Case Number: 3200933/2013

RESERVED JUDGMENT
LW

# EMPLOYMENT TRIBUNALS

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|---|---|
| Claimant: | Mr J F Ganga |
| Respondents: | (1) Chelmsford Diocesan Board of Finance<br>(2) Bishop of Chelmsford in corporate capacity |
| Heard at: | East London Hearing Centre |
| On:<br>In chambers | 11, 13, 14, 18 to 21, and 26 to 27 November 2014, and<br>15 to 17 and 19 December 2014 |
| Before: | Employment Judge Brown |
| Members: | Mr G Tomey<br>Mrs B K Saund |
| Representation | |
| Claimant: | Mr J Horan (Counsel) |
| Respondent: | Mr M Sheridan (Counsel) |

# RESERVED JUDGMENT

It is the unanimous judgment of the Tribunal that:-

1. The Respondent was a qualifications body within the meaning of *s54 Equality Act 2010* when granting and revoking the Claimant's general licence.

2. The Respondent did not discriminate against the Claimant because of race.

3. The Claimant's complaint that the Respondent victimised him when he sent a negative reference to the Diocese of Birmingham was presented out of time and the Tribunal does not have jurisdiction to consider it.

4. The Respondent did not victimise the Claimant in any other way.

5. The Claimant's complaints fail and are dismissed.

# REASONS

## Preliminary

### *The Claimant's Applications to Amend*

1. By a claim form presented on 28 February 2013 the Claimant brought claims of race discrimination and victimisation against the Respondent. A number of Preliminary Hearings were held and the claim was amended and Further Particulars were provided at various times.

2. The Claimant made further applications to amend his claim by letter to the Employment Tribunal dated 1 October 2014. Those applications had not been decided upon before the start of this Full Merits Hearing.

3. The Respondent did not object to a number of the amendment applications; it did not object to the Claimant amending his claim to name the Reverend Roger Gaylor and Marie Segal as comparators; to adding a claim for aggravated damages by way of additional remedy, nor did it object to the Claimant alleging that the Respondent had failed to respond to a request for a reference; although it contended that the Claimant would not succeed in any of these amended claims.

4. The Respondent did object to the Claimant's application to amend his claim to include complaints that the Respondent had discriminated against him because of race and victimised him by not appointing him to 3 stipendiary posts on 14 May 2010, in April 2011 and on 5 February 2010.

5. Separately, the Claimant also sought to re-characterise an existing factual complaint that the Respondent had instructed, caused or induced potential partners in a project of the Claimant's not enter into it under *s111(7) Equality Act 2010,* as a complaint that the Respondent directly discriminated against or victimised the Claimant by disapproving of that partnership by some means or another. The Respondent objected to that further amendment application.

6. Those two amendments were in issue before this Tribunal and were referred to as "the first and second amendments" in that order.

7. The Claimant contended that, while the first amendment pleaded new factual allegations and new complaints about stipendiary posts, the new complaints were very similar to the current case pleaded against the same Respondent; that the Respondent had denied the Claimant "house for duty" positions. The Claimant said that it had only become clear on disclosure that the Respondent had disapproved of the Claimant's applications for stipendiary positions. He said that the Respondent was in a position to

call evidence on the amended claims and therefore was not at a disadvantage, whereas there would be a disadvantage to the Claimant if the claims were not admitted.

8. The Respondent contended that these were new factual allegations made substantially out of time; at least 3 years out of time. The Respondent's witness's memories would inevitably have faded and the purpose of the statutory time limits was to prevent stale claims being litigated. The Respondent said there was no good reason why the Claimant had not advanced those claims earlier; the Claimant knew that he had applied for the stipendiary posts but had not complained about race discrimination or victimisation in respect of those before, even when he was contending that the Respondent had discriminated against him in not allowing him House for Duty positions. The Claimant had been represented at numerous Preliminary Hearings and disclosure had been given in February 2014. Therefore, there had been significant further inexcusable delay in making the applications to amend after that date, even if it was correct that the claims were prompted by material disclosed by the Respondent. The Claimant had other claims which could be successful and therefore he was not at a significant disadvantage.

9. With regard to the second amendment, the Claimant said that he was simply attaching a different legal characterisation to essentially the same facts. The Respondent, on the other hand, said that the Claimant's claim on a previous legal basis was doomed to fail and that he was re-characterising the claim without providing sufficient particulars about what he said was the nature of the Respondent's action.

*Law Relating to the Claimant's Applications to Amend*

10. In deciding whether to allow an amendment the Employment Tribunal is guided by the principles set out in *Selkent Bus Company v Moore* [1996] IRLR 661. On an amendment application, the Tribunal must balance all the relevant factors having regard to the interests of justice and to the relative hardship that would be caused to the parties by granting or refusing the amendment. Relevant factors include the nature of the amendment: applications to amend range, on the one hand, from correcting clerical and typing errors and the addition of factual details to existing allegations and the addition or substitution of other labels for facts already pleaded to and, on the other hand, the making of entirely new factual allegations which change the basis of the existing claim. The Tribunal has to decide whether the amendment sought is one of the minor matters or a substantial alteration pleading a new cause of action.

11. Other factors include the applicability of time limits: if a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the Tribunal to consider whether that complaint is out of time and, if so, whether the time limit should be extended. Other factors to be considered include the timing and manner of the application: an application should not be refused solely because there has been a delay in making it, as amendments can be made at any stage of the proceedings. Delay in making the application is, however, a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made, for example the discovery of new facts or new information appearing from the documents disclosed on discovery.

*12.* Even if there is an entirely new claim presented out of time, the Claimant may

still be allowed to amend, taking into account the balance of injustice and hardship. In considering whether to allow an amendment the Tribunal should analyse the extent to which the amendment would extend the issues and the evidence, *New Star Asset Management Holdings Limited v Evershed* [2010] EWCA Civ 870.

*Discussion and Decision on the Claimant's Applications to Amend*

13. The Tribunal decided that the first amendment did plead significant new facts and new complaints of race discrimination and victimisation, which were at least 3 years out of time. Allowing those new facts and complaints to be presented would extend the issues and the evidence in the claim. Applying the time limits and the relevant statutory tests, the Tribunal would not have extended time for the presentation of such complaints. It decided that no good reason had been given for the delay. The Claimant must have known about the existence of the stipendiary posts and the applications he made for those posts but, hitherto, had only claimed that the Respondent discriminated against him by not providing House for Duty positions. He specifically had not claimed discrimination in relation to failure to appoint him to stipendiary positions. Even if the Claimant had become of new facts on disclosure in February 2014, he had delayed applying to amend to include these new claims by a further 9 months and no real explanation had been offered for that delay.

14. The Tribunal found, on the other hand, that there would be significant prejudice to the Respondent in answering claims raised after such a lengthy delay. Memories of events would inevitably have faded. This is particularly important in discrimination and victimisation claims, where reasons in the person's mind for doing particular things are centrally in issue. That delay would have caused memories to fade.

15. There would be prejudice to the Claimant who would not be able to advance on the complaints, but he also advanced other claims, which were in time.

16. With regard to the balance of hardship and injustice, we considered that the Respondent would be put in danger of significantly more injustice and hardship if we were to admit these very old complaints. Less injustice and hardship would be caused to the Claimant in refusing the amendment when he could, and should, have brought the amendment application earlier than he did.

17. With regard to the second amendment, this was an application to re-characterise the legal basis of a claim which the Claimant had already pleaded on the facts. The Claimant had always alleged that the Respondent discouraged others from entering partnerships with the Claimant and the amended allegation did not take the Respondent by surprise in any way.

18. The Respondent complained that the Claimant's case about the way in which discrimination occurred was not clear - and that this was unfair. The Tribunal did not agree. The facts of the Respondent's actions were known to the Respondent and the Claimant could only point to evidence and ask the Tribunal to draw inferences and conclusions from it. That had always been the case, and remained so. We considered that it would be unfair to the Claimant to prevent him from advancing a legal case on the basis of factual allegations which had been known to the Respondent from the outset.

19. Accordingly, we refused the first amendment but allowed the second amendment.

***The Issues***

20. The parties had agreed a List of Issues for the Tribunal to determine. Taking into account the amendment, the Issues were as follows:

*Introduction*

21. The Claimant brings claims against the Respondent for:

21.1 Direct discrimination contrary to sections 13 and 53 of the Equality Act 2010 ("EqA 2010"); and
21.2 Victimisation contrary to sections 27 and 53 of the EqA 2010.

22. The protected characteristic that the Claimant relies upon is his race.

23. The protected act on which the Claimant relies in respect of his victimisation claim is his race discrimination claim brought against the Diocese of Southwark in 2004(Case No. 2303434/2004), The Respondent does not dispute that this is a protected act under section 27 of the EqA 2010.

*Jurisdictional issues*

*Qualifications Body*

24. Is the Respondent a "qualifications body" within the meaning under section 54 of the EqA 2010? The Claimant says that the Respondent was acting as a qualification body when he granted and revoked the Claimant's general licence. The Respondent says he was not.

*Time Limit*

25. Have any of the pleaded claims been brought in time pursuant to section 123(1)(a) of the EqA 2010? In particular, was there a discriminatory regime amounting to an act extending over a period which ended within three months of the Claimant's ET1?

26. For those claims which are out of time, is it just and equitable to extend the time limit under section 123(1)(b) of the EqA 2010?

*Direct Discrimination*

27. Was the Claimant subjected to the following acts by the Respondent;

27.1 On diverse occasions between 2008 up until his departure from the priesthood in 2012, denying the Claimant a "house for duty" position.

27.1.1 The particulars to this allegation are set out in paragraphs 3.2 and 3.4 of the Claimant's Amended ET1 dated 24 October 2013 and paragraph 1.2 of his Further Particulars dated 21 January

2014 as follows:

27.1.1.1 Paragraphs 3.2 and 3.4 of the Claimant's Amended ET1 dated 24 October 2013 are as follows:

*"3.2 The Parish of St. Mary's and All Saints Lambourne within Holy Trinity Abridge and St. Mary's the Virgin, Stapleford Abbotts has had no vicar since 2010 when the incumbent vicar retired. Since early 2011 a house for duty position has been advertised and they have not been able to fill that position to date. The Respondent made his interest clear but his application has been rejected.*

*3.4 Other posts applied for include:*

| ***Post*** | ***Date*** | ***Those involved*** | ***Outcome*** |
|---|---|---|---|
| *Diocesan Director of Ordinands* | *04/02/09* | *Diocese of Canterbury* | *Shortlisted –NA* |
| *St Andrews Ilford* | *14/05/10* | *Diocese of Chelmsford* | *No response* |
| *Parish Development Advisor* | *30/06/10* | *Diocese of Chelmsford* | *No appointment made* |
| *Assistant Director* | *23/05/10* | *Diocese of Rochester* | *Shortlisted interviewed* |
| *Training and Initial Ministerial Education Vicar, St Peter in the Forest* | *25/05/10* | *Diocese of Chelmsford* | *No response. Re-advertised three times.* |
| *St Mary's Leyton* | *02/07/2011* | *Diocese of Chelmsford* | *No response* |
| *House for Duty* | *19/01/11* | *Archdeacon of Rochester* | *No response to emails* |
| *House for Duty* | *19/01/11* | *Bishops of London* | *No response to email* |
| *House for Duty* | *19/01/11* | *Bishop of Guildford* | *No response to email* |
| *House for Duty* | *19/01/11* | *Bishop of St Albans* | *No response to email* |
| *House for Duty* | *19/01/11* | *Bishop of Chelmsford* | *Refused* |
| *House for Duty* | *19/01/11* | *Bishop of Dover* | *No response to email* |
| *House for Duty* | *19/01/11* | *Bishop of Oxford* | *No response to email* |
| *Chief Executive interviewed* | *12/01/12* | *Church Missionary Society* | *Short-listed &* |

*House for Duty 10/02/12 St Clement and St James Notting Hill Re-advertised twice*

*Adviser for Minority 16/02/12 Church of England No response*
*Ethnic Anglican Concerns*

*Chaplain Brentwood School 05/03/12 Diocese of Chelmsford Three times re-advertised*

| | | | |
|---|---|---|---|
| *Prison Chaplain* | *06/03/2012* | *HMP Thameside/ Diocese of Southwark* | *no response* |
| *St Mary's Watford* | *28/06/12* | *Diocese of St Albans* | *No response* |
| *Grosvenor Chapel All Souls Langham Place* | *28/06/12* | *Diocese of London* | *No response* |
| *Associate Rector* | *07/07/12* | *Diocese of London* | *Re-advertised* |
| *Chaplain* | *22/09/12* | *St Josephs Hospice/ Chelmsford* | *3 times re-advertised* |
| *Director of Post Graduate Programmes* | *28/09/12* | *Church of Wales* | *No response* |
| *Chaplain* | *10/12/12* | *Lee Abbey London* | *Interviewed NA"* |

27.1.1.1.1 Paragraph 1.2 of his [the Claimant's] Further Particulars dated 21 January 2014 is as follows:

*"1.2* ***"on divers occasions between 20089 up until his departure from priesthood in 2012, denying the Claimant a "house for duty" position****. The Claimant on several occasions enquired about House for Duty positions from September 2009, first of all to the Bishop of Barking who had leadership and pastoral responsibilities for the Claimant. These were always rejected. The Claimant asked for House for Duty positions wince he is aware of the financial challenges of the Diocese of Chelmsford and wanted to make it as easy as possible for a vacancy to be found. The Claimant was following the direction given on the Diocese of Chelmsford website regarding clergy seeking a vacant position, "The Area Bishops hope that clergy seeking a move will not be reluctant to make enquiries about the following vacant posts. Those seeking a move should consult their Area Bishops first." On the 13 January 2011 the Claimant wrote to all the Bishops and Archdeacons in the Diocese of Chelmsford pleading for their situation to be resolved, to no avail. As a result, on 21st January 2011 the Claimant formally wrote an email to the Bishop of Chelmsford requesting to be considered for a House for Duty position. The Claimant included his CV and a copy of a Church Times Press article which noted his ministry at St Peter's Fulham, the youthful*

*age of the Churchwardens 26 and 35 years old respectively and that the Claimant had doubled the size of the congregation within three years. St Peter's Fulham was a young congregation consisting mainly of young families and students. The Claimant had grown the Church from near closure in 2000 to be a flourishing, young congregation in a demographic group the Church of England are unable to reach. Yet, the Claimant's application was rejected by the Bishop of Chelmsford although several House for Duty positions remained unfilled. One in particular St Mary's and All Saints Lambourne within Holy Trinity Abridge and St Mary's the Virgin, Stapleford Abbotts, among others, remained unfilled from 2010 to 2013 it is unknown whether the position has been filled at the time of writing. The Parish was under five minutes drive from the Claimant's home. No reasons were given why the Claimant's application was so summarily rejected.*

*Clearly a pattern emerges, the Bishop of Barking (under the authority of the Bishop of Chelmsford) having rejected the incumbent of St Chad's Chadwell Heath's request that the Claimant's ministry be officially confirmed. Instead, the Bishop of Chelmsford revoked the Claimant's licence but ordained and licensed a white woman with whom the Claimant had been working with for three years in the same Parish of St Chad's Chadwell Heath. The facts point clearly to Direct Race Discrimination and Victimization*

*The Claimant made further House for Duty applications to the Dioceses of London, Rochester, St Albans, Oxford, Guildford and Canterbury. These applications were all rejected, although filling house for duty positions is a challenge for all these Dioceses. The Claimant believes that, given the treatment he received from the Bishop of Chelmsford that any reference requested from any Diocese or organizations such as School, Hospitals or Prisons would have been devastatingly negative without cause. The Claimant's reputation has been destroyed and he his ministry ended in the Church of England by the actions of the Bishop of Chelmsford."*

27.1.2 The Claimant relies on any individuals who were in fact appointed to the specific house for duty posts for which he allegedly applied as his alleged actual comparators.

