

BEFORE THE RT REVD THE LORD BISHOP OF WINCHESTER

ON BEHALF OF THE MOST REVD THE LORD ARCHBISHOP OF CANTERBURY

BETWEEN

**THE REVD RICHARD COEKIN**

Appellant

and

**THE RT REVD THE LORD BISHOP OF SOUTHWARK**

Respondent

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**OUTLINE SUBMISSIONS ON  
BEHALF OF THE APPELLANT**

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## Introduction

1. This is Mr Coekin's appeal against the summary revocation of his licence pursuant to paragraph 5 of Canon C12 by the Lord Bishop of Southwark by letter dated Monday 7 November 2005<sup>1</sup>.
2. The licence granted to Mr Coekin, which the Bishop revoked, is dated 7 January 1996, having been made by Bishop Martin Wharton, the then Bishop of Kingston-upon-Thames<sup>2</sup>. As the licence expressly records, the essential foundations on which it rests are the "*Fidelity, Morals, Learning, Sound Doctrine and Discipline*" of Mr Coekin, in which the Bishop "*do fully confide*". One would expect that in determining whether to revoke a licence consideration would first be given to whether these foundations (or any of them) had failed.
3. The licence is to perform the Office of Assistant Minister of the Chapel of Emmanuel Wimbledon in the Parish of Wimbledon, although, as is clear from the witness evidence and the documents, it was understood from the outset that Mr Coekin would have special responsibility for a church-plant at Dundonald School, in the parish of St Andrew's, South Wimbledon<sup>3</sup>.
4. It is evident that God has granted the Dundonald church plant tremendous growth in membership within the dioceses of Southwark and London under Mr Coekin's leadership. The network of congregations it has spawned has,

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<sup>1</sup> Documents bundle tab 1 page 94.

<sup>2</sup> A copy of the licence is in the Pleadings Bundle at tab 2 page 47.

<sup>3</sup> The church plant at Dundonald School was one of the very earliest instances of what are now formally recognised, in line with the Mission Shaped Church report, as "fresh expressions".

since 2003, been called "The Co-Mission Initiative"<sup>4</sup>. Mr Coekin is clearly highly respected and loved across these congregations (and further afield, both inside and outside the Anglican communion)<sup>5</sup>. He has a fine record of training leaders, teaching congregations and fostering mission<sup>6</sup>. He is a highly gifted Bible teacher, Christian leader and evangelist<sup>7</sup>. He is a committed Anglican, holding to and teaching the doctrine of the 39 Articles, the Book of Common Prayer and the Ordinal<sup>8</sup>. There is absolutely no suggestion that he presents a danger to the public, that he has been guilty of some immorality or infidelity, that he is a heretic or is teaching heresy or that he has done anything to suggest that he is unworthy to continue in office<sup>9</sup>. His positive ministry needs to be affirmed and encouraged.

5. Paragraph 5 of Canon C12 provides:

*"The bishop of a diocese may by notice in writing revoke summarily, and without further process, any licence granted to any minister within his diocese for any cause which appears to him to be good and reasonable after having given the minister sufficient opportunity of showing reason to the contrary; and the notice shall notify the minister that he may, within twenty-eight days from the date on which*

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<sup>4</sup> See Coekin WS paras 6-18 [WS bundle tab 1 pages 3-9].

<sup>5</sup> See Reid WS para 9 [WS bundle tab 8 page 3]; Fletcher WS para 15 [WS bundle tab 2 page 7]; Taylor WS para 6 [WS bundle tab 10 page 2]; Jensen WS paras 3-4 [WS Bundle tab 13].

<sup>6</sup> See Fletcher WS paras 6 and 15 [WS bundle tab 2 pages 3 and 7]; Taylor WS para 4 [WS bundle tab 10 page 2]; Roberts WS para 6 [WS bundle tab 11 page 3].

<sup>7</sup> See Jensen WS paras 3-4 [WS bundle tab 13]; Palmer WS paras 4-5 [WS bundle tab 12 page 2]; Roberts WS paras 2 and 5 [WS bundle tab 11]; Paul Perkin WS paras 9-10 [WS bundle tab 9 pages 4-5].

