very limited circumstances. The fact that the exception applies by Regulation 7(30(a)) only to employment 'for the purposes of an organised religion' is an important initial limitation. I accept Miss Carss-Frisk's submission that that is a narrower expression than for purposes of a religious organisation' or the expression, 'where an employer has any ethos based on religion or belief' as used in the corresponding regulations relating to discrimination on the grounds of religion or belief'. I also accept the example she gave, that employment as a teacher in a faith school is likely to be 'for purposes of a religious organisation' but not 'for purposes of an organised religion'."

79. Mr Justice Richards considers that the conditions in Regulation 7(3)(b) impose very real additional limitation. The restrictive language used and the need to apply the criteria means that it is going to be far from easy to satisfy either limb of the tests set out there. Mr Justice Richards also considers that Regulation 7(3)(b) would have to cover the point about concerns of some churches about certain forms of sexual behaviour rather than sexuality as such. Mr Justice Richards considered the protection against discrimination on grounds of sexual orientation relates as much to the manifestation of that orientation in the form of sexual behaviour as it does to sexuality as such. He refers back generally to the fundamental rights at issue in this case and the wording of the derogation in Article 4(1) of the Directive which refers to a difference of treatment which is based on characteristic related to sexual orientation, is wide enough to embrace the difference of treatment based on sexual behaviour related to sexual

Orientation.

80. Lastly, in relation to the conditions in Regulation 7(3)(c) that either (i) the person does not meet the requirement or (ii) the employer is not satisfied, in all the circumstances it is reasonable not for him to be satisfied, the person meets the requirement are the same in Regulation 7(2)(c) and do not need to be considered separately. Mr Justice Richards took the view that it is lawful for the exception to apply where the employer is reasonably not satisfied that the requirement is met.

81. Mr Justice Richards goes on to observe in paragraph 121:

"Actual decisions on particular situations need to be made on the basis of full consideration of all the relevant facts of the case, which will be the function of a Court or Tribunal in applying the regulations".

82. Referring back to Mr Justice Richards considerations of Regulation 7(2), it is noteworthy that, in paragraph 80 he said that in his judgment Regulation 7(2)(c)(ii) has a sensible rationale and went on to say:

"In those cases where being of a particular sexual orientation is a genuine and determining occupational requirement, it cannot be right that an employer, having asked the plainly admissible initial question whether a person meets that requirement, is bound in all circumstances to accept at face value the answer given or is precluded from forming his own assessment if no answer is given. At the same time the provision limits the risk of unduly intrusive enquiry. If the employer is not satisfied that the person meets the requirement, and if it is reasonable in all the circumstances for him to do so, the employer can decline to employ the person without having to make the same degree of enquiry as might be called for if it was necessary to gather sufficient evidence by way of proof of sexual orientation to meet a potential complaint of unlawful discrimination.

The requirement of reasonableness ensures that decisions cannot lawfully be based on the assumptions of social stereotyping to which Mr O'Neill took particular objection in his submissions.

Nor do I accept the Claimant's argument that any form of enquiry beyond the initial question whether a person meets the requirement would amount to unlawful harassment or to breach of Article 8 to the Convention. It is certainly true that particularly intrusive enquiries could give rise to such breaches, but that possibility exists independently of Regulation 7(2)(c)(ii). In my view the provision is there to reduce rather than to increase the risk."

83. One of the issues put before this Tribunal was whether a reference should be made to the European Court of Justice. The Claimant raised the matter as a possibility and as an alternative submission. However, it was accepted that if the Tribunal finds for the Claimant on the issue of whether

Regulation 7(3) is satisfied, it may not go on to consider this part of the submission. Both the Claimant and Respondent's submissions contain references to authorities contained within the authorities bundle 2. For reasons later set out it is not necessary to consider these authorities.

