EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Reverend Dr B Randall	**v**	The Bishop of Derby (R1) The Derby Diocesan Board of Finance Limited (R2) Mr Julian Hodgson (R3) Ms Hannah Hogg (R4) Ms Amanda Clarke (R5)

Heard: via Cloud Video Platform in the Midlands (East) Region

On: 23 and 24 February 2023 and, in chambers, on 24 April 2023

Before: Employment Judge Ayre, sitting alone

Representatives:

Claimant: Mr. R O'Dair, counsel
First Respondent: Mr. M Sheridan, counsel
Second, Third, Fourth and Fifth Respondents: Mr. C Milsom, counsel

RESERVED JUDGMENT AT PRELIMINARY HEARING

1. The First Respondent is not a qualifications body within the meaning in sections 53 and 54 of the Equality Act 2020.

2. The Tribunal does not have jurisdiction to hear the claim against the First Respondent.

3. As a result, the Tribunal does not have jurisdiction to hear claims against the Second, Third, Fourth and Fifth Respondents.

REASONS

Background

1. In a claim form presented to the Tribunal on 16 March 2022, following a period of Early Conciliation that started on 4 February 2022 and ended on 17 February 2022 the claimant issued proceedings against the respondents for discrimination on the grounds of religion or belief.

2. The Second Respondent is a charitable company limited by guarantee that was, the claimant says, the employer of Archdeacon Cunliffe, to whom the claimant alleges that the First Respondent delegated safeguarding responsibilities. The Third, Fourth and Fifth Respondents are or were employed by the Second Respondent. The Third Respondent was, between 1 February 2009 and 19 June 2020, the Diocesan Safeguarding Adviser ("**DSA**") in the diocese of Derby. The Fourth Respondent was appointed as DSA on 5 October 2020. The Fifth Respondent is the Assistant DSA.

3. The claimant holds beliefs on marriage, gender, sex and sexuality which he says are in line with the doctrine of the Church of England and the teaching of the Bible. In summary, the claimant alleges that by pursuing alleged safeguarding concerns about the claimant, the respondents subjected him to harassment related to his beliefs, and/or directly discriminated against him because of the manifestation of his beliefs. The claimant says that the discrimination prevented him from applying successfully for jobs following his dismissal by Trent College.

4. All of the respondents defend the claims. They deny discriminating against the claimant and argue that the Tribunal does not have jurisdiction to hear claims brought against them under the Equality Act 2010 because none of the respondents is a qualifications body.

5. The claimant says that the First Respondent can be sued under the Equality Act 2010 ("**the EQA**") because she is a qualifications body falling within sections 53 and 54 of that Act. The case was listed for a Preliminary Hearing in public to consider whether the First Respondent is a qualifications body within the meaning of section 53 of the EQA.

The Proceedings at the Preliminary Hearing

6. I heard evidence at the hearing from the claimant and from the First Respondent. There was an agreed bundle of documents running to 412 pages as a pdf, with the hard copy paginated through to page 311. An additional document, namely an extract from the National Register of Clergy, was added to the bundle by consent at the start of the second day of the hearing.

7. The Claimant and the First Respondent prepared written skeleton arguments and an authorities bundle for which I am grateful. Both counsel for the respondents also submitted written submissions at the start of the second day of the hearing. Mr. O'Dair submitted a 'Short

Supplementary Argument' and was given time to consider and respond to the additional submissions from the respondents.

8. At the start of the hearing Mr. O'Dair indicated that the claimant's case that the First Respondent is a Qualifications Body has two limbs:

    a. That the First Respondent is a Qualifications Body by virtue of her power to grant or withhold Permission to Officiate ("**PTO**"); and
    b. That the First Respondent is a Qualifications Body by virtue of her powers in relation to safeguarding (and in particular in relation to the issuing of a Clergy Current Status Letter ("**CCSL**").

9. The second of these arguments is, he said, contained within paragraphs 11,12 and 18 of the Particulars of Claim and had not been pleaded to by the respondents. He asked the Tribunal to enter judgment for the claimant in relation to paragraph 11 of the Particulars of Claim, or alternatively for the case to proceed straight to a final hearing. The respondents should not, he said, be given a second bite of the cherry by a further Preliminary Hearing and it would not be right to deal with the respondents' response to the second limb of the claimant's argument at this hearing.

10. The respondents objected to the claimant's suggestion that judgment be entered. They submitted, in summary, that:

    a. Paragraph 11 of the Particulars of Claim is a long way from being clear;
    b. The First Respondent had made clear to the claimant that it understood the claimant's case to be put on the basis of the first limb (relating to the PTO) only and the claimant had not contradicted this;
    c. It only became clear on receipt of the claimant's skeleton argument that the claimant was running the second argument. At that point a second witness statement had been prepared and served for the First Respondent;
    d. The claimant was not saying he was prejudiced by dealing with the second argument today;
    e. There have been no concessions in relation to the second argument.

11. Having considered the representations of all parties, I formed the view that it would be entirely inappropriate for me to enter a judgment for the claimant on the basis of paragraph 11 of the Particulars of Claim and that the hearing should deal with all aspects of the issue of whether the First Respondent is a qualifications body.

12. All of the respondents have specifically pleaded to paragraph 11 in their responses to the claim. The First Respondent had, in the Grounds of Response, denied "*each and every claim or allegation*" in the Particulars of Claim, as well as specifically denying paragraphs 11 and 12 of the Particulars of Claim. The remaining respondents had also, in their Grounds of Resistance, denied the contents of the

Particulars of Claim and pleaded that "*Any failure to respond should not be taken as an admission*", that paragraphs 11 and 12 of the Particulars of Claim were not admitted and that paragraph 18 was denied.

13. The Notice of Preliminary Hearing, sent to the parties in May 2022, made clear that the question for consideration at the Preliminary Hearing is whether the First Respondent is a qualifications body within the meaning of section 53 of the Equality Act. It did not qualify or limit that issue to any particular argument. It is in my view reasonable to consider all pleaded arguments relating to that issue.

14. All parties are legally represented, and I can see no prejudice to any party in proceeding in that manner.

15. The claimant has known for some time the basis upon which the respondents were preparing for today's hearing (i.e., focusing on the first argument) and could have identified the additional argument at an earlier stage than the skeleton argument.

16. In any event, it is not clear to me upon reading paragraph 11 of the Particulars of Claim what the 'safeguarding argument' is. The final sentence of that paragraphs reads that "*In providing or withholding such approval, the Bishop is acting as a qualifications body within s.53 and s.54 of the Equality Act 2010"*. It is not clear what approval the claimant is referring to.

17. On day one of the Preliminary Hearing counsel for the respondents indicated that they wished to submit additional written submissions. Counsel for the claimant indicated that he did not want to do so but would like time to consider the additional written submissions before responding to them. I therefore ordered that the respondents should send any supplemental written submissions to the Tribunal and the claimant by 8.30 am on the second day of the hearing. Counsel for the respondents complied with this order.

