



EMPLOYMENT TRIBUNALS

Claimant
Mr J Gould

- v -

Respondent
St John's Downshire Hill

Heard at: London Central

On: 1-9 April 2019 (10-11
April 2019 in chambers)

Before: Employment Judge Baty
Mr D Schofield
Ms S Plummer

Representation:

For the Claimant: Mr A Sendall (counsel)
For the Respondent: Mr T Cordrey (counsel)

RESERVED JUDGMENT

The claimant's complaints of unfair dismissal and of direct marriage discrimination fail.

REASONS

The Complaints

1. By a claim form presented to the employment tribunal on 24 November 2016, the claimant brought complaints of unfair dismissal, wrongful dismissal (in relation to an alleged failure to follow the correct contractual procedure to dismiss him), and marriage discrimination (both direct and indirect). The respondent defended the complaints.
2. At a preliminary hearing on 17 March 2017, the direct and indirect marriage discrimination complaints were struck out as having no reasonable prospect of success. The claimant appealed in relation to the decision to strike out the direct marriage discrimination complaint (but not the indirect marriage discrimination complaint). The appeal was heard on 5 October 2017. The

Employment Appeal Tribunal (Simler P sitting alone) upheld the appeal. Permission for the respondent to appeal to the Court of Appeal was refused.

3. At the start of this hearing, Mr Sendall withdrew the wrongful dismissal complaint and the tribunal dismissed that complaint.

4. There remained for determination, therefore, the complaints of unfair dismissal and of direct marriage discrimination.

The Issues

5. A list of issues had been agreed between the parties previously. That list was provided to the tribunal at the start of this hearing. A few minor changes were made following discussion between the representatives and the tribunal. The list was then agreed as between the representatives and the tribunal. The issues to be determined were therefore as follows:

Unfair dismissal

1. Was the Claimant dismissed for a potentially fair reason as listed under s.98(1) or (2) of the Employment Rights Act 1996 (“ERA”)?
 - a. The Respondent relies on s.98(1)(b), some other substantial reason, as the reason for dismissal, and more specifically the breakdown of the relationship between the Claimant and the trustees, Leadership Team, certain members of staff and other members of the congregation of St John’s Downshire Hill (“SJDH”).
 - b. The Claimant contends that the real reason for his dismissal was the breakdown of his marriage.
2. If the Claimant was dismissed for a potentially fair reason, was the dismissal fair in all the circumstances, pursuant to s.98(4) ERA?

The Claimant contends that the dismissal was not fair in all the circumstances because:

- a. The Respondent did not undertake a reasonable investigation into the breakdown of the relationships between the Claimant and others;
- b. There was not a sufficient breakdown in relationship between the Claimant and the trustees to warrant dismissal;

- c. The Respondent did not take reasonable steps to repair the relationship between the trustees and the Claimant;
- d. The Claimant was not provided with adequate detail about, and evidence in support of, the allegations made against him;
- e. The Claimant was not given adequate time to respond to allegations made against him and amend his conduct if necessary;
- f. The Claimant was not given adequate warning of the meeting at which the decision was taken to terminate his employment.

Direct Discrimination because of marriage

- 3. Was the Claimant, contrary to sections 13 and 39(2)(c) of the Equality Act 2010 (“EqA”), treated less favourably because of marriage? The less favourable treatment relied upon by the Claimant is his dismissal.

Equality Act 2010 Schedule 9 Exception

- 4. Can the Respondent rely upon the exception for religious organisations contained in Schedule 9, Part 1, paragraph 2(4)(e) of the EqA?

Remedy

- 5. In the event that the Claimant is found to have been unfairly and/or wrongfully dismissed and/or discriminated against what financial loss, if any, has the Claimant suffered?
- 6. Has the Claimant mitigated his losses? Should there be a reduction to any compensation on the basis that the Claimant caused or contributed to his losses? Should there be a *Polkey* reduction? Should there be any adjustment to compensation as a result of any unreasonable failure to comply with the ACAS Code on Disciplinary and Grievance Procedures 2015?
- 7. Should there be an award for injury to feelings, and if so what amount?

6. It was agreed that this hearing would be on liability only but that the issues in paragraph 6 of the list of issues (concerning contribution/Polkey/ACAS Code) should be determined at the liability stage.

7. There was some discussion about issues of remedy. Mr Sendall confirmed that the claimant would be seeking stigma damages but that this was an issue which should be dealt with at any remedies hearing.

8. In his submissions, Mr Cordrey confirmed that he would not be relying on the Equality Act 2010 Schedule 9 exception set out at issue 4 above, and therefore that issue fell away and was not determined.

The Evidence

9. Witness evidence was heard from the following:

For the respondent:

Mr Gareth Burns, a trustee of the respondent since 11 January 2016, and one of the five trustees who took the decision to dismiss the claimant;

Bishop Peter Broadbent, the Bishop of Willesden, who was at the times relevant to this claim the acting Bishop of Edmonton and who produced a report on 2 December 2015 in relation to, amongst other things, the claimant's relationship with the respondent;

Mr Jonathan Kennedy, a member of respondent's Leadership Team until 7 October 2015;

Mr David Choi, a trustee of the respondent since 11 January 2016, and one of the five trustees who took the decision to dismiss the claimant; and

Mr Alex Chitra, a trustee of the respondent since 2003 and one of the five trustees who took the decision to dismiss the claimant.

For the claimant:

The claimant himself.

10. Witness statements were also produced by the claimant in relation to: Mr David Munro; Mr John Orme; Mr George Gould (the claimant's eldest son); Ms Isobel Burden; Ms Jill Paterson; and Ms Lucy Ogilvie. Of these, Mr Sendall was originally intending to call only Mr Munro, Mr Orme and Mr George Gould; however, as the case developed and as detailed below, he decided in the end not to call them. The tribunal read the witness statements for all of the witnesses referred to in this paragraph; however, in the light of the fact that these individuals were not called to give evidence and could not be cross-examined on their statements, we give little weight to the evidence in their statements.

11. An agreed bundle of documents in four volumes numbered pages 1-2085 was produced to the hearing. By consent, further documents were added at various points of the hearing as pages 2086-2111.

12. The tribunal read in advance the witness statements, any documents referred to in the witness statements and (as the respondent's statements did not cross refer to the bundle) the documents marked in yellow on a chronology provided by Mr Cordrey.

13. In addition, there were provided to the tribunal cast lists (one from each representative), a chronology and reading list from the respondent, and a timetable agreed between the representatives.

14. The tribunal discussed the timetable with the representatives at the start of the hearing and it was agreed to as between the representatives and the tribunal.

15. Towards the end of the morning on the fourth day (after Mr Choi's evidence had been completed, with Mr Chitra's evidence scheduled for the rest of that day), Mr Sendall asked if Mr Chitra could come back later in the hearing as well as he did not think that he would be able to complete his cross-examination of him that day and needed one to one and a half days to do this. Notwithstanding that Mr Sendall stated at this point that he was no longer going to be calling Mr Orme, this request would have delayed the agreed timetable considerably. Mr Sendall made suggestions about Mr Cordrey taking less time with the claimant. Mr Cordrey objected strongly to any adjustment to the timetable stating: that the timetable had been agreed from the start between the two of them; that the balance of time it contained was not disproportionate; that it was up to Mr Sendall to manage his cross-examination as he saw fit (whilst he had acknowledged that he would need a reasonable amount of time with Mr Chitra, he had spent the vast majority of the morning on cross-examination of Mr Choi); Mr Sendall had put lots of questions to other witnesses about emails written by Mr Chitra and that, whilst that was up to him, they were questions which would have been better directed to Mr Chitra and consequently used up time unnecessarily with the other witnesses; and he didn't at that point know whether Mr Chitra would be available either tomorrow or next week. The judge asked Mr Cordrey to take instructions from Mr Chitra as to his availability: Mr Chitra stated that, whilst he would not be available the following week, he could take emergency leave the following day which, having been asked, he said would not have a detrimental effect on his patients (Mr Chitra is a GP).

16. The tribunal adjourned briefly to consider this. When it returned, it expressed disappointment that the agreed timetable was not being kept to and acknowledged many of the points made by Mr Cordrey in this respect; however, it agreed that Mr Sendall could have up to 2 hours the following morning cross-examining Mr Chitra, given that Mr Chitra was available and that the tribunal considered that he was an important witness and could understand why Mr Sendall had a lot of questions for him; however, it could not allow any further time beyond that, as it would not be fair to take time out of Mr Cordrey's agreed allocation and the tribunal was not prepared to do that; and even the delay which the tribunal was allowing would most likely mean that the tribunal had less of the time for its deliberations which had been built into the timetable (the judge noted that, as a result of this adjustment, submissions were likely to slip into the eighth day of the hearing, which had been scheduled for tribunal deliberations).

17. When Mr Sendall came to the end of the additional two hours cross-examination time the following day, he stated that he still had a number of questions remaining. Mr Cordrey objected to any further extension. The tribunal asked Mr Sendall whether there were one or two key questions that he felt he must ask and allowed him an extra 10 minutes for that; however, the tribunal did not permit Mr Sendall any further time beyond that (it would have been disproportionate to do so, given the considerable latitude which the tribunal had already afforded him).

18. After lunch on the sixth day of the hearing (part way through the claimant's evidence), Mr Sendall reiterated that (as he had mentioned on the first day of the hearing) he had a commitment on the eighth day of the hearing and therefore hoped that, as had been envisaged by the original timetable, the evidence and submissions would be completed by the end of the seventh day, leaving the eighth and ninth days for tribunal deliberations. In the light of the adjustments to the timetable detailed in the paragraphs above, which were done to accommodate Mr Sendall, submissions would inevitably have had to run into the eighth day. Mr Sendall then stated that he was now no longer going to be calling Mr Munro and Mr George Gould (in addition to Mr Orme), with the result that, of the claimant's witnesses, only the claimant himself would be giving evidence in the tribunal, and that he hoped that this would save some time; and that, therefore, submissions could be completed by the end of the sixth day of the hearing.

19. Mr Cordrey objected and reiterated some points which he had made earlier about submissions; he had hoped to be able to complete his written submissions after the claimant's evidence had been completed so that the tribunal could have a good, complete set of written submissions which he considered would be helpful in this case; however, if the tribunal acceded to Mr Sendall's request, such that the remainder of the claimant's evidence was on the same day as submissions, he would not be able to include everything that came out of the claimant's evidence in those written submissions.

20. The tribunal adjourned briefly to consider this. The tribunal decided that, on the basis that Mr Sendall would now only be calling the claimant himself to give evidence, Mr Cordrey could have until midday on the seventh day of the hearing to complete his cross-examination of the claimant (which would mean that he was not short-changed on his original time allocation for the claimant); written submissions could then be handed up to the tribunal, and oral submissions made on the afternoon of the seventh day once the tribunal had read those written submissions; and the parties would be limited to one hour for their oral submissions. The tribunal acknowledged the good reasons given by Mr Cordrey in relation to production of written submissions; however, balancing that against Mr Sendall's assertion that he needed to be elsewhere on the eighth day of the hearing (which he had mentioned at the start of this hearing), it decided that it was proportionate to accede to his request.

21. Both parties duly produced written submissions, which the tribunal read before hearing the oral submissions. The evidence and submissions were duly completed by the end of the seventh day of the hearing.

22. The tribunal reserved its decision.

The Law

Unfair dismissal - some other substantial reason

23. The tribunal first has to decide whether the employer had a reason for dismissal which was one of the potentially fair reasons for dismissal within section 98(2) of the Employment Rights Act 1996 (“ERA”) (such as capability, conduct or redundancy) or some other substantial reason for dismissal as set out in section 98(1) of the ERA. The burden of proof in this respect is on the employer, which must prove that there was such a reason and that that reason was the reason for dismissal. “Some other substantial reason” is a non-exhaustive category and has been held to include a variety of different types of reason, including an irreparable breakdown in the relationship between employer and employee.

24. In Ezsias v North Glamorgan NHS Trust [2011] IRLR 550, a case where the employee had been dismissed for some other substantial reason as a result of a breakdown in the working relationship and the employer’s contractual disciplinary procedures were not used, the EAT found that those procedures do not apply to cases where, even though the employee’s conduct caused the breakdown of their relationship, the employee’s role in the events which led up to that breakdown was not the reason why action was taken against him. However, the EAT went on to say that employment tribunals will, however, be on the lookout, in cases of this kind, to see whether an employer is using the rubric of “some other substantial reason” as a pretext to conceal the real reason for the employee’s dismissal.

25. Secondly, the tribunal has to decide whether it is satisfied, in all the circumstances (including the size and administrative resources of the employer), that the employer acted reasonably in treating the reason as a sufficient reason to dismiss the employee. The tribunal refers itself here to section 98(4) ERA and directs itself that the burden of proof in this respect is neutral and that it must determine it in accordance with equity and the substantial merits of the case.

26. Where dismissal is for a conduct or performance reason, the ACAS Code on Disciplinary and Grievance Procedures 2015 (the “ACAS Code”) applies, as do the provisions (under section 207A Trade Union and Labour Relations (Consolidation) Act 1992) for adjustment to compensation for an unreasonable failure to comply with the ACAS Code. However, in Phoenix House Ltd v Stockman [2016] IRLR 848, the EAT held that the ACAS Code does not in terms apply to dismissals for some other substantial reason; certain of its provisions, such as for example investigation, may not be of full effect in any event in such a dismissal; what is required when a dismissal on that ground is in contemplation is that the employer should fairly consider whether or not the

relationship has deteriorated to such an extent that the employee holding the position that he does cannot be reincorporated into the workforce without unacceptable disruption; that is likely to involve, as in that case, a careful exploration by the decision-maker of the employee's state of mind and future intentions judged against the background of what has happened; of course, it would be unfair to take into account matters that were not fully vented between decision-maker and employee at the time that the decision was to be made; ordinary common sense fairness requires that; clearly, elements of the ACAS Code are capable of being, and should be, applied, for example giving the employee the opportunity to demonstrate that he can fit back into the workplace without undue disruption, but to go beyond that and impose a sanction because of a failure to comply with the letter of the ACAS Code is not what Parliament had in mind when it enacted section 207A and when the ACAS Code was laid before it.

27. In Taylor v OCS Group Limited [2006] ICR 1602 (a conduct case), the Court of Appeal stressed that the task of the tribunal under section 98(4) is to assess the fairness of the disciplinary procedure as a whole; where procedural deficiencies occur at an earlier stage, the tribunal should examine the subsequent appeal hearing, particularly its procedural fairness and thoroughness and the open-mindedness of the decision-maker. An appeal, therefore, may cure earlier defects. Whilst Taylor was a conduct case, we see no reason why the principle should not apply to section 98(4) fairness in a "some other substantial reason" case involving an appeal.

Direct marriage discrimination

28. Pursuant to the Equality Act 2010 ("EqA"), s13(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'. S13(4) states 'If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (Work) only if the treatment is because it is B who is married or a civil partner'.

29. EqA s4 sets out the protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

30. EqA s8 defines the protected characteristic of marriage and civil partnership:

8 Marriage and civil partnership

(1) A person has the protected characteristic of marriage and civil partnership if the person is married or is a civil partner.

(2) In relation to the protected characteristic of marriage and civil partnership—

(a) a reference to a person who has a particular protected characteristic is a reference to a person who is married or is a civil partner;

(b) a reference to persons who share a protected characteristic is a reference to persons who are married or are civil partners.

31. One result of the statutory wording is that the protection only works one way: it only prohibits discrimination against married persons; it does not prohibit discrimination against unmarried persons. As stated in the explanatory notes to the EqA and in Harvey on Industrial Relations and Employment Law, Division L, Chapter 2E, at para 187, under EqA s8 “There is no equivalent protection for those who are single, cohabiting and/or divorced or where the civil partnership has been dissolved”.

32. Historically, discrimination on the ground of marriage was not uncommon. It was established practice, for example, for air hostesses, female secretaries and civil servants to, as a matter of policy, be dismissed as soon as they became married (see Hawkins v Atex Group Ltd [2012] IRLR 807 at paragraph 10). Examples of women being dismissed simply because they became married include Bick v Royal West of England Residential School for the Deaf [1976] IRLR 326 and North East Midlands Co-operative Society Ltd v Allen [1977] IRLR 212.