Submissions

84. Both the Claimant and Respondent made written submissions. They were supplemented by oral submissions which can be summarised as follows. On behalf of the Claimant it was submitted the overall question is why the Claimant was rejected for the post. The Minutes of the 20 June indicate a clear view by Bishop Priddis before the Claimant was questioned. The regulations came into force after the Claimant had left the Chester Diocese. Sexual orientation is a private matter and if it is disclosed it should not be gone into in the way in which Bishop Priddis did and as vividly described by Mr Chapman. Dignity is an important matter. It was submitted that this was a clear case of direct discrimination and that the focus shifts to that of the Section 7(3) exception. In this context, the key question is whether it was for the purposes of an organised religion and it has not been made out in this case because the post does not promote religion. The safeguard must be applied to a small number of posts. Part of the object of the regulations is to remove and approach the concealment of sexual orientation which is corrosive of integrity. The Tribunal was referred to the South African case of The National Coalition for Gay & Lesbian Equality (died Applicant), South African Human Rights Commission Second Applicant -v- The Minister of Justice first Respondent, The Minister of Safety and Security (Second Respondent) & The Attorney General of the Witwatersrand (Third Respondent), S.A. [1999] 1 where on page 26 the South African Court, Ackermann J, approved what the European Court of Human Rights said about the often serious psychological harm for gays which result from discriminatory provisions and what the Supreme Court of Canada Vriend -v- Alberta also had to say about psychological harm where it was stated that potential harm to the dignity and perceived worth of gay and lesbian individuals constitutes a particular cruel form of discrimination. It is submitted that this rationale and concern lies at the heart of the case on behalf of the Claimant.
85. On behalf of the Respondent it was submitted that this was a case in which no-one is lying but it is a question of interpretation of the regulations. The case for Bishop Priddis is that sexual relationships ought to be within marriage and the disclosure of the Claimant's lifestyle was incompatible with the stated position of the Church in "Issues in Human Sexuality". It is submitted that there was no difference in the treatment of the Claimant regarding direct discrimination and the focus should be on indirect discrimination. A late amendment in the course of final submissions by the Respondents' Counsel for reliance upon justification was rejected as having not been raised until the latest possible stage in the proceedings. Applying the overriding objective, the amendment was refused. It is denied that the questioning by Bishop Priddis was particularly intrusive. It was the

Claimant who volunteered the information. The Bishop had not asked specifically about the relationship. It was not getting the job that dented, the morale of the Claimant rather than the questioning. It is submitted that the post of Diocesan Youth Officer was a Minister as it was a post that promoted and represented religion. As to the position of the Diocese, the Diocese is and was the Church of England. On the question of reasonableness, it was the use of the Claimant's present intention that caused Bishop Priddis to be concerned about the very recent breakdown of his relationship and the head/heart point is reasonable.

Conclusion

86. We propose to deal first with the allegation of harassment arising from the meeting of Bishop Priddis and the Claimant on 19 July 2006. It is not alleged by the Claimant that Bishop Priddis was aggressive or that the Bishop's purpose was to harass or humiliate him. The claim is brought upon the basis that there was unwanted conduct which had the effect of violating the Claimant's dignity or created a humiliating environment for him. We pay particular regard to the provisions of Regulation 5(2) which provides that conduct will be regarded as having the effect of violating an individual's dignity or creating a humiliating environment "only if, having regard to all the circumstances, including in particular the perception of B, it should reasonably be considered as having that effect". So we have to consider all the circumstances including in particular the perception of the complainant.
87. What were the circumstances here? First of all the Claimant had appreciated that, in applying for the job of Diocesan and Youth Officer in Hereford, he had been required in the application form to give the reason why he had left previous employment. Of particular note was the reason for leaving a similar job in the Chester Diocese in 2002. The Claimant had been open in his application form about the reason which was connected with his sexuality. The Claimant said that he expected to be asked about his sexuality at some point because he disclosed it. He described the issue of homosexuality to be a 'hot potato' in the Church of England with strongly held convictions on both sides. He said that a significant number of members of the Church were in favour of the position of homosexuals but there may be a significant number against. He had been asked about his sexuality by the Reverend Terry at the interview stage and whether he would comply with Issues and he gave the assurance that he would. The Claimant was aware that the Bishop would have to ratify his appointment and give his approval to it. Although he was surprised to be called in to see the Bishop, the Claimant agreed that different Bishops had different approaches. When, at interview with the Bishop, he was asked about why he had left Chester, the Claimant understood that he would have to discuss the issue of his sexuality and it was not that question which he considered to be objectionable. It was what the Claimant described as the probing and . depth that he found objectionable. We have found that probably Bishop Priddis asked what would happen in the future. This would not be

an unreasonable question in the circumstances. This was an appointment for some five years and it would be clearly relevant for a potential employer to know the position on an important matter. It was accepted by the Claimant that this was an important matter.