18. At approximately 9.30 on the second day of the hearing the claimant's counsel sent to the Tribunal and the respondents a document headed "Short Supplementary Argument for the Claimant". In the document the claimant raised a new argument. In summary, that argument was that the First Claimant was acting as a qualifications body when issuing her licence with respect to the claimant's chaplaincy at Trent College.

19. This was not an argument that had been raised previously and, in my view, requires an application to amend. By consent, the hearing proceeded to hear oral submissions on the original arguments raised by the claimant and, once these had concluded, we discussed how to deal with the amendment.

20. I then made Orders for the claimant to set out the terms of any proposed amendment in writing and for the respondents to respond. The application to amend would then be considered before any decision on the arguments raised during the preliminary hearing. It would not in my view be appropriate for me to make a judgment on

whether the First Respondent is a qualifications body on the basis of one set of arguments, knowing that there is a possibility that another set of arguments may be run if any application to amend were successful.

21. The amendment application was considered on the papers in chambers on 30 March 2023 and was refused. The reasons for that decision are set out in a separate judgment dated 30 March 2023.

The Issue for consideration at the Preliminary Hearing

22. The sole issue for determination at the Preliminary Hearing was whether the First Respondent is a qualifications body within the meaning of sections 53 and 54 of the Equality Act 2010.

23. Mr. O'Dair accepted that if the Tribunal were to find that the First Respondent is not a qualifications body, the claims against the other respondents fall away.

Findings of fact

Background

24. The claimant is ordained in the Church of England. Between 2015 and 2020 he worked as Chaplain at Trent College. He was dismissed from that post by reason of redundancy. He has brought separate proceedings in relation to his employment by Trent College and its termination. The claims made in those proceedings were dismissed in a judgment sent to the parties on 21 February 2023.

25. The First Respondent is the diocesan bishop of Derby and has held this role since February 2019. The Church of England has no legal personality. It is made up of two provinces, Canterbury and York, which in turn are made up of 42 dioceses, each of which is headed by a diocesan Bishop. The First Respondent is responsible for the care of the clergy within the diocese of Derby.

26. Clergy in the Church of England are only authorised to exercise their ministry if they have been granted a licence by the bishop of the diocese where they work, or if the bishop has given them permission to officiate ("**PTO**"). It would be an ecclesiastical offence for a member of clergy to officiate without either a licence or PTO.

27. Licences are granted to allow a member of clergy to take up a particular role and are linked to that role. When the role comes to an end, so does the licence. Licences are normally linked to paid employment or ministry.

28. The claimant was granted a licence to exercise ministry as a chaplain at Trent College by the First Respondent's predecessor as Bishop of Derby. That licence was granted under section 2 of the Extra Parochial Ministry Measure 1967 which states that:

"*The Bishop of the diocese in which any university, college, school, hospital or public or charitable institution is situated, whether or not it possesses a chapel, may license a clergyman of the Church of England to perform such offices and services as may be specified in the licence on any premises forming part of or belonging to the institution in question…*"

29. The claimant's licence came to an end when he was made redundant from Trent College late in 2020. As a result, he was no longer able to exercise his ministry and could not preach or officiate at religious services. Before his licence came to an end the claimant had been volunteering at Derby Cathedral. The claimant has not been able to minister in any form since he was made redundant by Trent College. He has found this very distressing, as he considers his ministerial vocation to be a core part of who he is.

30. Trent College raised safeguarding concerns about the claimant with the diocesan safeguarding team. The team subsequently completed an Investigation Summary Report which was discussed at a Case Management Meeting. The meeting members were unable to conclude that the safeguarding concerns were unsubstantiated. A decision was taken to refer the claimant for an independent risk assessment.

Permission to Officiate

31. PTO is a permission, granted by a diocesan bishop, to officiate in certain circumstances. The House of Bishops has a Policy on Granting Permission to Officiate, which was approved by the House of Bishops Delegation Committee in July 2018. That policy contains the following relevant provisions:

"*…1.2 Clergy with PTO play a vital and sometimes unsung part in the Church's mission. Their ministry is largely unstructured, and varies enormously….*

2.1 Canon C 8 of the Canons of the Church of England provides that a minister duly ordained as priest or deacon (referred to as a cleric throughout this policy) may officiate in any place only after he or she has received authority to do so from the diocesan bishop in which that place is situated…

2.4 It is unlawful for a member of the clergy to officiate (which includes preaching) without the requisite authority…

2.5 Permission to officiate enables clergy who are not otherwise authorised to officiate to do so when invited to do so by the minister having the cure of souls (or the churchwardens and area dean in a vacancy) in the diocese…in respect of which the permission has been granted. It is the Bishop who is responsible for issuing PTO…

2.7 As clergy with PTO are engaging in ministry that will bring them into contact with children, young people and vulnerable adults, bishops

must follow the House of Bishops' Safer Recruitment guidance…when granting PTO and ensure that: -

- *an application form for permission to officiate is completed…*
- *if the cleric is remaining in the diocese, the Blue File and DSA are consulted and, if the cleric is not known to the bishop, references are obtained;*
- *a Clergy Current Status letter (CCSL) is obtained if the cleric is coming from another diocese…*

2.8 In addition, Bishops should ensure that

- *PTO is issued for a fixed term, and a review is carried out before renewal, which must be subject to obtaining enhanced criminal record checks…*

2.10 …PTO is not granted as of right…

2.11 …PTO is held entirely at the bishop's discretion and may be withdrawn by the bishop at any time, and without any right of appeal…

3.1 Forms of ministry that usually require permission to officiate include:

a) *Occasional duties, for example, preaching, providing cover during temporary absence, and presiding at the Eucharist;*
b) *Performing the Occasional Offices;*
c) *Substituting during a vacancy;*
d) *Covering a period of authorised absence such as sabbatical, maternity leave or sick leave)…*

3.3 Clergy who are granted PTO are often, but not always, retired stipendiary clergy…However, not all clergy with PTO are retired. Examples where it might be appropriate to grant PTO to someone who has not retired include:

- *Someone in good standing who has left parochial ministry in order to take employment outside the Church, but who wishes to continue to offer help with the Occasional Offices;*
- *A cleric who requires a period of staged return to ministry following past difficulties; or*
- *A cleric who is licensed in one diocese but who may have occasion to minister regularly in another diocese, such as someone who is a representative for a Church Mission agency.*

3.4 If a cleric is carrying out a ministry subject to an employment contract (for example, as chaplain…), he or she will need a licence rather than PTO. However, clergy who are carrying out an employed role that does not require a licence (because it is one that does not need an ordained person) will need to be given PTO to enable them to exercise a ministry…"

32. PTO is most commonly granted to retired clergy who wish to continue ministering in a voluntary capacity. The bishop's power to grant PTO is entirely discretionary and there is no right of appeal against the

exercise of that discretion. Work carried out under a PTO is usually unpaid,

33. On 17 December 2020 the claimant wrote to the First Respondent. In the email he wrote that he was being made redundant by Trent College and that his employment would be coming to an end. He said that, as a result he would be without a licence and would "*need to apply for a licence or PTO*".

34. On 11 January 2021 the claimant completed a PTO request form and sent it to a member of the First Respondent's staff. In the covering email he wrote: "*Attached is a request form, to tide me over until something else becomes available…*".