33. The original provision in the Sex Discrimination Act 1975 section 3 provided that ‘A person discriminates against a married person of either sex [...] if – (a) on the ground of his or her marital status he treats that person less favourably than he treats or would treat an unmarried person of the same sex [...]’.

34. Following an amendment introduced by the Civil Partnership Act 2004 s251, the 1975 Act was amended at section 3 to provide that ‘a person discriminates against a person (“A”) who fulfils the condition in subsection (2) if – (a) on the grounds of the fulfilment of the condition, he treats A less favourably than he treats or would treat a person who does not fulfil the condition [...]’. The condition in question was stated at subsection 2 as ‘that the person is – (a) married, or (b) a civil partner’.

35. We accept Mr Cordrey’s submission that it does not appear that the amendment in the wording brought about by the Civil Partnership Act 2004 or the EqA was intended to bring about any change of substance to the scope of the protected characteristic of marriage as enacted in the 1975 Act. The Explanatory Notes to the respective statutes do not indicate any change was intended and in Atex (at paragraph 9), the then President of the EAT, Underhill J, proceeded on the basis there had been no significant change.

36. We accept Mr Cordrey’s submission that, in respect of the Civil Partnership Act 2004 it appears that the change in wording was to address the fact that there was no equivalent to the expression ‘marital status’ in relation to civil partnerships and that, as to the EqA, this removed the rather clumsy drafting referring to fulfilment of a ‘condition’ and brought the terminology for marriage discrimination into line with the other protected characteristics.

37. We therefore accept that thus the meaning in the EqA of less favourable treatment ‘because of marriage’ is the same meaning as in the 1975 Act. What is proscribed is less favourable treatment on the ground of marital status.

38. As stated by Underhill P in Atex (at para 9) “In my view it is clear that (to use the terminology of the 2010 Act) the characteristic protected by s.3(1) [of the Sex Discrimination Act 1975] is the fact of being married – or, to put it the other way round, that what is proscribed is less favourable treatment on the ground that a person is married. That is what the language used says. The same is true of the section in its pre-amendment form: ‘marital status’ naturally means the fact of being married”.

39. Having said that, we were also referred to the decision in this case (which we alluded to earlier) of the EAT (Simler P sitting alone) against the earlier strike out of the claimant’s direct marriage discrimination complaint, which overturned that decision (Gould v St John’s Downshire Hill [2017] UK EAT/0115/17). In its decision, the EAT held at paragraph 27 “...on a reasonable reading of his pleaded claim, it is clear that the claimant was complaining that the discrimination flowed from the composite reason of his being married and having marital difficulties”. It went on to conclude:

“36. Thus for all those reasons the Employment Judge was wrong to conclude that this case did not engage the protected characteristic in section 8 of marriage. On a reasonable reading of the claimant’s pleaded case, the facts give rise to an arguable case that it was his married status and his marital difficulties as a married man that led to his dismissal. That composite reason was, on his case, the reason for the respondent’s treatment of him and that case should have been permitted to proceed.”

40. Mr Cordrey is right to counsel us to proceed with caution in light of the fact that this was a decision only in relation to whether the claim should have been struck out or not. However, whilst the EAT’s conclusion does not state it in absolutely clear terms, it seems to us that the EAT is concluding that, if the reason for treatment was a composite reason of married status and marital difficulties, the protected characteristic of marriage is engaged. We acknowledge Mr Cordrey’s concerns that, in the light of the law set out above, the EAT in concluding this is impermissibly widening the application of the EqA as regards the protected characteristic of marriage. However, notwithstanding these concerns, we accept that we are bound by the EAT’s decision in this respect.

41. Furthermore, as will be seen from the facts of this case, it appears not to be the case (on the claimant’s case as put before this tribunal) that it was the fact that he had marital difficulties which was the reason for dismissal (as those marital difficulties were well known to the respondent from 2011 onwards, long before the events in late 2014 through to 2016 leading to the claimant’s dismissal); rather it was the fact that the difficulties had got to such a stage that he and his wife were on the point of separating and the likelihood that the marriage would terminate. However, it seems to us that, if a combination of married status and marital difficulties can, on the EAT’s analysis, engage the protected characteristic of marriage, a combination of married status and marital separation/the likelihood of divorce must equally engage the protected characteristic. Therefore, as a matter of law, we consider that, if we were to find that that is what happened on the facts, the protected characteristic of marriage would be engaged.

42. In Chief Constable of West Yorkshire Police v Khan [2001] ICR 1065 (at para 29) Lord Nicholls explained that outside the field of discrimination law:

“Sometimes the court may look for the ‘operative’ cause or the ‘effective cause’. Sometimes it may apply a ‘but for’ approach. For the reasons I sought to explain in Nagarajan v London Regional Transport [1999] ICR 877, 884-885, a causation exercise of this type is not required either by section 1(1)(a) [direct discrimination] or section 2 [victimisation]. The phrases ‘on racial grounds’ and ‘by reason that’ denote a different exercise: why did the alleged discriminatory act as he did?”

43. In Khan the Chief Constable had withheld a reference from a police officer who had brought race discrimination claims against the force. The Chief Constable could not give a reference because the proceedings were still live and he did not want to be prejudiced by any reference given at that stage. Thus, as a matter of “but for” causation, had it not been for the race discrimination claims, a reference would have been supplied. At paragraph 77 Lord Scott observed under the heading ‘The causation point’:

“Was the reference withheld “by reason that” Sergeant Khan had brought the race discrimination proceedings? In a strict causative sense it was. If the proceedings had not been brought the reference would have been given. The proceedings were a *causa sine qua non*. But the language used in s.2(1) is not the language of strict causation. The words “by reason that” suggest, to my mind, that it is the real reason, the core reason, the *causa causans*, the motive, for the treatment complained of that must be identified.”

44. In Amnesty International v Ahmed [2009] ICR 1450, Underhill P explained at para 37:

“We turn to consider the “but for test” [...] This is therefore a useful gloss on the statutory test; but it was propounded in order to make a particular point, and we do not believe that Lord Goff intended for a moment that it should be used as an all-purpose substitute for the statutory language. Indeed, if it were there would plainly be cases in which it was misleading. The fact that a claimant's sex or race is a part of the circumstances in which the treatment complained of occurred, or of the sequence of events leading up to it, does not necessarily mean that it formed part of the ground, or reason, for that treatment.”

45. In relation to direct marriage discrimination, the burden of proof rests initially on the employee to prove on the balance of probabilities facts from which the tribunal could decide, in the absence of any other explanation, that the employer did contravene that provision. To do so the employee must show more than merely that he was subjected to detrimental treatment by the employer and that the relevant protected characteristic applied. There must be something more. If the employee can establish this, the burden of proof shifts to the employer to show that on the balance of probabilities it did not contravene that provision. If the employer is unable to do so, we must hold that the provision was contravened and discrimination did occur. We were referred by Mr Sendall to the well-known provisions of Igen Ltd v Wong [2005] IRLR 258 in this respect, which we do not repeat here.

46. However, where the tribunal is able to make clear findings of fact one way or another, it is not necessary to apply the burden of proof provisions outlined above.

Assessment of Evidence

47. Before going into our findings of fact, we make some findings about the reliability and credibility of the evidence given by the witnesses who appeared before us.

Respondent's witnesses

48. We turn first to the respondent's witnesses. Mr Burns, Mr Choi, Mr Kennedy and Bishop Broadbent were all cross-examined at length but were consistent in their evidence, both in terms of consistency within their own evidence, with the evidence of the other respondent's witnesses and with the contemporaneous documents. They answered the questions put to them directly and fully. We have no reason to doubt the truth of their evidence. They were reliable and credible witnesses.

49. Mr Chitra was one of the most open and honest witnesses from whom we have ever heard. There was no guile or even any guardedness in his responses to questions; his answers were forthright, immediate and full. He had no hesitation in admitting things which were potentially adverse to the respondent's case, for example that his theological view of marriage was such that he considered, except in exceptional cases, that the end of marriage for a minister should lead to the end of his ministry; even though he said that his view had softened over the course of the events of this case leading up to the dismissal of the claimant, when asked to what extent, he said merely that it went down from 95% to 90%. At the same time we consider there was a certain naivety and innocence about Mr Chitra and, on occasion, he was led by Mr Sendall down a path to accepting something adverse to the respondent's case which was simply not borne out in the contemporaneous documents (in particular the meaning of the phrase "he must go" in two emails of 13 May 2015, which we refer to in our findings of fact). However, with the exception of examples such as this, Mr Chitra's evidence was consistent with that of the other witnesses of the respondent and with the contemporaneous documents. Furthermore, we have no doubt that he was completely genuine and honest in his replies; indeed his forthrightness and open and natural responses to the questions gave some of the clearest insights into what was really going on vis-a-vis the claimant's relationship with and modus operandi in relation to the respondent's trustees, leadership team and congregation as a whole.

The claimant

50. By contrast, in his evidence, the claimant was unduly evasive throughout; failed to answer even the most basic of questions; was rarely straightforward; frequently went off on lengthy tangents away from the question being asked; and had to be reminded by the judge on a considerable number of occasions to answer the questions put to him. The claimant frequently made assertions in his oral evidence which were not backed up by the

contemporaneous documents. Examples include: his insistence that he was “extremely discreet” in not discussing his marital difficulties widely, when there were numerous references in the contemporaneous documentation to individuals with whom he had such discussions; stating that there was no detrimental impact on the church fellowship at the time, following which he was taken to a contemporaneous email where he stated that there was a detrimental impact on the fellowship at the time; and his repeated insistence that he was not trying to avoid a meeting with the trustees in July 2016 when the evidence of his own emails and other contemporaneous documents is that he was trying to avoid such a meeting.

51. Therefore, we are extremely sceptical about the reliability of any of the claimant’s evidence, except where it is undisputed or backed up by contemporaneous documentation, and are therefore unwilling to accept it other than in those circumstances; and, where there is a conflict between the evidence of the claimant and the respondent’s witnesses, we prefer the evidence of the respondent’s witnesses.

52. None of the other witnesses for whom statements were provided by the claimant actually gave evidence at the tribunal. Therefore, as we have already noted, we give little weight to the evidence set out in those statements.

Findings of Fact

53. We make the following findings of fact. In doing so, we do not repeat all of the evidence, even where it is disputed, but confine our findings to those necessary to determine the agreed issues.

54. The church of St John’s Downshire Hill, which is in Hampstead, north London, is a proprietary chapel. This means that it sits within the Church of England but owns its own premises and so is not governed by the Church of England and by ecclesiastical law in the same way as churches that function out of premises owned by the Church of England and are part of its structure are. All ministers within the Church of England have to be licensed by the Bishop; however, the appointment and removal of a minister in a proprietary chapel is a matter for the governing body of the proprietary chapel.

55. The claimant, the Reverend Jonathan Gould, commenced employment as vicar/minister of St John’s Downshire Hill with effect from 1 September 1995. The claimant’s licence was granted in 1995 by the then Bishop of Edmonton. Prior to becoming a minister, the claimant was a lawyer.

56. St John’s Downshire Hill was incorporated as a legal entity in 2003, with three trustees (the claimant, Mr John Lawson and Mr Alex Chitra); in 2007, all of the church’s undertaking (the assets, including properties, liabilities and all church activities) were transferred into this company, and in 2010 the company was registered as a charity. The charity’s memorandum and articles of association make it clear that the trustees may exercise all of the powers of the charity. There is no dispute that the charity (St John’s Downshire Hill, i.e. the

respondent) was at all material times the employer of the claimant and that the claimant had continuous employment dating back to 1 September 1995.

57. The composition of the trustees (the claimant, Mr Lawson and Mr Chitra) did not change until 2016, when three new trustees (Mr Gareth Burns, Mr David Choi and Ms Mary Wenham) were appointed with effect from 11 January 2016 and the claimant resigned as a trustee with effect from 9 February 2016. (Ultimately, it was these five trustees (Mr Burns, Mr Choi, Ms Wenham, Mr Lawson and Mr Chitra) who unanimously took the decision to dismiss the claimant on 1 August 2016.)

58. Almost all of the respondent's income comes from congregational giving. We have seen evidence in the bundle that some of the contributions made by individual members of the congregation were substantial. The church does not receive from or contribute to the Church of England any funds, apart from pension contributions for any staff who have been members of the Church of England pension plans. The church constitution is very clear that the legal authority for all church business, and therefore the appointment and removal of ministers, rests with the trustees.

59. The claimant helped to build St John's Downshire Hill into the church that it is today over the 20 years that he served as minister. When he was appointed, the congregation was close to single figures and the church building was in a state of disrepair. Over the following 20 years, the claimant oversaw, with the support of other members of staff and the congregation, the restoration of the building and the expansion of the congregation to approximately 200 people across morning and evening congregations.

60. In 1997, the claimant married his wife, Beth. Over the years they had four children.

61. Mr Chitra started attending St John's in 1996. He regarded the claimant as a trusted friend ever since and as a source of wise counsel. The claimant married Mr Chitra and his wife Karen in 1999 at St John's. Until it deteriorated from around late 2014, Mr Chitra had a good relationship with the claimant, although there were many times when Mr Chitra (who was one of the three trustees from 2003 onwards) became frustrated by the claimant's solo leadership and decision-making without giving Mr Chitra's voice much space. For the two years up to the deterioration of their relationship, the claimant and Mr Chitra were prayer partners. Mr Chitra is a full-time GP.

62. Mr Lawson was also a long-standing member of the congregation and a trustee since 2003. Whilst he did not give evidence before this tribunal, we have seen evidence that Mr Lawson was particularly close to the claimant and that Mr Lawson and his wife were very close friends with the claimant and his wife. Mr Lawson was, even from 2014 onwards, frequently one of the claimant's chief defenders. He was described in a contemporaneous document by the claimant's wife Beth as a father figure to the claimant. Whilst the claimant denied that this was the case in cross-examination, we nonetheless accept that, particularly given our concerns about the reliability of the claimant's evidence, that he did

indeed have a very close relationship with Mr Lawson and Mr Lawson was supportive of him. Mr Lawson is a retired businessman.

63. Mr Jonathan Kennedy started attending St John's in 1999. Mr Kennedy is a consultant neurologist within the NHS.

64. Mr David Choi also started attending St John's in 1999. Mr Choi is a neurosurgeon.

65. Mr Gareth Burns started attending St John's in 2004. Mr Burns works for Statoil and in his role is a board observer of a number of portfolio companies and, as a qualified actuary, chairman of its UK company defined benefit pension plan, as well as being a trustee of a Christian charity which is one of the 30 largest charities in the UK.

66. Ms Mary Wenham is also a long-standing member of the congregation at St John's. She is a teacher.

67. In autumn 2006, the claimant disbanded the church council which had existed at St John's and replaced it with a Leadership Team ("LT"). The LT comprised six male members of the congregation plus the claimant. It consisted of three members chosen by the claimant himself and three members selected by the claimant with the assistance of the wider church membership. We accept Mr Kennedy's evidence that the system for nominating the latter was opaque and that, effectively, the claimant could choose all six members as he saw fit. The LT had no formal powers as such (these lay with the trustees). The role of the LT was to assist the claimant with spreading the gospel and building up God's people, although this was far from being the sole preserve of the LT. In later years the role of the LT was stated to be a sounding board, amongst others, for the claimant as he led the church's ministry and staff team. The LT also had an advisory role in approving an annual budget and considering significant capital expenditure, aided by the finance task team.

68. Up until late 2014, the LT's working relationship with the claimant was broadly amicable, despite certain concerns referred to below. By 2013, the LT consisted of Mr Kennedy, Mr Nate Burke, Mr Jeremy Townsley, Mr Matthew East, Mr David Stanton, Mr Lawson and the claimant. This remained the case until October 2015 when, as we shall come to later, all of the members of the LT (apart from the claimant) resigned. Mr Chitra was not a member of the LT.