<sup>8</sup> See Coekin WS para 3 [WS bundle tab 1 page 2]; Taylor WS paras 3-5 [WS bundle tab 10].

<sup>9</sup> Since the revocation of his licence, and pending the outcome of this appeal, Mr Coekin has continued to minister to the congregations under his charge (and further afield) without incident or complaint. This has been the position openly, having been made clear in paragraph 53 of Mr Coekin's Statement of Case on this appeal.

*he receives the notice, appeal to the archbishop of the province in which the diocese is situated.*

*On such appeal the archbishop may either hear the appeal himself or appoint a person holding the office of diocesan bishop or suffragan bishop in his province (otherwise than in the diocese concerned) to hear the appeal in his place; and, after hearing the appeal or, if he has appointed a bishop to hear the appeal in his place, after receiving a report in writing from that bishop, the archbishop may confirm, vary or cancel the revocation of the licence as he considers just and proper; and there shall be no appeal from the decision of the archbishop.*

...

*Any appeal under this paragraph shall be conducted in accordance with [the Elphinstone rules]; and any such rules may provide for the appointment of one or more persons to advise the archbishop or bishop hearing such an appeal on any question of law arising in the course thereof.”<sup>10</sup>*

6. The revocation letter had been preceded by a letter dated Friday 28 October 2005 inviting Mr Coekin to show “good” cause why his licence should not be revoked<sup>11</sup>. The letter was expressly written in the light of Mr Coekin’s letter of 25 October 2005<sup>12</sup> (which may only have been received by the Bishop on 28 October 2005), appears to give three grounds for summary revocation of Mr Coekin’s licence and invites Mr Coekin voluntarily to surrender his licence “*since you no longer accept my authority*”. As stated, the three grounds were:

- (1) A statement by Mr Coekin that “we” (meaning his congregations, staff and himself) were ‘in temporarily impaired communion’ with the

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<sup>10</sup> Canon C12(5) has been amended by Amending Canon Number 24 but not in a way that is relevant to the issues in this case, save to note that, if the Bishop had deferred until less than 2 months after he had acted, the power of summary revocation would no longer have been available to him.

<sup>11</sup> Documents bundle tab 1 page 90.

<sup>12</sup> Documents bundle tab 1 page 87A. A second copy appears at page 88.

Bishop by virtue of the Bishop's unwillingness to distance himself from the House of Bishops' Statement on Civil Partnerships or to give certain affirmations as to the Bishop's doctrinal stance on such matters;

- (2) A statement by Mr Coekin that "we" (with the same meaning) "shall no longer be able to accept your oversight" for the same reasons; and
  - (3) An indication that "we" (again with the same meaning) intend to proceed with the ordination of eligible staff by a visiting Anglican bishop.
7. It is submitted that the Bishop's letter dated 28 October 2005 was written on the basis of misapprehensions of both law and fact. This submission is made on the basis of inferences which have been drawn from the documents and in the absence of evidence from the Bishop, who has chosen not to serve a witness statement.
  8. These misapprehensions include: (1) that Mr Coekin no longer accepted the Episcopal authority of the Bishop of Southwark and (2) that Mr Coekin intended to proceed with the ordination of lay members of his staff in breach of The Overseas and Other Clergy (Ministry and Ordination) Measure 1967. It is submitted that neither was or is either legally or factually correct.
  9. If, as we submit, the revocation of Mr Coekin's licence was based on misapprehensions of both fact and law, the revocation cannot stand. Alternatively, it was unjust, unfair, unreasonable and disproportionate, and cannot stand.

10. In the Bishop's pleading for this proceeding, headed "Response of the Respondent", it is alleged that the Bishop had "good and reasonable cause to revoke" Mr Coekin's licence because Mr Coekin "*consistently refused to accept the Respondent's Episcopal Authority*" with a list of 9 particulars then being given<sup>13</sup>. There is some evidence<sup>14</sup> which suggests that the Bishop did take all these additional matters into account in reaching the decision to revoke Mr Coekin's licence. If the Bishop did take them into account, the revocation should be discharged for unfairness, since Mr Coekin was not given the opportunity of responding to all of them before his licence was revoked. If the Bishop did not take them into account, they are irrelevant. In any event, (insofar as it is necessary to explore any of these reasons) it is submitted that none is correct in fact or sufficient in law.
11. Each of these submissions is developed below.
12. The remaining sections of these Outline Submissions follow the following structure:
  - (1) In section A, the essential facts are introduced.
  - (2) In section B, the nature of the hearing is considered and the questions which (it is submitted) the Commissary must address at the hearing are identified and explained.