35. The Application for PTO form includes the following 'guiding principles':

"*PTO is granted for occasional or temporary ministry in any parish in the Diocese…*

PTO is granted at the Bishop's discretion. It may be caried or revoked at any time…"

36. One of the questions on the form is: "*Are you intending to claim fees for the ministry you offer?*". The claimant answered "*No*" to that question. The next question is: "*How are you hoping to use your PTO?*" The claimant replied to that question: "*Occasional services as required, until a new post is found.*"

37. The claimant suggested in his evidence to the Tribunal that the reason he said in the application form that he did not intend to claim fees was because he understood that question as relating to 'fees for this ministry', namely the voluntary work that he was performing at Derby Cathedral. He said that his understanding was that, despite saying 'no' on the PTO application form, he would be permitted to claim and receive fees for other work carried out under the PTO, and that it had always been his intention to claim fees where possible for services outside of the Cathedral.

38. This explanation was not convincing. The claimant suggested that the wording of the PTO application form is ambiguous. It is not. In response to the question 'how would the respondent have known you intended to claim fees, did you make it clear in any other way?' the claimant replied, 'I don't think I did, the question was never asked'. There was nothing in the form completed by the claimant or in his behaviour at the time that would have suggested to the respondents that the claimant wished to claim fees if he were granted PTO. Quite the opposite.

39. Clergy who are granted PTO do not receive any remuneration as a result. When they officiate at services they normally do so without any pay, the only limited exceptions being when they provide cover for absences, or when retired clergy perform what are known as 'occasional offices', usually weddings and funerals. The First Respondent's evidence was that the claimant would not have been

covered by the exceptions and would not have been paid for services performed with PTO because he made clear in his application form that he did not intend to claim fees. She understood the claimant to be applying for PTO to take on voluntary roles, and so that he could demonstrate his ability to lead services when applying for new employment. I accept her evidence on these issues.

40. Even if fees can be claimed for officiating under a PTO, these fees are very limited. For example, the fee for leading a Sunday or mid-week service is £54. PTO is not meant to be used to conduct ministry as a way of earning a living – that would normally be done by way of a licence.

41. The decision on whether to grant the claimant PTO was made by the First Respondent. When making her decision she was required to have due regard to all relevant guidance issued by the Church of England's House of Bishops. She had to review the claimant's 'Blue File', which is the equivalent of a personnel or HR file, and to consult the DSA.

Limited PTO

42. After his dismissal from Trent College the claimant began applying for jobs elsewhere. His applications were unsuccessful. On 8 April 2021 he wrote to the First Respondent explaining that he was growing increasingly anxious and concerned that if he went for a job interview, he could be asked to lead or contribute to a service as part of the interview process, but without PTO it would be unlawful for him to do so.

43. In response to this email, the First Respondent decided to give the claimant limited PTO so that he could, if required, lead or contribute to services as part of a job application process. On 16 April the First Respondent wrote to the claimant granting him limited PTO. In her letter she wrote:

"*…This letter gives confirmation that I have granted you PTO until 31st July 2021, limited to leading or being involved in services which you might be invited to lead or in which you might be invited to participate, provided such invitations are issued in connection with interviews attended, either physically or virtually, in your search for employment…*"

44. The First Respondent wrote to the claimant again on 22 April. In her email she referred to the recent granting of temporary PTO to enable him to lead or contribute to services as part of an interview process. She explained that she had been in discussion with the DSA and had asked that an investigation report be prepared, with a view to deciding whether she should commission an independent risk assessment. She also explained that until that process had been completed, she could not give the claimant wider PTO.

45. The First Respondent has safeguarding responsibilities within her diocese and is supported in that by a safeguarding team which

includes a DSA and an Assistant DSA. The decision to ask the claimant to undergo an independent risk assessment was made by the First Respondent on the advice of her safeguarding team. It is an approach that she had taken on other occasions, and on those other occasions the process resulted in the member of clergy being granted a licence or PTO.

46. The claimant refused to undergo an independent risk assessment and as a result the First Respondent has been unable to satisfy herself that there is no safeguarding risk.

47. The limited PTO expired on 31 July 2021. The First Respondent offered to renew it for six months, but the claimant declined the offer, saying that he did not want a limited PTO because he thought it was 'useless' and "*exposes me to the worst of all worlds*".

48. Neither PTO nor a licence is required for a member of the clergy to apply for a job. All of the roles that the claimant applied for were ones which, had his applications been successful, would have required a licence in order for him to take up the role.

Clergy Current Status Letter

49. Where a PTO is issued, it allows the recipient to practice in the diocese in which it has been issued. If a member of clergy wishes to apply for a role in a different diocese, then the bishop of that diocese (commonly referred to as the 'receiving' or 'accepting' diocese') must request a Clergy Current Status Letter ("**CCSL**") from the bishop of the diocese in which the member of clergy is currently working (the 'sending' diocese).

50. The CCSL is similar to a reference and is a means by which the bishop who has most recent knowledge of the individual's work can share information with the receiving bishop. That information will then be used to help the receiving bishop decide whether to grant the individual PTO or a licence in the receiving diocese.

51. There is a standard form of CCSL which is headed: "*Episcopal reference and clergy current status letter*". The form asks the bishop completing it to confirm that before doing so s/he has consulted the individual's Blue File and any other relevant files including any safeguarding and disciplinary material.

52. Part A of the form then asks the bishop to comment on the individual's history, qualifications, experience and suitability for appointment to the post for which s/he is being considered. In Part B the sending bishop is asked to provide specific information about the individual, such as what s/he currently authorised to do and the type of her/his current office or ministry.

53. The sending bishop is also asked in Part B to state a number of matters. These include whether any complaints have been received under the Clergy Discipline Measure 2003, whether any undetermined enquiry has been made into the capability of the individual under the

Ecclesiastical Offices (Terms of Service) Regulation 2009, whether the sending bishop is aware of any past of current investigations or enquiries by the police, social services or probation, and whether there are any concerns relating to safeguarding.

54. The sending bishop is required, when completing a CCSL, to identify any safeguarding concerns in that letter.

55. Guidance Notes have been issued to assist bishops to complete the Episcopal Reference and Clergy Current Status Letter. Those notes refer to the CCSL as "*the Bishop's Reference*".

56. In April 2021 the First Respondent and her office prepared a CCSL for the claimant in connection with an application he was making for a role as an Army Chaplain in the Royal Army Chaplain's Department. In the letter the First Respondent wrote:

"*…Trent College alerted us in 2019 to a concern they had about him in his role as School Chaplain. The issues related to the content of sermons which he preached to pupils in the context of chapel services. Further details, if needed, should be obtained from Trent College.*

6. As we had been informed by Trent College of their concern, we were obliged to start a safeguarding process. This stalled for a long time during lockdown and has not yet been concluded…"

57. The First Respondent's evidence, which I accept, is that it would then be for the receiving bishop to take steps, in conjunction with her/his safeguarding team, to resolve the safeguarding concerns before granting PTO or a licence. The fact that a safeguarding concern is mentioned in a CCSL is not an automatic bar to the member of clergy's appointment to a role in the receiving diocese. The First Respondent has received CCSLs mentioning safeguarding concerns in the past and worked with the clergy concerned to resolve the issues. In the other cases in which safeguarding concerns were raised and which the First Respondent was involved, the safeguarding concerns raised in the CCSL did not act as a bar to the individual starting work in the diocese, because it was possible to resolve those concerns.