69. Mr Burns had been a member of the LT from 2009 until he resigned in 2012 (and was church treasurer from 2010-2012).

70. St John's is a conservative evangelical church. This is not disputed; the nature of the Christianity practised at St John's stems from its minister, who preaches it, and this type of Christianity is adhered to, certainly by those members of the congregation from whom we heard or of whom we heard of in the course of these proceedings.

71. Mr Burns gave evidence, which we accept, that, during his time on the LT, the claimant regularly raised concerns about the direction of the Church of England (which was perceived as liberal) and questioned whether St John's should look to sever all links with the Church of England. At least since Mr Burns' time at St John's (from 2004 onwards), it has had very limited interaction with the Bishop of the diocese. This was until the autumn of 2015, when the claimant informed the church that he had referred the breakdown in his working relationship with the LT to Bishop Peter Broadbent, the then acting Bishop of Edmonton.

72. All of the respondent's witnesses from whom we have heard and who are members of the congregation clearly regard St John's and its congregation and community, which they describe as "the fellowship", as akin to a type of family. Their Christianity, and the fellowship, is clearly an integral part of their lives and identity at all times, and not just when they are attending church on a Sunday.

73. Throughout the many documents that we have been referred to, we have seen numerous references to passages from the Bible (the New Testament in particular), quoted in or referred to by members of the congregation and by the claimant. In particular, we have seen references to 1 Timothy 3; 1 Titus; and 1 Peter 5. These passages are about the standards expected of "overseers and deacons", in other words including church ministers. It is not in dispute that these passages represent a higher standard expected of those in positions of authority in a church, including ministers, as compared to others. Timothy, which was most often quoted, sets out a long list of behaviours which are expected/not expected of those in authority. One of these examples is that such a person must be "the husband of but one wife" and that "he must manage his own family well and see that his children obey him with proper respect. (If anyone does not know how to manage his own family, how can he take care of God's church?)" These are but two of the examples and the others do not relate to wives or the management of one's family. Those others include that an overseer must be "above reproach", "have a good reputation with outsiders"; and that deacons "are to be men worthy of respect, sincere... and not pursuing dishonest gain". The passage in Peter refers to "not lording it over those entrusted to you, but being examples to the flock".

74. When read as a whole, these passages are about the high standards expected of a minister (and others in positions of authority) in a church.

75. It has also been suggested that, deriving from these passages, is a doctrine that, if a minister's marriage is broken or fails, then his ministry is broken and should cease. It is not the position of the Church of England that, if a minister's marriage did break down, this would be incompatible with him continuing in ministry within the Church of England (unless there is evidence of adultery or other improper behaviour); we had clear evidence of this from Bishop Broadbent, both in his witness statement to this tribunal and in his letter of 2 November 2015 to the trustees.

76. In that letter, the Bishop identified that “there are some in the congregation who do not believe that it is acceptable that a minister should be separated from his wife”. He goes on in his subsequent report of 2 December 2015 to state that “those within the church who believe that marital breakdown (where there are no other parties involved) is incompatible with Christian ministry will need to be told that separation per se is no bar to continuing as a priest/presbyter in the Church of England”. The Bishop does not identify which individuals held this view, although he was prior to completing his report, in his own words “deluged with letters and emails from supporters and detractors of Jonathan and his ministry”, so it is impossible to speculate as to precisely who he means. However, whilst we accept that some in the congregation held this view, we have not seen or heard any direct evidence (other than in the case of Mr Chitra) that any members of the LT or any of the trustees (including the three new trustees appointed in January 2016) held this view. The evidence of Mr Kennedy, Mr Burns and Mr Choi, which we have no reason to doubt and which we accept, is that they did not hold this view.

77. As already noted, Mr Chitra did hold this view. However, the question of whether or not he acted upon it in relation to the dismissal of the claimant, is a different matter and one which we will come to.

78. There is no question that the members of the congregation from whom we heard regarded the institution of marriage very highly; however, that is a very different matter from subscribing to the “broken marriage equals broken ministry” view referred to above.

79. When questioned in cross-examination, the claimant confirmed that, in relation to all of the members of the LT and all of the trustees (Mr Kennedy, Mr Burke, Mr Townsley, Mr East, Mr Stanton, Mr Lawson, Mr Chitra, Mr Burns, Mr Choi and Ms Wenham), he considered them to be honest and reputable individuals who, for the purposes of the higher standard in 1 Timothy 3, were fit to hold the LT and trustee roles that they held, both at the time of their appointment to those roles and afterwards (although he said that his view changed when they took the actions in relation to him which they took in 2015 and 2016 and which are set out below).

80. In 2011, the claimant informed the LT that he was having significant difficulties in his marriage with his wife. He made it clear that there had been difficulties throughout the marriage, since its outset, but said that he and his wife were going through a particularly difficult patch at that time. He said that they were both seeking help from a number of people to help resolve their issues. The LT responded by offering the claimant its support. It suggested that he consider whether it might be helpful for him to take some time off and that if this was something he wanted to do, the LT would support him in doing so. However, the claimant told the LT that he didn't think time off would be the best thing for him or his wife at that stage.

81. Although there was a period of modest recovery, the marriage suffered another sharp decline in September 2013 (as the claimant himself admitted in his letter of 1 August 2015 to Mr Lawson and Mr Chitra).

82. The claimant had a tendency to make decisions about issues to do with the church and to progress them before speaking to the LT about them. From around 2010 onwards, some in the LT had concerns about a number of governance issues. These included the speed of a decision made to purchase a property in 2010. Although concerns were raised, the transaction nonetheless went ahead. Despite that, an almost identical situation arose the following year, even though the capital appeal for the 2010 property purchase was still ongoing. Again, this transaction went ahead. However, Mr Kennedy's evidence, which we accept, is that it felt as if the LT was being expected to rubber stamp the claimant's decisions.

83. Furthermore, the claimant owned a flat which he had bought from the respondent and was used to house a member of the church staff. After the claimant purchased it, it continued to be used to house church staff and the rental income paid to the claimant. This was done even when other entirely owned church properties were empty, including partially so, or rented out to non-church staff. The LT challenged the claimant on the potential conflict of interest (as a trustee of the respondent and as the owner of the property, there was a clear conflict of interest when it came to decisions about where church staff should be housed and the level of rent that should be paid to the claimant). Mr Burns, the treasurer at the time, raised with the claimant that, even if this was entirely innocent, it left the claimant open to accusations of impropriety and that a better structure to protect the claimant and the respondent should be put in place, to protect everyone's reputation. The claimant received this advice poorly and insisted that the church greatly benefited from this arrangement and was resistant to any changes such that the matter was dropped.

84. Mr Burns was uncomfortable that he had not been consulted in any meaningful way in relation to the property transactions referred to above and was uncomfortable with the claimant forcing through the second transaction. In the light of this, and in order to preserve the unity of the LT, Mr Burns decided to step down from the LT in 2012.

85. There were also a number of staff employed by the respondent other than the claimant (by early 2015 there were six). Staff were not provided with proper employment contracts setting out their full terms and conditions. It was typical of the claimant's evasiveness in his evidence that he, as a former lawyer, sought to suggest that staff did have employment contracts, in the sense that they had an offer letter and that the legal requirements sufficient for a contract (offer and acceptance etc) were in place; it entirely missed the point that a proper statement of terms and conditions, as required by statute, was not in place.

86. Mr Burns was aware of one individual who regularly asked for an employment contract to be drawn up, so that that individual could be aware of his/her basic terms and conditions. That individual left employment in 2012 without ever having received an employment contract. During Mr Burns' time on the LT, the LT regularly asked the claimant to ensure that employment contracts were put in place for all staff. However, this was not done. When Mr Burns

became a trustee in January 2016, he was surprised to discover that employment contracts had still to be put in place for staff.

87. Mr Roger Ong was a Singaporean national who worked as an assistant minister of the church. In 2011, Mr Ong had relocated with his family from Canada to the UK in order to take up the assistant minister post. It was anticipated that he would have a permanent post and he relocated on that basis. Because of his Tier 2 visa requirement, his initial employment was arranged for three years. However, in the summer of 2014, the claimant, who had changed his mind about Mr Ong, decided to offer him only a fixed term contract of three years with the expectation that he would not be offered any further extension thereafter. This came as quite a shock to both Mr Ong and the members of the LT, who felt that Mr Ong had carved out a useful ministry in his first three years. The claimant did not consult the LT in advance of making this decision and many in the LT were angry about that. Mr Kennedy was of the impression that the claimant was picking and choosing whom he spoke to, providing a veneer of accountability whilst ensuring he got his own way; and that he appeared increasingly prepared to make big decisions with important ramifications for the fellowship with little desire to be truly accountable for such decisions.

88. Furthermore, in January 2015, following an apparent spot visit by the Home Office, the Home Office raised concerns about Mr Ong's visa, with the result that the respondent's sponsorship of his visa was suspended on 30 January 2015. This was on the basis of alleged non-compliance with Home Office requirements. The church appealed the decision to suspend Mr Ong's visa, by providing further information, including a new contract of employment, and the sponsorship was reinstated in April 2015.

89. In the period up to 2014, therefore, the LT had become increasingly concerned about the way that the claimant was managing the governance of the church, including employee procedures and relationships; not taking the LT's concerns on board and taking steps to rectify problems and mitigate risks; and taking major decisions as he felt.

90. In September 2014, it was apparent that matters between the claimant and his wife were very difficult. The claimant began to spend quite a lot of time on Sunday mornings, after services, sharing with a number of people that things were very difficult at home. Members of the congregation were being taken to one side by the claimant and told very personal details about their marital difficulties and what he perceived his wife's problems were. This included the suggestion that she may not be a Christian or that she may have a personality disorder. His wife was also sharing their marriage difficulties with members of the congregation. However, what was clear was that their marital problems and issues were increasingly being played out in a very public way. As noted, we have, as well as the evidence of the respondent's witnesses to this effect, which we accept, seen contemporaneous evidence in the bundle of individuals stating that this was what the claimant was doing.

91. Furthermore, although the claimant was sharing the details of his marriage difficulties with members of the congregation, he was simultaneously

asking a number of people not to speak to his wife about these issues, which in effect meant many felt that they could not easily meet with his wife. This seemed intended to isolate his wife.

92. At an LT meeting of 22 September 2014, called by Mr Lawson (but at which the claimant was not present), the concerns surrounding the public effects of the claimant and his wife's marriage difficulties were discussed, and there was consideration of how best the LT could support them. This is reflected in the notes of that meeting. They reflect the concern expressed by the LT for the claimant and his wife and "the impact on the fellowship". Issues discussed were: concern for the claimant's health generally; concern regarding the genuineness of the claimant's preaching (notwithstanding the very public marriage difficulties, the claimant had chosen to preach a series of sermons on marriage, which appeared hypocritical in the light of his own very public difficulties); gossip among the church, including an incident where the husband of one member of the congregation had become aware of the marriage situation and had questioned one of the LT members about it; bitterness and recrimination within the relationship and a seeming unwillingness on both parts to admit fault; the long-term future of that on the church; and a potential loss of trust from some of those closest to the problem. Two of the proposals discussed at that meeting were: that the claimant should limit his conversations in relation to his marriage within the fellowship to a few respected individuals; and that he should take a planned sabbatical.

93. About a week later, Mr Lawson had a discussion with the claimant to this effect and the possibility of a sabbatical was offered. Mr Lawson was reassured by the claimant at that time that things between him and his wife were better than they had been previously. Ultimately, the claimant declined the LT's offer to meet, to pray and to discuss how the LT may best help. He felt that any suggestions of mediation were already in hand and that a sabbatical was not likely to be beneficial.

94. The LT had drafted a letter to the claimant and his wife in October 2014 although, in the light of the reassurances, it was not sent. The letter includes the following:

"Dear Jonathan and Beth

As you know the leadership team met on 22nd September. The reason for the meeting was the concern felt by all of us about your apparently failing marriage and the inevitable repercussions on both you, your immediate family and the church family as a whole.

We want to make clear from the outset that we love and treasure you and [your four children] and seek only to act in your best interests. Your best interests will surely therefore be in the best interests of the fellowship of StJDH. We are unbiased and do not apportion blame to either of you.

Jonathan, you said that it is unlikely that the fellowship will be damaged by your marital problems. The reality is that the fellowship has been harmed and will continue to be harmed until such time as you and Beth embark on a path towards genuine reconciliation. As a family we all grieve when a member or members of that family are in distress. Both of you have spoken of your unhappiness to several people - inside and outside fellowship. Many more are aware of "things not being right". This is unavoidable given your highly visible position as the head of StJDH. If

we believe that our earthly marriages are a picture of Christ's union with the church it is hard to see how the broken marriage of the leader of the fellowship cannot be detrimental to the life of that fellowship..."

95. We have quoted from this draft letter extensively because the last sentence quoted above is one of the written expressions which Mr Sendall seeks to suggest indicates that the concerns of the LT (and the trustees) were along the lines of "broken marriage equals broken ministry", in other words that if the marriage breaks down, the ministry should end. However, in the context of the letter as a whole and in the light of the minutes of the meeting which preceded this letter, the central concern of the LT is clearly about the impact of the marriage breakdown on the fellowship due to its public manifestation, which had become problematic by this point; the marriage difficulties per se had, as noted, been known to the LT from 2011 without any action having been taken.

96. The claimant's marriage difficulties nevertheless continued through the rest of 2014 and into 2015.

97. We have seen two emails dated 23 March 2015 from Ms Mez Stead, who was, since 2011, one of the members of staff at the church. In them Ms Stead states:

"Was I the only one last night who was massively disturbed by the huge abyss between what Jonathan preached about marriage from the pulpit and what he actually says to couples, ourselves included?..."

... Jonathan doesn't practice what he preaches at home whatsoever according to everything I hear and observe and I was rather amazed at his ability to calmly and coolly teach the fundamentals of a loving, respectful marriage with his wife three rows back and his children front row!"

This email is indicative of four things: that the concern about the claimant not "practising what he preaches" was a real one; that, despite the claimant in his evidence before the tribunal saying that he couldn't recollect preaching on marriage around this time, he clearly was; that, despite his denials in his evidence before the tribunal, the claimant was speaking to members of the congregation, including Ms Stead, about his marriage; and, something which was to become another important concern for the LT, certain people considered that the claimant was not treating his wife properly.

98. In around spring 2015, Ms Stead shared with Mr Lawson some concerns about the claimant's suitability as a minister, including his management of her role (she later put these in writing in July 2015 when asked to do so as part of a subsequent investigation by Mr Chitra). Her concerns about the claimant as her line manager included concerns about a lack of pastoral care, feeling unable to raise concerns with him (and there being no forum for her to do so), feeling undervalued and demoralised as an employee, a lack of support, an unmanageable workload, poor line management and contradictory and divisive leadership, amongst other things. She also raised concerns about the claimant's working relationship with Mr Ong, highlighting a number of "underhanded" and "divisive" conversations that the claimant had had with her about Mr Ong's continued employment at the church. In addition, she highlighted her concerns

that the claimant's difficult personality was having an adverse effect on the welfare of the church itself and that this had caused some to leave the church. Despite the claimant's and Mr Sendall's attempts to downplay them, these were serious concerns.

99. Mr Lawson who, as noted, was very close to the claimant and his wife, knew by this time that the claimant was progressing with formal separation settlements with his wife. In April 2015, he informed Mr Chitra of this.

100. In early May 2015, Mr Ong resigned from his position as assistant minister. He planned to move on to Toronto, without any offer of employment. This was despite his visa issues in the UK by this time having been resolved. He resigned because of the claimant. Mr Ong was also subsequently asked in July 2015 to put his concerns into writing, which he did. However, the concerns he raised to the LT (both verbally and in writing) were that he was concerned about the claimant's behaviour, not only as an employer but also as minister of the church; he highlighted concerns that the claimant could be unnecessarily selective about who should join the fellowship and had turned people away from the fellowship for no good reason; that in relation to staff relationships specifically, the claimant displayed poor leadership, a lack of care in managing staff fairly and a lack of integrity and accountability; he also raised concerns about the effects of the claimant's marital difficulties on his professional role, in particular the fact that the claimant's recent sermons on marriage had come across as insincere in the light of the well-known problems he was having in his own marriage and the fact that he considered that the claimant had displayed "abusive behaviour" in relation to his wife, by, for example, forbidding Mr Ong and his wife to meet with the claimant's wife or offer her support in a time of need and dealing with his marital problems in an inappropriate and public manner. Mr Ong was concerned that the claimant's behaviour was damaging to the fellowship.