88. The conversation about how the Claimant might deal with future situations was not asked in any aggressive manner by the Bishop. The Claimant was willing to discuss what his future situation might be and was willing to discuss it with the Bishop. The action of the Bishop was to call into question how certain the Claimant could be about the situation in the future because he had only recently ended a relationship. The Claimant tried to reassure the Bishop that he was not seeking a relationship and answered the question about what he would do if he met someone. We do not consider that it was unreasonable for Bishop Priddis to make these enquiries.
89. Bearing in mind that the Claimant was an applicant for a job, the Bishop's reticence and failure to react positively to the assurances given by the Claimant, had a distressing effect upon the Claimant. It was the reaction of the Bishop that was disappointing to the Claimant, which is why he wanted to discuss more widely the issue of homosexuality and the Church. This is what happened. It was at this point, described as a turning point by the Claimant, that he felt upset and angry and wanted to know why the Bishop had come to his view. The Claimant wanted a frank discussion because at that point he knew the position was not going to be offered to him and he wanted to know why. He asked the Bishop questions and he was trying to make a point that he had missed the point of celibacy. The Claimant was frustrated, angry and deflated at the position of the Bishop and had been hit very hard by the reaction of Bishop Priddis. The Claimant said he did not seek to challenge the Bishop but to inform him. For example, when the Bishop was saying that his words were the Church's position about not appointing a heterosexual who was in a partnership, the Claimant said that that was part of the Church's position and that it was not definitive. There was a debate that was taking place.
90. The demoralised and upset situation of the Claimant at the end of the conversation with the Bishop must be seen in the light of these circumstances. We accept fully that the Claimant was, as he said in evidence, so upset by the end of the conversation that he felt and was physically sick on the way home. He did feel personal rejection. He also felt a great sense of injustice and unfairness because of the reluctance of the Bishop to embrace the assurances that he had given to him. We find that this was the cause of the distress of the Claimant, and not the raising of the question of future relationships by Bishop Priddis and what might happen in the future. The Claimant was more than willing to deal with those matters and sought to engage Bishop Priddis about what should be the Church's attitude.

91. We find that Bishop Priddis was concerned to establish in his mind the agreement of the Claimant in regard to the Church's teaching as set in Issues. That was a reasonable enquiry in all the circumstances. A debate on the wider ground regarding Issues and questions of Human Sexuality is what the Issues document itself has a purpose in promoting. If someone is as committed to the Church work as the Claimant was, it must be expected that the Bishop and the Claimant would engage in a lengthy conversation about respective positions regarding homosexuality. This is not unwanted conduct nor does it violate the dignity of the Claimant or create a humiliating environment. The whole approach of the Church has been to stimulate debate on these matters and to accept that people have very strongly held views at different ends of the spectrum about homosexuality. Disagreements between individuals who hold genuine opinions appear not to be uncommon in the Church of England as the literature put before us indicates. We also consider that the Claimant, having spoken to Dr Terry and been told that he was the unanimous choice of the panel with 8 people recommending him, clearly considered that it would be very unusual for someone to overturn such a large panel opinion and he was reassured by Dr Terry that that should not be an issue for the Bishop. It therefore must have come as something of a shock to the Claimant to have realised during that conversation with the Bishop that the Bishop was not simply confirming the offer of the job to him. In short the Claimant did not receive the sort of automatic approval that he had been expecting.
92. For the above reasons we consider that the Claimant was not subjected to harassment within the meaning of Regulation 5 and this part of the claim is dismissed.
93. We now turn to consider the claim of discrimination on the ground of sexual orientation pursuant to Regulation 3. We consider it appropriate to deal with the question of direct discrimination first.
94. Regulation 3(2) requires a comparison of the Claimant's case with that of another person and it must be such that the relevant circumstances in the one case are the same, or not materially different, in the other. This raises the question about who should be the relevant comparator. The Respondents say that the correct comparator is a person not of same sex orientation having recently come out of a long-term unmarried sexual relationship who would raise this in an application form. The Claimant says that a lack of intention to marry would have been a wilful choice but the Claimant had no such choice. One of the problems about choosing the correct comparator is whether it is necessary or desirable to import the condition of marriage status into the comparator's position. The emphasis of the regulations is on sexual orientation and not marital status. If, for example the correct comparator is someone who has recently come out of a long-term heterosexual relationship, then other considerations apply because one would have to consider whether the circumstances were materially different or not from that of a single gay person. Questions would then arise as to whether the material circumstances were different or