The Law

58. Section 53 of the Equality Act 2010 (Qualifications bodies) provides that:

"*(1) A qualifications body (A) must not discriminate against a person (B) –*

(a) in the arrangements A makes for deciding upon whom to confer a relevant qualification;

(b) as to the terms on which it is prepared to confer a relevant qualification on B;

(c) by not conferring a relevant qualification on B.

(2) A qualifications body (A) must not discriminate against a person (B) upon whom A has conferred a relevant qualification –

(a) by withdrawing the qualification from B;
(b) by varying the terms on which B holds the qualification;
(c) by subjecting B to any other detriment.

(3) A qualifications body must not, in relation to conferment by it of a relevant qualification, harass -
(a) a person who holds the qualification, or
(b) a person who applies for it…."

59. Section 54 of the Equality Act (Interpretation) states that:

"*(1) This section applies for the purposes of section 53.*

(2) A qualifications body is an authority or body which can confer a relevant qualification.

(3) A relevant qualification is an authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular trade or profession.

(4) An authority or body is not a qualifications body in so far as –
(a) it can confer a qualification to which section 96 applies,
(b) it is the responsible body of a school to which section 85 applies,
(c) it is the governing body of an institution to which section 91 applies,
(d) it exercises functions under the Education Acts, or
(e) it exercises functions under the Education (Scotland) Act 1980.

(5) A reference to conferring a relevant qualification includes a reference to renewing or extending the conferment of a relevant qualification.

(6) A competence standard is an academic, medical or other standard applied for the purpose of determining whether or not a person has a particular level of competence or ability."

60. Section 212 of the Equality Act (General Interpretation) defines 'trade' as "*includes any business*" and 'profession' as "*includes a vocation or occupation*".

61. Section 3(1) of the Human Rights Act 1998 provides that:

"*So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.*

62. Section 13 of that Act states as follows:

"*(1) If a court's determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right.*

(2) In this section "court" includes a tribunal."

European Convention on Human Rights

63. Article 8: Right to respect for private and family life

"*1 Everyone has the right to respect for his private and family life, his home and his correspondence.*

2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

64. Article 9: Freedom of thought, conscience and religion

"*1. Everyone has the right to freedom of thought, conscience and religion: this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

65. Article 10: Freedom of expression

"*1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

66. Article 14 :

"*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or*

social origin, association with a national minority, property, birth or other status,"

Submissions

67. The submissions of each party are summarised briefly below. The parties submissions were lengthy and the fact that a point made in submissions has not been mentioned below does not mean that it has not been considered.

68. I was referred to the following cases:

British Judo Association v Petty [1981] ICR 660
Tattari v Private Patients Plan Ltd [1997] IRLR 586
Loughran v Northern Ireland Housing Executive [1998] IRLR 593
Triesman v Ali [2002] IRLR 489
Paterson v Legal Services Commission [2004] ICR 312
Ghaidan v Godin-Mendoza [2004] AC 557
M v Secretary of State for Work and Pensions [2006] 2 AC 91
Watt v Ahsan [2008] 1 AC 696
Kulkarni v NHS Education Scotland EATS/0031/12
X v Mid-Sussex Citizens' Advice Bureau [2013] IRLR 146
Sharpe v Worcester Diocesan Board of Finance Ltd [2015] ICR 1241
Pemberton v Inwood [2017] ICR 929
Pemberton v Inwood [2018] ICR 1291
Wandsworth London Borough Council v Vining and others [2018] ICR 499
BP v Elstone and anor [2010] ICR 879
Turner v East Midlands Trains [2013] 3 All ER 375
Bates van Winkelholf v Clyde & Co [2014] I WLR 2047
Gilham v MoJ (Public Concern at Work Intervening) [2018] ICR 527
Gilham v MoJ (Public Concern at Work Intervening) [2019] 1 WLR 5905
Steer v Stormsure [2021] ICR 807
Steer v Stormsure (Sec. State for Equalities) [2021] ICR 1671
Jeffrey-Shaw v Shropshire County Premier Football League and Shrophshire County Football Association UKEAT/0320/04/TM (unreported)
Leach v Ofcom [2012] IRLR 839
Mr B Randall v (1) Trent College Limited (2) Mr J Hallows (3) Ms J Rimington Case No: 2600288/2020
Blackwood v Birmingham and Solihull Mental Health NHS Foundation Trust [2016] ICR 903
Denisov v Ukraine 76639/11 (GC)
Niemietz v Germany (1993) 16 EHRR 97
Hasan and Chaush v Bulgaria (2000) 34 EHRR 55
Fernandez Martinez v Spain (2015) 60 EHRR 3
Boyraz v Turkey (2015) 30

69. I was also referred to the ***Clergy Discipline Measure 2003*** and the ***Diocesan Safeguarding Advisors Regulations 2016***.

Claimant

70. Mr O'Dair, in his skeleton argument, argues that the First Respondent is a qualifications body on two bases:

    a. Because she holds the power to grant or withhold PTO; and
    b. Because she is responsible for the diocesan safeguarding processes, an important part of which is the issuing of the CCSL.

71. Mr O'Dair sought, on the second day of the Preliminary Hearing, to raise a third argument, namely that the First Respondent acts as a qualifications body when issuing licences. For the reasons set out above and in a separate judgment, that argument required an application to amend, which was refused. No findings are therefore made on that issue.

72. Mr O'Dair submitted that the following principles emerge from the case law:

    a. An approval must be based on objective criteria not the subjective whim of the decision maker (***Ahsan v Watt*** and ***Kulkarni v NHS Scotland***);

    b. The approval need not be intended to benefit the person seeking it provided it benefits him in objective terms (***British Judo Association v Petty***);

    c. "*The key point is that the body granting the qualification is not simply applying a standard for its own purposes but is signifying that the individual meets a particular standard in circumstances where others will rely on that authorisation such that it will provide or facilitate access to a particular profession*" (***Pemberton v Inwood***);

    d. ***Pemberton v Inwood*** is not determinative of this case. The Court of Appeal made clear that counsel had agreed that PTO was not a relevant qualification because it did not lead to remuneration, so the Court did not have to decide that issue.

73. Mr O'Dair argues that the decision whether to grant or withhold PTO is subject to section 53 of the Equality Act. The claimant would have been paid fees had the First Respondent issued him with unrestricted PTO. He also suggests that the natural meaning of 'vocation' is not limited to paid vocations, and that section 53 should apply equally to unpaid vocations.

74. Denying the claimant the right to officiate is, in Mr O'Dair's submission, interfering with his right to express his faith and with his Article 10 rights and with his Article 8 right to professional life including practicing a vocation. He referred to the case of ***Niemitz v Germany*** in which he says it was held that the right to privacy of personal correspondence applied to professional correspondence.