27.2 Instructing, causing or inducing the potential partners in a project of the Claimant not to enter into a partnership agreement with the Claimant in January 2010.

27.2.1 The particulars to this allegation are set out in paragraph 3.3 of the Claimant's Amended ET1 dated 24 October 2013 and paragraph 1.3 of his Further Particulars dated 21 January 2014 as follows:

27.2.1.1 Paragraph 3.3 of the claimant's Amended ET1 dated 24 October 2014 is as follows:

*"3.3 St. John's College Durham expressed more enthusiasm to work with the Claimant to make theological education accessible to school leaders and teachers in 2011. However shortly after meetings with the college, Professor Wilkinson, Principal of St John's College Durham wrote to the Claimant in an email that ""*communications sent out to the diocese brought back a lot of negative comment filtered through various directors of education and bishops connected with the college, and also the College Council as to whether it is wise for us to proceed down this avenue of partnership"." *The email was sent on the 14th December 2011".*

27.2.1.2 Paragraph 1.3 of his Further Particulars dated 21 January 2014 are as follows:

*"1.3 "**instructing, causing or inducing the potential partners in a project of the Claimant not to enter a partnership agreement with the Claimant in January 2010"** A response to this point requires the setting of a context. Early on in June 2006 the Claimant had a meeting with the Bishop of Chelmsford at which he informed the Claimant that the Bishop of Southwark had called him to urge him not to appoint or license him. The Claimant remembers the meeting very well since he immediately realized the significance of the intervention. The Claimant remembers the event as follows:*

***Bishop:*** *"Congratulations on your appointment, by all accounts I hear it is going very well". 'I am concerned though that you have been involved in too many disputes recently. I have received a call from the Bishop of Southwark urging me not to appoint or license you since you have made a complaint of Race Discrimination against his Diocese, although he did say that it was for a very good reason'.*
***Jeremy:*** *'He should not have done it'. 'Bishop I made the complaint because they refused to apologize, I had no other option', 'what would you have done in my position'.*
***Bishop:*** *'There are many ethnic minorities in East London and any actions of this kind could cause a great deal of difficulties'.*
***Jeremy:*** *'Bishop I can assure you that I will not let you down'.*

*The Bishops and Archdeacons of Chelmsford complete negative response to the Claimant's request for a House for Duty position is evidence that the Bishop of Chelmsford acceded to carry out the Bishop of Southwark's recommendation of 2006 not to 'appoint or license' the Claimant subsequent to leaving St Mellitus College.*

*It should be noted that the Bishop of Chelmsford is also Chair of the Board of Trustees of St Mellitus College. It was the Bishop of Chelmsford's decision to force the Claimant to undergo a medical investigation by an occupational therapist, though the Claimant had no health concerns, nor was there any issues concerned about his work or neither did he have a record of absenteeism. The result of this investigation would be that the Claimant's records would be freely*

*available across the Church of England and also the mere fact that this investigation took place would undoubtedly have left a needless question over the Claimant's health. This imposition left the Claimant with no option but to resign. A clear case of constructive dismissal.*

*Equally, the six South Eastern Dioceses rejection of the house for duly applications by the Claimant (emails available), an effective Priest able to grow congregations among young people and young families points to the fact that this policy to get rid of the Claimant by removing him from the Church of England, had been extended to other Dioceses, all at the instigation and recommendation of the Bishop of Chelmsford and his failure to provide fair references.*

*It was therefore not surprising that Bishops who have had no direct knowledge of the Claimant felt able to make a judgment on the basis of hearsay and warn St John's College Durham not to work with the Claimant. The commonly known practice of collegiality among Bishops would have conveyed his groundless negative perceptions of the Claimant to the rest of the Diocesan Bishops.*

27.2.2 The Claimant relies on a hypothetical comparator.

27.3 Serving on the Claimant a notice of removal of the licence to conduct services in the Diocese of Chelmsford on 16 April 2012.

27.3.1 The Claimant relies on a hypothetical comparator.

27.4 Failing to respond to a reference request from the Bishop of Birmingham.

27.5 Instructing, causing or inducing prospective employers not to offer the Claimant posts in other Dioceses.

27.5.1 The particulars to this allegation are set out in paragraph 3.4 of the Claimant's Amended ET1 dated 24 October 2013 **[set out in full at paragraph 28.1.1.1 above]** and paragraph 12.8 of his Further Particulars dated 21 January 2014, the latter of which is as follows:

*"1.8* ***"instruction, causing or inducting prospective employers not to offer the Claimant posts in other dioceses".***
*As previously pointed out, a pattern emerges of the Claimant being rejected for House for Duty and stipendiary positions within the Diocese of Chelmsford, the pattern is replicated in other Dioceses where the Claimant's applications are rejected and or ignored. Despite the Claimants excellent record in Church Growth among young families and students. It can only be that the Bishop of Chelmsford and his representatives have falsely offered negative references when approached. Confirmed when the Bishop of Barking refused to endorse the Claimant in a post which he had already been in for the previous three years and would not say why.*

*In contrast, when the Church of England Dioceses were not directly involved the Claimant's prospects improved. For instance, he was shortlisted and interviewed for the post of CEO of Church Mission Society (Budget in excess of £10m, 281 Partners in mission in 31 countries and in excess of 30 staff at its Cowley Head Office, Oxfordshire), one of the largest and oldest mission societies in England. Given feedback, he was told that they were disturbed by the fact that the Claimant had left St Mellitus College, what they regarded as prematurely. It was noted that the Claimant offered strong leadership qualities and deep understanding of contemporary mission both in the UK and abroad.*

*The Claimant is devastated that his reputation and career has been destroyed in this callous manner led shamelessly by the Bishop of Chelmsford and other Diocesan Bishops. The impact on this family life has been destructive, given that the family are now living in a hostel for the homeless. The Bishop of Chelmsford directly had a hand in this, in that his solicitors contacted the Claimant's former landlord to tell him that they had overstayed their welcome at St John's Vicarage. It served to make the Claimant's landlord suspicious about them and made their lives a misery in that property. The Diocesan CEO, Mr John Ball, in his witness statement indicated that they were trying to find the Claimant's address. This is denied, the Claimant had sent a copy of his tenancy agreement to the Diocesan Head of Property, Mr. Richard Smith before they moved and he also delivered mail to the Claimant early on in his tenancy.*
*The pattern of personal attacks continued, the Diocesan Solicitors, contacted the trustees of the Anglican Institute for School Leadership, individually, in an attempt to discredit the Claimant. Again, it served to soil the Claimant's good reputation and cast doubt on his ability to run a national programme. These events serve to illustrate the malicious intent of the Diocese of Chelmsford under the authority of the Bishop of Chelmsford toward the Claimant and his family.*

27.5.2 The Claimant relies on Marie Segal as his alleged actual comparator.

27.6 If so, was the Claimant's treatment because of his race?

Victimisation

28. Did any of the above alleged acts at paragraph 26 above amount to detriments within the meaning of section 27(1) of the EqA 2010?

29. If so, was the Claimant subjected to any of the detriments because he had done the protected act set out at paragraph 23 above?

***The Hearing***

30. The Tribunal heard evidence from the following witnesses: the Claimant himself, and Councillor Dr Paul Bremner in support of the Claimant; for the Respondent; Bishop

Stephen Cottrell, Bishop of Chelmsford; Christopher Morgan, formerly Bishop of Colchester; Archdeacon David Lowman (Archdeacon of Chelmsford); Archdeacon Elwin Cockett (Archdeacon of West Ham); former Bishop David Hawkins, formerly Bishop of Barking; Reverend Paul Bowtell; former Bishop Laurie Green, formerly Bishop of Bradwell; Robert Fox; and Reverend Martin Court .

31. There was a large Bundle of Documents, with additional documents provided by both parties. Both parties made written and oral submissions.

32. The Tribunal heard evidence on merits only, setting a date for a provisional remedy hearing. The Tribunal reserved its decision.

***Findings of Fact***

33. The Claimant is a black British man of African origin. He was ordained as a priest in the Church of England in 1996.

34. The Claimant had been employed as a Pastoral Chaplain at St Paul's School, London and was Acting Head of Religious Studies and Philosophy there from 2000 to 2002.

35. In 2001 the Claimant brought a complaint of race and sex discrimination against St Paul's School when the school appointed a white female to the post of Head of Religious Studies without advertisement, at a time when the Claimant was "acting up" into that post. That claim against St Paul's School was settled.

36. The Claimant was also Assistant Curate of the Parish of St Peter's in Fulham from 2000 to 2002 and, then, Priest in Charge of the same Parish from 2002 onwards. It appears that the Claimant was a successful Priest at St Peter's and that the congregation grew significantly during his time there. St Peter's in Fulham is in the Diocese of Kensington. When the Claimant was Priest in Charge of St Peter's, he was paid half a stipend of about £12,500 per year and was provided with a house by the Bishop of Kensington (page 323).

37. In 2003 the Claimant's daughter was not offered a place at a Church of England School, Lady Margaret Secondary School, and the Claimant sought help from his local Bishop in challenging the School's decision.

38. In 2004 the Claimant applied for a post as Vicar of the Parishes of St Phillip and All Saints within St Luke in Kew, in the Diocese of Southwark. During an interview for the post, the Claimant was asked how he would feel if he was appointed as the first black Vicar of the Parishes. The Claimant sought an explanation for this question from the Diocese of Southwark, but was not provided with one (page 351). The Claimant brought a race discrimination complaint against the Bishop of Southwark arising out of this selection process, under Case no ET2303434/04. The Bishop of Southwark settled the claim for about £12,000.

39. In October 2005 the Claimant wrote to the Bishop of Kensington saying that the Claimant had applied for a Canon's position in Guildford Cathedral and asking the Bishop to write him a reference. The Claimant said that there had been animosity between the two men and said:

*"If I am unable to resolve this matter quietly between you and I, I will be forced to use other avenues to achieve justice."*

40. The Bishop of Kensington replied saying that he was surprised and that he had not been aware of any animosity between the two. He said that he had already written a positive reference, but hoped that the Claimant's letter had not been intended to influence the type of reference that the Bishop would write for him (page 380).

41. The Claimant was appointed as a full time admissions and personal tutor at North Thames Ministerial Training Course ("NTMTC"), later known as St Mellitus College, from 1 January 2006 (page 382). His terms of employment with NTMTC included salary and accommodation provided by one of NTMTC's partner Dioceses, through arrangements negotiated with the particular Diocese. The Claimant's contract said, at paragraph 29:

*"This accommodation is provided on the terms of the providing Diocese for the housing of clergy for the time being in force."* (page 385)

42. One of the individuals on the NTMTC appointments committee which appointed the Claimant was the Archdeacon of Southend, David Lowman. Archdeacon Lowman was a Trustee of NTMTC. David Sceats was the Principal of NTMTC at the time. At the time of the interviews for the Claimant's post, Mr Sceats told Archdeacon Lowman that the Claimant had brought a claim of race discrimination against the Bishop of Southwark.

43. The Claimant had obtained a loan to buy a car from the Church of England Church Commissioners Car Loan Scheme (page 390). When the Claimant stopped being Vicar of St Peter's in Fulham, under the terms of the loan, the loan fell to be repaid. The Church Commissioners wrote to the Claimant on a number of occasions from September 2005 through to 2006, asking for the loan to be repaid, but the Claimant did not respond to the letters (page 390).

44. David Sceats wrote to the Bishop of Chelmsford, John Gladwin, on 27 February 2006, saying:

*"Further to what we said about the appointment of Jeremy Ganga as admissions tutor and Chelmsford representative at NTMTC, I am writing to ask your office to set the wheels in motion for Jeremy to be licensed as a preacher under seal in the Diocese of Chelmsford ..... I hope this will give you sufficient time to get what information you require from the Diocese of Southwark."* (page 398)

45. On 3 March 2006 Bishop John Gladwin wrote to the then Bishop of Southwark in the following terms:

*"I have been asked to licence the Reverend Jeremy Ganga for his work with NTMTC. I am conscious that there is a bit of history here! What would be valuable is, in responding to this request about his being Safe to Receive, to have any comment that might be appropriate for his file, indeed, his blue file probably needs to come here. That will help in managing his ministry. I am*

*more than happy to have a conversation as well as what you wish to say on paper."* (page 392)

46. On the same day, 3 March, Bishop John Gladwin wrote to the Bishop of Colchester, Christopher Morgan, asking that, when Bishop Morgan visited NTMTC, he licence the Claimant. Bishop Gladwin said,

*"I will be writing to the Bishop of Southwark under the Safe to Receive process because I would value having something about Jeremy's unhappy past in Southwark Diocese. I do not see that this should prevent the licensing proceeding."* (page 393)

47. On 8 March the Bishop of Kensington wrote to Bishop John Gladwin, forwarding letters from the Church Commissioners about the Claimant's unpaid loan and saying that, given that the Claimant was to be licensed in the Diocese of Chelmsford, he though that Bishop Gladwin should see them. The Bishop of Kensington said that he was also aware of another outstanding debt to the Diocese of London in respect of which repayments had not been made. He further said that the Claimant had been continuing to reside at St Peter's Vicarage after starting to work at MTMTC; and that the Claimant was not paying any rent, despite the fact that the Claimant was receiving £5,000 housing allowance from NTMTC until the Claimant was given a house in the Diocese of Chelmsford (page 396 )

48. Two days later, on 10 March, Christopher Morgan, Bishop of Colchester, wrote back to Bishop John Gladwin saying that he was unaware of any *"unhappy past"* and asking for a *"steer"* if Bishop John Gladwin wanted Bishop Morgan to say anything to the Claimant about the past (page 396A).

49. On 13 March Bishop Gladwin wrote to the Claimant, copied to Bishop Morgan, David Sceats and the Bishop of Kensington, saying that he would delay the Claimant's licensing until the Claimant resolved his debts with the Church Commissioners, the Diocese of London and rent in respect of the Vicarage of St Peter's which the Claimant was occupying (page 397).

50. The Tribunal finds that Bishop Morgan, Bishop of Colchester, was not told, in 2006, about the Claimant's race discrimination claim against Southwark, when Bishop Morgan was asked to licence the Claimant. He was only aware of financial irregularities at that time. The race discrimination claim was not mentioned in the 2006 documents seen by Bishop Morgan. The reason for the delay in licensing the Claimant was expressed in the documents at that time to be the Claimant's debts. The Tribunal accepts Bishop Morgan's evidence that he did not know about the Claimant's race discrimination claim until he received the documents in respect of the Tribunal claim. We found Bishop Morgan to be a frank witness. He said clearly, at another point in his evidence, that if a candidate was not confirmed to be "Safe to Receive", they would not generally be interviewed for a post.

51. The Archdeacon of Southend, David Lowman, attempted to help the Claimant resolve his financial difficulties and offered the Claimant a house in Basildon which the Claimant initially accepted in around mid March 2006 (page 414). Less than a week later, however, the Claimant wrote to the Head of Property at the Diocese of London saying that its failure to offer the Claimant free accommodation was racism (page 420).

52. The Claimant had still not moved from St Peters Vicarage in May 2006. He said that his son was on the autistic spectrum and the Claimant was concerned about moving him before the end of his year 6 at school.

53. Archdeacon David Lowman wrote to Bishop John Gladwin, forwarding the correspondence between the Claimant and the Head of Property at the Diocese of London and saying that Bishop John Gladwin may wish to delay licensing the Claimant until the issue had been sorted out (page 427).

54. Later, around early June 2006 the Claimant met Bishop John Gladwin at his residence. The Bishop told the Claimant that the Bishop of Southwark had urged him not to appoint or license the Claimant because the Claimant had made a complaint of race discrimination against Southwark Diocese. Bishop Gladwin decided to license the Claimant in any event and wrote to him on 12 June 2006. He said that he had received the Claimant's blue file and that it had rather a large number of disputes in his ministry. Bishop John Gladwin said that he hoped that they could move forward into an era where all this belonged to the past. The Bishop specifically commented on the Claimant's financial debts and said that he needed to be assured that the Claimant had dealt with these. The Bishop continued by saying that he would ask the Archdeacon of Southend to work alongside the Claimant for the first 12 months to help make his transition to a new chapter in his ministry (page 431).