not about whether a person felt obliged to put his/her particular circumstances in an application form so as to allow the Respondents to make further enquiries about this matter or not.

95. We do not consider that an actual comparator of other support Ministers, such as the Child Protection Minister, is appropriate. Different job specifications and roles may have different attributes required and involve close examination for the purposes of the regulations. There are a number of problems about choosing a comparator as suggested by the Claimant with other support Ministers.
96. We consider that the problem raised by having to focus on an appropriate comparator raises exactly the sort of "arid and confusing debate" contemplated by Lord Nicholls in the case of Shamoon and Elias P in Laing and Manchester City Corporation. We accept the Claimant's submissions that the real value of the comparative approach is to identify and draw differences of treatment as an aid to identification of the ground. We consider that this is the sort of case that we should proceed to the second stage of the test in order to not miss the point and purpose of the legislation.
97. In considering the question of why the Claimant was not appointed to the post of Diocesan Youth Officer, we consider that the regulations do not make a distinction between the mere fact of being gay and expressing that sexual orientation in behaviour. We accept the Claimant's submissions that the regulations must be read consistently with Convention rights, as Richards J considered to be the right interpretation in the AMICUS case. In particular "Sexual orientation and its manifestation of sexual behaviour are both inextricably connected with a person's private life and identity". Therefore, if the question is asked whether, but for his sexual orientation, the Claimant would have been treated as he was, the answer is "No". The "Issues" document being considered and raised is concerned with gay sexual orientation. Bishop Priddis would not have considered that further questioning was necessary if the Claimant's homosexuality had not been raised. The Claimant would have not been required to, in effect, convince the Bishop of his future intentions to the sort of standard that was being consciously or unconsciously required by Bishop Priddis. The fact that Bishop Priddis was not prepared to accept the assurance given to Dr Terry when the Claimant was interviewed, is very clear evidence of particular concern on the part of Bishop Priddis and indicates the fact that the Claimant was gay to be the reason why the Claimant was not appointed.
98. We consider that (on the ground of his sexual orientation) the Claimant was treated less favourably by Bishop Priddis than Bishop Priddis would treat other persons within the meaning of Regulation 3.
99. The alternative claim for discrimination is based upon indirect discrimination. The Claimant bases this upon the fact that the Respondent applied a condition that the Claimant had to be either celibate in the sense

of abstinence or being married. The Respondents accept that they applied a provision criteria or practice to the Claimant which would apply to person not of the same sexual orientation of the Claimant. That is that the individual to be appointed to the post of Diocesan Youth Officer must live a lifestyle which conforms to the doctrine and teachings of the Church as set out in the resolutions of the General Synod, the Lambeth Conference and the House of Bishops Teaching document Issues in Human Sexuality. The Respondents also accept that, insofar as it would not be possible for the Claimant to choose to marry, it is accepted that a person of same sex sexual orientation as the Claimant would be placed at a particular disadvantage when compared with others. If it is necessary, we would hold that there has been indirect discrimination in this case. However, for the reasons set out above, we consider there has been direct discrimination in this case.