101. Again, as regards those concerns which related to the claimant's marriage, Mr Ong's concerns were about the public manifestation of the marriage difficulties (and the way he perceived that the claimant treated his wife) rather than the fact that there were marriage difficulties per se.

102. The LT were, entirely understandably, extremely concerned about the departure of two of the six staff at the respondent and the very serious concerns they had raised about the claimant.

103. In an email of 5 May 2015 to Mr Townsley, Mr Lawson stated:

"I'm going to talk with Alex Chitra for he is a trustee with me and I hope to see him this evening... it seems to me that we have now moved on to a position where, as trustee, I shall have to ask Jonathan for his resignation, or tell him that it is now on the cards. The marriage is broken so it affects the fellowship both now and into the future..."

104. Again, in the context of the previous concerns and the concerns raised by Mr Ong, we find that, contrary to what Mr Sendall submits, the reference to marriage here is about the public manifestation of the difficulties and the impact on the fellowship rather than marriage breakdown per se. As can be seen from

the email, Mr Lawson considered that that impact was so serious that he was contemplating asking the claimant to resign.

105. By email of 6 May 2015, the claimant's wife informed Mr Lawson that she feared a permanent separation between her and her husband may occur. It was in this email that she thanked Mr Lawson for being, in relation to the claimant, "the father he never had".

106. There was an email exchange between the claimant and Mr Chitra on 7 May 2015. In his email to the claimant, Mr Chitra referenced the fact that the claimant seemed to imply that divorce was likely the last few times that they had met. Mr Chitra expressed his terrible sadness about this and stated that the claimant's restoration was "the absolute ideal scenario". His email went on:

"However what if the worst scenario occurs? Your marriage fails and you get divorced. I assume then your pastoral ministry at sjdh will come to an end. I hope this is a right assumption and not a presumption. We need an action plan therefore which the leadership team and wardens have agreed to and they're aware of well in advance. This is responsible planning as I see it. We need an action plan to enable a handover for the functioning of core church affairs, guidance on seeking your replacement, Andy's future as curate in your absence etc."

107. Mr Chitra, who had been attending St John's since 1996 and listening to the claimant's theological views over the almost 20 years since then, was of the view that the claimant had been quite clear, when it came to the issue of divorce, that it was "not what God intended for marriage". Therefore, he was making the assumption when writing that email that the claimant, in accordance with what Mr Chitra believed were the claimant's own beliefs and what he had taught over the last 20 years of his leadership, would be resigning his ministry if his marriage ended in divorce.

108. This did of course accord with Mr Chitra's own theological belief that, except in exceptional circumstances, the end of a minister's marriage should mean the end of his ministry. However, he held that belief at least in part because he believed that that was the claimant's own belief and that the claimant had expressed that belief in his teaching over the years.

109. The LT (excluding the claimant) met on 11 May 2015, with Mr Chitra also in attendance. We have seen the minutes of the meeting. They state that the purpose of the meeting was to address the well-being of the claimant, his marriage and the fellowship. They go on to set out two principal issues under two headings, namely the state of the claimant's marriage to his wife and the claimant's behaviour negatively impacting upon the staff team and the wider fellowship. Under the first heading, the minutes note the seriousness of the state of the marriage and that there have been discussions about the financial terms of separation, but the concerns raised are about the evidence that their unhappiness in the marriage is affecting both their children and the wider fellowship/community who have been drawn into discussions on the state of their marriage and witnessed arguments in church and the wider community. Under the second heading, the minutes reference the concerns raised by the staff (Ms Stead and Mr Ong) and concerns of several of the LT who have expressed their unhappiness with the claimant's behaviour and declared difficulty in sitting under

his authority and listening to him preach. The LT acknowledged that they should have been stronger in their response in the previous autumn of 2014; and expressed the concern that the fellowship was being damaged by the claimant's behaviour and there was a risk of more significant damage if it was not tackled immediately. The minutes note that some of the claimant's behaviour, both inside and outside his marriage, was "at odds with the fruits expected of those professing Christ". They note that there had been no significant outward demonstration from the claimant that he accepted significant responsibility for the state of his marriage or the desire to truly repent and seek restoration of the relationship. They go on to state that, should the marriage remain as it is, or progress to the point of separation/divorce, then the LT could not see the claimant continuing in the employment of the church.

110. The LT resolved to meet the claimant on 18 May 2015 to demand that he take a six month sabbatical; and that it would be outlined to him that some felt that an immediate request for his resignation was more appropriate. It also noted that the sabbatical was a suspension in all but name. Finally, it noted that the purpose of the time away was for the claimant to "bring his marriage before the Lord and, with Beth, to do whatever it takes to see the restoration of that relationship." It noted that, if by the end of this period, there had been no significant change in the claimant's marriage and attitude, the LT would ask and expect his resignation.

111. Large chunks of these minutes, therefore, reflect a discussion about the serious staff concerns and the fact that the marriage difficulties were being played out publicly etc and the detrimental effects of that on the fellowship. Having read the minutes and heard the evidence (in particular from Mr Kennedy, who was on the LT), we consider that those issues were the primary concern. However, whilst the marriage difficulties per se were not the concern (these had been in existence since 2011) and the primary concern was the manifestation of the difficulties in public, the minutes do include statements that, should the marriage proceed to separation/divorce, then the fact of that separation/divorce would also be a ground for seeking the claimant's resignation. We accept that very often in the documents which we have been looking at, references to the state of the claimant's marriage are indeed shorthand for the public manifestation of the difficulties in that marriage; however, we are not convinced that that is entirely the case in relation to these minutes; these statements appear to support the view that, at least among some members of the LT (and it is impossible to say with any certainty which members or how many), there was, in addition to all the other concerns detailed above, a view that separation/divorce would or should lead to end of ministry.

112. We have seen a handwritten letter of 12 May 2015 from the claimant to Mr Townsley. It acknowledges that Mr Townsley is for various reasons very upset with the claimant. The letter goes on to encourage Mr Townsley to speak to the claimant personally before he speaks to anyone else (and quotes a passage of scripture in this context) and concludes by saying that:

"If there is any risk of a leadership team meeting being hijacked to stir up trouble and dissension, I think you must consider stepping aside - at least until you have spoken to me."

It is a classic example of the claimant's modus operandi which we have seen in these pages, to seek to divide and to control and, if individuals do not accord with his way of thinking, to encourage them to resign.

113. In an email of 12 May 2015 to Mr Kennedy and various other trustees and LT members, Mr Townsley wrote:

"Either we consider Jonathan fit to be the minister of St John's according to scriptural guidance, evidence by being self-controlled, upright, holy and disciplined; not lording it over us but being an example to the flock... or we do not."

The references here are indeed to the passages in Timothy, Titus and Peter. However, they reflect the more general concerns about the claimant's fitness to be a minister and his attitude ("lording it over us"); that is not the same as any concern about his marriage per se.

114. In his reply to that email, also on 12 May 2015, Mr Kennedy included the following:

"However, I do think we need to be clearer as to what measures we will use to judge whether it is right for Jonathan to return and these need to be set out from the start. Whilst we discussed that the marriage is the clear issue I happen to think the staff issue is more important and I want to be satisfied on both fronts that it is safe for Jonathan to return [from sabbatical]."

Again, Mr Sendall suggested that the reference to "the marriage" is a reference to the marriage per se; however, in the context of the other documents and evidence and Mr Kennedy's evidence itself, we consider that it is shorthand for the public manifestation of the marriage difficulties.

115. On 12 May 2015, Mr Lawson attended a meeting with the claimant and his wife's father in which the claimant proposed financial terms for a split with his wife.

116. In email correspondence of 13 May 2015 between Mr Chitra and Mr Townsley, with the other members of the LT (apart from the claimant) copied in, there is a reference in Mr Chitra's email to "we are all agreed he must go". Mr Sendall submits that this is a reference to the LT being agreed that the claimant's employment must terminate. He managed to get Mr Chitra, whose email it is, to accept in cross-examination that that was what he meant. However, Mr Kennedy, when asked about this, indicated that it was a reference to the LT being agreed that the claimant must go on sabbatical.

117. We consider that the reference was clearly to the sabbatical. First, Mr Chitra himself appears to have been confused in terms of chronology here, particularly as, only a few months later, Mr Chitra's position had indeed become that the claimant's employment must terminate. However, in his email of 13 May 2015, Mr Chitra has been going through a number of scenarios in terms of what questions the LT might ask the claimant and how the claimant might reply. The last of these is asking him to go on compulsory sabbatical and Mr Chitra envisages that the claimant would say "I will not go"; Mr Chitra's reference to "we

are all agreed he must go” follows on directly from that passage about the sabbatical. Furthermore, in his reply, Mr Townsley states “Remember that 7 of us are of one accord that JG must go.” In the light of the documents regarding the 11 May 2015 LT meeting (where the LT agree that the claimant should be asked to go on sabbatical, albeit one or two of them expressed the opinion that his employment should terminate at that point, a reference to all seven of them being of one accord that his employment should terminate at that point makes no sense; furthermore what happens next is that they do ask the claimant, at the meeting of 18 May 2015, to go on sabbatical. In the light of that, the references in the 13 May 2015 emails only make sense if they are references to the sabbatical.

118. We have seen an undated draft document (page 275), we think prepared by Mr Chitra, referencing the LT meeting on 11 May 2015. As far as we are aware, this document was never sent. The document references the claimant’s marriage. However, it is in the context of there being no evidence of remorse or culpability from either side and that the claimant is constantly blaming his wife for all his marriage difficulties and accepts no responsibility himself. It then contains the passage:

“It is not acceptable for your tenure as minister to continue while your marriage remains broken. There are quite clear scriptural guidelines for the behaviour of married couples and indeed marriage is equated with Christ and his church. Your broken marriage and lack of sorrow over your share in the responsibility for its breakdown preclude you from credibly teaching and preaching this doctrine.”

It then goes on to reference the fact that the LT has expressed unhappiness with the claimant’s behaviour including frequent inappropriate remarks and arrogance and lack of humility; which entails a real difficulty in sitting under the claimant’s authority and listening to him preach.

119. The quoted passage above, in the context of the evidence we have seen, is a reference to the passages from Timothy/Titus/Peter; however, we consider that it is a reference to the behaviour of the claimant as a church minister not conforming to those passages in terms of his behaviour to his wife, rather than the marriage difficulties per se. That is to do with the manifestation of the marriage difficulties through the claimant’s behaviour, as are the other comments in relation to the claimant’s blaming his wife and the hypocrisy in his preaching; they are not to do with the marriage breakdown and marriage difficulties per se.

120. In an email of 17 May 2015, we believe to members of the LT and trustees, Beth Gould stated that:

“There is no stone unturned (I don’t think?) with my efforts to confront the issues that have broken the marriage. It’s just that J is not willing/unable to connect with them. I think only time out in our living circumstances is going to help us review the grave situation.... Jonathan just seems to have an agenda of his own and not be able to open up to/face the reality confronting him. He intimidates by his directness and disengages when it doesn’t suit his train of thought. It immobilises the other person.”

This description by his wife of how the claimant is reflects the experiences of trying to engage with him of others amongst the trustees and the LT; Mr Chitra in particular gave compelling evidence of his experiences in trying to engage with the claimant in similar terms.

121. The LT, plus Mr Chitra, met the claimant on 18 May 2015. They presented the claimant with a letter, setting out their concerns. That letter included the following:

“After much prayerful thought, discussion, and consideration of scripture, it is our unanimous view that the ongoing situation of the breakdown of your marriage is incompatible with your position as leader of the fellowship at St John’s.

The evident effects on your behaviour, care of staff, and the unity and well-being of the fellowship mean that we cannot support a continuation of the present state of affairs.

We therefore propose that you undertake a sabbatical from all leadership, management, pastoral and preaching duties at St John’s for a period of four months, beginning on 22 June 2015.”

Read as a whole as above, and not selectively quoted, we consider that the issue set out there is not the marriage difficulties/breakdown of the claimant’s marriage per se but its effects on the claimant’s behaviour, care of staff and the fellowship. The scriptural references are to the paradigm of how a church leader should behave set out in Timothy/Titus/Peter and not to the breakdown of the marriage per se; it is the way the claimant chooses to behave in the context of the circumstances which is the issue.

122. Furthermore, Mr Kennedy’s evidence was that the LT were clear with the claimant at this meeting that it wasn’t so much the breakdown of his marriage per se that was the issue. Rather it was the way in which his behaviour was adversely affecting his ability to carry out his role as minister and the consequent threat to the health and unity of the fellowship which concerned them. We have no reason to doubt Mr Kennedy’s evidence and accept it.

123. The claimant was angry when the LT presented its concerns to him. He disagreed with the LT’s assessment of the situation and risks to the fellowship and refused to acknowledge the seriousness of the issues it was raising. He appeared adamant that his ministry and leadership would continue unaffected and made no constructive suggestions as to how to move forward. Nor did he make any attempt to allay the LT’s concerns but rather explained that it had completely overstepped the mark. He declined to take any time off at that stage.

124. The LT agreed that Mr Chitra would investigate the concerns that had been raised by the employees (Ms Stead and Mr Ong) about the claimant’s behaviour towards them and that the claimant would cooperate with the LT in taking this issue forward. Initially, the claimant wanted to investigate the issue himself, but the LT didn’t think that this was appropriate as he was the line manager of the employees concerned and the subject of their complaints. As the LT had no legal status, it therefore nominated Mr Chitra, as a trustee, to investigate this instead. Despite this agreement, at the next staff meeting the claimant made it clear that any employees with any concerns about his management should come to him personally.

125. At a subsequent meeting of the trustees, the notes of which we have seen (page 330 in the bundle), the claimant stated his position as to why he should stay on as normal. He stated that: end of marriage was not end of ministry and that he had sought external advice from various reputable Christian leaders including a bishop in this respect; that staff were largely happy except for Mr Ong; and that the congregation at large was not affected by his marital situation and dissent came from the LT and not the congregation, and that he hoped the LT would change its mind on him. Effectively, rather than address the very serious concerns presented to him, he sought to deny or minimise them and to suggest that it was the LT which had got it wrong.

126. In an email of 19 May 2015 to her husband, Beth Gould indicated that she would be moving out of the family home. Around this time, she also stopped attending St John's, as she said she was unable to sit under her husband's authority.

127. In an email of 29 May 2015 from Ms Marina Townsley (Mr Townsley's wife) to Mr Chitra and members of the LT (apart from the claimant), Ms Townsley reiterated many of the concerns about how the claimant's behaviour, including the public manifestation of his marriage difficulties, was a cause for concern. Towards the end of her email she states:

"There is much that can be said but we go around in circles. I just wish JG had shown some humility/repentance/brokenness/commitment saving his marriage when we met on that Monday. Some loving loyalty to the fellowship rather than just wishing to preserve his position. If that had been the case we could all work with that and move on and love together..."

Again, it is the claimant's behaviour which is at issue and not the fact of his marriage breakdown.

128. In the meantime, the claimant had got in touch, via the outgoing Bishop of Edmonton, with Bishop Peter Broadbent, the now acting Bishop of Edmonton. As noted, this was unusual in the context of the claimant's 20 year ministry given his views about the Church of England, in particular his opinion that it was too liberal. A short note dated 4 June 2015 from Bishop Broadbent to the claimant states that he stood ready to support the claimant and his wife at any stage "and that if the congregation starts getting difficult, we're here to watch your back!". Bishop Broadbent explained in evidence that from time to time, congregations can give their ministers a hard time and that one of the roles of the Bishop is to look after the clergy. The Bishop was, therefore, someone whose initial position was to look after the claimant's interests.