75. Mr O'Dair also referred to ***Fernandez Martines v Spain*** in which the European Court of Human Rights held that the removal of a priest from a teaching post in a Catholic school engaged Article 8, and to ***Boyraz v Turkey*** in which the court held that a dismissal on the ground of sex interfered with the right to private life and that the concept of 'private life' extends to aspects relating to personal identity.

76. Article 8 is engaged in the current claim, Mr O'Dair says, because officiating at services is the exercise of a vocation which is part of the claimant's conception of who he is. An individual's fundamental identity in the social world is protected by Article 8.

77. In Mr O'Dair's submission it is not the purpose of today's hearing to decide whether there has been a breach of the claimant's Convention Rights, but merely whether they are engaged in the decisions made by the First Respondent. It would be wrong to reject the claimant's arguments on human rights because of the decision in the ***Randall v Trent College*** case, which is not binding on this Tribunal.

78. Mr O'Dair argues that sections 53 and 54 of the Equality Act derive from the Sex Discrimination Act 1975 rather than the Equal Treatment Directive, and that therefore the provisions of the Equal Treatment Directive which say that it does not apply to volunteers are not applicable here. The Tribunal should adopt the natural meaning of the words which make no reference to a need for payment. The question of whether qualification bodies are only qualification bodies in relation to paid work is not answered by the text of sections 53 and 54.

79. The Supreme Court case of ***X v Mid Sussex CAB*** is not decisive in this claim, Mr O'Dair says, because:

    a. Human rights arguments were not considered in ***Mid Sussex****;*
    b. The liability of qualifications bodies stems from the Sex Discrimination Act and is not retained law;
    c. Lord Mance indicated that interns might be covered as voluntary work might lead to paid employment, and this case is analogous as the claimant wanted PTO to 'keep his hand in'.

80. Mr O'Dair submits that the issuing of a CCSL represents an 'approval' or a certificate, such that a candidate with a favourable CCSL may be appointed to a post. He likened it to the issuing of a Practising Certificate by the Law Society. The First Respondent operates a system which certifies whether an applicant has a clean safeguarding record, which operates on objective criteria and facilitates the exercise of vocation by clergy.

First Respondent

81. Mr Sheridan submitted on behalf of the First Respondent that the unlimited Permission to Officiate for which the claimant applied was not a qualification and that, in deciding not to grant the permission pending the outcome of a safeguarding risk assessment, the First Respondent was not acting as a qualifications body because the PTO was not

needed for and would not facilitate engagement in a particular trade or profession.

82. Mr Sheridan also submitted that the claimant had made clear in his application for PTO that he did not intend to use it to conduct ministry in respect of which he would claim fees. Any ministry he would have exercised had PTO been granted would therefore have been unremunerated, and unpaid activities fall clearly outside the Equality Act.

83. Even if the claimant had used PTO to claim fees, such ministry would still not have been an activity which constituted a 'trade or profession' in Mr Sheridan's submission, because PTO is not linked to a particular post or employment but merely grants the right to conduct occasional ministry, and the very modest fees payable for conducting services under a PTO would not have enabled the claimant to earn a living. Unlike a licence, he submits, PTO does not confer authority to minister at a particular church or institution, and there are significant limitations on the activities of a priest with PTO.

84. Mr Sheridan referred me to the judgment of the Court of Appeal in ***Pemberton v Inwood*** in which Asplin LJ summarised the nature of PTO and to the judgment in the EAT that cases under section 54(3) are 'fact-dependent'. The EAT's decision that PTO was not a qualification, and that the bishop was not a qualifications body had, he said, been upheld by the Court of Appeal.

85. In Mr Sheridan's submissions, the following general principles emerge from the case law:

    a. In order to be a qualifications body, the body must have the power to set a particular standard and to declare that the candidate has attained that standard (***Triesman, Paterson, Kulkarni*** and ***Pemberton***);

    b. The standard applied must be an objective one applied in a transparent way on a pass/fail basis (***Watt*** and ***Paterson***);

    c. The standard must relate to competence (***Triesman***);

    d. A qualifications body vouches to the public for the qualifications of the candidate and the public rely upon the qualification (***Watt*** and ***Pemberton***);

    e. A body is not a qualifications body if it merely chooses which already qualified candidates it wishes to engage (***Tattari, Loughran*** and **Triesman**); and

    f. A 'qualification' must provide or facilitate access to a particular profession (***Loughran*** and ***Pemberton***).

86. Mr Sheridan also submits that for the purposes of sections 53 and 54 of the Equality Act, a person does not engage in a particular trade or profession unless the activity is remunerated. In ***Pemberton*** the Court

of Appeal had, he says, noted that it was accepted by the parties to the appeal "*that remuneration is necessary for the activity to amount to a trade, profession or vocation*" but did not express any view on that question. That is, in Mr Sheridan's submission, hardly surprising given the agreement between the parties, and it is equally unsurprising that leading counsel acting for the claimant did not argue the point given the clear state of the authorities.

87. In ***Triesman***, a case involving the selection by the Labour Party of candidates for local authority elections, the Court of Appeal held that being a councillor was not a profession because it was not paid and that the Labour Party was not a qualifications body.

88. The qualifications body provisions in the Equality Act are, in Mr Sheridan's submission, plainly intended to be concerned with work done pursuant to a 'work-wage bargain' and it is trite law that volunteers are excluded from the protection of the Framework Directive 2000/78 which the Equality Act implements. He referred to ***X v Mid-Sussex CAB*** where the Supreme Court held that the word 'occupation' in the Framework Directive did not cover volunteers and that as a result volunteers fell outside the scope of the Disability Discrimination Act 1995.

89. The claimant's submissions that ***X v Mid-Sussex CAB*** is not decisive are misconceived in the First Respondent's submission. The EHRC intervened in support of the claimant in that case, and it is therefore 'fanciful to imagine' that if there were any meritorious human rights arguments in that case that they would not have been made. The claimant's argument that sections 53 and 53 of the Equality Act do not implement the Framework Directive but merely re-enact the provisions on qualifications in the Sex Discrimination Act 1975 and therefore apply to volunteers is without merit. The Framework Directive required EU member states to implement protection against discrimination by qualifications bodies (Art. 3(1)(a)). It is clear, in Mr Sheridan's submission, that the Supreme Court in ***X v Mid-Sussex*** intended its decision to apply to the Equality Act despite the fact that the claim was brought under the Disability Discrimination Act 1995. He referred me to the following extract of Lord Mance's judgment [para 1]:

"*Any responsible organisation aims to combat discrimination on the grounds of disability or indeed any other characteristic protected by the Equality Act 2010 and will do so for the benefit of persons serving or wishing to serve as volunteers in the organisation no less than anyone else. But the present appeal is not about this moral imperative. It is about whether, under European Union and domestic law, discrimination against volunteers, or some categories of volunteer, on the grounds of disability is currently unlawful and if so how the relevant volunteers are to be defined.*"

90. The unlimited PTO sought by the claimant was not, Mr Sheridan argues, needed for nor would it have facilitated the claimant's engagement in a particular trade or profession. If the claimant wanted the First Respondent's authority to exercise ministry to earn a living, he would have required a licence. Applying ***Triesman***, the limited

circumstances in which the claimant would have been able to claim fees pursuant to a PTO would not constitute engagement in a trade, profession, occupation or vocation.