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<sup>13</sup> See paragraph 45 at Pleadings bundle tab 3 pages 39-40.

<sup>14</sup> Supported, on one reading of it, by paragraph 45 of the "Response of the Respondent".

- (3) In section C, some relevant legal principles are stated and developed.
  - (4) In section D, the correspondence leading to the revocation of Mr Coekin's licence, and related documents, are scrutinized with a view to understanding the conclusions to which, within the scheme of Canon C12(5), the Bishop in fact came, and the thought processes and reasoning which led him to those conclusions.
  - (5) In section E, Mr Coekin's case on the questions identified in section two is set out and explained.
  - (6) Finally, there is a brief conclusion.
13. There are three bundles of documents in this matter – a Pleadings bundle, a Witness Statements bundle and a Documents bundle. In addition, bundles of authorities are being prepared. In advance of the hearing, the Commissary would be most assisted by reading the following:
- (1) These written submissions.
  - (2) The pleadings bundle.<sup>15</sup>
  - (3) The witness statements bundle.
  - (4) The correspondence between 16 September 2005 and 8 November 2005 [Documents bundle tab 1 pages 84 to 96].

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<sup>15</sup> The Directions Order dated 30 March 2006 should also be noted [Documents bundle tab 3 page 155].

14. It is not suggested that the Commissary read a bundle of authorities at this stage, save that particular regard will have to be paid to the decision of the Lord Archbishop of York in ***Brown v. Lord Bishop of Carlisle***, Judgment, 28 February 2003, which is the most recent and most comprehensive treatment of the summary revocation of licences under Canon C12(5)<sup>16</sup>.

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<sup>16</sup> This was a decision by the Archbishop of York. Recent authority suggests that the doctrine of precedence should be applied in the Consistory Court, even as between the two Provinces – ***In re Blagdon Cemetery [2002] Fam 299, 309***. The Archbishop of Canterbury should follow the principles established in the ***Brown*** case.

**A. Factual background**

15. A chronological statement of facts is attached. This is not yet an agreed document although its contents ought not to be contentious.
16. The essential facts ought not to be in dispute. In the absence of evidence from the Bishop, the Commissary may find it necessary to draw certain inferences of fact. The inferences which Mr Coekin will invite the Commissary to draw are identified and explained below.

## **B. The nature of the hearing**

17. The scheme established by paragraph 5 of Canon C12 (as set out in paragraph 5 above) operates in the following way:

- (1) If the bishop identifies a cause which appears to him<sup>17</sup> to constitute good and reasonable grounds for summary revocation, the bishop must give the minister sufficient opportunity of showing reason to the contrary.
- (2) If the minister does not show reason to the contrary, the bishop may by notice in writing summarily revoke the licence. The notice in writing ("decision document") must particularise the facts found proved as being the grounds of summary revocation appearing to the bishop to be good and reasonable<sup>18</sup>.
- (3) The requirements (both procedural and substantive) which the bishop must follow in deciding to revoke the licence are no mere formalities.
  - (a) It is clearly intended to give the minister sufficient opportunity of seeking to persuade the bishop not to take the course he is provisionally minded to take. To that end, the bishop must identify to the minister on what grounds he is provisionally minded to act so that the minister can address those concerns with 'reason to the contrary'.

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<sup>17</sup> This apparently subjective language must be construed by reference to the applicable legal principles, which are addressed in section C below.

<sup>18</sup> ***Brown v. Lord Bishop of Carlisle***, Judgment, 28 February 2003, para 119.