129. In an email of 6 June 2015 in response to an email from the claimant, Mr Lawson stated:

"I find your email particularly objectionable
You accuse me of being sad and stressful
You state that you watch and spy on me and with whom I talk
And you demand that you are present whenever I talk with the leadership team
You are paranoid and unwell if you think this way and you do need help"

It is an indication of the claimant's modus operandi/state of mind that he made these demands of Mr Lawson. Furthermore, for Mr Lawson, a long-standing friend of the claimant, to make these comments is indicative of the seriousness of the situation.

130. Mr Lawson and Mr Chitra sent a note dated 7 June 2015 to the claimant headed "Concerns raised about the management of company affairs". In it they state that these concerns, if true, are damaging to the image of St John's. They set out some examples of their concerns being: staff have no employment contracts (illegal); company records and processes are in a poor state; conflict of interest occurred with your position as both trustee and employee regarding your pension changes - you issued pension changes on your own pay without consulting the other trustees; there is no liability insurance taken out for the directors.

131. The claimant wrote a letter in response (undated). It downplayed the concerns; indicated that the claimant considered that he wasn't aware of some of the problems raised; and made no acknowledgement of any fault on the claimant's part. In his concluding paragraph, the claimant stated:

"I am concerned that as well as asking some very reasonable questions, your letter suggests a loss of confidence (temporary, I hope) in me...."

132. Mr Chitra's subsequent investigation resulted in the lengthy letters from Ms Stead and Mr Ong setting out their complaints (both written in early July 2015). These reiterated what they had said earlier orally.

133. In addition, Mr Ong approached Mr Kennedy to ask if he would speak to Mr Roger Staton, a voluntary staff member at the church (and one of the six staff members), as he had professional concerns too. Mr Staton said that his concerns were significant and Mr Kennedy suggested that he outline them to the trustees, which he duly did on 1 July 2015. He set out his view that there was a lack of camaraderie among staff under the claimant's supervision and low morale; that there was a real lack of leadership and that the claimant did not communicate clearly or effectively with staff; that he sometimes felt uncomfortable carrying out work that the claimant requested him to do, because it was not always clear whether this work was driven by the needs of the church, or the claimant's personal situation, and that he had on occasion had to check with members of the LT before carrying out tasks to ensure that they were legitimate; he also raised concerns that the church's record-keeping was inadequate (as highlighted by the HMRC audit and the visa issues regarding Mr Ong) and that there was therefore a lack of accountability within the church.

134. By this stage, therefore, three of the six staff members had, of their own accord, raised serious concerns about the claimant's professional role.

135. Around this time, the LT were also considering asking the claimant to engage in some form of mediation process, with a "moderator" to be appointed to preside over it.

136. In an email of 8 July 2015 to Mr Lawson, Mr Chitra discussed issues further. His email includes:

"I'm getting quite concerned though that we are attacking JG from all fronts. I personally do not think that is fair. Firstly we need to allow him to digest the concerns raised, be given opportunity to respond, be given the room to change. If he had underperformed as a fellow trustee we must give him warnings and opportunity to change. I am probably the worst under-performer!

I favour sticking to:

1. The marriage issue (I think this is an unfinished business), his integrity and responses around this (which I find inadequate to date), and how this has impacted on his pastoral role. I find it quite impossible to believe that no ordained members of the Christian community have so far stood up for marriage as God intended it.... Will he admit that his position as a Christian pastor is at the very least "difficult" given his marital separation?
2. There will be behaviour issues (we can list some) as raised by staff, ask for his responses on this and how this too has impact on his pastoral role...."

137. In this email, Mr Chitra clearly references the staff issues and the impact of the marriage issues on the claimant's pastoral role (as opposed to the marriage and its difficulties per se). His reference to "marriage as God intended it" could, in line with the concerns of all the LT, be to the claimant's behaviour in his marriage and in particular the treatment of his wife. However, Mr Chitra goes on to suggest in terms that the claimant should admit that his position as minister is at least "difficult" given his marital separation. This, we consider, is reflective of the theological view held by Mr Chitra that, except in exceptional circumstances, the end of the marriage should lead to the end of the ministry. In his reply to this email, Mr Lawson does not comment on this view (he neither agrees nor disagrees with it) and his reply focuses on other issues.

138. Mr Chitra's email is also further indicative that he had not at that stage reached the view that the claimant's employment needed to terminate; rather he wanted to give him a further chance to address the concerns which the LT had.

139. On 9 July 2015, Mr East wrote an email to the LT (not including the claimant) in relation to the concerns which the LT had with the claimant. As well as referencing other concerns not connected to the claimant's marriage, he states:

"We are very concerned for the health of Jonathan's marriage and its current and potential impact on the fellowship. This is not a straight line between failed marriage and failed ministry, but simply an acknowledgement that character and stability within the home are important elements for ministry of the Tim and in particular the reference to the church as the pillar of truth."

Mr East is specifically stating that there is not a straight line between failed marriage and failed ministry; rather he is referencing the provisions of Timothy regarding the character of a minister and stability within the home, in other words how the claimant behaves.

140. The final section in Mr East's email is:

"4. Consequential loss of trust

It has become difficult for those who are aware of these issues to listen to sermons and newsletter articles, without drawing conclusions on the motivations behind what was said or written...

Overall, to me, speaks of a loss of trust between core church members and Jonathan.

As a way forward, I think we should propose a moderator, both direct try and reconcile deep differences (which could yet split the church) and give suggestions on better governance structures going forwards.”

141. First, it is clear from the email that, even at this stage, Mr East considers that there is a loss of trust between core church members and the claimant.

142. Secondly, it was a concern for members of the LT, trustees and the congregation that, beyond the claimant’s sermons on marriage, the claimant was using the pulpit to vent his issues with others in the congregation. An example to which both Mr Choi and Mr Chitra referred in their evidence before this tribunal was that the claimant chose to preach about Job, who suffered and was beset by those around him whom he trusted; both of them felt that the claimant was portraying himself as Job and the LT as those around him who were behaving badly towards him.

143. On 11 July 2015, Mr Lawson and Mr Chitra, as trustees, met the claimant, with Mr East present as a representative of the LT, to discuss the concerns that had been raised by both staff and the LT. A two-page written summary of those concerns was prepared and given to the claimant at the meeting and they talked through the concerns with him. They did not provide the full letters of Mr Ong, Ms Stead and Mr Staton; however, they referenced the concerns of those employees, including that the claimant’s behaviour was the reason for Mr Ong’s resignation, that Ms Stead left hurt and disappointed and that Mr Staton was unhappy with the environment he was working in.

144. In the summary of concerns, the various concerns were set out under headings about question marks over the claimant’s leadership and him being seen not to practice what he preached and that he “lorded it over others”, whilst Christian leadership should be one of humble service lived through a life of example. The subheadings under these headings included: the claimant’s preaching; the motives behind the claimant’s preaching often not being honourable and driven by his personal situation; his showing little care for the well-being of his staff; how harshly he spoke to his wife, “depriving her of the emotional needs and support from a loving husband”; the claimant’s controlling matters and not trusting others to do things; the way in which he controlled things being manipulative and divisive, creating sides and alliances, creating camps and his “paranoid behaviour/questioning”; and a lack of accountability and integrity in his working behaviour (referencing inadequate record-keeping, HR records not being maintained, no documentary evidence of decisions taken). The summary then stated:

“We would add (and this is not included in staff statements per se), that the manner in which you respond to the concerns raised regarding your marriage by the leadership team is another example of your controlling behaviour. As far as I can see, not a single ordained member of the Christian community so far has stood up for biblical marriage! They have stood up for you, not for

marriage! This is so perplexing for me as a lay member of the church, somehow there is a different theology applied for those in ministry. In fact you have now divided clergy vs lay over your marriage! To me, this is completely wrong and needs to be rectified.”

145. Whilst we do not know for certain who drafted this, its style has the hallmarks of Mr Chitra. It also looks as if the latter part is his personal view as the references to “we” stop and are replaced by “I” and “me”, and we accept therefore that the latter part is only Mr Chitra’s view which is expressed. It is quite possible that, in the context of everything else, that the reference in it to “biblical marriage” is to the way the claimant allegedly behaved within his marriage (his treatment of his wife etc), with the emphasis in 1 Timothy 3 on the behaviour of the minister; the passage does not state that end of marriage equals end of ministry. Equally, Mr Chitra could be expressing the personal theological view which he held that, except in exceptional circumstances, end of marriage should lead to end of ministry. However, in the light of our findings in the paragraph below, we find on the balance of probabilities that it is the former.

146. In an email of 13 July 2015 to the LT (not including the claimant), Mr Chitra stated in relation to their concerns, amongst other things:

“I think the marriage must be one because this we have the evidence before our very eyes. I am not too much interested in the ins and outs of their marriage; who is to blame etc but rather the impact of such marriage upon individuals and the fellowship as a whole. The defence of biblical marriage as it should be. I hope you agree.”

The email is indicative that, whatever his theological view about the end of a marriage leading to the end of the ministry except in exceptional circumstances, Mr Chitra’s primary concern was the impact of the marriage on the fellowship rather than the marriage per se. The email is also indicative that, when he says “biblical marriage”, he means behaviour within and in relation to that marriage and its impact on the fellowship and the claimant’s ministry rather than the marriage per se.

147. On 15 July 2015, Mr Kennedy emailed the claimant asking him to consider seriously the suggestion of a moderator. Ultimately, this suggestion was never taken up by the claimant nor did he engage with it.

148. On 19 July 2015, Mr Chitra sent the claimant a follow-up email, attaching again the summary of concerns raised which he had given to the claimant at the meeting of 11 July 2015. His email included the following:

“The current situation is quite a crisis; a crisis of confidence in your leadership and integrity, which therefore leads to a crisis of trust from key leaders of St John’s. I do not think this has arisen out of nothing, and there are good grounds for these concerns. We have no desire to hurt you or treat you unfairly if there are no grounds for such concerns. We respect you and do look up to you as a leader of a local church, which is mainly why many of us have been left doubly wounded by these concerns, and the way you have responded to us...

In the meantime, John and I would very much like to see reconciliation and for you to work towards that aim. We must regain the trust and confidence of those who have been disillusioned by this crisis. This process can only start if there is dialogue and the appointment of an external moderator. I’m very concerned if this step is not taken, and instead you stamp your mark and those who can follow you and sit under your authority should do so... while those who can’t either

leave leadership position or leave St John's altogether. This will cause enormous damage to the fellowship and very regrettable exodus of many."

149. On 20 July 2015, the claimant emailed Ms Stead. He stated:

"I hope it is not too awkward to ask, but it is being said by some that you have left hurt and disappointed. I really hope this is not the case, but if it is I'm terribly keen to make apology, as appropriate, for anything I might have contributed to your hurt and disappointment. Perhaps if you feel you have tried to express any grievances to me, which you feel I have not addressed, please do let me know.

I would be terribly sad if you felt you were leaving with anything unresolved between us. I'm not conscious of anything: I'm just so thankful. But it would give me peace of mind if you are able to let me know what, if anything, you might have said to others that they may now want to pass to me.

This is all "in confidence", so would be grateful if it wasn't forwarded to others, and of course if you choose not to reply, I will understand."

In this email, the claimant is going behind the LT's back, firstly speaking to someone whom he knows has raised a complaint about him, and secondly seeking to obtain further information in relation to his personal situation without the LT's knowledge. That he knows exactly what he's doing is clear from the final line where he exhorts Ms Stead not to forward the email to others.

150. The LT also subsequently became aware that the claimant himself was sharing some details about the issues in his working relationship with the LT in order to seek support for his position.

151. In addition, during 2015, after these issues had arisen, several families made it known that they would be significantly reducing their financial donations to the church.

152. In an email of 25 July 2015 to Mr Chitra and the members of the LT (excluding the claimant), Mr Lawson wrote:

"Whilst I go along with most of your thoughts I do feel we are perhaps overlooking the way that JG is dealing with the whole problem. He by habit likes to prevaricate, delay, isolate, talk, obfuscate and so he is now banking on dragging things out till after the holidays when the whole matter will get chewed over again and he hopes quieten down. I believe we should move our tanks onto his front lawn to convince him we are deadly serious and not accept his protestations of needing more time.... What are our tanks?"

He then goes through various options, those being: appoint a moderator; write to the Bishop; appoint two or three new congressional trustees; make the claimant resign as a trustee because it "is not right that he should be both master and servant"; "reduce all our contributions by 95% to make him realise that if we either leave the fellowship, or he tries to make us leave, there will be serious consequences to the cash flow. He has a certain love of money and what it brings". Mr Lawson then referenced the fact that his firm had been making substantial contributions for a number of years and he was going to stop that and also act on his own personal giving.

153. In fact, as the year went on, various members of the congregation chose to reduce their financial giving.

154. On 1 August 2015, the claimant wrote a long letter to Mr Lawson and Mr Chitra. He acknowledged that there were difficulties in his working relationship with the LT. However, he did not seem to be able to acknowledge the extent to which his behaviour had contributed to the LT's concerns or the seriousness of those concerns; he reiterated that he wished to remain in his current position for the foreseeable future and would not currently entertain the idea of a sabbatical. In effect, his response was to say that he did not think the LT's concerns were sufficient to challenge his fitness to continue as minister or take any time away from the church at that stage.

155. In the letter, he acknowledged that there had been a loss of confidence in his ability to carry out his role and that there had been a loss of trust in him for some time. However, in telling passages, he stated:

"There may be others who feel that whilst they would like to be at St John's, they do not feel that they can in conscience support me as part of the leadership team. And certainly, we need a leadership team from early autumn that can be openly and honestly supportive of me and the staff team - who are feeling the suspicion of the leadership team, and the tension arising out of its loss of confidence in me. ...

If any present leadership team members feel able to be part of a newly formed leadership team in the autumn committed to this kind of partnership with me, I would very much welcome that, and I would be glad for people to let me know their position. If there are those who don't feel they can serve in this way, I will respect that decision also. ...

In closing, I want to plead with you not to be angry at what I have written. Let us live in peace - in the fellowship of St John's if we can, or apart, if we must. But let peace reign. There is work to do for God's Kingdom. I believe God called me to do the work here at St John's. I accept some people will choose to be a part of what God is doing in and through another fellowship. Let it be so. Let each determine to do what each understands God's will to be for them at this time."

In other words, if the LT didn't like the current state of affairs, they should leave. This was typical of the claimant's modus operandi, as we have seen from the evidence before us.

156. The claimant then asked that all further correspondence on matters pertaining to him, his ministry and his leadership of St John's be referred directly to Bishop Broadbent, with whom he had been liaising and that, if further discussions were to take place, it would be helpful if this could be done in the presence of a third party. We infer from that that the claimant was trying to shut down direct communication between him and the trustees/LT.

157. On 3 August 2015, Mr Lawson emailed the claimant. His email contained the following:

"Jonathan, there is a large body of Christian men and women in the fellowship who are deeply concerned at your treatment of many people over the last few years. Most of them have either felt unwelcome and left of their own accord, or you have forced them to leave, together with this your treatment of staff has often been deplorable. These concerns have to be addressed and this is what we in the leadership team are trying to get you to face up to. I understand that you have now asked Nate to leave. Do you not realise that by so doing you upset at least a further 20 or

more Christian men and women and dig yourself deeper and deeper into your hole? It would appear that if you don't like something you don't listen, but if you do listen then you don't relate. If you do relate then you do not act positively, so you leave everyone frustrated and dig yourself deeper into your hole. Come out of your hole, stop trying to divide and rule, accept that we have valid concerns rather than batting us away, put your pride aside and start recognising and then addressing your problems. Many of us want to help you but so long as you stay in denial we cannot help. ..."

158. Mr Lawson and Mr Chitra subsequently contacted Bishop Broadbent on 10 August 2015, asking for his advice on how best to mediate and resolve the outstanding issues between the claimant, the trustees and the LT, and set out those issues. They referred to the "current crisis of trust" between the LT, the trustees and the claimant.