91. There was, in Mr Sheridan's submission, limited evidence that having PTO would have enabled the claimant to 'keep his hand in' and therefore facilitate later applications for paid roles. The claimant did not express concern at the time that without PTO he would not be able to get references from those who had seen his ministry, and there was no cogent evidence to suggest that this was in fact the case.

92. Mr Sheridan accepted that it is possible to establish that something is a qualification on the basis that, whilst not needed, it facilitates engagement in a trade or profession (***Petty***). It must however do so in a 'sufficiently real and direct way' and this case can be distinguished from ***Petty***. The Tribunal should, he says, reject the contention that a receiving diocese considering whether to grant PTO or a licence to the claimant would draw a negative inference from the mere fact that the claimant did not have PTO. There are many innocuous reasons why a priest may not have PTO, and conversely, the fact that a priest holds PTO in one diocese does not mean that s/he will be considered to be in good standing in another diocese.

93. Mr Sheridan further submits that the fact that the First Respondent might be called upon to communicate to the bishop of another diocese any concerns she had in relation to safeguarding does not make her a qualifications body as the communication is not a 'qualification'. The First Respondent did not set an objective safeguarding standard or apply objective criteria in a transparent way on a 'pass/fail' basis when deciding what should be said about any safeguarding concerns in a CCSL, nor do safeguarding matters relate to a priest's skill and ability to perform his role.

94. The First Respondent cannot, in Mr Sheridan's submission, be a qualifications body simply by virtue of her responsibility for safeguarding processes within her diocese. It is necessary under section 54 of the Equality Act to identify a qualification which can be 'conferred'.

95. In relation to the human rights arguments raised by the claimant, Mr Sheridan submitted that the Tribunal should consider the words of Mummery LJ in ***Leach v Ofcom [2012] IRLR 839*** [para 57] that "*'Human Rights' points rarely add anything much to the numerous detailed and valuable employment rights conferred on workers*".

96. The interpretation of sections 53 and 54 of the Equality Act as excluding volunteers from their protection is, he says, compatible with Convention rights. The Framework Directive excludes volunteers, and it is 'inconceivable' that by following the same approach the UK legislation is incompatible with Convention rights.

97. Mr Sheridan submits that the claimant cannot show even a prima facie case that Article 8 applies. All that the First Respondent has done is require the claimant to undergo a risk assessment so that she can form

an informed view of whether he presents a safeguarding risk before deciding whether to grant full PTO. That is a 'world away' from the facts of the cases whether the ECHR has held that Article 8 is engaged in relation to professional activities, which involved decisions to dismiss or ban individuals from employment. ***Boyraz v Turkey***, the case relied upon by the claimant, involved the dismissal of a female employee on the sole ground of sex, which was found to constitute an interference with the employee's Article 8 rights.

98. Mr Sheridan further submits that there is no prima facie case that the claimant's Article 10 right was infringed by the denial of unlimited PTO. All the First Respondent did was required an independent risk assessment before considering whether to grant full PTO.

99. He referred me to section 12(1) of the Human Rights Act 1998 which he says requires the Tribunal to have particular regard to the First Respondent's Article 9 rights which heavily outweigh the claimant's alleged Article 8 and 10 rights. He referred me to the decision of the ECHR in ***Fernandez Martinez v Spain*** [paragraph 129] that "*…the principle of religious autonomy prevents the state from obliging a religious community to admit or exclude an individual or to entrust someone with a particular religious duty…*"

Second, Third, Fourth and Fifth Respondents

100. The Second, Third, Fourth and Fifth Respondents adopt the submissions of the First Respondent. In addition, Mr Milsom made submissions in relation to the Convention rights invoked by the claimant.

101. Mr Milsom submitted that reliance upon the Convention principles is misconceived. In summary, he says that:

a. Articles 8 and 10 are not engaged and, to the extent that they are, there is no unjustified breach of them;

b. Reliance upon Article 14 is hopelessly vague. No Article 14 status had been identified and the ET cannot begin therefore to undertake a comparative exercise, still less decide whether any Article 14 discrimination is justified; and

c. The Tribunal should not accede to the claimant's invitation to rewrite section 54 of the EQA. To do so would be to go against the grain of the legislation or reach legislative choices which only Parliament can make.

102. In Mr Milsom's submission, the claimant's reliance upon Convention principles is misconceived and if there is any infringement of Convention Rights, the infringement is by the legislation (and in particular by the decision to limit section 54 Equality Act to paid work) and not by the respondents. If the Tribunal lacks jurisdiction the claimant cannot seek to have his claim determined through the back door by relying upon ECHR principles.

103. Article 8 is not, Mr Milsom says, engaged as a matter of course in the loss of employment or the setting of conditions of employment (***Wandsworth LBC v Vining and others [2018] ICR 499***) and there is no authority to suggest that Article 8 is engaged in the course of pursuing a voluntary occupation. A loss of opportunity, even when combined with stigma and difficulty in obtaining future employment "*is nowhere near enough to engage article 8 on its own*" (Elias LJ, para 35 in ***Turner v East Midlands Trains***). There is a 'threshold of severity' before Article 8 is engaged and the claimant has not shown that the failure to provide an unlimited PTO contravenes Article 8.

104. Mr Milsom referred to the judgment of the Tribunal in ***Randall v Trent College Ltd and others*** in which it was held that the claimant's right to manifest his beliefs did not outweigh the school's obligations to safeguard pupils, and that the claimant had committed an act of gross misconduct. It has, in Mr Milsom's submissions, been established in that case that any impediment to vocational activity has been caused by the claimant himself. In ***Turner*** Elias LJ commented at paragraph 37 of the judgment that article 8 "*cannot be relied upon in order to complain of a loss of reputation which is the foreseeable consequence of ones own actions…*"

105. Further, Mr Milsom submits that even if Article 8 was engaged, the claimant had to go a step further and establish that the legislative failure to extend section 54 of the Equality Act to voluntary work is an unjustified contravention, which he has no prospect of doing (***Gilham v MOJ (Public Concern at Work Intervening*** in the Court of Appeal). Unless Article 14 can be invoked, all the Human Rights Act requires is the availability of a remedy under section 7 to pursue complaints in the civil courts.

106. The claimant's arguments in relation to Article 10 are, Mr Milsom submits, equally as flawed. The Tribunal has already found in ***Randall v Trent College*** that there is no unjustified breach of Article 10 in relation to safeguarding proceedings. The most natural transposition of Article 10 in employment proceedings is in the legislation relating to whistleblowing. That legislation does not extend to job applicants or volunteers.