55. The Claimant moved out of St Peter's Vicarage in July 2006 and was provided with housing by the Diocese of Chelmsford at St John's Vicarage, Romford.

56. On 9 November 2006 the Bishop of Chelmsford granted the Claimant a licence (page 432). It was agreed between the parties that the licence given to the Claimant was a general licence. A general licence is permission from the Bishop of a Diocese that an ordained minister may exercise ministry in any Parish of the Diocese, subject to the consent of the particular Vicar or Priest of that Parish.

57. The Church of England itself is not a legal entity but is divided into 41 Dioceses, each headed by a Diocesan Bishop. In Chelmsford, the Diocesan Bishop is the Bishop of Chelmsford. He is assisted by subordinate Area Bishops, to whom he may delegate some of his Episcopal responsibilities. The Area Bishops are the Bishops of Colchester, Bradwell and Barking. Each Diocese in the Church of England has at least one Archdeacon. Archdeacons are members of the Diocesan Bishop's Senior Team, which usually meets about once a month to take a strategic overview of the life of the Diocese, known as the Bishops Staff Meetings. Pending appointments of clergy in the Diocese and issues with particular clergy members are discussed, amongst other things, at these meetings.

58. A general licence gives confirmation from the Diocesan Bishop that the licensee is a suitable person to exercise ministry, in that he or she is confirmed to be "in good standing". A specific licence also confirms that the Priest is in good standing, but is granted by a Diocesan Bishop in connection with a post or office in a particular Parish – a Priest will be granted a specific (rather than general) licence as Priest in charge of a Parish. Retired Priests may be given a "PTO", or Permission to Officiate, by the Bishop. This is written permission by the Bishop permitting ministry in the Diocese, provided that the Priest is in good standing. It can be revoked at any time.

59. In order to exercise any form of ministry in a Diocese, a Priest needs to have been ordained in the Church of England and to hold some form of licence; for example, a general or specific licence or Permission to Officiate, from the Bishop of that Diocese. Ordained Priests within a Diocese who are employed in schools or Colleges as Chaplains are generally granted general licences.

60. The general licence granted to the Claimant on 9 November 2006 did not limit the licence to any particular employment post or period; it was open ended and it was not expressed to be coterminous with the employment at NTMTC.

61. Under the Ecclesiastical Offices Measure 2009, which post dated the Claimant's general licence, by clause 3(5) Duration of Appointments:

> *"Where a licence has been granted by a Diocesan Bishop to a person to exercise an office which is held by the office holder in connection with employment under a contract of employment the Bishop may revoke the licence if that contract is terminated and the term of office of the office holder shall, thereupon, be terminated."* (Page 193)

62. Before licensing someone, a Bishop makes enquiries of the Bishop of the last Diocese in which the Priest had been licensed, or held office, as to the Priest's good standing. The enquiry is whether someone could be "received with confidence" and the response has become known as a "Safe to Receive" letter. These letters have become standardised and are now entitled Clergy Current Status Letters, or CCSLs. There is a standard form which Bishops complete. The CCSL requires a Bishop to confirm that they have consulted the Priest's confidential personal file (the blue file) and confirm whether any complaints have been received about the Priest, whether the Priest is subject to any Police enquiry or other agency enquiry, or whether the Priest is or has been the subject of any current or concluded criminal or civil Court proceedings, or is the subject of any pecuniary embarrassment of a serious character. It asks for details of any such matter (pages 919 to 920). The form says "*This letter is not a competence or character reference .....*".

63. A Safe to Receive letter, or CCSL, would also be sought by Parishes, or appointing bodies, when calling candidates to interview for a Parish position.

64. In March 2008 the Claimant wrote an email commenting on a consultation day for ethnic minority Ordinands and talking about the Chelmsford ethnic minority Ordinands who had attended it. The Claimant concluded the email by saying:

> *"The ease and confidence with which all our Ordinands participated ..... testified to the inclusive values which so strongly underpin the Diocese of Chelmsford."* (page 470)

65. In 2008 the Claimant failed to repay a £100 deposit paid by a holidaymaker to him in respect of a holiday booking on his Isle of Wight cottage. A member of the holidaymaker's family, a retired Priest, complained to the Bishop of London, who passed the concerns on to the Bishop of Chelmsford (pages 471 to 475).

66. In April 2009, Kevin Quinlan, Deputy Property Manager in the Diocese of

Chelmsford, wrote to the Claimant stating that the Diocese was closing St John's Church, Romford and was proposing to sell the buildings. The Claimant was already aware of these plans; he was living in the St John's Vicarage at the time (pages 50 to 510). The Claimant wrote back saying that he wanted to be re-housed as soon as possible (p509).

67. Archdeacon Lowman, who was copied in to this email chain, commented:

> *"This could be a complex one for us. If you require any background please let me know."*

He sent that email to the Archdeacon of West Ham and Kevin Quinlan (page 508).

68. Later, in May 2009, the Claimant proposed that the Diocese buy a replacement property for the Claimant and his family in Romford at a price of around £750,000 (page 517). On 28 May 2009 Mr Quinlan said that there was an embargo on the purchase of any houses. He offered the Claimant 2 alternative properties; one in Hutton and the other in Dagenham. Hutton is about 9 miles from Romford and Dagenham is about 3 miles from Romford. The Claimant refused both offers, saying that he needed to stay in Romford because his children were at school there and were studying A levels and GCSEs. He said that he was not prepared to accept anything else but that the Diocese purchase a replacement property in Romford. He said:

> *"I will also consider enforcing my terms of employment by other means ....."* (page 520)

69. On 28 May 2009 Archdeacon Lowman emailed Kevin Quinlan in response to the Claimant's communication saying "*This is all as I had anticipated ....*" (page 536)

70. On 15 June 2009 the Claimant emailed Archdeacon Lowman and Archdeacon Elwin Cockett complaining about the Vicarage being sold and asking that, if the family was required to move, this should happen at the end of the academic year. He asked again that the £750,000 property be bought for the family and said:

> *"I am sorry to say that I have also taken legal advice from my union and though I hope and pray that this matter can be resolved amicably I am willing to go to this extent to protect my children."* (page 545 to 546)

71. The Archdeacon of West Ham, Elwin Cockett, replied to the Claimant, saying that he sympathised, but there were not funds to buy a house. He said that he was willing to look at other options.

72. The Tribunal comments, at this point, that the Claimant was not entitled to be provided with accommodation at any particular address in the Diocese of Chelmsford under the terms of his contract of employment. The Chelmsford Diocese had offered 2 alternative properties within a short travelling distance by public transport, whether by train or bus. The Claimant was being wholly unreasonable in refusing those alternative properties and demanding that an expensive property be bought to house him.

73. Around this time, in June 2009, the Claimant was noted by the NTMTC to be

falling asleep during work time and not attending scheduled meetings. The College decided to refer the Claimant to Occupational Health (page 547).

74. At the end of June, the Chelmsford Diocese property manager proposed to the Claimant that the Diocese would purchase an alternative property to house the Claimant if a sale could be achieved could be achieved of the St Johns Vicarage. He asked the Claimant to allow potential purchasers to view St Johns Vicarage at reasonable times (page 552).

75. Also at this time, in the summer of 2009, the Claimant was developing a proposal for an academic course, an MA in Anglican School Leadership. He was notifying Bishops and others about the proposal and inviting interest and support. An inaugural meeting was held in the Chapter House at Chelmsford on 18 June 2009 (page 531). Chris Smith, Chief of Staff at Lambeth Palace (for the Archbishop of Canterbury), wrote to the Claimant about the Claimant's paper on the MA course, saying:

> *"This all sounds immensely worthwhile ..... Thank you so much for keeping the Archbishop informed."*

He pointed the Claimant towards other sources of funding. (page 554)

76. Schools Advisers from other Dioceses, and Bishops, also expressed interest and support in the MA idea in the summer of 2009. For example, the Portsmouth Diocesan Schools' Adviser, the Worcester Diocesan Director of Education and the Director of Education in the Diocese of Sheffield, (pages 555 and 604 to 60-5); Ripon College, Oxford expressed interest in being a partner in forwarding the idea, (page 607). The Claimant devised the programme content, methods of learning, module content, assessment and outcomes for the MA programme (page 562 to 566).

77. On 10 August 2008 the Claimant wrote to Laurie Green, Bishop of Bradwell, saying that the Claimant was intending to work as National Programme Director for Anglican School Leadership, working on the proposed MA course, on a half time basis from January 2010. He asked Bishop Laurie Green whether the Bishop might have a suitable half time post available as a Parish Priest from about February 2010 (page 557 to 558).

78. Bishop John Gladwin had retired as Bishop of Chelmsford in August 2009. The Bishop of Bradwell, Laurie Green, deputised for the Diocesan Bishop while a new Bishop of Chelmsford was appointed. Bishop Laurie Green forwarded the Claimant's enquiry to all other Bishops and Archdeacons in the Diocese, saying that there were no posts available in Bradwell (page 557).

79. The Claimant resigned from NTMTC on 1 September 2009, giving a term's notice, with his last day of service being the first day of Spring Term 2010.

80. On 14 September 2009 the Claimant wrote to the Bishop of Barking, Bishop David Hawkins, saying that he had resigned from St Mellitus College and that he had plans for the MA course. He asked if there would be a half time Parish post available in the Barking area and proposed that he succeed the Vicar at St Peter in the Forest Parish (page 567).

81. The Claimant's resignation was discussed at a Bishops' Staff Meeting on 21 September 2009, when Bishops Laurie Green and David Hawkins were present, along with Archdeacons David Lowman, Elwin Cockett and the Archdeacon of Harlow. The meeting noted in respect of the Claimant's resignation:

> *"There are a range of issues to be aware of. He was housed due to his role at St Mellitus."*

82. A variety of Parish Priest posts exist in any Diocese. Some posts are stipendiary posts. A stipendiary Priest receives a stipend, or salary. The Priest will usually also be entitled to accommodation, but may not be so entitled. Some posts are "House for Duty" posts. House for Duty Priests are provided with a house, but no stipend, in return for exercising ministry in the Parish. Some posts are non stipendiary; the Priest receives neither a stipend, nor a house, and is self-supporting.

83. In the Chelmsford Diocese, there are few "House for Duty" posts. In Bradwell in 2009 there were no vacancies for House for Duty posts – the few House for Duty posts which existed were in very rural areas and were unlikely to become vacant. Lists of vacancies for posts were held by assistants to Bishops. Paul Bowtell, a Chaplain and assistant to the Bishop of Barking, held the vacancy lists from time to time (see page 576 for example).

84. On 24 September 2009 Lynne Hillier, Diocese of Chelmsford Advisor for Schools, sent a detailed email to the Claimant, setting out the thoughts of Robert Fox (Diocesan Director of Education) and of herself, on his proposed MA course. She said that the course contents were appropriate and learning options were good, but that both Mr Fox and she considered that there would be a larger take up for a Post Graduate Certificate course than an MA course. Robert Fox was uneasy about the emphasis on Anglicanism, which might deter people of other faiths. Ms Hillier explained why she believed the take up for the MA would be low. She concluded the email by apologising for being negative and suggesting that the Claimant do a survey of Head Teachers and senior school leaders, to test the level of interest, before any more work was done.

85. At the same time, however, other Diocesan Directors of Education continued to send the Claimant numerous enthusiastic and encouraging comments about the MA and Post Graduate course. They included, for example, representatives of the Dioceses of Norwich, Canterbury, Bristol, Rochester, Liverpool, St Albans, Lincoln, Birmingham and Manchester (pages 609 to 617). This enthusiasm continued until January 2010 with further messages of support from the Dioceses of Wakefield, Worcester, Oxford, St Edmundsbury and Ipswich (pages 619 to 623).

86. Following the Claimant's resignation from NTMTC, he sent an email to his students, informing them that he had resigned. In the email, he mentioned that Bishops would be meeting to discuss a 0.5 (half time) Priest post for him in the Chelmsford Diocese (page 580). There followed, in October 2009, an email discussion among the Archdeacons of the Diocese, about the Claimant's belief that he would be offered a half time post in the Chelmsford Diocese. Archdeacon David Lowman said on 22 October 2009:

> *"..... Because of the sensitivity with which we need to work with Jeremy I would be grateful if you could let me know whether he has approached you about a half time job and whether you have identified a post for him. I have a feeling he is working under a misapprehension." (page 579)*

87. Other Archdeacons and members of Bishops' staff replied, saying that the Claimant had not been offered a post and that the Claimant had no reason to believe that a post had been identified for him (pages 578A and 579).

88. On 18 November 2009 Richard Smith, Senior Property Manager for the Diocese of Chelmsford, wrote to the Claimant, saying that he understood that the Claimant would be vacating the St John's Vicarage, having resigned from St Mellitus College (page 587). A Bishops Staff Meeting further noted on 23 November 2009 that the Claimant had not been offered a job. It noted that the Claimant's contract ended at the beginning of January 2010 and that, as the Claimant was housed as an employee of NTMTC, he was expected to move out of the Vicarage when his contract ended (page 589).

89. The Chelmsford Diocese website gave the following advice to applicants for posts as Priests;

> *"The Area Bishops hope that clergy seeking a move will not be reluctant to make enquiries about the following vacant posts. Those seeking a move should consult their Area Bishops first."*

90. The Claimant wrote to the Bishop of Barking, and to Paul Bowtell, his Chaplain, in particular in November and December 2011, again asking about a half time post in the Barking area. Paul Bowtell replied, saying that there was still nothing to suggest; two half time possibilities had not materialised; a post at St Peter's in the Forest was due to be advertised on 8 and 15 January 2010, but was full time (page 592).

91. On 11 December 2009 the Claimant replied, saying that he would consider a House for Duty post (page 592).

92. On 9 December 2009 the Bishops Staff Meeting discussed the Claimant again, noting that the Claimant had not applied for any job in the Diocese and that he had chosen to resign from his job, so that the Diocese had no further obligation to house him thereafter (page 591).

93. In a Barking Episcopal area staff meeting on 14 December 2009, under the heading of "Fire-fighting" on the agenda, it was recorded that the Claimant was looking for a half time post or a House for Duty post. The Claimant was not included in a list of clergy wanting or needing a move also in those minutes. Further, it appears from the minutes of that meeting that some candidates were being encouraged to apply for particular vacancies (page 595).

94. Archdeacon Elwin Cockett told the Tribunal that the Claimant was not on the list of clergy wanting a move because he did not hold an office in the Diocese – he was living in the Diocese as a member of staff of St Mellitus College. "Fire-fighting" referred to families who were potentially in need of support. Archdeacon Cockett gave examples relating to other names on the list. The Tribunal accepted Archdeacon

Cockett's evidence; it was logical and was supported by explanations in relation to other names on the list. Archdeacon Cockett gave clear and straightforward evidence.

95. Archdeacon David Lowman wrote to Bishop Laurie Green on 19 December 2009, saying that the Claimant had resigned from NTMTC and had not applied for any post, despite David Lowman telling him to look at the Diocese website for vacancies. David Lowman said that Richard Smith, Property Manager, had written to the Claimant, but felt that there was a need for an official note from the Bishop saying that no post had been offered to the Claimant and that he should look at the website and apply for vacant posts like other ministers. Archdeacon Lowman said:

> *"Because Jeremy has taken Dioceses to Court before we need to get the wording of our letters and our intentions very clear. I suggest we pass a letter by both Steve Webb and Buzz Hood." (page 598)*

Buzz Hood was the solicitor who advised the Diocese.