100. Next we come to consider the exception under Regulation 7. The first question is whether the employment is for the purposes of an organised religion. The organised religion is the religion of the Church of England. We bear in mind the observations set out in the ministerial statements in Parliament and also in the judgment of Richards J in the AMICUS case. The provisions of Regulation 7 should be narrowly construed being a derogation from the principle of equal treatment. It is necessary to consider specifically what the post of Diocesan Youth Officer for the Diocese of Hereford actually involved. We refer back to the job application, job description and associated documents which were sent to the Claimant. It is clear that the job was not that of an ordained Minister within the traditional three-fold Ministry of the Church. A reference to The Ministry of Bishops, Priests and Deacons appears on page 158 of the bundle, this being an extract from the 'Challenge and Hope of being an Anglican Today A Reflection for the Bishops' Clergy and Faithful of the Angli[c]an Communion by Dr Rowan Williams'. A Support Minister is not an ordained Minister. A Support Minister may undertake functions such as that of a Lay Reader but need not do so. The term is not one which is present in every Diocese in the Church of England. The use of the term Support Minister as a label without looking at the substance of the job is not helpful. For example, the small number of Support Ministers identified in the structure of the Diocese of Hereford would not allow a conclusion to be based simply upon the fact that they are called Support Ministers by the Diocese. It may be that one Support Minister is covered by the Regulations when one looks at the substance of his work, but another Support Minister would not be. Each case must be looked at individually.

101. In this case, the Claimant was to fulfil a role of representation of the Diocese, that is the Church of England, in the field of youth work. There would be considerable liaison with local authorities and other secular bodies. But the primary purpose of the attendance and the input of a Diocesan Youth Officer would be to represent the Diocese. It is a different role to that of a Parish Youth Worker who would be engaged in actual youth work, as opposed to the small, if any, actual youth work undertaken

by the Diocesan Youth Officer. A Diocesan Youth Officer's job would be to co-ordinate and to encourage and to promote church based youth organisations. The Diocesan Youth Officer would have a Line Manager and would be subjected to discipline as an employee. However, the work of the Diocesan Youth Officer could be said to be closely bound up with the Bishop as the Head of the Diocese and to put into effect the priorities of the Bishop and the Church.

102. It is a fact that the Claimant considered himself called particularly to do church-based youth work at a Diocesan level, rather than continue as he had been at the Parish Youth level. The particular skills of leadership that the Claimant had demonstrated in his present job and in his past employment, as attested to by his referees, points to the leadership role being a vital component of the job. The Claimant would be in one of the small number of jobs which would be closely associated with the promotion of the Church. The Claimant would have been promoting religion in the way in which it has been suggested the regulations are meant to encompass. In our opinion the post of Diocesan Youth Officer falls within that small number of posts outside of the clergy which are within the first limb of Section 7(3).
103. The second limb is whether the Respondents applied a requirement related to sexual orientation so as to comply with the doctrines of the religion or because of the nature of the employment and the context in which it is carried out so as to avoid conflicting with the strongly-held religious convictions of a significant number of the religion's followers. A great deal of debate in this case has involved whether the requirement related to sexual orientation was that of compliance with "Issues" and what is meant by compliance with "Issues". "Issues" has a dual purpose: to stimulate debate and also to set out the current pastoral position of the Church of England. The current pastoral position of the Church of England is that as expressed by Bishop Priddis, namely that sexual behaviour outside marriage, whether homosexual or heterosexual, does not live up to the high ideals of the Christian [faith. In](#) the case of lay people that would mean abstinence or celibacy. Bishop Priddis was requiring the Claimant either to declare that he had made a positive choice of celibacy for the future or abstinence from sexual behaviour. That was in accordance with the doctrines of the Church of England.
104. The alternative limb relied upon is that of sub-paragraph (ii). The evidence of the Claimant was that a not insignificant number of people have strong feelings against homosexuality within the Church of England. The evidence of Bishop Priddis, and also the evidence of other witnesses such as Mrs Susan John, and the many references in the case to the debates of the General Synod as well as papers and documents produced on the subject which involve the Church of England, indicates strongly that this second limb would be fulfilled in this case. However we think it would be unduly restrictive to consider the Church of England as being purely the Diocese of Hereford for the purposes of the interpretation of this regulation.

If it was meant to be geographically restricted in the way that the Respondents consider it should be then there would have been some reference in the regulation to the effect upon followers in a particular part of the country or district. There is no such reference and we consider therefore that the general position within the whole of the Church of England is the proper interpretation of significant number of the religion's followers. We consider that Regulation 7(3)(b)(ii) would be satisfied here.