107. In relation to Article 14, Mr Milsom suggests that the relevant four questions are those summarised by the Supreme Court at paragraph 28 of its judgment in ***Gilham v MOJ (Public Concern at Work Intervening)***:

"*…(i) do the facts fall within the ambit of one of the Convention rights; (ii) has the claimant been treated less favourably than others in an analogous situation; (iii) is the reason for that less favourable treatment one of the listed grounds or some "other status"; and(iv) is that difference without reasonable justification – put the other way round, is it a proportionate means of achieving a legitimate aim?*"

108. Mr Milsom further submits that even if there were an unjustified contravention of the claimant's Convention rights, that does not give the Tribunal jurisdiction. The purpose of section 3 of the Human Rights

Act is to achieve compatibility with the Convention rights and does not require the Tribunal to construe the Equality Act so as to give the 'best possible' effect to Convention rights. He referred me to the judgment of Underhill LH in ***Blackwood v Birmingham and Solihull Mental Health NHS Foundation Trust*** as to the scope and limits of the interpretative obligations. The Tribunal must not exercise its interpretative function in a manner which crosses the boundary between interpretation and quasi-legislative amendment (***Steer v Stormsure Ltd [2021] ICR 807*** [paras 149-150 and 161]).

109. In relation to Mr O'Dair's submission that the issuing of a CCSL is akin to the issuing of a Practising Certificate by the Law Society, Mr Milsom submits that, on that analysis, any person or organisation that answers questions when asked to provide a reference would be a qualifying body under the EQA.

Conclusions

110. The starting point in determining whether the First Respondent is a qualifications body is the wording of the statute itself. Section 54(2) of the Equality Act defines a qualifications body as "*an authority or body which can confer a relevant qualification*" and section 54(3) defines a relevant qualification as "*an authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular trade or profession*".

111. The Explanatory Notes to the Equality Act state, at paragraph 185, that a qualifications body is "*…a body which can confer any academic, medical, technical or other standard which is required to carry out a particular trade or profession, or which better enables a person to do so by, for example, determining whether the person has a particular level of competence or ability.*" Paragraph 187 gives examples of qualifications bodies, namely the Public Carriage Office which licenses taxi drivers, the British Horseracing Authority and the General Medical Council. It goes on to state that: "*Also included is any body which confers a diploma on people pursuing a particular trade (for example, plumbers), even if the diploma is not strictly necessary to pursue a career in that trade but shows that the person has reached a certain standard.*"

112. It cannot, in my view, be said that either the granting of PTO or the issuing of a CCSL is the conferment of an academic, medical, technical or other standard which is required to carry out the role of minister. The claimant is ordained in the Church of England and is therefore already qualified to carry out the role of a member of the clergy. Neither a PTO nor a CCSL is required to carry out the role, as demonstrated by the fact that the claimant previously worked as a Chaplain without PTO but with a licence.

113. Nor can it be said that the granting of PTO or the issuing of a CCSL better enable the claimant to carry out a trade or profession. They do not determine whether or indicate that he has a particular level of competence or ability. The PTO merely indicates that he has the

permission of the diocesan bishop to perform occasional services and the CCSL is a form of reference. There may be many innocuous reasons why an ordained minister does not have PTO such as, for example because s/he is taking a career break or working under a licence.

114. Neither the granting of an unlimited PTO or the issuing of CCSL is a necessary staging post to paid employment. Unlimited PTO would at best give the claimant the opportunity to earn occasional fees for conducting services, but that is not its purpose.

115. In any event, the contemporaneous evidence suggests that the claimant did not intend to claim fees when using PTO. The claimant's evidence to the Tribunal that, notwithstanding the fact that he ticked 'no' to the fees question on the PTO application form, he did in fact intend to claim fees, was not credible. The application form, as a contemporaneous document, carries more weight than the claimant's evidence to the Tribunal many months after the event. ;;

116. The issue of PTO has been considered already at appellate level in ***Pemberton v Inwood***. The first instance Tribunal in that case held that the granting of PTO by a Church of England bishop was not a 'relevant qualification' within section 53 of the Equality Act. That conclusion was upheld on appeal by the EAT. In her decision at paragraphs 101-109, Her Honour Judge Eady noted that it was accepted that 'profession' requires some payment for services and that the PTO did not lead directly to remuneration.

117. In the Court of Appeal, it was "*common ground that the qualification had to facilitate paid work and it was accepted that a PTO itself did not do so. It merely enabled one to officiate within a diocese with the consent of the incumbent of the benefice in question.*" [para 38]. The Court of Appeal 'made no comment' on whether this assumption was correct [para 40].

118. Although decisions of one Employment Tribunal are not binding on other Employment Tribunals, and each case turns on its facts, decisions of other Employment Tribunals can be taken into account. I see no reason, on the evidence before me, why I should reach a different conclusion to the one reached in ***Pemberton***. It is my view that the unlimited PTO that the claimant was seeking was not intended to facilitate paid work. Rather it would be an indication that the claimant had permission to perform occasional services. It is not linked to a particular post or to employment.

119. There are a number of cases in which the courts have held that the provisions of the discrimination legislation apply only to paid workers and not to volunteers. The leading case is ***X v Mid-Sussex CAB*** in which the Supreme Court held that volunteers were not protected by the Disability Discrimination Act 1995. In ***Triesman*** the Court of Appeal held that the Labour Party was not a 'qualifying body' under the Race Relations Act 1976 when selecting candidates for local government elections or allowing someone to be nominated to the pool from which potential candidates are selected.

120. In paragraph 33 of the judgment the Court held (Lord Justice Peter Gibson giving judgment) that:

"We own to having doubts as to whether being a local government councillor is being engaged in a profession or occupation within the meaning of the section, still more so if the profession or occupation is limited to being a Labour party councillor. To our minds it is certainly not being engaged in a profession and while being a councillor occupies some of the time of the councillor who is entitled to receive allowances, it is not an activity from which the councillor will earn his living or receive a salary, and we question whether it is within the intendment of the section."

121. There was in this case no prospect of the claimant earning his living from any occasional fees that he may have earned from PTO. Nor, in my view can it be said that the provision of a CCSL would necessarily have resulted in the claimant earning fees.

122. I am not persuaded by the claimant's suggestion that neither ***Pemberton*** nor ***X v Mid Sussex*** are decisive on the question of the requirement for remuneration, or by his suggestion that the principles that they establish to do not apply to the qualifications body sections of the Equality Act. The Equality Act was the replacement legislation for both the Disability Discrimination Act and the Race Relations Act, and it is clear from the judgment of Lord Mance in ***X v Mid-Sussex*** that the Equality Act was in the mind of the court when it made its decision.

123. I do not accept the claimant's submissions that sections 53 and 54 of the Equality Act 2010 are 'nothing to do' with the Framework Directive (Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation). The Equality Act is, in my view, implementation of that directive which is aimed at ensuring equal treatment in employment.

124. I accept the respondents' submissions that those provisions are aimed at paid work only. They are contained within Part 5 of the Equality Act, which deals with work. Mr O'Dair suggests that their wording is unclear, and that section 54 does not state that it is confined to paid work. He also suggests that because there is a reference in section 49(2) of the Equality Act (which defines 'personal office') to remuneration, had parliament intended to make clear that remuneration was required for sections 53 and 54 then it would have done so, and that section 54 on the face of it is not limited to paid work. These arguments are not persuasive. It would in my view be a step too far in statutory interpretation for me to interpret those sections as applying to volunteers.