96. The Bishop of Bradwell, Laurie Green, did write a letter to the Claimant on 22 December 2009 (page 600). In a friendly and supportive tone, he said that the Bishops had not promised the Claimant a post in the Diocese and that, while the diocese wanted to see the Claimant settled into a job which suited his many talents, each post had to be applied for and interviewed for in the usual way. The Bishop said:

> *"..... Of course we can never make any promises to you regarding any particular post."*

97. Bishop Laurie Green suggested that the Claimant look carefully at the Diocesan website and make applications as soon as possible.

98. In a first draft of the letter, the Bishop had said:

> *"We would love to have [the Claimant] in the Diocese."*

99. David Lowman advised him to omit that phrase, saying:

> *"That would be a hostage to fortune". (page 597)*

100. Steve Webb also commented on the letter, saying that the Claimant had told Richard Smith, Property Manager, that the Bishops would find the Claimant a 0.5 post with accommodation. Stephen Webb said that it was important that the Bishop made clear that it was the Claimant's responsibility to find himself a new post (page 597).

101. The Claimant then applied for the full time post of St Peter in the Forest, which had been combined with the post as Mission and Parish Development Adviser to the Archdeacon of West Ham, on 4 February 2010 (page 649).

102. The Claimant did not move out of St John's Vicarage in January 2010. On 12 February 2010, Steve Webb, Chief Executive of the Diocesan Board of Finance, emailed the head of NTMTC, asking for a copy of the Claimant's contract, as the Claimant was ignoring all Diocesan efforts to contact him and legal advice was being sought about the Claimant's removal from the property (pages 693 to 694).

103. On 23 February 2010, the solicitor acting for the Diocese served on the Claimant two months' notice to quit the Vicarage at St Johns, Romford.

104. On 22 March 2010 the Claimant asked Richard Smith whether he and his family could stay in St John's Vicarage until the end of June 2010, while the Vicarage remained unsold (page 696).

105. Bishop Laurie Green had emailed the Claimant on 19 March, saying that Bishops were under orders to sell houses immediately they fell vacant and Curates had been made to leave their houses as soon as their licence expired (page 695).

106. The Tribunal accepts the evidence of the Respondent's witnesses that it was extremely unusual for a Priest to stay in a house without paying any rent for the accommodation after their post had come to an end. Priests invariably moved out, even if they had nowhere to go.

107. The Claimant asked Richard Smith if he could rent a vacant property and was offered a vacant property in St Cedd's Vicarage in Dagenham. The Claimant rejected this (page 704). He was then offered an empty Vicarage for rent in Elm Park, Hornchurch on 1 April 2010 (page 706). The Claimant initially accepted the offer of the Elm Park property, but then asked that it be redecorated throughout, fitted with new carpets and offered on a long term lease basis (page 714). Richard Smith replied, saying that it would not be possible and suggested that the Claimant look for a property to rent in the private sector (page 713).

108. The Claimant had not been paying any rent for the St John's Vicarage property during this time.

109. There was a further email discussion between Bishop Laurie Green, Reverend Paul Bowtell and the Archdeacons about the Claimant's request to live in St John's Vicarage until August 2010. Archdeacon Elwin Cockett commented that the Claimant had been offered a property but wanted £15,000 worth of work and said that the Claimant was being unreasonable (pages 716, 717 and 736).

110. On 5 May 2010 Bishop Laurie Green commented finally:

> *"..... I think we have all done more than our fair share with Jeremy so we can now leave it in his own hands ....."* (page 716)

111. The Tribunal comments that, while the Diocese of Chelmsford had no obligation to assist the Claimant, Richard Smith and others had made a number of housing offers to the Claimant, in order to assist him. This email chain indicates that the considerable patience of Bishops and Archdeacons had been tested and eventually exhausted by the Claimant, who was still not paying rent despite having no right to live at St John's Vicarage, and who had rejected reasonable offers of alternative accommodation.

112. The Claimant applied for a post of Priest in charge of St Andrew's, Ilford, on 14 May 2010. From the documents in the bundle, it is apparent that the Parish representatives wanted to interview the Claimant and another applicant called Marie Segal, out of the 5 applicants for the post. The Reverend Paul Bowtell, writing on

behalf of Bishop Hawkins, asked the Parish representatives why they did not intend to interview the other 3 candidates. Eventually, all 5 were interviewed in May 2010 (pages 738 to 739).

113. Bishop Hawkins told the Tribunal that the unanimous view of the interviewing panel for the post, which included the Parish representatives, after having interviewed all the candidates, was that Marie Segal should be appointed.

114. Very close to this time there was an email exchange between the Personal Assistants to the Bishops of Barking, Colchester and Chelmsford (which post was still vacant at this point): Jo Bluck, Heather Barton and Jenny Robinson respectively (pages 777 to 778).

115. Heather Barton initiated the email chain, asking where the Claimant was licensed as a Priest because she was requesting a "Safe to Receive" letter (page 778). Jenny Robinson replied on 21 June 2010, saying that the Bishop of Chelmsford held the Claimant's file. She continued:

> *"However I suspect that he might be the last person that anyone wanted to appoint to a post in this Diocese! Everyone was extremely relieved when his role came to an end and we had no need to house him. There were numerous problems in connection with him while he was housed here. I expect when Bishop Christopher returns he will not wish to take the application further ....."*

116. Jo Bluck replied on the same day saying:

> *"..... my opinion .....* I didn't think that [Bishop] David wanted him to be short listed for the post he applied for recently ..... but the reps wanted to see everyone who applied ..... he was unsuccessful." (page 778)

117. Later that day Jenny Robinson replied again saying:

> *"Yes – I think the view at Bishops staff was that he was unemployable in this Diocese but, as you say, if reps want to see people you can't say No." (page 777)*

118. Bishops staff meetings were attended by the Area Bishops and Archdeacons and, at this time, Jenny Robinson was acting as note taker and secretary to the meetings. Jenny Robinson retired in about early 2012. On her retirement, the new Bishop of Chelmsford, Stephen Cottrell, wrote of her:

"*She knows where the bodies are buried, which skeletons are in which cupboard. She can spot a pig in a poke from 50 paces ..... I could not have managed in my first couple of years as your Bishop without her wisdom, loyalty, encouragement and support .....*". (page 1319)

119. Bishop Cottrell told the Tribunal that, while he wrote this valediction, he had viewed Jenny Robinson as a problem from when he arrived in post; that Jenny Robinson had too much power, was a gossip and was controlling. Bishop Christopher Morgan told the Tribunal that he made a point of not talking to her.

120. Bishop Hawkins told the Tribunal that the email chain between the Pas absolutely did not represent his views and that he was doing his utmost to help the Claimant get a post and a house to go with it. Bishop Christopher Morgan also said that there were growing concerns about the Claimant's continued occupation of the Vicarage at this time. He said that, in two to three Bishops Staff Meetings, there had been mention of Jeremy Ganga, so that the Bishop was aware of sensitivities about him and a possible candidature. Archdeacon Elwin Cockett told the Tribunal that Jenny Robinson was factually incorrect and did not represent the view of the Bishops Staff Meeting. Archdeacon Cockett said that, he, himself, wanted the housing situation to be sorted out and the easiest way that that would be happen would be if the Claimant obtained another post.

121. The Tribunal was conscious that the writers of the emails were not called to give evidence, although Jo Bluck was still employed in the Diocese. The emails were written in 2010, at the time of the relevant events. Jenny Robinson attended Bishops Staff Meetings and therefore had heard what had been said about the Claimant there. The witnesses who gave evidence to the Tribunal, the Bishops and Archdeacons, were remembering events from four years previously and therefore may not have had perfect recall of the details of conversations, or the chronology of events. In the emails Jenny Robinson gives grounds for saying that the Diocese would be reluctant to offer the Claimant a post. There were numerous problems associated with him when he was housed there. A month earlier, as the Employment Tribunal has decided, Archdeacon Cockett's and Bishop Green's patience with the Claimant had been exhausted in relation to his housing.

122. On all this evidence, the Tribunal decides that the views expressed by Jenny Robinson and Jo Bluck in the emails reflected strong misgivings about the Claimant aired at Bishops Staff Meetings at the time. While the Claimant may not have been viewed as "unemployable" (and that word may have been an exaggeration by Jenny Robinson) the Tribunal finds that, by June 2010, there was reluctance within the Diocese to see the Claimant employed as a Priest there.

123. Bishop Hawkins told the Tribunal that the unanimous decision of the interview panel for the St Andrews Ilford post was that Marie Segal performed better than the Claimant. Bishop Hawkins gave the Claimant feedback about the interviews and explained the decision. Marie Segal had already worked in the Parish and had a depth of knowledge of that Parish.

124. The Tribunal accepts Bishop Hawkins's evidence that the whole panel, the Parish reps and the Bishop himself, decided that Marie Segal was the best candidate, based on the interview process.

125. The Claimant also applied for the post of Area Parish Development Adviser in the Colchester Episcopal area in early June 2010 (page 756). The Archdeacon of Colchester and Bishop Christopher Morgan, Bishop of Colchester, undertook the short-listing exercise.

126. It is clear that Heather Barton had started the June 2010 email chain between Jo Bluck and Jenny Robinson, when she explained that she was asking for a "Safe to Receive" in respect of the Claimant. Heather Barton ended the chain, saying:

*"Many thanks – I get the message!"*

127. Bishop Morgan told the Tribunal that Ms Barton probably would have shown him the email chain, but said that it would not have influenced him. He said that he did not shortlist the Claimant because the Claimant did not have relevant experience. However, at the end of Bishop Morgan's evidence, he also said that he would ask for a "Safe to Receive" letter before interviewing candidates because, if a "Safe to Receive" was not provided, there would be no point in interviewing the candidates; because that fact would very heavily inform the decision about whether to interview the candidates.

128. The Tribunal finds that Bishop Morgan had seen the email chain between the Personal Assistants saying that the Claimant was unemployable. Bishop Morgan also told the Tribunal that he had his own memory of misgivings expressed in Bishops Staff Meetings about the Claimant. He said that these, however, were not "knock down" reservations.

129. The Tribunal accepts Bishop Morgan's evidence that the Claimant did not have experience over rural Parishes and that his recent experience had been in clergy training, rather than Parish development.

130. The Tribunal notes that, of the seven candidates for the post only three were short-listed; fewer than 50%.

131. The Tribunal accepts Bishop Christopher Morgan's evidence that he was aware of reservations about the Claimant's candidature from Staff Meetings, but that this was a knock down point. Christopher Morgan also had other reasons for not short-listing the Claimant, to do with the Claimant's particular experience.

132. On 25 June 2010 Property Department emailed the Claimant asking for vacant possession of the Vicarage at St Johns in Romford (page 791). On 8 July 2010 the Property Department emailed the Claimant again, reminding him of his promise to leave the Vicarage at St John's by the end of June and saying that the matter would now be passed on to solicitors (page 790). The Claimant replied, saying that he was working on behalf of the wider church and that he could not make his family intentionally homeless, particularly given that he had a vulnerable child. On 13 July 2010 the Property Department emailed the Claimant once more, stating that he had broken his promise to leave St John's Vicarage by the end of June 2010 and that the Claimant's continued occupancy was jeopardising the proposed sale of the site (page 793).

133. On the same day, Richard Smith, Property Manager, emailed Bishops David Hawkins and Laurie Green and Archdeacon Martin Webster, Archdeacon of Harlow, referring to his own correspondence with the Claimant and the Claimant's continued occupancy of St Johns Vicarage. Mr Smith said:

> *"I am afraid I don't think that he has behaved at all honourably or honestly in this matter and consider his last email to be a combination of dishonesty and emotional blackmail."*

He said that legal proceedings were regrettably the next step and asked for consent of the Bishops and the Archdeacon of Harlow (page 794).

134. Bishop Laurie Green replied that day, agreeing to the action. The Archdeacon of Harlow replied the following day, saying:

> *"I had a suspicion (as others probably do) that this was where we were going to end up. I am perfectly content that we have acted honourably in the matter and that it is time for us to take legal action.....".* (page 796)

135. On 5 August 2010 the Claimant enquired of Paul Bowtell whether he could live in All Saints Vicarage in Chigwell in return for undertaking the Parish Development post which had been tied to the Parish of St Peters in the Forest (page 803).

136. Archdeacon Elwin Cockett told Reverend Bowtell that the Claimant had been considered for the post and clearly turned down, and that he could see no reason why the decision should be reviewed (page 801).

137. Archdeacon Cockett had overseen the appointment process to the combined post of Vicar at St Peters and Parish Development Officer. His recollection of the process and the reasons for short-listing candidates was vague, although he was not cross-examined in any detail on this. Archdeacon Cockett said that interviews were not held in February 2010 because there were insufficient applications and that, when the post was re-advertised in May 2010, the Claimant was not short-listed because his application was not strong enough and other candidates were preferred. Later, in 2011, the post at St Peter's in the Forest was combined with the Chaplaincy of Forest School, but the Head Teacher of that school did not select the Claimant for short-listing. There were no documents available from any of these short-listing exercises.

138. On 27 September 2010 the Claimant wrote to the Bishop Elect of Chelmsford, Stephen Cottrell, along with the other Diocesan Bishops, about his Post Graduate courses in Anglican School Leadership and saying that a charity called The Anglican Institute for School Leadership (AISL) had been founded (page 822). He said that St Mary's University College Twickenham had agreed to validate the course and that steps were being taken to apply for start up funding from the Missionary Development fund for three years. He asked for the Bishops' support of that application.

139. Bishop Stephen Cottrell had not yet been installed and instructed Jenny Robinson to reply in a noncommittal way to the Claimant's email (page 822).

140. On 28 September the Bishop of Barking's secretary, Jo Bluck, wrote to the Claimant, saying that she understood that the Claimant was presiding at services in the Barking area, but that he needed to have Permission to Officiate ("PTO") from the Diocesan Bishop to continue. She invited him to complete a CRB form and said that, once this had been received, the Claimant could be granted PTO. Ms Bluck said that Bishop David Hawkins was content for the Claimant to preside at Beacontree St Cedd's on the following Sunday (page 825). The Claimant replied, emailing Jo Bluck a copy of his licence.

141. There followed an email exchange between Jo Bluck and Jenny Robinson about the Claimant's licence. Jenny Robinson said that she thought that the licence was the Claimant's licence when he was at NTMTC and that, since Bishop John Gladwin had retired when the Claimant left NTMTC, the Claimant had not returned his licence

because it did not have a length of time on it (page 827).

142. Around this time, the Claimant's proposals for Post Graduate Anglican Education were forwarded to Nick McKerney - Head of School Improvement Church of England Education Division and Deputy General Secretary of the National Society – by Tim Elhorne – Diocesan Director of Education for the Diocese of Ely. The National Society is a central institution of the Church of England which promotes and resources Church Schools in England and Wales (page 833).

143. Tim Elhorne said that the details of the Claimant's proposals looked thin and did not sit easily with the claims made for them. He expressed the view that there would need to be rigorous quality assurance and sound governance in respect of the proposals. He also suggested that they would need National Society endorsement in order to use the Anglican "brand" (page 833).

144. In October 2010 the National Society instituted a National Society Programme endorsement process which would provide a "kite mark" for leadership courses and programmes. Modules from such courses and programmes would be credit-bearing and would count towards Masters' and Higher Degrees. Applications for National Society endorsement for credit bearing programmes required specific endorsement from a recognised University and at least one Church of England Diocese (page 843).

145. The National Society specifically mentioned the Claimant's AISL (Anglican Institute for School Leadership) programme when it was instituting this endorsement procedure. It said that the Claimant's AISL could apply for National Society endorsement.

146. The Claimant arranged to meet with Nick McKerney to discuss the endorsement process on 1 November 2010 page 849). It seems that the Claimant did not apply for National Society endorsement at any point.

147. In October 2010 the Diocese of Chelmsford commenced eviction proceedings against the Claimant.

148. On 6 October Bishop Stephen Cottrell was appointed Bishop of Chelmsford and later; on 25 November, he was enthroned.