159. Notwithstanding this, over the course of August and September 2015, members of the LT did meet with the claimant individually to discuss mediation and reconciliation. For example, Mr Kennedy met the claimant on 28 September 2015 and was very clear that he wanted to be reconciled in their relationship. Mr Kennedy again suggested that they seek a moderator or mediator which both parties could trust, to oversee a process of reconciliation. The claimant's response was that he had done nothing wrong. He went on to say that Mr Kennedy needed to decide whether he supported the claimant or not. Mr Kennedy also suggested that a sabbatical might be beneficial, but the claimant again declined the offer.

160. Following these meetings, the LT had the sense that there had been no substantial advance in its working relationship with the claimant, no resolution of the significant concerns which it had raised with him and no change in his positional approach. By that time, they were rapidly approaching the church's annual meeting (due to be held on 7 October 2015), which was traditionally the time when the church's plans for the year ahead would be outlined to the wider fellowship and any nominations for the LT called for. However, it had been apparent for some time that the claimant had in fact been canvassing for new candidates to join the LT and had already asked a number of people to put themselves forward.

161. All of the existing LT members felt that they had arrived at a significant impasse in their relationship with the claimant. The LT therefore wrote to the claimant on 2 October 2015, reiterating their serious concerns. The reference in their letter to the claimant's marriage stated "your broken marriage and its ramifications have been played out publicly within and without the fellowship"; the reference was therefore to the public manifestation of the marriage rather than the marriage or its breakdown per se. The letter noted that the claimant had rejected all representations from the LT and trustees, made both individually and collectively, with regards to his "cavalier, insensitive and inappropriate behaviour" and that he had been unwilling to or unable to hear and acknowledge any of their concerns. The letter went on:

"After many months of deliberation, soul searching and prayer we have come to the collective conviction that your continued tenure as minister of StJDH will be divisive and damaging to the wider fellowship. Indeed this damage has already been felt by many as you were warned of

months ago. Most importantly the name of our Lord Jesus is dishonoured and denied by a broken fellowship.

We therefore entreat you most earnestly to tender your resignation forthwith. You may wish to announce your resignation as of next summer. Severance terms to be discussed. ...

Jonathan, please understand that this decision has been arrived at with great sadness - indeed it has been forged in the crucible of great pain and anguish of seven families who have known you and your family for many years.

We are grateful for all you have done for StJDH over 20 years. Please do not destroy that which you have contributed to building.

Dear Jonathan, in the name of Our Lord, please, it is time."

The letter was sent from all of the LT (apart from the claimant) plus Mr Chitra. The claimant did not resign.

162. The entire LT and Mr Chitra sent a further letter of 5 October 2015 to the claimant as a last resort. It reiterated the concerns and begged that the claimant tender his resignation, perhaps with a plan to leave the following summer allowing him time to plan his future. It went on:

"Should you not be able to agree to this we would ask that you announce at the annual dinner that the whole leadership team are resigning as they feel no longer able to work with you, on account of the issues we have raised, and attempts to resolve our differences have not, as yet, been possible. We would be happy to prepare some appropriate wording. ...

Finally despite our request in this letter we do continue to offer the opportunity to engage in a meaningful process of moderation with someone who could try to help us to resolve our differences, even if that is to rebuke us for wrong thinking."

163. The claimant replied by letter of 6 October 2015. The letter contained the following:

"... I am sorry that at present it appears we have not been able to resolve our differences to your satisfaction. Further, I do not feel able to give any assurance that I will tender my resignation in the foreseeable future. This being so, I reluctantly accept your resignations from the leadership team and I will make an announcement to that effect on Wednesday evening."

The claimant duly did so. The LT's resignation en masse therefore took effect on 7 October 2015.

164. In a letter of 8 October 2015 to the claimant, Mr Staton raised serious concerns with the claimant about governance (for example management, accountability and visibility, the transparency of the decision-making process and contracts for staff).

165. On 9 October 2015, Mr Kennedy wrote to the claimant reiterating that he felt the concerns that they had been raising with him since May 2015 were too big to ignore and posed a significant threat to the unity and functioning of the fellowship; he repeated his plea for the claimant to consider engaging in a process of mediation; he also suggested that they seek to agree how best to respond to any questions the fellowship may have about the current situation,

and perhaps have a meeting to deal with any such questions. The claimant did not reply to this email. Mr Kennedy wrote again on 15 October 2015 chasing a response.

166. By that time, a number of people within the congregation had been asking for clarification on the reasons behind the LT's resignation and how the breakdown in the working relationship between the members of the LT and the claimant would be resolved going forward.

167. However, the claimant himself wrote to the congregation in a letter of 15 October 2015, explaining his position. He stated that:

"The issues that concern the leadership team are, I understand, related to my home situation and/or to the fact that one or more staff may have left with issues that were not raised and resolved as one would have liked."

He then addressed the issue of putting together a new LT and said that he was keeping the Bishop fully informed of all the events at St John's.

168. The claimant had, by that stage, approached a number of people within the congregation about putting themselves forward for the new LT but many or all of them had indicated that they would not be willing to join a new LT until they knew more about why the previous LT had resigned and how a new team could resolve the issues that had caused their resignation.

169. It was agreed that the claimant, a representative of the outgoing LT and the trustees should attend meetings with Bishop Broadbent so that he could understand the views of each side. Mr Kennedy, Mr Lawson and Mr Chitra met Bishop Broadbent on 26 October 2015. The claimant had met Bishop Broadbent prior to this.

170. We have seen an email dated 1 November 2015 from Ms Wenham to two other people (we are not aware of who either of them are). She heads it "being cornered by JG at church that evening about the letter" and its content details an incident, which Ms Wenham clearly did not find pleasant, when the claimant cornered her to ask her about issues related to his position and the dispute with the former LT. She notes that the claimant "has now fixated on the marriage being the entire reason for the conflict as he can then say that as he can't do anything about it, it is not his fault". Without repeating all the details, at one point Ms Wenham's email states:

"He invoked George at this point and said that George had pointed out that nobody had a problem with the ministry until Beth had a problem... even though surely this is the Titus territory. If a minister can't run his own household, should he be running a church?"

I'm afraid I fudged it when he asked me whether I thought a failed marriage meant a failed ministry. I said I couldn't see how such a seismic event *wouldn't* affect your ministry but I wasn't feeling up to using scripture to back up my claims. Once again I felt very under-prepared for the conversation, and don't think that it was a fair way of responding to our letter at all."

The email goes on to detail how the claimant asked Ms Wenham if he had her support:

“So do I? Do I have your support? I answered that I couldn’t give an answer either way bearing in mind the total lack of evidence for me to make my mind up on. Clearly he wanted me to, and was waiting for me to “cast my vote””.

171. Ms Wenham was not at the tribunal to be questioned about this email. Mr Sendall has submitted that this email shows that Ms Wenham subscribed to the “broken marriage equals broken ministry” view. However, we do not accept that. First, it is not clear whether the first paragraph quoted above is not Ms Wenham referring to what someone else had said rather than her own view. Secondly, even that reference could as easily be to a minister running his household in terms of the way he treats his wife and the problems of the home spilling out into the wider congregation rather than necessarily “broken marriage equals broken ministry”. Thirdly, in the second paragraph quoted, Ms Wenham specifically does not offer a view on this issue, preferring to “fudge it” when caught unawares and put under pressure by her minister. We do not, therefore, draw any inferences about Ms Wenham’s view from this email.

172. The other point which is clearly shown from the email is the further evidence of the claimant’s modus operandi of seeking to divide and rule and canvass support for his own position amongst the congregation (Ms Wenham was at that time just a member of the congregation; it was before she became a trustee).

173. On 2 November 2015, Bishop Broadbent wrote to the claimant, Mr Chitra and Mr Lawson. In his letter, he set out his view that there had been a clear breakdown in the relationship between the claimant, the trustees, the LT and some of the wider congregation. He noted that it may be permanent but that they needed to see whether it could be addressed with a view to resolution. He referenced the possibility of involving a professional mediator. The letter includes the following:

“Presenting issues

The various presenting issues that have been raised with me and which are evident in correspondence are concerned with Jonathan Gould’s marital situation, his pastoral style, his relationship with at least some of those who have been employed by the church and his personal authoritarian style.... Jonathan has tended to address criticisms of this kind by responding in writing and refuting what has been said, and instead giving his own account of affairs. This has tended to mean that he feels the matter has been dealt with and that people can now move on. This is certainly how he has responded to criticisms in relation to governance, finances and staff employment. It is clear that there are members of the congregation who do not think that it is possible to move on and this really is a major focus for the issues that we need to work through.

Marital issues

There are some in the congregation who do not believe that it is acceptable that a Minister should be separated from his wife. I have made it quite clear that, unless there is evidence of adultery or other improper behaviour, the Church of England does not see separation as a barrier to continuing ministry. However, it is clear that some in the St John Downshire Hill Fellowship do not accept that this is the case.”

The letter sets out concerns regarding governance issues in relation to the respondent. This includes the Bishop questioning the position of the claimant as

a member of the trustee body and the concern that, as he has a significant income benefit from the respondent, his position is compromised. He recommends that the claimant should resign as a trustee, particularly as the trustees are also responsible for appointing the minister.

174. On 7 November 2015, the trustees (Mr Chitra, Mr Lawson and the claimant) met. At this meeting, Mr Chitra and Mr Lawson expressed their firm opinion to the claimant that he should step down as minister and as trustee of the respondent. They told him that trust and confidence was shattered. They told him that the fellowship was about to break apart and that a lot of long-established people would move and asked him to keep them united by resigning. They stressed that it was for the good of the fellowship. They stated that they wished, however, to remain as friends.

175. As noted, Bishop Broadbent received a lot of communications from various members of the congregation, some advocating for and some against the claimant. He also met some members of the congregation as well as the trustees.

176. Bishop Broadbent produced his final report and sent it to the trustees on 2 December 2015. It is an extremely detailed and thorough document. In it, Bishop Broadbent made many sensible recommendations, many to do with addressing systemic failures within the church, having an HR audit, improving financial and procedural controls, and the key recommendation that the trustee body should be expanded to 5 members (with the possibility of adding further trustees if this should be deemed necessary) and that the claimant should resign as a trustee on the appointment of three new trustees. This was actioned with the appointment on 11 January 2016 of three new trustees, Mr Burns, Mr Choi and Ms Wenham. Mr Lawson and Mr Chitra were also keen that, given their recent close involvement in the situation with the claimant, they should be in the minority in any expanded board of trustees, which duly happened. The claimant was extremely unwilling to resign as a trustee despite the Bishop's recommendation and the obvious conflict of interest; however, he eventually did so on 9 February 2016.

177. In relation to the claimant's marital situation, Bishop Broadbent's report states:

"This has been raised as a concern by a number of correspondents. I would urge that the issue of Jonathan and Beth's marriage be entirely discounted from the conversations that are going on. ... Those within the church who believe that marital breakdown (where there are no other parties involved) is incompatible with Christian ministry will need to be told that separation *per se* is no bar to continuing as a priest/presbyter in the Church of England."

178. In relation to the conflict within the fellowship, Bishop Broadbent stated:

"This situation is probably exacerbated by what I have observed in Jonathan's way of dealing with criticisms directed at his leadership. His habit is to seek immediately to refute what has been said. If that doesn't work, he will solicit contrary responses and character references from others whom he sees as supporters. If that has no effect, he then seeks to minimise the criticism and move on. I do see this as a major problem for his leadership. People don't, I'm afraid, feel that

Jonathan listens to them or takes any notice of their concerns. This is at the heart of the pastoral breakdown in the church.”

179. He concluded:

“There is clear evidence of pastoral breakdown within SJDH. The leadership of the Revd Jonathan Gould has become a matter of division. ...”

180. He then set out five possible options. Two he did not recommend. The other three were:

1. that the claimant be invited to take a sabbatical on full pay in order to finalise arrangements in relation to his marital situation, to spend time with his family, and to consider prayerfully the options for the next stage of his ministry;
2. in the light of the evidence that many in the fellowship had lost confidence in his leadership, either the trustees might wish to ask the claimant to tender his resignation, or the claimant might wish to tender it himself with a sufficient lead time to allow him to find another place to serve; and
3. the trustees could ask a mediator or mediation team to work with the claimant and the leadership of SJDH in order to bring about reconciliation or to plot a way forward.

Bishop Broadbent recommended that any sabbatical should be on full pay for a period of six months, the first part of it to enable the claimant to deal with family matters and with a reconciliation and mediation process taking place during the second three months, in order to address whether the claimant could or should return to the leadership of the respondent.

181. Bishop Broadbent’s oral evidence to this tribunal, which we have no reason to doubt and therefore accept, was that, from his whole period of engagement in the matter, it became increasingly clear that the claimant’s style and approach was to listen to people whose opinion he was looking for and, if he didn’t get it, he would look elsewhere, and those who disagreed were brushed off with a counter narrative.

182. In an email of 8 December 2015 to Mr Lawson, Mr Chitra, following the opinion of Bishop Broadbent in relation to this matter, reflected on the question of separation/divorce and the possibility of continuing as a vicar. In that email, he states that whilst a vicar could still be a vicar and be separated or divorced, his view remained that such an individual should not be a vicar if separated/divorced. That is a view which Mr Chitra continues to hold. However, as we will come to, Mr Chitra draws a distinction between this “theological” view which he holds and whether he acted upon it in relation to the subsequent dismissal of the claimant; Mr Chitra’s evidence was that, whilst he still holds the view, he followed the instruction of Bishop Broadbent and did not take it into account when deciding whether or not to dismiss the claimant. We have already made findings as to what a credible witness Mr Chitra was and we accept his evidence in this

respect. If he had been dishonest, he could simply have told us that, by the time of the decision to dismiss the claimant in August 2016, he had changed his mind about this theological view; however, he didn't do this but told us that he continues to hold this theological view (notwithstanding that his admission that he continues to hold it was not in the interests of the respondent in defending this claim).

183. Without first consulting with the other trustees, the claimant wrote to the congregation in a letter of 22 December 2015. The letter very much puts his spin on events. For example, it states:

"In May of this year the trustees and leadership team of St John's questioned the suitability of my remaining as your minister at this time. I believe their good aim was to protect the fellowship. At the heart of their concern was my home situation, which some have subsequently said is a sign of "sinful authoritarian behaviour" that has also impacted adversely on staff who have left recently, and perhaps others in the fellowship. This has been very great shock and sadness to me."

This deliberately underplays the very serious concerns set out in Bishop Broadbent's report; it focuses only on his home situation and makes no reference to the key concerns about a pastoral breakdown and the claimant's modus operandi in general.

184. The new trustees did not take the option set out in Bishop Broadbent's report of asking the claimant to resign, which they could have done; rather, they opted for suggesting the sabbatical/mediation; in other words, they took the option which was most favourable to the claimant.

185. In terms of mediation, Bishop Broadbent recommended to the new trustees that they engage with Bridge Builders, a reputable Christian organisation specialising in facilitating reconciliation. The trustees did so. In due course, Bridge Builders billed the respondent for 128 hours of reconciliation work, for which the respondent paid over £9,000.

186. The trustees discussed the proposed sabbatical with the claimant. It was due to start on 1 March 2016 and end on 31 August 2016. The aim was that the claimant should have a complete break in the first months of the sabbatical, with the reconciliation process taking place in the last three months of the sabbatical. With a view to the claimant needing time off for holidays with his family over the summer and also the need for clarity on whether the claimant was going to return or not in September 2016, it was discussed that August would be taken for holidays but that the claimant would be available for meetings in July.

187. Discussions about the sabbatical and mediation process took place with the claimant in January and February 2016. The idea was that the claimant should have a complete break and not attend the respondent during the sabbatical. Several drafts of the sabbatical agreement were prepared. The claimant, however, did not engage and in the end did not sign the sabbatical agreement. The final version of the sabbatical agreement, dated 4 March 2016, includes the following:

“Whilst on sabbatical leave, you will be expected not to attend work or events at St John’s Downshire Hill....

You will be expected to take your summer vacation during the sabbatical leave.

A formal reconciliation process is planned to commence after 1 May 2016. ... During the process you will be expected to be available for all reconciliation meetings that you will be a part of. We would aim to finish the reconciliation process by the end of July.”