- (b) Normal principles of natural justice apply at this stage.<sup>19</sup>
- (c) Consequently, the bishop must
  - (i) Carry out a proper assessment;
  - (ii) Reach a proper and reasoned conclusion;
  - (iii) Direct himself properly on matters of law and fact (and not act under any relevant misapprehensions);
  - (iv) Take into account all relevant matters;
  - (v) Not take any irrelevant matters into account;
  - (vi) Consider what alternative courses of action are, in the circumstances, open to him;
  - (vii) Consider which of the alternative courses of action is the most proportionate in all the circumstances;
  - (viii) Determine whether summary revocation was proportionate, reasonable and fair.
- (4) At the request of the minister, there is an appeal against the summary revocation to the Archbishop.
- (5) On such an appeal, the Archbishop (in this case acting through a Commissary) must<sup>20</sup>

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<sup>19</sup> ***Brown v. Lord Bishop of Carlisle***, Judgment, 28 February 2003, paras 125 and 126.

- (a) Review the fairness of the bishop's handling of the matter;
  - (b) Hear the evidence and submissions and decide whether the evidence is sufficient to justify revocation; and
  - (c) Decide whether to confirm, vary or discharge the revocation.
- (6) Procedurally, the appeal hearing should follow the Elphinstone Rules, which are designed to ensure that the second stage is more structured and formal than the first stage. The Rules provide for exchange of pleadings and evidence followed by a formal hearing with oral evidence on oath subject to cross-examination and re-examination. Ordinary rules of evidence apply.
- (7) The foregoing process may be viewed as a single process in two stages: the first stage (decision by the bishop) occurs where the bishop decides to hold an enquiry<sup>21</sup> leading to a summary revocation; the second stage (appeal) occurs where the minister asks for it.<sup>22</sup>
18. Consequently, an appeal hearing, such as the present, has the following characteristics:
- (1) Its scope is set by the cause or causes which the bishop originally identified as constituting good and reasonable grounds for revocation,

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<sup>20</sup> Technically, it is (according to the Canon) for the Commissary to report and the Archbishop to decide. However, it is not open to the Archbishop to reach a decision which is both different from, and more adverse to the Appellant than, that recommended by the Commissary. This is because it would be a fundamental breach of natural justice for an adverse decision to be made against the Appellant in the absence of the Appellant having the opportunity for his case to be heard by the real decision maker.

<sup>21</sup> Although, as will be seen, it is straining language to use this as a description of what happened in the present case.

<sup>22</sup> **Brown v. Lord Bishop of Carlisle**, Judgment, 28 February 2003, para 128.

of which the bishop originally gave the minister opportunity of showing reason to the contrary.

- (2) It is not open to the bishop at this hearing, still less the Commissary, to rely on matters which were not identified by the bishop to the minister at the outset as constituting good and reasonable grounds for revocation.
- (3) The first task on the appeal is for the Commissary to determine whether the bishop acted fairly in summarily revoking the licence<sup>23</sup>. Regard must be had to whether the Bishop acted fairly and properly in relation to all the matters identified at paragraph 17(3)(c) above. If the Bishop did not act fairly, the Commissary must conclude (unless the unfairness was trivial and caused no prejudice to the minister) that the revocation cannot stand, but must be discharged.<sup>24</sup>
- (4) If the Commissary concludes that the bishop acted fairly<sup>25</sup> (or with trivial and non-prejudicial unfairness which does not of itself invalidate

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<sup>23</sup> ***Brown v. Lord Bishop of Carlisle***, Judgment, 28 February 2003, paras 106, 132, 170 and 174. Unfairness may take many forms, including taking into account irrelevant considerations, taking into account considerations of which the minister has been given no opportunity of showing reason to the contrary, failing to take relevant considerations into account, failing to clarify ambiguities, or acting under a misapprehension as to facts or law. All these forms of unfairness exist in the present case, as explained below.

<sup>24</sup> In that event, it is not open to the Commissary to determine *de novo* whether the licence should be revoked for two reasons. First, paragraph 5 of Canon C12 only grants to the Commissary the power to determine whether to confirm the revocation by the bishop, not whether there could or should, in the abstract, be a revocation. If, by reason of unfairness, the bishop's revocation cannot be confirmed, the Commissary must discharge that revocation, which is an end of the matter. Secondly, if (contrary to the foregoing) paragraph 5 of Canon C12 does confer on the Commissary the power to determine *de novo*, that power ceased to be exercisable on 1 January 2006 as regards misconduct falling within the Clergy Discipline Measure 2003.