149. On 29 November the Claimant wrote to Bishop Stephen Cottrell, asking for a postponement of the eviction and talking about his Anglican School Leadership programme and asking to be allowed to rent All Saints Vicarage in Chigwell (page 852).

150. On 7 December 2010 the Claimant was ordered to give up possession of the St Johns Vicarage by 25 January 2011, and was ordered to pay costs.

151. On 14 December, Bishop Cottrell wrote back to the Claimant, saying that the Claimant should continue to deal with the Bishop of Barking and the Archdeacon of West Ham (page 867).

152. Around this time the Claimant was asked by the Archbishop of Canterbury's staff to stop referring to the email sent to the Claimant from Lambeth Palace, in the

Claimant's promotional emails concerning his course (page 868).

153. On 13 January 2011 the Claimant wrote again to the Bishop of Chelmsford and the Area Bishops, asking to be allowed to move into All Saints Vicarage and saying that he was optimistic that he could pay the rent for it in the future (page 869). Bishop Cottrell asked the Bishop of Barking and the Archdeacon of Southend how he should respond.

154. On 18 January, Archdeacon Elwin Cockett responded, giving a detailed history of the Claimant's failure to move out of the St John's Vicarage, and to pay any rent in respect of it. He concluded by saying:

> *"There is every reason to believe that if we rented him a Vicarage he would neither pay the rent nor vacate the house when requested to do so ..... I have to say that we would be mad to offer to house Jeremy Ganga."* (page 874)

155. The Tribunal observes, at this point, that Archdeacon Cockett's views about the wisdom of offering housing to the Claimant were based on fact and entirely reasonable.

156. On 19 January 2011 Archdeacon David Lowman also replied to the Bishop of Barking and the Bishop of Chelmsford, saying:

> *"I am afraid that all of this is rather typical of Jeremy".*

He continued by saying that the Diocese had had to obtain a Court Order to evict him and said:

> *"He has a history of litigious activity prior to coming to NTMTC."*

157. Archdeacon Lowman said that, while Bishops were supportive of the Claimant's educational charity, that was very different from providing funding and facilities for the programme. Archdeacon Lowman concluded his email by saying:

> *"Because he is so litigious we need to make a very careful response ....."*. (page 877)

158. Around 19 January 2011 the Claimant wrote to other Dioceses including St Albans, Bromley and Bexley, and Guildford, asking for House for Duty positions (page 880).

159. On 21 January 2011 Bishop Stephen Cottrell wrote back to the Claimant, setting out his history of occupation of the Vicarage of St John's, saying that the Claimant had cost the Diocese £33,000 in unpaid rent, Council tax liability, insurance and costs. He said that the Diocese was in no position to provide the Claimant with accommodation (page 883).

160. On the same day, the Claimant emailed Bishop Cottrell with the title subject: "*House for duty post*?" (page 885). He attached a CV.

161. The Claimant did not move out of St John's Vicarage on 25 January 2011 and, in February 2011, the Diocese applied to Romford County Court for a Warrant of

Possession. The Claimant eventually vacated St John's Vicarage on 3 March 2011, the day that bailiffs were due to attend.

162. On 24 April that year the Claimant applied for the post of Parish Priest at St Mary's Church, Leyton. The patrons of that Parish were Simeon's Trustees and they organised the recruitment process. The Reverend Mike Booker was the Appointments Secretary. He consulted with Bishop David Hawkins about which candidates to shortlist for interview. The Reverend Paul Bowtell relayed the Bishop's thoughts.

163. On 20 April Paul Bowtell emailed Reverend Mike Booker and others with the Bishop's preferences for short-listing. The Claimant's name was not included. Reverend Booker replied that day, saying that he agreed with all but two of the short-listing choices. With regard to the Claimant he said:

> *"Happy not to shortlist but would really like more of a sense from you about the reservations on the part of the Diocese."* (page 941)

164. Paul Bowtell told the Tribunal that he had spoken to Reverend Booker and explained that the Diocese was in dispute with the Claimant over his failure to vacate a Vicarage and that the Bishop would counsel caution in the circumstances where the Claimant had only left the Vicarage when he was due to be evicted. Those were the only matters of concern that he relayed.

165. The Tribunal accepted Reverence Bowtell's evidence on this. It was corroborated by the fact that, at exactly this time, on 21 April 2011, he emailed the Diocese Property Manager, asking for an update on the Claimant vacating the Romford Vicarage (pages 942 to 943).

166. The Claimant also applied for a post at Cotteridge in the Diocese of Birmingham in April 2011. On 18 April 2011, the secretary to the Bishop of Birmingham emailed Jenny Robinson, asking that she send a reference, complete a CCSL and confirm that the Claimant was "Safe to Receive" (page 918).

167. It appears that a CCSL was used in the recruitment process for Priests but that the Bishop was still asked to confirm that the Claimant was "Safe to Receive".

168. Bishop Cottrell asked Archdeacon David Lowman to write the reference, as Bishop Cottrell himself did not know the Claimant. Jenny Robinson confirmed that the Bishop's office would complete the CCSL because the Claimant's file was there (page 937).

169. Archdeacon Lowman responded to Jenny Robinson, saying:

> *"This is very difficult. I need to talk to Bishop Stephen and to Paul Tratham [the Bishop's Chaplain] about this".* (page 937)

170. It appears that Jenny Robinson drafted a response to the Bishop of Birmingham (page 939). The response advised the Bishop of Birmingham to seek a reference from North Thames Ministerial Training College as the Claimant had been employed by it. The response also said:

*"Jeremy held [and still holds] a public preacher's licence in the Diocese which was linked to his post at NTMTC. However I feel I need to warn you that this is someone who has run into financial difficulties from time to time and has involved the Diocese in litigation."*

171. Archdeacon Lowman responded to the draft, saying:

*"..... I think that you could also say that he was involved in litigation with this and another Diocese."* (page 939)

172. Bishop Stephen Cottrell sent Jenny Robinson's draft, amended as suggested by David Lowman. He therefore said in his response to the Bishop of Birmingham:

*"..... I feel I need to warn you that this is someone who has run into financial difficulties from time to time and has been involved with litigation with this and another Diocese."* (page 940)

173. In May 2011 the Claimant emailed Diocesan Directors of Education proposing that they host Post Graduate Anglican Study Courses and receive the majority of fees paid by the students for the courses. Andy Mash from the Norwich Diocese forwarded the email to a colleague, saying:

*"The figures make interesting reading. But its Mr Ganga (again!)."*

174. Robert Fox was copied into the email chain and said:

*"I think it would be very interesting to develop a joint course ..... for our area. BUT NOT with MR GANGA."* (page 946)

175. The Claimant was still receiving expressions of interest concerning his course throughout 2011 from colleges and church people (pages 956 to 957, 967A, 969 and 977). However, Robert Fox, the Diocesan Director of Education at Chelmsford, was not supportive.

176. On 16 June 2011 the Claimant wrote to Mr Fox asking whether the Diocese would work with the Claimant's Anglican Institute for School Leadership (AISL) organisation and establish a teaching centre in Chelmsford. The Claimant said;

*"I understand your commitment to the National Society ..... I understand too that there is a feeling amongst the majority of DDEs that I am usurping the role of the NS staff."* (page 962)

177. Mr Fox replied tersely on 29 June 2011, saying:

*"My position has not changed and do not wish to work with you. I do not consider a meeting would help to change my view."* (page 961)

178. Mr Fox told the Tribunal that the Claimant's course had not been validated by the National Society and therefore he would not consider promoting it.

179. On 13 October 2011 the Claimant wrote to the Bishop of Chelmsford once more,

saying that his organisation had been asked to become a training provider and asking to be paid a stipend via the Missionary Development Fund. He asked that he be allowed to rent St Andrew's Vicarage in Chingford. Jenny Robinson replied on behalf of the Bishop, saying that the Missionary Fund was unlikely to be able to support that sort of work and that the Diocese was not in a position to rent any of its properties (page 985).

180. On 29 November 2011 the Claimant wrote to all Bishops, introducing what he described as a programme of half day seminars from his Anglican Institute for School Leadership organisation (page 1004). The Claimant mentioned that he had the support of St John's College/Cranmer Hall in the University of Durham.

181. Tim Elhorne, the Diocesan Director of Education for Ely, wrote an email to a number of colleagues with the subject: *"More Ganga"*. He said:

> *"We remain very sceptical of this enterprise for a number of reasons. Rob Fox (in whose diocese it is based) can say more and so can Jan ..... I don't want to say more in an open email but I am sure we would all be happy to talk ....."* (page 1004)

182. On 1 December that year Robert Fox sent an email to the Bishops, Archdeacons and Church officers in Chelmsford, saying that the Claimant was sending information to Area Deans, bypassing Education Departments and saying that Mr Fox could explain his concerns if any of them wished for more information.

183. On 14 December the Reverend Professor David Wilkinson, from the Durham College through which the Claimant had been hoping to provide his Anglican Leadership course, wrote to the Claimant, saying the College would not move forward with the idea (page 1007A). He said that the College was surprised to see its name being circulated in the Claimant's emails to Dioceses and said:

> *"The communication sent out to dioceses has brought back a lot of negative comment filtered through directors of education and bishops connected with the College and also the College Council ....."*.

184. The Association of Diocesan Directors of Education met in about January 2012 and discussed the Claimant and his emails promoting his Anglican Institute of School Leadership. It proposed that the Diocese of Chelmsford be asked to make a statement about the Claimant's organisation, the fact that its courses were not commended by the National Society, and that the Claimant did not operate with the support of the Bishop of Chelmsford, or hold a licence or permission to officiate (page 1025). The proposed statement from the AADE (or Association of Anglican Directors of Education) included the following words:

*"AADE does not seek to restrain legitimate enterprise which supports the mission of Church Schools' and Christian Schools' leadership ..... It is the view of the AADE executive that unless and until this organisation which purports to be an Anglican Institute is commended to us by the Bishop of Chelmsford, the Chelmsford DBE [Diocesan Board of Education] or the National Society DDEs [Diocesan Directors of Education] and our Diocesan colleagues should not engage in further discussion with it."]*

185. Robert Fox passed this request on to the Bishop of Chelmsford by email on 30 January 2012. He said:

> *"We obviously have to be careful about what we say so as not to get lawyers involved."*

186. John Bull, Chief Executive of the Chelmsford Diocesan Board of Finance, replied, saying that he was uncomfortable with references to Chelmsford and that it was unfair leaving it to Chelmsford to advise on the Claimant's standing just because the Claimant lived in the Diocese (page 1024). No public statement was made.

187. The Claimant had been helping out at St Chad's Church in Chadwell Heath from about 2010, performing Parish duties by way of support to the Vicar there, the Reverend Martin Court.

188. On 15 March 2012 Reverend Court visited Bishop David Hawkins to ask whether the Claimant's role in St Chad's Church could be formalised so that he could, for example, become an Associate Minister. Bishop Hawkins told Reverend Court that this would not be possible and that the Claimant could not act as a Priest in the Parish. Reverend Court visited the Claimant that day and told him that he should step down until the Bishop made a decision about the extent of the Claimant's ministry in a Diocese. The Claimant showed Reverend Court his 2006 licence, saying that he had a licence to minister in the Chelmsford Diocese.

189. Martin Court emailed Bishop Hawkins the same day saying:

> *"Has Jeremy's licence been revoked, and if so, is he aware of that?"*

190. Next day Bishop Hawkins emailed the Diocesan Bishop, Stephen Cottrell, saying that Martin Court had visited him asking whether the Claimant could be given PTO (permission to officiate) to exercise a limited ministry of leading, preaching and presiding. He commented that it might not be appropriate to grant PTO in light of the Claimant's debts to the Diocese, but said that the Claimant's skills had been appreciated by the Parish (page 1066).

191. Bishop Cottrell replied, copied to the Archdeacon of West Ham and to John Ball, asking their views because he did not know the Claimant, nor how much money he owed. He said:

> *"I don't see how we can support him unless there is at least some movement on his part to make amends".* (page 1066)

192. Archdeacon Cockett replied the same day, saying that he believed it would not be possible for the Bishop to sign a CCSL because the Claimant was in dispute with the Diocese over tens of thousands of pounds and the Diocese should not be giving the Claimant PTO. He said that, if the Claimant came to an agreement about repaying money, then a PTO and CCSL would both be possible, but that Archdeacon Cockett would still be wary about giving the Claimant a licence or a house (page 1067).

193. John Ball replied, saying that the Claimant was not, in his opinion, in good

standing with the Diocese at that point and referred to the very large amounts of money owed by the Claimant to the Diocese. He said that the Claimant appeared not to accept that he was in the wrong (page 1068).

194. On 16 March 2012 Bishop Cottrell ended that email chain by saying:

> *"I think the outcome therefore is that we could not offer him any sort of PTO and neither should he exercise any sort of public ministry and nor could we consider this until some sort of reparation is made with regard to the money he owes to the Diocese."* (page 1068)

195. On 16 April that year Bishop Cottrell wrote to the Claimant revoking the Claimant's licence (page 1074). He said:

> *"As you will realise the general licence granted to you by my predecessor in November 2006 was intended to facilitate the exercise of your ministry in the Diocese of Chelmsford in connection with and during your tenure of your post at NTMTC/St Mellitus College. A request should have been made for the return of the licence for cancellation when you ceased to occupy the post at St Mellitus College and I am sorry that was not communicated to you at the time. Nevertheless, as you now hold no office connected with the Diocese of Chelmsford, for the avoidance of doubt I hereby give you notice of the revocation of the licence of 9 November 2006 with effect from 26 July 2012, being 3 months from the date of this letter....."* (page 1074)

196. The Claimant applied for various posts in other Dioceses around this time. There was no evidence of any requests for confirmation that the Claimant was "Safe to Receive", or CCSL letters or references, from the other Dioceses in respect of these posts, save for the post in Birmingham which the Tribunal has already addressed.

197. The Claimant sought legal advice about the withdrawal of his licence from his union representative, Roger Stokes. Mr Stokes advised the Claimant in August 2012 that the Claimant should write to Bishop Cottrell, asking for him to confirm the canonical authority relied on revoking the licence and also asking how to appeal. Roger Stokes concluded his emailed advice by advising the Claimant:

> *"Pending such clarification, you regard his decision as unlawful and consequently of no effect."* (page 1119)

198. On 18 September 2012 the Claimant wrote to the Reverend Paul Bowtell, asking whether there was a possibility of a short term House for Duty post in the Barking area as the Claimant was intending to move to South Africa in a few months.

199. Reverend Bowtell replied on 1 October 2012 saying that there were no short-term House for Duty posts, but that if anything cropped up, he would let the Claimant know (page 1138).

200. In about December 2012 the Claimant applied for financial support from the English Clergy Association. On 6 December he was told that, unless the Claimant was in possession of a licence, or PTO, the Association could not assist him.

201. On 10 December 2012 the Claimant wrote to Bishop Cottrell saying that the withdrawal of his licence had been unlawful and contrary to canon law and asking the Bishop to reconsider its withdrawal (page 1159).

202. Bishop Cottrell did not reply; he did not reconsider his decision to revoke the licence, nor did he grant the Claimant PTO. He told the Tribunal that he continued to believe that granting the PTO would not be appropriate until the Claimant made some reparation for the debts he owed.

203. The Tribunal notes that, in an email to the Claimant in 2013, the Reverend Martin Court said that, when telling Reverend Court that the Bishop would not approve the Claimant for an honorary curate type post, Bishop Hawkins would not say why (page 1187).

204. The Claimant presented his claim to the Tribunal on 28 February 2013.

205. The Reverend Roger Gaylor applied for a house for duty post at St Mary and All Saints Parish at Lambourne on 14 July 2013 (page 1190). It appears that that post at Lambourne was advertised first in about May or June 2012 (page 1077). The Claimant did not apply for the House for Duty post in St Marys and All Saints, Lambourne when it was advertised.