105. This leaves the third limb or hurdle in Regulation 7(3) to be considered, namely that the person to whom that requirement is applied does not meet it or the employer is not satisfied in all the circumstances and it is reasonable for him not to be satisfied if that person meets it. As to the first part we find that the Claimant was a person who did meet the requirement a set out in Issues. His past relationship had ended some months before and he was committed to undertake the work in the Church of England in full compliance with the requirement of not entering into a sexual relationship with another person. The Claimant indicated that he was happy to remain celibate for the duration of the post. That was a positive commitment to a lifestyle which put the job above that of any personal feelings. The question then arises whether it was reasonable for Bishop Priddis to be not satisfied in all the circumstances that the Claimant did not meet the requirement. It is noteworthy that the tense used in the regulations is that of the present tense and not the future tense. It is a question that needs to be answered on the present circumstances. This is wholly logical and rational because the future is not known to any person. In an ordinary employment context a potential applicant for a job cannot give cast-iron guarantees as to circumstances which may happen in the future. We consider that once this is appreciated, then Bishop Priddis' position is untenable.

106. The reason is that there was no good reason to consider that the Claimant did not at the present time meet the requirement. Bishop Priddis had no evidence to suggest that the Claimant was not telling the truth when he said he did not have any present relationship. Indeed it is not suggested in the evidence of Bishop Priddis that he did consider that to be the position. The evidence collated by Bishop Priddis about the Claimant had come from his referees, who made it clear that the Claimant was an honest and trustworthy person. Indeed it is difficult to think of referees who could be more fulsome in their praise for the good character of the Claimant. Bishop Priddis, the panel appointed to carry out a rigorous interview process, from their different specialities and points of view in ordinary life, had unanimously recommended the Claimant for appointment. So had a senior person in the Diocesan structure, Dr Terry, who was also a senior person in the Clerical hierarchy. Bishop Priddis' conversations with the Bishop of Birkenhead would not have given rise to any reasonable person doubting the integrity and veracity of what was being said by the Claimant. We consider that Bishop Priddis was not reasonable to not be satisfied that the Claimant met the requirement.

107, If we are wrong in giving too much emphasis on the present tense as used in the regulations and that a proper interpretation would be that of looking to the future, then the same considerations appear to us to apply which is that there are no good reasons why the Claimant's replies should be disbelieved or not given the weight that the Claimant was asking that they be given. We do not consider it to be reasonable to rely upon some vague idea that a person whose relationship has recently come to an end cannot be relied upon to state a future intention because of the fragility of that person's state of mind, as for example a person who has suffered from recent bereavement. Indeed, the contrary appears to be the case in that, despite having positive endorsements of the Claimant, for example by Mr Peter Ball, who thought he had learnt from the Chester episode and from the views of all those surrounding him in the process, Bishop Priddis either ignored such views or gave them very little weight. It may well be that there was some unconscious discrimination on the part of Bishop Priddis in the refusal to accept the assurances of the Claimant because he was a gay man. It may be that Bishop Priddis' belief that the Claimant would not be able to live a life of celibacy despite this being a positive calling meant that he was confusing the stricter standards which would be expected of Clergy to that of a lay person such as a Diocesan Youth Officer. We do not think that it would be in accordance with the Issues statement to require a lay person to commit to celibacy. Whatever the reason, we consider that it was not reasonable for Bishop Priddis to be satisfied that the requirement was not met. We bear in mind that we should not substitute our own view to that of an employer who is reasonable.

108. It follows that we do not consider that the exception in Regulation 7(3) applies in this case and that the statutory defence to discrimination has not been made out.

109. The unanimous judgment of the Tribunal is that the claim for harassment be dismissed, and the claim of direct discrimination succeed. It was agreed that the matter of remedy should be considered at another Hearing, if not agreed. In the circumstances, it is unnecessary for us to consider the matter of a possible reference to the European Court of Justice. The case will now be listed for a remedy hearing unless the parties are able to agree matters.

Judgment entered in Register and copies sent to parties on 17 July 2007
(Signed) for Secretary of the Tribunals

(Signed) CHAIRMAN Dated: 17 JULY 2007

RESERVED JUDGMENT