188. On 5 March 2016, the claimant wrote to the congregation to inform them that he had commenced his sabbatical on 1 March 2016 and that the trustees had asked him not to attend the church during this time. The letter was (again) sent without the trustees’ knowledge and without any input from them. It also included details of each trustee’s personal email address (without the claimant having sought permission to disclose these). Again, the letter put the claimant’s spin on matters. It concluded “I greatly look forward to being back with you at the close of my sabbatical in early September.” This completely undermined the process as it assumed that the claimant would be coming back when the reality, as the claimant well knew, was that the trustees would be taking a decision prior to September 2016 as to whether or not he would be coming back at all. (That the claimant knew full well at that time that there was a possibility that he would lose his job is evident from an email of 8 March 2016 to his sons’ school in which he makes reference to the consequences for him if he loses his job.)

189. Despite the conditions of the sabbatical, which made clear that he should take a complete break from the church during the sabbatical period, the claimant undermined that agreement and conducted himself in a way which the trustees considered to be divisive and unhelpful during the sabbatical in a number of ways, including:

1. Contacting members of the congregation throughout the sabbatical in what appeared to the trustees to be attempts to bolster support for his position, asking numerous members of the church with little or no knowledge of the situation for letters of reference and support;
2. Engineering informal meetings with members of the congregation by walking his (daughter’s) dog outside the church at times to coincide with the start or end times of services and events at St John’s;
3. Contacting members of staff and requesting that they visit him at his home and/or meet him elsewhere in order that he could assess what level of support he had amongst the staff team;
4. Visiting the church office for reasons unknown to the trustees; and
5. Parking his car on the church grounds, despite requests from the trustees that he did not do so.

190. Mr Choi co-ordinated the trustee engagement with Bridge Builders throughout the reconciliation process. The trustees had an initial fact-finding conversation with Mr Colin Moulds, the executive director of Bridge Builders, on 14 March 2016. Bridge Builders subsequently met the claimant.

191. Bridge Builders requested that the trustees did not engage with the claimant directly during the mediation process without informing Bridge Builders beforehand. They requested that the discussions which took place during meetings with the claimant remain confidential. The trustees agreed to these requests.

192. In an email of 28 April 2016 to the other trustees, Mr Chitra states (amongst other things):

“I have just re-read bishop’s report and I agree with Ray more and more now that in many ways this report is unhelpful and falls short of the real meat - the marriage and the ministry of JG and the behaviour surrounding this. The two are inseparable, and JG is determined to separate them, and the bishop had given him the license to do so. The question is should we? Should we disagree with the bishop here and take a stance which is more in line with the wider evangelical stance of the worldwide evangelical churches (not just position of coE). ... We may differ with our views here, while I may be able to accept JG’s continuing Ministry for myself, the real question is should I make the same decision for St John’s?! ...”

193. Mr Chitra is again, as is his wont, expressing the theological view which he holds that broken marriage equals broken ministry. His reference to “we may differ with our views here” is indicative that others do not agree with him. Indeed, Mr Choi’s response to him, whilst indicating that the marriage was the fundamental issue around which things unravelled leading to dysfunction of wider relationships, indicates that he doesn’t think that there is any point in debating this further and that they should continue to follow Bishop Broadbent’s recommendations and counsel.

194. As intended, the reconciliation process did not commence during the first months of the sabbatical. After 1 May 2016, when it did commence, Bridge Builders had a series of individual meetings with the claimant and each of the five trustees and the company secretary. Bridge Builders recommended that the reconciliation process should initially be focused on the relationship between the claimant, Mr Chitra and Mr Lawson (who had the longest history of dealing with the claimant in a leadership capacity) before expanding to include the other newer members of the trustee body and other members of the congregation as necessary.

195. In an email of 9 May 2016 to Mr Moulds, the claimant set out (purportedly for Mr Moulds benefit) information about the “key players in the role of trustee and/or leadership team members”. Without repeating the whole email, which is about 1½ pages long, it is a transparent attempt to character assassinate the various individuals.

196. Bridge Builders met the trustee body as a whole on 27 June 2016, to discuss the status of the reconciliation process and make arrangements for one-to-one meetings between the claimant and Mr Chitra and Mr Lawson. At the

meeting, Bridge Builders acknowledged that a decision would have to be made towards the end of the claimant's sabbatical about how best to move forward come September 2016 but expressed concerns that the reconciliation process may not be completed by 31 July 2016 as the trustees had hoped.

197. The one-to-one meetings between the claimant and Mr Lawson and between the claimant and Mr Chitra took place respectively on 8 and 9 July 2016. Neither of them were successful. Both Mr Lawson and Mr Chitra felt they had put a lot of problems on the table at these meetings but did not feel that there were any solutions or any positive movement in the state of the relationship. The claimant did not accept any responsibility for the relationship breakdown and showed no insight into his behaviour or attitude and appeared to have no intention of changing his behaviour or attitude.

198. Mr Chitra gave evidence to the tribunal, which we accept, that he was actually scared at the prospect of having to go into the one-to-one meeting with the claimant.

199. By this point, the trustees were becoming increasingly concerned about what was going to happen at the end of the claimant's sabbatical on 31 August 2016. As well as the ongoing concerns about the relationship with the claimant itself, the trustees were concerned that if the claimant returned without some significant change having taken place, a number of the long-standing and very committed members of the church would leave and that this would have a very detrimental impact on the church and on its financial position.

200. Up until then, the trustees had avoided meeting the claimant face-to-face, following the advice from Bridge Builders. However, and particularly in light of the fact that, as far as the trustees were concerned, the month of August 2016 was not going to be available to meet because of holidays, they decided that they needed to meet the claimant.

201. There then followed, from 12 July 2016 onwards, a long series of attempts by the trustees, principally through Mr Choi, to set up a meeting with the claimant. This, however, never happened. It is not necessary to go through all of the communications, of which there are many. However, whilst it is true that the claimant did offer two potential evenings at short notice for a meeting (which the trustees could not accommodate), the general tenor of the claimant's responses is that he is trying to avoid a meeting with the trustees. As far as everyone was aware, August was reserved for holidays, but it was not anticipated that there would be a problem arranging meetings in July. However, it appeared from the communications that the claimant had nonetheless arranged, or at least said he had arranged, holidays in July. The claimant's communications to Mr Choi also contain expressions such as (in his email of 14 July 2016) "I'm afraid I'm away this weekend and quite a bit thereafter as holidays kick in. I'm sure there will be a few points to catch up on when I'm back with you in September."; he is clearly trying to avoid a meeting which he knows is about his ongoing employment and assuming (disingenuously) that he will simply come back to work in September 2016 as if there was nothing serious to discuss. Furthermore, the claimant had at a meeting on or prior to 15 July 2016 with

Bishop Rob Wickham, by then the Bishop of Edmonton, made it clear to that he was not going to attend any meeting with the trustees. Furthermore, on 22 July 2016, when Bishop Wickham met the claimant, the claimant gave him the impression that he was not going to have any further engagement on matters until September as he was (he said) departing for vacation the next day until the end of August.

202. In his meeting with Bishop Wickham on or prior to 15 July 2016, the claimant also asked Bishop Wickham to intervene by asserting his moral authority over the trustees to inform them that they had no right to sack him. He also suggested to Bishop Wickham that Mr David Monro (a solicitor and friend of the claimant's) should be engaged to review the church's governance structure. This demonstrated the claimant's lack of respect for the authority of the trustees and his undermining of them.

203. Bishop Wickham concluded that the claimant was attempting to completely avoid the situation and had not adjusted his position at all as regards the situation at the respondent. He also concluded that he considered that there had been long-term manipulation and abuse of power by the claimant and that he had now seen regular glimpses of the manipulative behaviour that others had commented on as having taken place over the years. Bishop Wickham communicated to the trustees these aspects of the contents of these two meetings with the claimant.

204. The communications to the claimant from Mr Choi (and one from Mr Burns) made clear that there were important things that needed to be discussed before the claimant went away in August and which couldn't wait until September. An email of 18 July 2016 from Mr Choi to the claimant states:

"In terms of the important decisions which the Trustees need to take by the end of July (before everyone goes away on holiday), the key one is whether it is in the church's interest for you to return to the leadership. This is clearly referred to in Bishop Pete Broadbent's report dated 2 December 2015."

It was therefore made absolutely clear to the claimant what the meeting was to be about.

205. In one email, of 21 July 2016, to Mr Choi (copied to Ms Wenham and Mr Burns), the claimant stated:

"The trustees that owned the buildings when I arrived didn't presume to run the church then, and beyond this interim arrangement we have at the moment, we shouldn't presume the present trustees would have that role going forward."

Again, the claimant was failing to acknowledge the authority of the trustees and seeking to undermine them.

206. The communications went on, without success in arranging a meeting. Eventually, the trustees wrote to the claimant on 29 July 2016, offering a meeting on 31 July or 1 August and again making it clear that the meeting was to consider whether the claimant should continue in the employment of the

respondent. The letter made clear that, if the claimant was unwilling to attend on either of these dates, then the trustees would need to make this decision in the claimant's absence. The claimant wrote to the trustees on 30 July 2016, confirming that he would not be able to attend a meeting on either date as he was in Devon with his children.

207. The trustees held the meeting on 1 August 2016. They unanimously decided to dismiss the claimant with immediate effect from 1 August 2016; but to honour payment of the claimant's full sabbatical up to 31 August 2016 and to pay him a further three months' payment in lieu of notice, with the claimant also being permitted to live on in the parsonage until 31 December 2016.

208. The minutes of the meeting record that the trustees discussed various factors in connection with this including:

1. The lack of any meaningful progress in the reconciliation process;
2. Their lack of confidence and trust in the claimant and the unworkable nature of the relationship between the trustees and the claimant;
3. The critical state of the church's finances; and
4. The pastoral needs and integrity of the Fellowship.

209. The minutes are very much a summary of a meeting which lasted three hours in total and involved a huge amount of soul-searching on the part of the trustees.

210. There was discussion about the finances of the respondent. At that stage it was running a monthly deficit of approximately £5,000 and, without any changes to this, was projected to reach a critical position by October 2016. The financial deterioration had occurred as the result of a 50% reduction in aggregate congregational donations, with approximately 25% of the regular givers having suspended or reduce their financial support to the church. Having analysed who had suspended donations, the trustees believed that the reduction in congregational donations was linked, at least in part, to the breakdown in the relationship between the claimant and the former LT and trustees, some members of staff and members of the wider congregation. (Since the claimant's dismissal, the finances have significantly improved.)

211. The trustees also discussed the pastoral needs and integrity of the Fellowship. They considered a range of different scenarios, including whether it would be feasible for the claimant to return in September 2016 or for the sabbatical to be extended. However, the consensus was that, despite attempts to reconcile, there remained a seemingly irreparable breakdown in the relationship between the claimant, the trustees and others in the congregation. The subsequent reconciliation process, which had involved considerable time and effort, had shown no prospect of the relationship breakdown between the claimant and the trustees being mended, nor had there seemingly been any

change in the claimant's perspective or approach. In addition to the lack of progress in the reconciliation process, the trustees were concerned by their various interactions with the claimant since Bishop Broadbent's report, including his unwillingness to meet with the trustees, his unwillingness to cooperate with the trustees, or accept their legal authority or the terms of the sabbatical agreement. It seemed clear that the claimant did not and would not accept any responsibility for this relationship breakdown and had not changed his behaviour and could not work collaboratively with the trustees. The trustees felt that the relationship with the claimant had irretrievably broken down. They therefore concluded that the only viable option available was to terminate the claimant's employment and that, given the breakdown in the working relationship, it would not be feasible to allow the claimant to return to work for the duration of his notice period.

212. Various witnesses were asked about whether there had been any discussion regarding the breakdown of the claimant's marriage in relation to the decision to terminate his employment. The evidence of the respondent's witnesses was that this was not discussed, let alone it being a consideration in their decision. First, with the exception of Mr Chitra, we have not found that the other four trustees held the view that a broken marriage should lead to a broken ministry. As to Mr Chitra, he continues to this day to maintain that that is his theological view; however, his evidence was that he was told by the Bishop through his report that this should not be a consideration in relation to the claimant's ongoing employment and therefore, whilst he held this theological view, it did not form part of his decision. We have already set out our reasons as to why we find Mr Chitra's evidence in general to be so credible and, in this instance too, we believe him. We believe his evidence, corroborated by the other witnesses, that there was no discussion about the claimant's marriage being a reason for the termination of his employment and that it was not a reason for the termination of his employment.

213. Furthermore, when asked about this, the respondent's witnesses were unable to say what the views of their fellow trustees were on the issue of whether broken marriage should lead to broken ministry. The fact that they didn't even know what the views of their fellow trustees were in this respect is further evidence that the matter was not discussed at the meeting of 1 August 2016.

214. We therefore find that it was not discussed and that it was not part of the reason for the claimant's dismissal.

215. The decision to dismiss the claimant was not taken lightly. All of the trustees had known the claimant for a very long time and it was a personally very difficult decision for them to take.

216. The decision was communicated to the claimant by letter of 1 August 2016.

217. On 28 August 2016, Mr George Gould (the claimant's then 18-year-old eldest son), approached Mr Chitra after a Sunday morning service. Mr Chitra was very moved when he saw him because he had known him ever since he was

born and was now in the terribly unhappy position of having been involved in the dismissal of his father. Mr Chitra was resolute that he did not want to say anything that would drive a wedge between Mr George Gould and his father. Whilst he cannot recall what Mr George Gould's opening question was, Mr Chitra said to him that his father's marital breakdown meant that he was no longer suitable to be the minister of St John's. Mr Chitra felt that he could not go into detail as to what this meant in reality about the way the marital breakdown had been played out in the church or what his father had said about his mother and vice versa or the authoritarian behaviour that his father displayed that led to the pastoral breakdown. It was a difficult and emotional conversation for Mr Chitra.

218. By letter of 31 August 2016, the claimant appealed against the decision to dismiss him.

219. The appeal was heard on 11 November 2016 by Dr William Jacob, a retired Archdeacon. The claimant attended, accompanied by a barrister. Mr Burns was also in attendance, as a representative of the trustee body. The claimant admitted in evidence that he was given a proper hearing and was able fully to set out any points he wished to raise.

220. On 17 November 2016, Archdeacon Jacob wrote to the claimant informing him that he did not uphold his appeal and concluded that his dismissal was reasonable in all the circumstances.

221. Bishop Broadbent's evidence to the tribunal, which we accept, is that, when he was made aware that the decision had been taken to dismiss the claimant, whilst this was disappointing, it did not come as a surprise to him. He acknowledged that the claimant not returning after his sabbatical was the outcome which he had expected and, in his view, the appropriate outcome for the church unless the process of reconciliation was able to make significant headway in healing the division that had occurred (which it had not).

Conclusions on the issues

222. We make the following conclusions, applying the law to the facts found in relation to the agreed issues.

Unfair dismissal

Reason for dismissal

223. There are two questions to be determined here, namely: whether or not there was a breakdown in the relationship between the claimant and the trustees, LT, certain members of staff and other members of the congregation; and, if so, whether that was the reason why the trustees took the decision to dismiss the claimant on 1 August 2016.