The Claimant's Reasons for Delay in Issuing Proceedings

206. The Claimant was a member of the union UNITE, formerly AMICUS, throughout the period 2006 to 2012. He referred to his membership of the union and seeking advice from it on a number of occasions; for example, when writing to the Diocese of London in 2006 about his occupation of St Peter's Vicarage in Fulham (page 420), and also when resisting moving from St John's Vicarage in June 2009 (page 546). He sought advice from his union about the revocation of his licence in August 2012. The Claimant was advised by Roger Stokes, at this point, that he should write to Bishop Cottrell and that, pending clarification, he should treat the revocation as being of no effect.

207. The Claimant told the Tribunal that he was quite fearful about lodging another complaint to the Tribunal, as he had had first hand information on how mercilessly cruel the Church could be to those who sought justice.

208. The Tribunal does not accept that the Claimant was fearful about bringing proceedings. He referred to litigation and enforcing his rights on several occasions in communication with representatives of the Church. If he had been fearful about bringing litigation against the Church and the consequences thereof, the Tribunal considers that he would not have made such references.

Christine Harding

209. The Tribunal accepts Bishop Cottrell's evidence, which was detailed and clearly well informed, concerning the ordination and licensing of the Reverend Christine Harding in June 2012. Priests are selected and trained for ministry in two categories; either nationally deployable (which usually means stipendiary and being housed) or locally deployable, which usually means non stipendiary, living in their own home and

being deployed in a church nearby.

210. Christine Harding was selected, trained and sponsored for ordination on the basis that she would be a locally deployed, self supporting minister. She was licensed to Chadwell Heath as a locally deployed minister in a training curacy. It was never envisaged that she should minister elsewhere; she did not receive a stipend, or a house. The post she occupied was never available for anyone else. All locally deployed, self supporting posts are built around the individual person applying themselves for ministry in that particular area alone.

Collegiality

211. The Claimant contended that there existed the concept and practice of collegiality among the general Synod of Bishops, so that Bishops would share freely their views on Priests and support each other's views. In light of that, the Claimant contended that, if one Bishop had negative views about a Priest, that view would be communicated to other Bishops and they would adopt that opinion too.

212. Bishop Cottrell denied that such collegiality existed regarding opinions on individual priests. He said that he had never spoken about the Claimant outside the Diocese. He said that no-one had ever asked him informally for a reference regarding the Claimant. He said that he had spoken to Archdeacon David Lowman, to Bishop Hawkins and Archdeacon Cockett about the Claimant, on occasion, because they had worked with him and knew him better than he (Bishop Cottrell) did. He and other witnesses said that Bishops and Priests are used to keeping confidences and that it is in the nature of their posts to do so. Collegiality referred to matters of faith and doctrine, primarily.

213. Bishop Cottrell was again credible on this issue. On all the evidence the Tribunal finds:

213.1 Bishops did seek confirmation that Priests were "Safe to Receive" from other Bishops when Priests moved Dioceses. On those occasions, Bishops would communicate both in writing and by telephone about the Priest. Such communications would not necessarily be recorded.

213.2 Otherwise, it was unlikely that Bishops gossiped with each other about individual Priests.

213.3 Collegiality refers primarily to matters of faith and doctrine and not to opinions about individuals.

213.4 Within Dioceses, Bishops would seek opinion and advice about individual Priests from Archdeacons and Area Bishops, who knew them well, when any issue arose about a Priest, or when a "Safe to Receive" request was sent from another Diocese.

213.5 There would be discussions about Priests and issues concerning them during Bishops Staff Meetings attended by Bishops and Archdeacons; often a collective view or decision would be reached about a particular issue.

213.6 Bishop Cottrell did not receive, nor did he provide, any informal or formal reference, whether orally or in writing, in respect of the Claimant, other than the reference provided to the Diocese of Birmingham in April 2011.

Knowledge of the Claimant's ET Claim against the Bishop of Southwark

214. There were important issues for the Tribunal to resolve as to whether Bishops or Archdeacons knew that the Claimant had done a protected act by bringing race discrimination proceedings against the Diocese of Southwark. Archdeacon David Lowman did know from 2006, because David Sceats told him about the Southwark race discrimination when the Claimant was being interviewed for his post NTMTC (or St Mellitus College). Clearly Bishop John Gladwin knew (that is the Bishop of Chelmsford) in 2006, because he was told by the Bishop of Southwark at that time.

215. The Tribunal notes that Archdeacon Lowman, in correspondence with other Archdeacons and the Area Bishops, referred to the Claimant as "litigious" or "very litigious", said that the Claimant had taken Dioceses to Court before and urged caution in dealings with the Claimant. Furthermore, he amended Jenny Robinson's proposed draft communication to the Birmingham Diocese, specifically to refer to the Claimant having brought litigation against Chelmsford and another Diocese. Bishop Cottrell sent this communication himself to the Bishop of Birmingham, so he must have seen the wording of it. It is apparent that the Claimant was also discussed at Bishops Staff Meetings.

216. The Tribunal could draw the factual inference from all these facts that, in addition to Archdeacon Lowman, others, including Archdeacon Cockett, the Area Bishops and Bishop Stephen Cottrell and the Bishops' immediate staff, all knew that the Claimant had brought race discrimination proceedings against the Diocese of Southwark.

217. Each of the Respondent's witnesses was cross-examined in detail on this issue.

218. Bishop Cottrell said that he was not aware of the Claimant's race or ethnicity for a long period. He did not read the Claimant's blue file for about 2 years after he became Bishop. When the request for a reference and CCSL from Birmingham came in, he referred it to David Lowman. He said that he never had any discussions with his predecessor, John Gladwin, about the Claimant. He said that he knew the Bishop of Southwark well, but that the Bishop of Southwark had never spoken to Bishop Cottrell about the Claimant's race discrimination claim. Bishop Cottrell said that the Claimant had lied about his housing and Bishop Cotterell's concerns about the Claimant were due to his lack of trustworthiness and honesty. Bishop Cottrell also said that Archdeacon David Lowman had never spoken to him about the Claimant and his race discrimination claim against the Bishop of Southwark. He said that, when he sent the email at page 940, he did so, on the advice of Archdeacon Lowman, who had greater knowledge of Mr Ganga. The litigation the Bishop was referring to against the Diocese of Chelmsford was the housing proceedings. He did not question Archdeacon Lowman's reference to litigation in another Diocese, because he trusted Archdeacon Lowman to get the wording right.

219. Bishop Christopher Morgan, the retired Bishop of Colchester, said that he was

aware that there was an unhappy past in Southwark, because Bishop John Gladwin had drawn this to his attention, but that he was not sure that he had ever spoken to Bishop Gladwin about it. He said that what was visible to him was the financial problems that the Claimant was in. The Tribunal noted that, from the documents, the Claimant's licensing by Bishop Morgan was delayed because of the Claimant's debts; the debts were the matters which were discussed and resolved, following which the Claimant was licensed. Bishop Morgan said, categorically, that he did not know about the Southwark race discrimination claim until he received the bundle of papers for this current Employment Tribunal.

220. Archdeacon Lowman acknowledged that he was told about the Claimant's race discrimination proceedings by David Sceats in 2006. He said that he did not discuss the Claimant's race claim with Bishop Gladwin thereafter, but did speak to him about the Claimant's financial matters. He reported back to him about housing issues at Fulham and the Claimant's loans. Archdeacon Lowman said that his reference to the Claimant being litigious referred to correspondence that the Claimant had sent to Chelmsford and London about housing matters, where he appeared to threaten litigation against them. He said that he had mentioned litigation by the Claimant against another diocese in the reference to Birmingham because the CCSL specifically asked about Priests being involved in civil litigation. He thought that he was obliged to mention the previous proceedings, but he did so giving only the barest bones of matters. He said that, to the best of his knowledge, he had never discussed the Claimant's race discrimination claim with the Bishop of Chelmsford or Jenny Robinson.

221. Archdeacon Elwin Cockett was asked about David Lowman's correspondence in which Archdeacon Lowman said:

> *"Because of the sensitivity with which we need to work with Jeremy"*

Archdeacon Cockett said that he was not aware of the 2004 Southwark race discrimination claim and that it was complete news to him. When he saw Archdeacon Lowman's comments about the Claimant's past, he assumed that Archdeacon Lowman was talking about his knowledge of the Claimant from St Mellitus. He said that Archdeacon Lowman was scrupulous in maintaining boundaries of confidentiality.

222. Bishop David Hawkins said that he had no knowledge about the race discrimination complaint until he prepared his witness statement for these proceedings. He said that the fact of a Court case had been discussed at Bishops Staff Meetings, but he did not know any details about it. He said that he took his own decisions and did not follow Archdeacon Lowman. While it was said that the Claimant was litigious, that was not something that stood out in his mind. He said the outstanding fact about the Claimant was that he was residing in a Diocese accommodation having been given many opportunities to quit. The issue for him was the Claimant refusing to leave and owing money to the Diocese.

223. The Reverend Paul Bowtell said that he was not party to a lot of the correspondence. He said that, at the stage that the Claimant was being interviewed or short-listed in May 2010 and thereafter, there were concerns about how the Claimant had carried on with his housing matters. He said that there were even stronger concerns by 2011. Reverend Bowtell insisted that he only knew of housing concerns in relation to the Claimant.

224. Bishop Laurie Green said that neither he, nor his secretary, had ever received a request for a reference or a CRB check in respect of the Claimant. In cross-examination Bishop Green was asked about Archdeacon Lowman writing on 19 December 2009:

> *"Because Jeremy has taken Dioceses to Court we need to get the wording of our letters and our intentions very clear."* (page 598)

Bishop Laurie Green said that he thought this referred to Diocese arbitration and minor disputes about premises. He said he thought it referred to *"the same old thing about boilers, bells and pews."* Bishop Laurie Green said that such disputes frequently arose in Parishes and the Church had set up a mechanism of resolving these, presided over by Judges or Arbitrators. He said that Archdeacon Lowman was a man of great integrity and had not told him about the race discrimination claim. He believed that he had heard about a dispute in London, about money, or housing, at a Staff Meeting.

225. Robert Fox said that he did not know about the Claimant's race discrimination claim until the current Tribunal case. He did not attend Bishops Staff Meetings. Mr Fox was asked about a statement that he made in an email on 30 January 2012 (page 1025) that the Diocese needed to be careful about the wording of a statement in relation to the Claimant so as not to get lawyers involved. Mr Fox said that the context was that the Claimant had had to be taken to Court and was a debtor. Mr Fox was cautious about what information was in the public domain about this and whether it was appropriate to refer to it in open communication.

226. The Tribunal notes that, in the email chain in which Jenny Robinson, the Bishop of Chelmsford's PA, expressed the view that the Claimant was unemployable, she referred to problems with the Claimant in the Diocese of Chelmsford, and not in other Dioceses.

227. While acknowledging the number of references to litigation made by Archdeacon Lowman and the fact that an inference could be drawn that other Bishops and Archdeacons knew about the Claimant's race discrimination against Southwark, the Tribunal found all the Respondent's witnesses to be credible and accepted their evidence. Those witnesses individually explained what they knew and justified it. For example:

227.1 In Bishop Morgan's evidence, he said that he knew about financial debts, but not about the Tribunal proceedings. That was corroborated by documents which showed that the Claimant's debts and money problems were the reasons for delaying the licence.

227.2 Laurie Green and Elwin Cockett both said that they had the impression from Bishops Staff Meetings that previous proceedings concerned the Diocese of London and debts for housing. They corroborated each other on this.

227.3 Laurie Green, Elwin Cockett and Stephen Cottrell all said that ministers and Archdeacons may be privy to a lot of personal or private information but they do not disclose it.

227.4 Bishop Laurie Green was credible when he spoke about believing that the claims against Dioceses were about boilers, bells and pews. He explained that those are the type of disputes which occur regularly in Parishes in the Church of England.

227.5 Bishop Cotterell's evidence that he did not know the Claimant and delegated the matter of the reference for the Bishop of Birmingham to David Lowman was credible because, on the facts, Bishop Cottrell was new to the Diocese and did not have the experience and knowledge of Priests that the Archdeacons would have done. David Lowman himself was adamant that he did not disclose the fact of the race discrimination proceedings to Bishop Cottrell.

228. The Tribunal therefore finds that Archdeacon David Lowman did know about the Employment Tribunal proceedings against Southwark throughout the Claimant's association with the Diocese of Chelmsford, but that the other Bishops and Archdeacons and their staff did not know about the Southwark proceedings until after the Claimant brought Tribunal proceedings in this case.

Other Evidence – the Claimant's Use of Litigation

229. The Respondent contended that the Claimant was litigious and was over-ready to allege discrimination. The Respondent drew the Tribunal's attention to the Claimant's allegations of race discrimination against St Paul's School and against the Diocese of London, when the Claimant was not permitted to remain in the Vicarage in Fulham, but his friend Jack Maple was provided with a house.

230. The Tribunal does not consider that these matters show that the Claimant was not credible or over-ready to allege discrimination. On the facts presented to the Tribunal, the Claimant had a legitimate grievance against St Paul's School when it appointed a Head of Religious Studies/Philosophy without advertising the post. The Claimant was "acting up" into the position at the time. Appointing another candidate without interviewing the Claimant appears to have been less favourable treatment of the Claimant in the same relevant circumstances to the person who was appointed. The Claimant was entitled to ask why that treatment had occurred. Furthermore, if the Claimant was not allowed to live in a Vicarage after his job had ended, but that Jack Maple was permitted to remain after his job also ended, the Claimant could well consider that he had been treated less favourably than Mr Maple in the same circumstances.

231. On other occasions, the Tribunal finds that the Claimant implied that he would bring litigation against Chelmsford when it proposed to remove him from a house during his employment by St Mellitus College (NTMTC). The Claimant had no right to live in a particular location under his contract of employment and his threat of litigation was unreasonable. Further, the Claimant's refusal to leave the St John's Vicarage in Romford, after his job ended at St Mellitus, was clearly wrong and unreasonable.

***Relevant Law***
**Equality Act & Qualifications Bodies**

232. By *s53(1)(2), (4) and (5) EqA 2010,* a qualifications body must not discriminate against, or victimise a person, by not conferring a relevant qualification on the person, by withdrawing the qualification from the person, or by subjecting the person to any other detriment.

233. By *s54,* a qualifications body is an authority or body which can confer a relevant qualification. A relevant qualification for this purpose is "an authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular trade or profession".

234. *ss53 & 54 EqA* are intended, amongst other provisions of the *Equality Act 2010,* to implement *2000/43/EC (Racial Discrimination Directive)* and *2000/78/EC (Equality Directive). Article 1 Equality Directive* provides, *"The purpose of this Directive is to pay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment."*

*235. Article 3* provides, *" Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to—*

*(a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;*

*(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;*

*(c) employment and working conditions, including dismissals and pay;*

*(d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations."*

236. The scope of "qualification" is broad, encompassing an authorisation, qualification, recognition, registration, enrolment, approval or certification.

237. In order for a body to come within the scope of the Directive and *ss53* and *54 EqA,* it must confer such a qualification which is needed for, or facilitates engagement in employment, a trade, profession, or occupation. *S54 EqA* refers to "a trade or profession", *Art 3* refers to "employment", "occupation" and "profession".

238. Accordingly, registration as an amateur footballer with a local league was held not to fall within the predecessor provisions of *s12 RRA, Jeffrey-Shaw v Shropshire County Premier Football League* EAT 0320/04. In *Ali v McDonagh* [2002] ICR 1026, CA, the Court of Appeal held that, in selecting a candidate for local government elections or allowing a person to be nominated to the pool from which prospective candidates are to be selected, the Labour Party was not a body which could confer and authorisation or qualification on a member seeking selection which was needed for or facilitated engagement in a particular profession. The Court of Appeal doubted whether being a local councillor amounted to being engaged in a profession or occupation within the meaning of *s12 RRA* since it was not salaried work; still more so if the

profession or occupation was limited to being selected as a candidate for local elections.

