

NOTE OF REASONS

by

**PAUL REID, K.C., PROCURATOR OF THE
CHURCH**

in respect of

**THE ACCUSATIONS REFERRED TO
TRIAL AGAINST BISHOP ANNE DYER**

Introduction

1. This Note records my reasons for deciding not to lead evidence in respect of any of the accusations which have been referred to trial against Bishop Anne Dyer (“**the Bishop**”).

Procedural History

2. On 23 December 2023, I was appointed as the Procurator to the Church by the Standing Committee. At the time of my appointment, a number of accusations concerning the Bishop had been referred to the Procurator by the PPC of the Church and I began consideration of them. On 16 May 2024, I issued a Notice of Trial to the Bishop. I referred three accusations to the Tribunal. A trial date was set of 10 September 2024 (and a further nine days during September 2024). On 16 July 2024, on the Bishop’s unopposed application, those trial dates were discharged. A Procedural Hearing was fixed initially for 27 September 2024. That was postponed until 4 October 2024 and ultimately discharged in the circumstances set out in para.15, below.

Code of Canons

3. Canon 54 provides the rules by which complaints against clergy, including Bishops, shall be resolved in the event they cannot be dealt with pastorally. In terms of para.2 of Canon 54, an offence is committed where a Bishop behaves or conducts themselves in a manner unbecoming of a Bishop or in a way which is causes, or is likely to cause, scandal or bring the Church into disrepute. Where the Procurator has issued a notice

of trial, para.28 allows the Procurator not to lead any evidence in respect of any accusation which has been referred to trial:

“At any time after the cleric accused has lodged an Answer in terms of Section 24 of this Canon to the Notice of Trial and prior to the leading of evidence at the said trial, the Procurator may decide that no evidence be led in relation to any accusation.”

Provision is also made for the College of Bishops to request that the Procurator lead no evidence in respect of any accusation (para.29). No such request has been made in this case.

4. Given the broad discretion conferred upon the Procurator by para.28, it is appropriate to explain how I have approached its exercise. Before turning to that, there are two other aspects of Canon 54 which should be noticed. First, para.32 allows the Tribunal to adopt Rules which shall govern all matters relating to the procedure and conduct of any trial. Where a matter is not regulated by such rules, the Tribunal shall *“be regulated by the Civil Law Rules of the Court of Session currently in force”*. Rules have been adopted under para.32 (*Clergy Discipline Tribunal Rules*, April 2013). The following provisions are noteworthy for present purposes:

“Part 1: General Provisions

1. Overriding objective

- (1) *The overriding objective of these Rules is to enable proceedings brought under Canon 54 to be dealt with fairly and justly.*
- (2) *Dealing with proceedings fairly and justly includes:*
 - (a) *dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;*
 - ...
 - (f) *avoiding unreasonable delay, having regard to the requirements of the proper consideration of the issues.*
- (3) *The Tribunal must seek to give effect to the overriding objective when it exercises any power under these Rules or interprets any part of these Rules.*
- (4) *Parties must help the Tribunal to further the overriding objective, and co-operate with the Tribunal generally.*

...

5. *Alternative Dispute Resolution*

(1) *The Tribunal should seek, where appropriate:*

- (a) *to bring to the attention of the parties the availability of any appropriate alternative procedure for the resolution of the dispute; and*
- (b) *if the parties wish and provided it is compatible with the overriding objective, to facilitate the use of that procedure."*

5. Secondly, para.36 provides an exhaustive list of sanctions which may be imposed in respect of each verdict of guilty returned by the Tribunal. Those sanctions are: (a) absolute discharge; (b) rebuke; (c) injunction to perform or refrain from performing a specific act(s); (d) removal from office; (e) disqualification from holding office; and (f) prohibition from the exercise of a ministry. One or more of those sanctions can be imposed in respect of each guilty verdict. Where a sanction of disqualification or prohibition is imposed, an application for restoration of the capacity or ministry can be made three years after imposition of the sentence.

Discretion to lead no evidence

6. Under para.28 of Canon 54 a broad and unfettered discretion is conferred upon the Procurator to decide to lead no evidence in respect of any accusation. Like any discretion, I have proceeded on the basis that it must be exercised reasonably and in accordance with the same common law expectations of any decision-maker upon whom a discretion is conferred. Conscious also of the interest in these proceedings, and thus the likely interest in this decision, I also consider it appropriate to record the reasons for my decision to lead no evidence.

7. As with the initial decision to refer allegations to the Tribunal for trial, I have approached each allegation in two stages: (a) is there sufficient evidence to provide a realistic prospect of conviction in respect of the allegation; and (b) whether a prosecution, or the continuation of a prosecution, in respect of each charge is in the "public interest".

8. The first stage is self-explanatory and falls to be considered in the context of the civil rules of evidence. In respect of the second stage, several general comments can be made. First, satisfaction of the first stage (sufficiency of evidence) does not make a prosecution automatic. It must be appropriate in all the circumstances to bring such a prosecution. In other regulatory contexts, this would be referred to as the “public interest”. Secondly, I have approached “public interest” in these circumstances by considering the wider Church community and general confidence in the Church. Thirdly, the “public interest” assessment requires to be kept under review and it is capable of changing after a decision to refer allegations to trial has been made. Fourthly, the “public interest” assessment includes having regard to the effect of proceedings upon the complainers. Those effects include any adverse effects which may be caused by having to give evidence and the effect of any delay in giving evidence. Finally, a prosecution should be a proportionate response to the alleged offences. A factor in such an assessment is the financial cost of proceedings. But that should only ever carry limited weight. Proportionality in the broader sense (e.g. impact upon complainers set against likely outcome in terms of sanction) is what requires to be considered.
9. That is how I have approached para.28 of Canon 54 in the present case. Notwithstanding having taken the decision to issue a Notice of Trial, both the sufficiency of evidence and the “public interest” have been kept under review.
10. Before turning to explain the decision I have reached in the present case, it may be helpful to say something about the role of the Procurator. While appointed under the Code of Canons, the Procurator exercises a role which is independent of the Church (and all others). It is not the function of the Procurator to decide whether someone is guilty of an offence under the Canons; it is to make an assessment about whether it is appropriate to present accusations under Canon 54 to the Tribunal. Only the Tribunal can determine guilt. A decision to present accusations to the Tribunal carries no implication of guilt. Similarly, a decision not to present (or continue to present) accusations to the Tribunal does not necessarily mean that an individual has not been a victim of behaviour which could constitute an offence under the Canons. In taking

such decisions, the Procurator must be even-handed and has a responsibility to a person accused as well as a potential victim. Whilst, as explained above, such decisions are taken by reference to some general principles, it is ultimately a case-specific assessment to be made by the Procurator.

Application to the present case

11. In respect of the first stage, I remain of the view that there is sufficient evidence to provide a realistic prospect of conviction in respect of each allegation. Given the standard of proof is the balance of probabilities and there is no requirement for corroboration, I am satisfied that there is a legal sufficiency of evidence. Ultimately, there are sharp differences in accounts of various events which happened some time ago. But if the accounts offered by the complainers were accepted as credible and reliable, each charge could be established. In reaching that view, I have proceeded on the basis that appropriate measures would be allowed by the Tribunal to facilitate the giving of evidence by those witnesses who have expressed a reluctance or a concern about being called as a witness.
12. In respect of the second stage, the following specific issues arise in the context of this case. First, I have had contact with a number of the complainers or other witnesses who would be required for any trial. It has become apparent that the prospect of giving evidence, and in particular facing cross-examination in a public forum, is a source of anxiety for a number of potential witnesses. Whilst I have proceeded on the basis that the Tribunal would be sympathetic to any application for special measures, I recognise that extensive cross-examination is likely given the sharp factual disputes which arise. Those concerns are related to a second issue, the likely date for trial. It has become clear that fresh trial dates are unlikely before the Spring of 2025. In a case which turns on first-hand accounts of events which are already a number of years ago, that is unfortunate. More significantly, it further extends the period those already anxious about giving evidence have to wait. In that context, there is necessarily an inherent risk that some or all of the evidence given by complainers may not be accepted by the Tribunal. That risks compounding the anxiety already reported. Thirdly, by the time of trial, the Bishop will have been suspended on an interim basis

for over two years. That is a relevant consideration in respect of any sanction in the event of conviction. It, in my view, materially increases the prospect of an ultimate disposal, even in the event of conviction, which saw the Bishop return to the Diocese immediately after trial. Given the already difficult situation in the Diocese, a public trial very materially risks, whatever its outcome, making an already difficult situation worse. That, taken with the concerns expressed by a number of complainers/witnesses about the prospect of giving evidence, cause very real concern about continuing with this prosecution.

13. In assessing whether the “public interest” remains in favour of continuing with this prosecution, I have also had regard to the seriousness of the alleged offences. I recognise that they are, taken at their highest, allegations of bullying and the abuse of a position of trust and responsibility. I also recognise that the alleged behaviour is said to have had a significant adverse effect upon the complainers. In other words, it is said to have caused them harm. Those factors point in favour of a prosecution being in the public interest. I also note, however, that in relation to allegation 1 the same conduct could have been founded upon, but was not, to challenge the lawfulness of the complainer’s redundancy.
14. It is ultimately a matter for me to weigh those differing factors and to reach a view on whether it remains in the “public interest” to continue with this prosecution. I am not satisfied that it is, having particular regard to the continuing effect upon the complainers, the length of time before the accusations would go to trial and the likely outcome of the proceedings (both for the Bishop and also the Diocese more generally).

Procedural Consequences

15. I am conscious that a decision to lead no evidence in respect of each charge, and thereby bring the proceedings against the Bishop under Canon 54 to an end, would have important immediate consequences. Most obviously, the Bishop’s suspension would fall. Given the Bishop has been suspended for a substantial period of time, a return to work is a process that is likely to need managed. There are likely to be other practical consequences for the Diocese and I am aware that the Bishop has given

thought to a range of measures she may wish to put in place in the event of resuming her ministry. Accordingly, and to provide space for the Bishop and the Church to arrange an orderly return to work, I intimated my intention to make this decision on 24 September 2024 to both the Bishop and the Church. I also intimated my intention to the Clerk to the Tribunal. At that time, I intimated my intention to formally communicate my decision on 8 October 2024 and invited the Tribunal to dismiss the accusations against the Bishop.

Conclusion

16. For all of those reasons, I have determined under para.28 of Canon 54 to lead no evidence in relation to each of the charges that have been referred to the Tribunal.

Paul Reid, K.C.

8 October 2024

Procurator to the Scottish Episcopal Church