224. In relation to the first question, there is an overwhelmingly large amount of evidence of such a breakdown:

1. An LT of seven members of the respondent, whom the claimant himself considered to be honest and reputable individuals who, for the purposes of the higher standard in 1 Timothy 3, were fit to hold the LT roles that they held, both at the time of their appointment to those roles and afterwards, determined unanimously in October 2015 that their relationship with the claimant had broken down irretrievably and were prepared to resign en masse as a result.
2. 10 months later, a group of five trustees, similarly considered to be honest and reputable individuals and long-standing members of the respondent, three of whom had not been members of the LT or the previous board of trustees, themselves reached the unanimous conclusion that the damage to their relationship with the claimant was irretrievable.
3. For 10 friends and confidants of the claimant all to reach the point where it was considered that there was a fundamental breakdown in relationship with the claimant is indicative in itself that the breakdown was genuine, severe, and irretrievable.
4. Bishop Broadbent, who initially declared himself to be here to watch the claimant's back in June 2015 concluded in November 2015, after he had conducted his own independent investigation, that there was a serious pastoral breakdown, not just between the claimant and the trustees and the leadership team but also between the claimant and some of the wider congregation.
5. Archdeacon Jacob, having conducted what the claimant regarded as a proper hearing, concluded that the decision to dismiss him had been a reasonable one.
6. The claimant's authoritarian and controlling style of leadership was at the heart of the breakdown in relationships. The evidence of this set out in our findings of fact above his extensive.
7. On the numerous times when concerns were raised, the claimant did not engage with them, let alone moderate his behaviour in any way. Again, we do not repeat all of the examples of that which are set out in our findings of fact above.
8. When criticised, the claimant sought to divide and rule, to pick off membership members of the LT, to garner support amongst the congregation and suggest that anyone who disagreed with him should resign.
9. Three of the six staff members at the respondent all had serious concerns about the claimant's modus operandi, all of which seriously damaged trust and confidence, as set out in our findings of fact above.

10. When the LT resigned en masse, there was no acknowledgement by the claimant that there might be something in their reasons for doing so; he simply accepted their resignations and continued in trying to find other individuals to be part of an LT which would support him.
11. The earlier concerns regarding the property purchases and not involving the LT and the obvious conflict of interests between the claimant's position as trustee and employee, particularly when he was in receipt of funds from the respondent as rent for his property, were not acknowledged.
12. There were real problems regarding governance; lack of accountability; producing proper staff contracts; and record-keeping, which the claimant failed to acknowledge were an issue.
13. The effect of the claimant's marital difficulties impacted significantly on trust and confidence in that the failing marriage was the background to many of the trust and confidence issues in many respects including:
 - i. It was divisive among the congregation as the claimant and his wife sought to engender support with the claimant ostracising those who took the "wrong" side;
 - ii. It demonstrated a lack of integrity (a critical requirement of a Christian leader) with the claimant preaching one thing about marriage but actually acting differently in relation to his own and indeed using the pulpit to criticise those in the LT who had raised concerns about him (e.g. his preaching on Job);
 - iii. He sought to isolate his wife through his controlling behaviour and there was a lack of Christian love, humility and compassion and how he treated her; and
 - iv. It brought the church into public disrepute among non-Christians, e.g. when the husband of one member of the congregation had become aware of the marriage situation and had questioned one of the LT members about it.
14. The evidence of the breakdown of relationship continued after Bishop Broadbent's report and the appointment of the new trustees as set out below.
15. Despite the clearest of recommendations by Bishop Broadbent, that the claimant should resign as a trustee, and the obvious conflict of interest that his remaining as a trustee entailed, the claimant dragged his heels on this between December 2015 and February 2016 and only resigned reluctantly. This indicates a lack of sincere change on the claimant's part.

16. Even finalising the sabbatical agreement with the claimant was a tortuous process that ended with the claimant never signing the document.
17. On 22 December 2015 and on 5 March 2016, without permission or prior agreement, the claimant appealed directly to the congregation in letters, thereby undermining the trustees. In addition, in 5 March 2016 letter, he included their personal emails without their permission. He also suggested in that letter that he would be coming back on 1 September 2016, when he knew that a decision had to be taken as to whether or not he would indeed come back. Again, that undermined the trustees.
18. The claimant's letter of 9 May 2016 to Mr Moulds was a transparent character assassination of those who disagreed with him to date. This was a further typical attempt to undermine the trustees' credibility and get Bridge Builders to buy the claimant's narrative at an early stage.
19. The claimant breached the terms of the sabbatical agreement by, for example, contacting members of the congregation to bolster support for his position. Again, this undermined the trustees.
20. Both Mr Lawson and Mr Chitra felt that nothing had changed as a result of their individual meetings with the claimant during the reconciliation process on 8 and 9 July 2016. Indeed, the fact that Mr Chitra was actually scared of going into a meeting with the claimant is extremely powerful evidence of an irretrievable breakdown in relationship between the two.
21. In the summer of 2016, Bridge Builders remained so concerned about how fragile the relationships were that they did not want the trustees to meet with the claimant outside the reconciliation process.
22. The state of the relationship of the claimant with the trustees and the congregation resulted in donations to the respondent being withheld and the respondent getting into financial difficulties.
23. The claimant, even at this late stage, failed to acknowledge the authority of the trustees and sought to undermine them. Examples include what he said to Bishop Wickham in their meeting on or before 15 July 2016 and the contents of his email of 21 July 2016 to Mr Choi. This is critical; how can there be a relationship if an employee is not even prepared to acknowledge the authority of his employer?
24. The claimant was deliberately seeking to avoid meeting the trustees in July 2016.

25. In essence, in addition to all of the issues set out above, the reasons for the impossibility of a reasonable working relationship with the claimant are summarised in Mr Lawson's email of 3 August 2015 and in the observations of Bishop Broadbent in his report of 2 December 2015 on how the claimant deals with any criticism, which we have quoted in our findings of fact above and which merit rereading. The claimant was, as Mr Chitra put it in his evidence, a "lone wolf" who did his own thing regardless of what anyone else might have thought. Dealing with him in a reasonable manner was impossible.

225. Therefore, there was unquestionably a breakdown in the relationship between the claimant and the trustees, the LT, certain members of staff and other members of the congregation at the respondent.

226. We turn, therefore, to the question of whether that breakdown in relationship was the reason for the claimant's dismissal.

227. The only other reason put forward as a potential reason for dismissal (by the claimant) is the breakdown of his marriage. As we have already indicated, the fact that the claimant was married and the fact that his marriage was in difficulties was certainly not the reason for his dismissal; as noted, the claimant's marriage was in difficulty as far back as 2011 but no action was taken. The claimant's argument, as made at this tribunal, is that it was the fact that he was married coupled with the apparent imminence of separation/divorce which was the reason for his dismissal. As set out in our summary of the law, we have accepted that, applying the EAT's earlier decision in this case, the EqA would be engaged if on the facts that were the case.

228. First of all, the claimant's marriage was part of the background to events which led to the breakdown of the relationship. Several of the aspects of that breakdown as set out above are to do with the public manifestation of the marriage difficulties and the way the claimant conducted himself in the circumstances of his failing marriage. However, that is not the same as the reason for dismissal being the failing marriage; none of those events involved the marriage per se; rather they were manifestation of the problems of the marriage.

229. As to the assertion that the reason or part of the reason for the dismissal was a belief that "broken marriage equals broken ministry", we have not found that four of the five trustees who took the decision even subscribed to this view. The exception to this is Mr Chitra: he continues to hold this view to this day and the numerous examples of this view being put forward which are set out in our findings of fact above are examples of Mr Chitra putting for this view. However, Bishop Broadbent's report clearly instructed him (and everyone else) not to take the claimant's marriage into account in determining the claimant's future at the respondent and we have accepted Mr Chitra's evidence that he followed this advice and did not take it into account in his decision to dismiss the claimant.

230. Furthermore, the evidence of all the respondent's witnesses, which is backed up by the minutes of the meeting of 1 August 2015 and the contents of the dismissal letter, is that they did not take into account the claimant's marriage but rather dismissed the claimant because of the breakdown in relationship referred to above.

231. We therefore accept that the reason that the trustees dismissed the claimant was because of the breakdown in the relationship with the trustees, LT, certain members of staff and other members of the congregation, and that it was not, even in part, because of the claimant's marriage, his marriage difficulties, his potentially imminent separation/divorce or any combination of these three things.

232. The claimant was therefore dismissed for some other substantial reason, specifically the breakdown of the relationship.

Reasonableness of dismissal

233. We turn now to issue 2 of the list of issues and the question of section 98(4) ERA fairness.

a) The respondent did not undertake a reasonable investigation into the breakdown of the relationships between the claimant and others

234. First of all, we refer to our summary of the law and the legal principle that the ACAS Code does not in terms apply in relation to dismissals for some other substantial reason, which we have found this dismissal to be. Therefore, issues of investigation set out in the Code do not in terms apply here and we should look at reasonableness in general and whether the employer fairly considered whether or not the relationship had deteriorated to such an extent that the employee holding the position that he did could not be reincorporated into the workforce without unacceptable disruption.

235. Without repeating our findings above, there was an abundance of evidence that the relationship had broken down. Furthermore, over a period of well over a year, the problems had been presented to the claimant first by the LT and then by Bishop Broadbent, but they continued without any sign of the claimant changing his approach at all. That was more than enough to justify the trustees' conclusion that the relationship had deteriorated to such an extent that the claimant's employment could not continue. When the trustees considered the decision as to whether to dismiss in August 2016, they considered whether other options were available but, given the significant evidence not only of a fundamental breakdown in trust and confidence but also that the claimant, despite numerous opportunities over a long period of time, would never change his behaviour such that trust and confidence could be repaired, the trustees were fully entitled to dismiss him when they did.

236. The dismissal is not therefore rendered unfair for the reason alleged under this heading.

b) There was not a sufficient breakdown in relationship between the claimant and the trustees to warrant dismissal

237. We refer to our findings above. The evidence of the breakdown in relationship was abundant. That breakdown was more than sufficient to warrant dismissal.

c) The respondent did not take reasonable steps to repair the relationship between the trustees and the claimant

238. The respondent did take reasonable steps to repair the relationship between the trustees and the claimant. As set out in our findings of fact, the LT, the Bishop and then the trustees engaged with the claimant, pointing out the problems in the relationship, over a period of over a year. Instead of terminating the claimant's employment earlier, they pointed out the problems, gave him the opportunity to respond, suggested other solutions such as that he should take a sabbatical and go through mediation and gave him plenty of opportunities to help resolve the relationship before it became clear that nothing would change matters.

d) The claimant was not provided with adequate detail about, and evidence in support of, the allegations made against him

239. We repeat that the issues regarding the relationship were put to the claimant over the course of over a year before he was actually dismissed. He was fully aware that the issue of whether he should continue in employment from September 2016 was something which was to be discussed and considered with the trustees and the reasons why his continued employment was in question (which had been set out for him in communication with the LT previously and in Bishop Broadbent's report). He knew that his job was at risk and he knew the reasons why. He was provided with adequate detail and evidence of the breakdown in relationship.

e) The claimant was not given adequate time to respond to allegations made against him and amend his conduct if necessary

240. For the reasons set out above, we find that the claimant was given adequate time to amend his conduct but just did not do so. The same goes for responding to the allegations; over the course of over a year, the problems with the relationship were made clear to the claimant; it is just that nothing changed and the relationship remained irreparably broken.

f) the claimant was not given adequate warning of the meeting at which the decision was taken to terminate his employment

241. The claimant was given adequate warning of the meeting at which the decision was taken to terminate his employment. First, he knew that a decision would be made as to whether his employment should continue prior to September 2016 and he knew that from the start of the six-month sabbatical onwards. Secondly the respondent made considerable efforts to try and arrange

the meeting and, in its communications with him, was absolutely clear about what the meeting would consider, namely whether his employment should continue. The claimant, as set out in our findings of fact, deliberately sought to avoid attending that meeting.

242. Overall, we find that the respondent was scrupulously fair in the way it carried out the dismissal. First, as already indicated, it chose not to dismiss the claimant a lot earlier than it did, although it could have done so given the way that he had behaved and given the state of the relationship even at the point when the LT felt the need to resign en masse. However, the individuals in question were unwilling to dismiss the claimant unless it was absolutely necessary. Furthermore, when given the various options in Bishop Broadbent's report (one of which was to ask for the claimant's resignation straightaway), the trustees chose the option most beneficial to the claimant, namely the six month sabbatical and mediation, the latter involving a considerable investment of time on their part and the not insignificant cost to the respondent of Bridge Builders' fees of £9,000. It was only when it became clear that mediation was not going anywhere and that the situation was in fact getting worse in terms of the claimant's undermining of and lack of respect for the trustees that they moved to set up a meeting with him at which he might be dismissed. Even at that meeting, which lasted three hours, there was a huge amount of soul-searching on the part of the trustees and the decision to dismiss the claimant was not taken lightly.

243. The claimant was also given an appeal at which he was given a full opportunity to present his case and a fair hearing.

244. Furthermore, whilst we have not found that the decision to dismiss the claimant in his absence rendered the dismissal unfair, even if there were concerns about dismissing the claimant in his absence, those would not have rendered the dismissal unfair in any case because, under the principles in OCS v Taylor, the claimant was given the full opportunity at the appeal to state his case.

245. For these reasons, we find that the dismissal was fair in all of the circumstances. The claimant's complaint of unfair dismissal therefore fails.

ACAS Code/Polkey/contribution

246. In the light of our findings above, it is not strictly necessary to deal with these issues. However, we do so for completeness' sake.

247. First of all, as we have found that the dismissal was for some other substantial reason, the ACAS Code does not apply.

248. As regards Polkey, we have not found that the dismissal was procedurally unfair. However, if we are wrong and in some way it was procedurally unfair, we consider that, given the overwhelming evidence of the irretrievable breakdown in the relationship, the claimant would have been dismissed fairly in any case at the same time and so would have made a 100% reduction to any compensatory award under the principles in Polkey.

249. We have found that none of the claimant's marriage, his marriage difficulties or the imminent possibility of separation/divorce or any combination of these was in any part the reason for the claimant's dismissal. However, even if we had found that it had been part of the reason, we would also have found that, regardless of that part of the reason, the claimant would have been dismissed anyway at the same time for all the multiplicity of reasons of irretrievable loss of trust and confidence in relation to the relationship which we have set out above which have nothing whatsoever to do with his marriage. Essentially, leaving the marriage aside, because of the claimant's modus operandi and his complete inability to engage with his employer and adjust his way of behaving, the relationship was completely broken. Therefore, even if we had found that marriage or marriage difficulties or the imminent possibility of separation/divorce (or any combination of these three) was part of the reason for dismissal, we would have made a reduction of any compensation for unfair dismissal to zero under the principles in Polkey. (Similarly, given this causation issue, we would not have made any award in relation to ongoing loss of earnings for any successful direct discrimination complaint because, had there been no discrimination, the claimant would have been dismissed at that time in any event.)

250. Similarly, if we were wrong in the finding of fact we made that Mr Chitra's theological belief that broken marriage equals broken ministry played no part in his decision to dismiss the claimant, the other four trustees, whom we did not find held this belief, also decided to dismiss the claimant. Therefore, even if Mr Chitra's theological belief had played a part in his reasoning, the claimant would have been dismissed fairly and without discrimination at the same time by the other four trustees such that we would have reduced any compensation for unfair dismissal to zero under the principles in Polkey (and such that, given this causation issue, we would not have made any award in relation to ongoing loss of earnings for any successful direct discrimination complaint).

251. Finally, whilst we appreciate that this is not a conduct case, we also find that, in terms of the reasons for the breakdown of the relationship, it was the claimant who contributed 100% to that breakdown. The LT, the Bishop and the trustees behaved entirely reasonably whereas the claimant in his dealings behaved unreasonably and 100% of the fault in terms of the relationship breakdown rested with him. Therefore, had the dismissal been unfair, we would have made a reduction of 100% in both the basic and compensatory awards for unfair dismissal.

Direct marriage discrimination

252. We refer to the conclusions we have reached in relation to the reason for dismissal in the unfair dismissal section above, which apply equally in relation to the reason why the claimant was dismissed for the purposes of the direct marriage discrimination complaint; we do not repeat all of those conclusions here. We reiterate, however, that we have found that, although the claimant's marriage was the background to some of the reasons why trust and confidence in the relationship was irretrievably broken, the reason for dismissal (the "causa causans", as Lord Scott referred to it in Kahn) was not in any way because of the

claimant's marriage or his marriage difficulties or the imminent possibility of separation/divorce or any combination of these. Rather, it was entirely because of the irretrievable breakdown in the relationship between the claimant and the trustees, LT, certain members of staff and other members of the congregation.

253. The direct marriage discrimination complaint therefore fails.

Employment Judge Baty

Dated: 3 June 2019

Judgment and Reasons sent to the parties on:

4 June 2019

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For the Tribunal Office