239. As to the scope of the Directive in general, in *X v Mid Sussex Citizens Advice Bureau* [2013] IRLR 146, the Supreme Court held that the Framework Directive "does not cover voluntary activity", Lord Mance paragraph [48]. Lord Mance held this having reviewed all the provisions of Art 3. He cited all its provisions at paragraph [14] of his judgment and noted that Art 3 had been explained by the Commission of the European Union in its report on the application of Directive 2002/73/EC (COM(2009) 409 final) as a limited expansion of the previous scope of Directive 76/207/EEC, "Directive 2002/73 broadened the scope of Directive 76/207/EEC, in particular by prohibiting discrimination in the conditions governing access to self-employment and membership of and involvement in workers' and employers' organisations or any organisations whose members carry on a particular profession, including access to the benefits such organisations provide.." para [26]. Lord Mance stated, "The Commission clearly did not have in mind voluntary activities as falling within the scope of the reformulated Article 3 and the same must apply to... Article 3 of the parallel Framework Directive."

240. Accordingly, it seems that, in order to be a qualifying body for the purposes of a complaint of discrimination, the body must confer a qualification which is needed for, or facilitates engagement in paid employment, or a trade, profession, or occupation, which is for reward and not voluntary. The definition of "qualification" is broad.

241. It seems, also, that, in order to be a qualification body, the body must have the power to set a particular, objective, standard and the power to declare that the candidate has attained that standard. In *Watt v Ahsan* [2008] 1 AC 696 Lord Hoffman said [18], "The notion of "authorisation or qualification" suggests some kind of objective standard which the qualifying body applies, an even –handed, not to say "transparent" test which people may pass or fail. The qualifying body vouches to the public for the qualifications of the candidate and the public rely upon the qualification in offering him employment or professional engagements. That is why [section 12] falls under the general heading of discrimination "in the employment field"."

242. A body is not a qualification body if it merely chooses which already- qualified candidates it which to engage for its own purposes: *Tattari v Private Patients Plan Limited* [1997] IRLR 586 (CA); *Triesman v Ali* [2002] IRLR 489.

**Direct Discrimination and Victimisation**

243. Direct discrimination is defined in *s13 EqA 2010* and victimisation is defined in *s27*.

244. Time limits are set out in *s123 EqA 2010,* which makes provision for continuing acts.

**Direct Race Discrimination.**

245. Direct discrimination is defined in *s13(1) EqA 2010:*

"(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

246. By *s9 EqA 2010*, race is a protected characteristic and race includes colour; nationality; ethnic or national origins.

247. In case of direct discrimination, on the comparison made between the employee and others, "there must be no material difference relating to each case," *s23 Eq A 2010.* The requirement for comparison in the same or not materially different circumstances applies equally to actual and to hypothetical comparators, as highlighted in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11.

**Victimisation**

248. By *27 Eq A 2010*, " (1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(*a*) B does a protected act, or

(*b*) A believes that B has done, or may do, a protected act.

Each of the following is a protected act—

(*a*) bringing proceedings under this Act;

(*b*) giving evidence or information in connection with proceedings under this A

(*c*) doing any other thing for the purposes of or in connection with this Act;

(*d*) making an allegation (whether or not express) that A or another person has contravened this Act."

249. Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith, *s27(3) EqA 2010.*

250. There is no requirement for comparison in the same or nor materially different circumstances in the victimization provisions of the EqA 2010.

"Because"- Causation

251. The test for causation in the discrimination legislation is a narrow one. The ET must establish whether or not the alleged discriminator's reason for the impugned action was the relevant protected characteristic. In *Chief Constable of West Yorkshire Police v Khan* [2001] IRLR 830, Lord Nicholls said that the phrase "by reason that" requires the ET to determine why the alleged discriminator acted as he did? What, consciously or unconsciously, was his reason?." Para [29]. Lord Scott said that the real reason, the core reason, for the treatment must be identified. Para [77]

252. If the Tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it had a significant influence, *per* Lord Nicholls in *Nagarajan v London Regional Transport* [1999] IRLR 572, 576. "Significant" means more than trivial, *Igen v Wong, Villalba v Merrill Lynch & Co Inc* [2006] IRLR 437, EAT.

253. In *Martin v Devonshires Solicitors [2011] ICR 352, [2011] EqLR 108 the EAT*, agreeing with the test in *Khan*, held that 'there would in principle be cases where an employer had dismissed an employee in response to a protected act but could say that the reason for dismissal was not the act but some feature of it which could properly be treated as separable'. See also *HM Prison Service v Ibimidun* [2008] IRLR 940.

254. However, in the *Devonshires* case, Underhill P said, at paragraph [22] "Of course such a line of argument is capable of abuse. Employees who bring complaints often do so in ways that are, viewed objectively, unreasonable. It would certainly be contrary to the policy of the anti-victimisation provisions if employers were able to take steps against employees simply because in making a complaint they had say, used intemperate language or made inaccurate statements. An employer who purports to object to "ordinary" unreasonable behaviour of that kind should be treated as objecting to the complaint itself, and we would expect tribunals to be slow to recognise a distinction between the complaint and the way it is made save in clear cases. But the fact that the distinction may be illegitimately advanced made in some cases does not mean that it is wrong in principle."

Burden of Proof

255. The shifting burden of proof applies to claims under the *Equality Act 2010, s136 EqA 2010.*

256. In *Madarassy v Nomura International plc.* Court of Appeal, 2007 EWCA Civ 33, [2007] ICR 867, Mummery LJ confirmed that the burden of proof does not simply shift in a direct discrimination case where M proves a difference in protected characteristic and a difference in treatment. This would only indicate a possibility of discrimination, which is not sufficient, para 56 – 58.

257. In a victimization case, if the Claimant establishes that he has done a protected act and that he has then suffered a detriment at the hands of the employer, a prima facie case of discrimination will be established if there is evidence from which the Tribunal can infer a causal link.

258. In approaching the evidence in a case, in making its findings regarding treatment and the reason for it, the ET should observe the guidance given by the Court of Appeal in *Igen v Wong* [2005] ICR 931 at para 76 and Annex to the judgment. The Annex includes the following paragraphs,

"(3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of [race] discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that 'he or she would not have fitted in

(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

(5) It is important to note the word 'could' in s.136(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

(6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts...

.....

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice."

259. It is not necessary in every case for a Tribunal to go through the two stage procedure: *Brown v Croydon* LBC [2007] IRLR 259 at paragraphs [28] – [39]. It may be appropriate for the Tribunal simply to focus on the reason given by the employer and, if it satisfied that this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, absent the explanation would have been capable of amounting to a prima facie case under stage one of the *Igen* test.

260. As explained by the EAT in *Diocese Of Islington v Ladele* [2009] IRLR 154 at [40] –[41], the employee is not prejudiced by that approach because the tribunal is acting on the assumption that the first hurdle has been crossed by the employee: the case fails on the basis that the employer has provided a convincing non-discriminatory explanation for the less favourable treatment at the second stage. Equally, if a Claimant establishes that the reason for the detrimental treatment is a prohibited reason, the Claimant "necessarily establishes at one and the same time that he or she is less favourably treated than the comparator who did not share the prohibited characteristic. Accordingly, although the Directive and the Regulations both identify the need for a Tribunal to determine how a Tribunal was or would have been treated, that conclusion is necessarily encompassed in the finding that the Claimant suffered detriment on the prohibited ground. So a finding of discrimination can be made without the Tribunal needing specifically to identify the precise characteristics of the comparator at all", para [32] and see [33]-[38]. See also *Hewage v Grampian Health Board* [2012] ICR 1054 at [32] per Lord Hope.

Detriment

261. In order for a disadvantage to qualify as a "detriment", it must arise in the employment field, in that ET must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work. An unjustified sense of grievance cannot amount to "detriment". However, to establish a detriment, it is not necessary to demonstrate some physical or economic consequence, *Shamoon v Chief Constable of RUC [2003] UKHL 11.*

Time Limits

262. By *s123 Equality Act 2010,* complaints of discrimination in relation to employment may not be brought after the end of

262.1 the period of three months starting with the date of the act to which the complaint relates or

262.2 such other period as the Employment Tribunal thinks just and equitable.

263. By s123(3) conduct extending over a period is treated to be done at the end of the period. Failure to do something is to be treated as occurring when the person in question decided on it.

Continuing Acts/Qualifications Bodies/End of Relationship

264. In *Commissioner of Police of the Metropolis v Hendricks [*2003] ICR 530, the Court of Appeal held that, in cases involving numerous allegations of discriminatory acts or omissions, it is not necessary for an applicant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken' in order to establish a continuing act. The Claimant must show that the incidents are linked to each other, and that they are evidence of a 'continuing discriminatory state of affairs'. This will constitute 'an act extending over a period'. The question is whether there is "an act extending over a period," as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed'.' Paragraph [52] of the judgment.

265. In *Owusu v London Fire and Civil Defence Authority* [1995] IRLR 574, the EAT held that an employer's repeated failure to upgrade an employee or to allow him to act up at a higher grade when the opportunity arose amounted to a prima facie case of a continuing act 'in the form of maintaining a practice which, when followed or applied, excluded [him] from regrading or opportunities to act up'. Mummery J stated that a succession of specific instances was capable of indicating the existence of a practice, thereby constituting a continuing act extending over a period. Whether those instances did in fact amount to a practice, as opposed to a series of one-off decisions depended on the evidence and the employer's explanations for the refusals.

266. However, *Jooste v General Medical Council* EAT/0093/12, HHJ McMullen QC said at paragraph [45] of the judgment, " In my judgment, the rather liberal approach to continuing acts in cases... for example, *Hendricks v Commissioner of Police for the Metropolis* [2003] IRLR 95.. is not as appropriate for cases of continuing-act allegations by a regulatory body. In *BMA v Chaudhary* [2003] EWCA Civ 645, [2003] ICR 1510, Mummery LJ said the following: "67 [. . .] Cases such as *Rovenska* [*v General Medical Council* [1998] ICR 85] and the instant case, in which applications are made for registration by regulatory authorities and are rejected, are distinguishable from the cases in which an employer continuously applies a requirement or condition, in the form of a policy, rule, scheme or practice operated by him in respect of his employees throughout their employment: see *Barclays Bank plc v Kapur* [1991] ICR 208; *Cast v Croydon College* [1998] ICR 500 at 515B; *Owusu v London Fire and Civil Defence Authority* [1995] IRLR 574."

267. There is also a distinction between a continuing act and a one-off act with continuing consequences, in *Okoro v Taylor Woodrow Construction Ltd [2012] EWCA Civ 1590, [2012] All ER (D) 23 (Dec)* a ban from working on the respondent's construction sites was a one-off act with continuing consequences; see also *Richman v Knowsley Metropolitan Borough Council [2013] EqLR 1164*. Where there is a continuing act, it ceases when the employment ceases, Pill LJ [37], "Continuing acts were found both in *Kapur* and *Calder* but were held to continue only as long as the employment continued. That was also the approach in *Tyagi*. Just as, in such a case, time begins to run with the termination of the employment, so, on the ban, time began to run from the date of the ban. In the absence of a continuing relationship between the parties, there was no continuing state of affairs on which a complaint could be based."

268. Pill LJ drew a distinction between the one off ban in *Okoro* and a series of decisions to refuse benefits or particular terms of employment to an employee, which might give rise to a continuing act. At paragraphs [23] – [25] of his judgment, he referred to the case of *Cast v Croydon College* [1998] IRLR 318, [1998] ICR 500.

269. A one off act may have continuing consequences, but that does not demonstrate the existence of a continuing act of discrimination.

270. However, successive decisions may indicate the existence of a discriminatory policy extending over a period, where a relationship continues between the parties.

Extension of Time

271. Where a claim has been brought out of time the Employment Tribunal can extend time for its presentation where it is just and equitable to do so. In *Robertson v Bexley Community Centre T/a Leisure* Link [2003] IRLR 434 the Court of Appeal stated that there is no presumption that an Employment Tribunal should extend time unless they can justify a failure to exercise the discretion. Quite the reverse; a Tribunal cannot hear a complaint unless the Claimant convinces the Tribunal that it is just and equitable to extend time, so the exercise of the discretion is the exception rather than the rule. In exercising their discretion to allow out of time claims to proceed, Tribunals may have regard to the checklist contained in s33 Limitation Act 1980 as considered by the EAT in *British Coal Corporation v Keeble & Others* [1997] IRLR 336. Factors which can be considered include the prejudice each party would suffer as a result of the decision reached, the circumstances of the case and, in particular, the length of and reasons for the delay, the extent to which the cogency of the evidence is likely to be affected by the delay, the extent to which the party sued has cooperated with any requests of information, the promptness with which the Claimant acted once he or she knew of the facts giving rise to the course of action and the steps taken by the Claimant to obtain appropriate advice once he or she knew of the possibility of taking action.

**Discussion and Decision**

**Qualifications Body**

272. The Tribunal considers, first, whether the Bishop of Chelmsford was a qualifications body within the meaning of *s 54 Equality Act 2010* when he granted and revoked the Claimant's general licence.

273. The Tribunal finds that it is necessary for a Priest to hold a licence in order to

exercise ministry in a Diocese. Retired Priests also require permission, but this form of permission is known as PTO. Even though Priests are ordained they cannot minister without a licence or a PTO. The licence of PTO for this purpose is, the Tribunal considers, an approval or recognition or certification from the Bishop which is needed for, or facilitates engagement in the ministry.

274. The Respondent said that the Claimant did not need his particular general licence for his job at St Mellitus. He did in fact perform the job for many months without the licence. However, the Tribunal notes that, when Bishop Cottrell wrote to the Claimant giving him notice of withdrawal of the licence at page 1074, Bishop Cottrell said:

> *"..... the general licence granted to you ..... in November 2006 was intended to facilitate the exercise of your ministry in the Diocese of Chelmsford in connection with and during your tenure of your post at NTMTC/St Mellitus College."*

The Tribunal finds that Bishop Cottrell was specifically saying that the purpose of granting the licence was to facilitate ministry in connection with the Claimant's employment. Furthermore, David Sceats, the principal of St Mellitus College, asked Bishop Gladwin to grant the Claimant the licence. The natural inference from that request was that it would facilitate the exercise of his ministry in his employment at St Mellitus. The Tribunal heard that general licences were granted to ministers associated with schools or Chaplains of those schools, so that it appears that those licences are granted to facilitate the work of such Priests. Accordingly, the Tribunal finds that the licence granted to the Claimant was an authorisation, approval or certification which facilitated the Claimant's engagement in ministry associated with his post at St Mellitus.

275. The Tribunal considers whether the Claimant's ministry was employment, occupation or a profession and not something that was voluntary.

276. The Claimant's post at St Mellitus was not voluntary; he was paid a salary. Licences granted to stipendiary Priests and House for Duty Priests are certifications which are needed for facilitating engagement in work which is either paid or for reward. In the Claimant's particular case, the ministry he was exercising was envisaged to be carried out in association with his employed position at St Mellitus and the Tribunal finds, therefore, that it was not voluntary but was associated with paid employment.

277. Qualifications bodies need to set objective standards in order to qualify under *s54 Equality Act 2010*. There needs to be a transparent test set which people can pass or fail.