<sup>25</sup> As in the case of ***Brown v. Lord Bishop of Carlisle***, where the Archbishop undertook a review of the Bishop's decision separately from receiving oral evidence and concluded that the Bishop acted fairly and there was ample material to justify his decision to revoke – Judgment, 28 February 2003, para 170 and 174. Consequently, the situation in the present case did not arise in ***Brown***.

the revocation), the second task of the Commissary on the appeal is to determine whether, on the evidence and on the basis of his findings of fact, there are good and reasonable grounds for summary revocation. As to this:

- (a) The function of the Commissary is not limited to conducting a review of that which the Bishop of Southwark did or decided. The Commissary's task goes beyond that because the Commissary is not restricted to the information and materials which the Bishop had before him. Rather, the Commissary must take into account all the evidence and submissions which he hears or reads at this hearing.
- (b) The Commissary is, however, limited in the following respects:
  - (i) The determination must be made by a proper application of the law and associated principles of justice, fairness, reasonableness and proportionality.
  - (ii) The determination must be based on, and only on, the evidence which is read by or heard before the Commissary.
  - (iii) The determination must be based only on the grounds of revocation which the Bishop could properly take into account at the first stage (being those in respect of which the minister had originally been given opportunity to show reason to the contrary) as well as those other matters which the Bishop should properly have taken into account in determining whether summarily to revoke the licence (for

example, evidence of the minister's good character and faithful ministry).

- (5) If the Commissary determines that there is sufficient evidence to justify summary revocation, the Commissary must finally decide whether, in all the circumstances, it is just and proper to confirm, vary or discharge the revocation by the Bishop.

19. In summary, therefore, the questions which the Commissary must address at this hearing are as follows<sup>26</sup>:

- (1) As a matter of review, did the Bishop of Southwark act fairly in (i) identifying to Mr Coekin the grounds on which he was provisionally minded to revoke Mr Coekin's licence; (ii) giving opportunity for Mr Coekin to show reason to the contrary; and (iii) concluding that there were good and reasonable grounds for summary revocation?
  - (a) If the Commissary concludes that the Bishop of Southwark did not act fairly, the revocation cannot stand.
  - (b) If the Commissary concludes that there was fairness at the first stage, the second and third questions arise.
- (2) On the basis of the evidence heard and submissions made, did good and reasonable grounds exist for summary revocation of the licence?

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<sup>26</sup> This formulation is close to, but not identical to, the formulation contained in paragraph 2 of the Provincial Registrar's letter of 1 March 2006 [Documents bundle tab 3 page 142], which is repeated in the formal directions order dated 30 March 2006 [Documents bundle tab 3 page 155]. It is submitted that the Appellant's analysis more precisely accords with the legal position and is to be preferred.

- (3) Is it just and proper to confirm, vary or discharge the Bishop of Southwark's summary revocation of Mr Coekin's licence?

### **C. Relevant legal principles**

20. As noted above, the legislation with which this appeal is concerned, which empowers a bishop to revoke a licence granted to a minister within his diocese, is paragraph 5 of Canon C.12. It permits a bishop summarily to revoke a licence granted to a minister *“for any cause which appears to him to be good and reasonable after having given the minister sufficient opportunity of showing reason to the contrary”*.
21. The power afforded a bishop by paragraph 5 of Canon C 12 is a discretionary power. However, the fact that the power it affords is discretionary does not mean that it is an unfettered power. Rules of law have developed to ensure that discretionary powers are exercised in a proper and lawful way in accordance with the presumed intentions of the legislature that conferred the power. Two rules, in particular, govern the exercise of discretionary powers.
- (1) First, there is the rule which requires that powers must not be abused. They must be exercised, amongst other things, reasonably, in good faith and on proper grounds.
- (2) Secondly, there are the rules of natural justice. Two fundamental principles of fair procedure apply: that a person or entity may not be judge in their own cause; and that a person’s defence must always be fairly heard.
22. The law thus controls both the substantive approach to discretionary decisions and the procedure under which they are made. Insofar as relevant to the issues arising on this appeal, each is considered in turn.