125. For the reasons set out above I am satisfied that sections 53 and 54 of the Equality Act apply only to access to work which is remunerated.

126. I also find that the claimant was not 'denied the right' to officiate when the First Respondent declined to grant him unlimited PTO.

Firstly, it is not clear that there is any 'right' to officiate, as the claimant asserts. Members of the clergy, once ordained, can only officiate with permission or with a licence to do so.

127. Secondly, it cannot in my view be said that it was solely or predominantly the actions of the First Respondent that led to the claimant not being able to officiate. This was at least in part, if not mainly, due to the actions of the claimant. He chose to preach sermons at Trent College which led to the school raising safeguarding concerns. Once those concerns had been raised the respondents could not ignore them. The First Respondent had a responsibility to satisfy herself that the safeguarding concerns were resolved before issuing unlimited PTO.

128. The claimant then chose not to undergo a safeguarding risk assessment. The First Respondent granted the claimant limited PTO to enable him to demonstrate his ministry when applying for jobs. She offered to extend the limited PTO, but the claimant declined.

129. The steps taken by the First Respondent to try and resolve the safeguarding concerns were in my view entirely reasonable. She took advice from her safeguarding team and, in line with that advice, took action to try and resolve the safeguarding concerns, by asking the claimant to undergo an independent risk assessment. This was an approach she had used successfully in the past.

130. The claimant chose not to participate in the independent risk assessment process, knowing that this was likely to result in him not being granted unlimited PTO.

Safeguarding and the Clergy Current Status Letter

131. Mr O'Dair suggested that when carrying out her safeguarding duties and when completing and sending the CCSL the First Respondent is acting as a qualifications body because she is 'vouching for' the qualifications of the member of clergy. The 'qualification' (a clean safeguarding record) is not subjective, he says, because it requires a 'yes' or 'no' answer.

132. I do not accept that submission. Following it to its logical conclusion, any individual who provides a reference for another individual or who answers questions in response to a reference request could potentially be a qualifications body. That is not in my view the intention or the purpose of the qualifications body provisions in the Equality Act.

133. When preparing the CCSL, the First Respondent and her team are merely passing on information about the member of clergy. They are not making any decisions as to whether the individual is qualified or certified for a particular role, nor are they giving their approval for the appointment of the individual to a role. The decision as to whether to offer a role lies with the receiving diocese. It was clear from the First Respondent's evidence that the fact that a sending diocese may share information about safeguarding or indeed other potential concerns in a

CCSL is not a bar to appointment. The receiving diocese can then take steps to try and resolve any issues identified in the CCSL, as the First Respondent and her team have done in the past.

134. The First Respondent cannot, in my view, be said to be 'vouching to the public' when issuing the CCSL. There is a distinction between taking steps for the purpose of protecting the public, by ensuring that any safeguarding and other concerns are raised and resolved internally within the Church of England and vouching directly to the public that an individual is a 'fit and proper' person to carry out a role. There was no evidence before me to suggest that the public place any reliance on the content of a CCSL.

135. Moreover, comments made in a CCSL reflect the views of the writer of the reference, based upon the evidence before her. They do not amount to an objective standard applied on a pass or fail basis.

136. I accept Mr Sheridan's submissions that safeguarding processes do not make the First Respondent a qualifications body. She is not conferring any qualification or authorisation when she writes the CCSL which is a form of reference.

137. I therefore find that the First Respondent was not acting as a qualifications body when exercising her safeguarding responsibilities and writing a CCSL.

Human Rights Arguments

138. It is trite law that the EQA must be interpreted, as far as possible, compatibly with the HRA and the ECHR. In the words of Baroness Hale in ***Bates van Winkelhof v Clyde & Co*** (para 44) "*Under section 3(1) of the Human Rights Act 1998, we have a duty to read and give effect to legislation in a way which is compatible with the Convention rights (and this means that it may have a different meaning in this context from the meaning it has in others). Whilst it is comparatively easy to see how this may be done in order to prevent the state from acting incompatibly with a person's Convention rights, in other words, to respect the negative obligations of the state, it is a little more difficult to assess whether and when this is necessary in order to give effect to the positive obligations of the estate and thus to afford one person a remedy against another person which she would not otherwise have had.*"

139. Mr O'Dair submits that Article 8 is engaged in the claimant's case because officiating at services is the exercise of a vocation which is part of the claimant's conception of who he is. That is not, in my view, sufficient. If that were the case, then Article 8 would be engaged in very many if not most claims that come before the Employment Tribunal.

140. I prefer the submission of Mr Milsom that Article 8 is not engaged as a matter of course in employment matters, but that something more is required. I do not consider that the 'threshold of severity' referred to in ***Denisov v Ukraine*** has been met in this case.

The claimant has not been prevented from working as a priest by the First Respondent who, in granting limited PTO and offering to extend it, took steps to assist the claimant to find alternative employment.

141. The claimant has failed to show that either the refusal to provide unlimited PTO without the claimant undergoing a safeguarding risk assessment, or the provision of information about safeguarding concerns in a CCSL contravene Article 8. The claimant, by preaching the sermons that he did and by refusing to undergo a risk assessment is at least partly to blame for the situation in which he finds himself.

142. Similarly, the claimant has not established that there has been any infringement of Article 10 either through the actions of the First Respondent, or through the exclusion of volunteers from the Equality Act. Even if it could be said that the actions of the First Respondent did restrict the claimant's Convention right to freedom of expression, that right is a qualified right and can be restricted in accordance with Article 10(2). The only reason that the First Respondent in this case did not issue unlimited PTO was because of genuine concerns about safeguarding which she was obliged to try and resolve. Safeguarding exists to protect the public.

143. I accept Mr Milsom's submission that the questions to ask in relation to Article 14 are those set out in ***Gilham***. My conclusions in relation to each of those questions are as follows:

a. The facts in this case do not fall within the ambit of one of the Convention rights. The claimant has not established that there has been any breach of either Article 8 or Article 10;

b. The claimant has not identified anyone in an analogous situation who has been treated more favourably than he has;

c. Similarly, the claimant has not adduced any evidence or made submissions to suggest that the reason for any less favourable treatment was one of the listed grounds or some other status; and

d. The exclusion of voluntary work from sections 53 and 54 of the Equality Act is justified in light of the exclusions contained in the Framework Directive and the fact that Parliament has decided to exclude such work.

144. For these reasons I conclude that the interpretation of sections 53 and 54 of the Equality Act 2010 as excluding volunteers from their protection is compatible with Convention rights. The claimant has gone nowhere near establishing that the failure in the Equality Act to protect volunteers is an unjustified contravention of his Convention rights.

145. For the above reasons I find that the First Respondent is not a qualifications body falling within sections 53 and 54 of the Equality Act. The Tribunal therefore does not have jurisdiction to hear the claim against the First Respondent.

146. In light of the claimant's concession that the claims against the other respondents are contingent on the First Respondent being a qualifications body, the claims against those respondents also fall away.

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Employment Judge Ayre

10 May 2023

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