278. The Tribunal finds that the test for granting a licence is whether the person is in good standing. The Tribunal notes that John Ball said, in respect of the Claimant when discussing whether or not the Claimant should be given a licence or PTO, that the Claimant was not in good standing with the Diocese. This is similar to the question about whether a Priest was "safe to receive" and the Tribunal notes that the CCSL procedure, formalised for the purposes of "safe to receive", questions relevant to the issue of whether the Priest was in good standing. Those included whether or not the Priest had been the subject of any criminal convictions, or had any considerable debts,

or was involved in disputes. The matters discussed in that email chain of 16 March 2012 at pages 1066 to 1068 are the type of matters which are relevant to whether or not a Priest is in good standing. Such matters include trustworthiness, honesty, whether the Claimant has been convicted of any criminal offence, or in any disputes. The Tribunal considers that whether or not somebody is in good standing in a Diocese is something which can be objectively assessed according to these standards. The test is not a subjective one; of whether the Bishop subjectively likes the person, for example.

279. In this case, the matters relied on by the Respondent's ministers and officers in that email chain, saying the Claimant was not of good standing (or could not be given a "safe to receive" certification), were objective matters, based on facts, including his debts to the Diocese and his disputes with it.

280. The Tribunal concludes that Bishops do apply objective standards, which can be supported by evidence, when they decide whether or not to grant a Priest a licence or PTO.

281. Furthermore, the Tribunal decides that this is not a situation in which the Bishop merely chooses for himself already qualified candidates to engage for his own purposes. On the contrary, the Bishop provides a licence to others who are engaging the relevant Priest. In the case of Parish Priests, the Priests have been selected by the Parish and patron, and not by the Bishop. The Bishop licences or approves the Priests for that work in that Parish. The same was correct of the Claimant; he had been selected by St Mellitus and not by the Bishop of Chelmsford. The Bishop of Chelmsford was not excluded from the category of qualifications bodies applying the test in *Tattari v Private Patients Plan Limited* [1997] IRLR 586 and *Triesman v Ali* [2002] IRLR 489.

282. The Tribunal considers that the Respondent was a qualifications body when he granted the licence to the Claimant and also when he withdrew it. The withdrawal of the licence, on the Respondent's case, was a consequence of the end of the Claimant's paid employment. While there was a delay, so that the Claimant was no longer employed and was no longer being paid at the time that the licence was withdrawn, the Tribunal finds that the delay does not change the nature of the licence and whether it was referable to paid work.

**Shifting Burden of Proof**

283. In light of the negativity about the Claimant expressed by Archdeacon David Lowman, in particular about the Claimant's "litigious" nature, and the fact that Archdeacon Lowman was involved in many decision about the Claimant, the Tribunal approaches its decision making regarding all the Claimant's complaints of race discrimination and victimisation on the basis that the burden of proof has shifted to the Respondent to show that race and/or the Claimant's protected act were no part of the reason the Respondent acted as it did.

**Direct Race Discrimination and Victimisation – House for Duty Posts**

284. Dealing with the direct race discrimination and victimisation claims, the Tribunal considers whether the Claimant's race, or the fact that he had brought a race discrimination claim against the Bishop of Southwark, was any part of the reason that

he was not given a House for Duty post.

285. The Tribunal finds that those matters were no part of the reason the Claimant was not given a House for Duty post.

286. It was made abundantly clear to the Claimant by Bishop Laurie Green (page 600) that the Claimant was required to apply for House for Duty posts.

287. The Tribunal finds that candidates for all posts, whether stipendiary or House for Duty, are selected through transparent recruitment processes. The Claimant did not apply through any recruitment process, or in response to any particular advertisement, for any House for Duty posts. The Claimant only ever registered a general interest with the Respondent, or with Paul Bowtell, in House for Duty posts. The Tribunal accepts the Respondent's evidence that, in order to be given a post, the Claimant would have had applied for one through a recruitment process. While the Chelmsford Diocese website advised candidates that priests wanting a move should consult their Bishops first, this did not negate the requirement to go through a selection process.

288. Reverend Roger Gaylor did apply for the post as a House for Duty Priest at St Marys Abbott and the Tribunal finds that that was the reason that he was appointed to that post and the Claimant was not. There was no less favourable treatment of the Claimant than Rev Roger Gaylor in the same or not materially different circumstances, because Rev Roger Gaylor applied for the post.

289. Marie Segal and the Claimant both applied for the post of Priest in Charge of St Andrews, Ilford. Both were interviewed. The interviewing panel decided unanimously that Marie Segal performed better at interview and should be selected. There was no less favourable treatment of the Claimant in the same or not materially different circumstances. Marie Segal was the better candidate. The Tribunal makes clear that this post was not a House for Duty post, it was a Priest in Charge post and the Claimant was not given permission to amend his claim to include Priest in Charge posts. Insofar as the evidence about the St Andrew's, Ilford post is relevant to the claim, it does not support a conclusion that the Claimant was treated less favourably than a comparator, or was subjected to a detriment by the Respondent.

290. Further, as the Tribunal has found, any negativity felt by Bishop Hawkins towards the Claimant at the time of the St Andrew's Ilford recruitment process was due to the Claimant's behaviour in relation to the Romford vicarage.

291. The Claimant compared himself with Christine Harding, a white woman, who was licensed to Chadwell Heath. Christine Harding was selected, trained and sponsored for ordination on the basis that she would be a locally deployed, self supporting minister. She was licensed to Chadwell Heath as a locally deployed minister in a training curacy. It was never envisaged that she should minister elsewhere; she did not receive a stipend, or a house. The post she occupied was never available for anyone else; whether the Claimant, or any other priest who did not have the Claimant's protected characteristic or who had not done a protected act. All locally deployed, self supporting posts are built around the individual person applying themselves for ministry in that particular area alone.

292. The Claimant was not a locally deployable priest. He was nationally deployable

and sought a House for Duty post (or a stipendiary post). There is no valid comparison with Christine Harding.

293. In any event, the Tribunal is satisfied that the reason why the Claimant was not appointed to any House for Duty posts was that he never applied for such a post using the requisite application process. The Claimant's race and protected act were no part of the reason.

294. The Tribunal also finds that, when Bishop Laurie Green wrote the letter to the Claimant at the end of his employment with St Mellitus, Bishop Green and Elwin Cockett both wanted the Claimant to secure another job. In so far as any of the Bishops or Archdeacons in Chelmsford came to have reservations about the Claimant being appointed as a Priest in that Diocese, the Tribunal finds, on the facts, that that was entirely due to the Claimant's own actions in remaining at the St John's Vicarage in Romford, not paying rent, constantly promising to leave and not leaving, and causing the Diocese to lose a large amount of money in notional rent and in actual court costs. The Claimant's behaviour in this regard was reprehensible and lacking in integrity. He abused the Diocese of Chelmsford.

**Anglican School Leadership project**

295. The Tribunal next considers whether the Bishop of Chelmsford ever instructed potential partners not to enter into projects with the Claimant, or discouraged them from doing so.

296. The Tribunal finds, on the facts, that neither the Bishop of Chelmsford, nor any of the Archdeacons or staff of the Bishop, discouraged potential partners from joining with the Claimant in his projects. It is correct that Bishops from other Dioceses initially expressed enthusiasm and interest in the Claimant's Anglican School Leadership project. However, the National Society had concerns about the Claimant's project. The National Society introduced a "kite mark" scheme which all providers of education needed to obtain.

297. Robert Fox was not a member of the National Society, nor was he part of the executive of the Association of Anglican Directors of Education. Mr Fox had his own reservations about the Claimant's project, which he communicated to the Claimant at the time. The Tribunal finds that these reservations were based on the nature of the project. The reservations were detailed and justified and had nothing to do with the Claimant's race, or his previous proceedings.

298. Other people from outside the Diocese, the AADE, had reservations about the Claimant's Institute and discussed their concerns about it. The draft statement of January 2012 reflected those concerns. The Tribunal finds that, as Robert Fox was not on the National Executive of the AADE, he had no influence over that proposed statement.

299. As set out in David Wilkinson's email to the Claimant (page 1007A), objections of Diocesan Directors of Education to the Claimant's proposals (expressed at the same time at the AADE), led to the Durham College withdrawing from its association with the Claimant. The Claimant had not sought, and was not given, the approval of the National Society. It is not surprising, therefore, that Anglican organisations and

Colleges did not wish to continue their association with him when his courses did not have the approval of the relevant Anglican Church body.

300. The Claimant was well aware that his lack of endorsement by the National Society was the cause of Diocesan Directors of Education not wanting to work with him. In his email to Robert Fox in June 2011 he had said, *"I understand your commitment to the National Society ..... I understand too that there is a feeling amongst the majority of DDEs that I am usurping the role of the NS staff."* (page 962)

301. The Tribunal finds, on the facts, that the Bishop of Chelmsford and his staff had no influence over these other individuals, whether the National Society, Colleges who may have worked with the Claimant, or other Diocesan Directors Education or their Bishops. The Tribunal finds that they did not seek to influence the views of these other individuals and bodies. Those bodies had their own reservations which have been set out in detail in the Tribunal's findings of fact. The Bishop of Chelmsford did not discriminate against the Claimant, or victimise him, in this regard.

**Withdrawing the Claimant's Licence**

302. The Tribunal considers whether withdrawing of the Claimant's licence was an act of race discrimination against him, or an act of victimisation.

303. The Tribunal is satisfied from the evidence, that there were two reasons, and two reasons alone, for the withdrawal of the licence:

303.1 First, the Tribunal accepts the Respondent's evidence that the general licence was granted in association with the Claimant's job at St Mellitus College and that it should have been withdrawn when that job ended. It was not withdrawn simply due to an administrative oversight which coincided with the interregnum in the Bishop of Chelmsford position. This is supported by the contemporaneous email exchange between Jenny Robinson and Jo Bluck in September 2010 wherein Jenny Robinson said that she thought that the Claimant's licence was the licence he held when he was at NTMTC and that, since Bishop John Gladwin had retired when the Claimant left NTMTC, the Claimant had not returned his licence because it did not have a length of time on it (page 827).

303.2 The second reason for withdrawal of the licence was the Claimant's conduct in relation to St John's Vicarage, Romford. The withdrawal was prompted when Rev Martin Court asked Bishop Hawkins to formalise the Claimant's position in St Chad's Parish. Bishop Hawkins passed on that request and it was discussed by the Archdeacons and the Bishops in an email chain of 16 March 2012. The reasons given by the Archdeacons and the Bishops for deciding that the Claimant ought not to be given any form of PTO or licence were entirely due to the Claimant's debts arising from his failure to leave St John's Vicarage and had nothing to do with the Claimant's race or his previous proceedings.

304. The Tribunal finds that neither the Claimant's race nor his protected act was any

part of the reason that the Bishop of Chelmsford withdrew the Claimant's licence.

**Failing to Respond to a Reference Request from the Bishop of Birmingham/ Instructing, Causing or Inducing Prospective Employers not to Offer the Claimant Posts**

305. The Tribunal then considers whether the Respondent discriminated against the Claimant or victimised him by failing to respond to reference requests, or otherwise inducing prospective employers not to offer positions to him.

306. On the facts, the only reference request or "Safe to Receive" request which was sent to the Respondent from another Diocese was the CCSL and reference request from Birmingham in 2011. Archdeacon Lowman did draft an email response, which Bishop Cottrell adopted. That email referred to previous proceedings against another Diocese in a negative way. Those previous proceedings included a protected act. The Tribunal finds, from the wording of that emailed reference, that the email would have influenced prospective employers against the Claimant; it was a detriment to the Claimant, who would inevitably have been disadvantaged by the negative comments about the previous proceedings.

307. Bishop Cottrell simply adopted what Archdeacon Lowman said; he delegated responsibility for the wording of the emailed reference to Archdeacon David Lowman; he did not exercise any independent decision making in respect of it; Archdeacon Lowman acted as agent for Bishop Cottrell as principal.

308. The burden of proof has shifted to the Respondent to show that the protected act was no part of the reason that the Respondent made the negative comments about the Claimant. Tribunal accepts Archdeacon Lowman's evidence that he thought that he was obliged to mention the previous proceedings. Nevertheless, he did mention the proceedings and did so in a negative way. He "warned" the Diocese of Birmingham. The words used indicated that there should be caution about receiving the Claimant, partly because of his previous proceedings against another Diocese, Southwark.

309. The Tribunal does not accept that it was the Claimant's litigious nature alone which was being referred to. The words of the Archdeacon Lowman's draft refer to the proceedings themselves and not to the way in which the Claimant approached the proceedings. The Tribunal does not draw a distinction between the protected act and the manner in which it was done. In any event, the Tribunal finds that the proceedings against the Diocese of Southwark were proceedings which it was perfectly proper for the Claimant to have brought.

310. The Tribunal finds that the Respondent has failed to prove that the Claimant's protected act was not part of the reason he sent a negative reference to the Diocese of Birmingham. The Respondent sent the negative reference, in part, because the Claimant had done a protected act. The Tribunal finds that the Respondent would have committed an act of victimisation against the Claimant by the sending of that reference.

311. It finds, however, that the Claimant's race was no part of the reason Archdeacon Lowman and the Respondent sent that reference. There is no hint from any of the evidence that Archdeacon Lowman or Bishop Cottrell treated the Claimant less

favourably than they would have treated someone of a different race. The Tribunal accepts that Archdeacon Lowman considered that he was obliged to mention the Southward proceedings because of the standard questions asked on the CCSL. The Tribunal is satisfied therefore that a white comparator, not of African national origin, who had behaved in the way that the Claimant had done and who had brought race discrimination proceedings against another Diocese, would have been treated in the same way by Archdeacon Lowman.

312. On these facts, the only potentially successful complaint by the Claimant against the Respondent would have been a complaint of victimisation arising out the negative reference the Respondent sent to the Bishop of Birmingham. However, the Claimant did not issue his Employment Tribunal proceedings until 28 February 2013 and the reference was sent to the Bishop of Birmingham on 20 April 2011. The complaint of victimisation was therefore about a year and a half out of time.

313. There was no possible continuing act. No other reference or CCSL requests were received. The Tribunal accepts the Respondent's evidence that Bishop Cottrell did not discuss the Claimant with other Bishops, nor did he provide any other negative CCSL or reference.

314. When Bishop Cottrell revoked the licence in April 2012, he did so on the basis, first, that the licence associated with NTMTC had come to an end and, second, that the Claimant's debts and behaviour towards the Diocese of Chelmsford meant that he was not in good standing. There was no act of victimisation then. Furthermore, the Tribunal is satisfied that Bishop Cottrell did not know about the proceedings against the Diocese of Southwark and could not have victimised the Claimant himself. There is no evidence that there were other requests for references, or CCSLs, after April 2011.

315. In the Claimant's claim form presented on 28 February 2013, the Claimant said, "A culture and context was set in place through which the Claimant was victimised. Given that the Claimant applied unsuccessfully for post to other Dioceses it can therefore justifiably be inferred that other Bishops were equally discouraged from appointing the Claimant.. The Claimant applied for a large number of Church jobs since 2010, but has been completely unsuccessful. This is of course not surprising, given the Diocese of Chelmsford would have given him a poor reference since they would not even consider the Claimant for a House for Duty (no stipend, salary) position themselves."

316. The Claimant was aware of the fact that he had applied for posts in other Diocese since 2010 and was not successful. He was aware that he had not been given a House for Duty post since that time, also. He was aware of the facts which he said gave rise to a claim, but failed to present the claim until 2013.

317. The Tribunal has not accepted that the Claimant was too frightened to bring proceedings because of the way in which he had been treated previously.

318. The Claimant had been a member of a union from 2006 throughout his association with the Bishop of Chelmsford and the Diocese of Chelmsford and had sought advice from that union. Furthermore, he had brought previous Tribunal proceedings, so he knew about the possibility of bringing a complaint and must have known about the time limit within which to do so.

319. The very substantial delay in bringing the proceedings inevitably will have affected the ability of witnesses to recall events.

320. There are no good reasons for extending time for a complaint which was over a year out of time in this case and, as a result, the Tribunal does not have jurisdiction to entertain the Claimant's complaint of victimisation.

321. Accordingly, all the Claimant's complaints fail and are dismissed.

**RESERVED JUDGMENT**

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Employment Judge Brown

JUDGMENT & REASONS SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE