

IN THE MATTER OF

DISCIPLINARY PROCEEDINGS AGAINST THE DEAN OF CHRIST CHURCH OXFORD

REVIEW

Introduction

1. Christ Church Oxford is a charity. It was founded in 1546 and it has been registered as a charity with the Charity Commission since 2011. Its governance is regulated by Statutes which have as their genesis the Christ Church Oxford Act 1867. Christ Church is a constituent college of the University of Oxford; it is also the Cathedral of the Diocese of Oxford.
2. The foundation and membership of Christ Church is specified in Statute I clause 1. The membership includes the Dean and Canons. As its name suggests the Dean is an ordained priest; he is also the head of the College. The word “Canons” is given a specific meaning by virtue of Statute I clause 1d)(i). The phrase “Dean and Chapter” is also given a specific meaning – see Statute I clause 1(d)(iii).
3. Christ Church has a governing body. Its composition is defined by Statute I clause 3. The Governing Body includes the Dean, the Canons, the Students (loosely academic staff) and such other persons as may be elected under Statute XVI 3(a)(iii). The powers of the Governing Body are derived from Statute I clause 4. Some powers are exercisable by the Dean and Chapter as opposed to the Governing Body – see Statute I clause 5; there are also powers which are exercisable only by the Dean and Canons – see Statutes I clause 6.

4. Statute XXXIX (hereinafter referred to as “the Statute”) is concerned with a number of employment related issues which include provisions relating to the removal from office of the Dean. Clause 39 permits “Any seven members” of the Governing Body to make a complaint seeking the removal from office of the Dean “for good cause”. The complaint must be made to a specified person – the “Senior ex-Censor”. Upon receipt of the complaint, the Senior ex-Censor must refer it to the Governing Body (excluding the Dean and the members making the complaint) and the Chapter (excluding the Dean) with a request to each that they consider whether “the complaint is supported by sufficient evidence of good cause for the removal of the Dean from office” – see clause 40.
5. In the event that both the Governing Body and the Chapter consider “on the available material that the complaint is supported by sufficient evidence which could, if proved, constitute good cause for the removal of the Dean from office” they “shall jointly appoint a tribunal to hear and determine the matter” (clause 42). In the event that either Governing Body or the Chapter conclude that the complaint is not supported by sufficient evidence the Senior ex-Censor “may determine that no further action shall be taken upon it” (clause 41).
6. The phrase “for good cause” is defined by clause 5 of the Statute to include “conduct of an immoral, scandalous or disgraceful nature incompatible with the duties of the office...”. It also includes “conduct constituting failure ore persistent refusal or neglect or inability to perform the duties or comply with the conditions of office...”.
7. In consequence of events which are said to have occurred on Sunday 4 October 2020 seven members of the Governing Body made a complaint to the Senior ex-Censor seeking the removal of the Dean from Office pursuant to clause 39 (hereinafter referred to as “the complaint”). The complaint was referred to the Governing Body and Chapter pursuant to clause 40. They have both decided to appoint a tribunal pursuant to clause 42 to hear and determine the complaint.
8. I have been appointed to conduct a review of the decision-making process undertaken by the Governing Body and the decision itself with the aim of establishing whether any aspect of the process and/or the decision itself is likely to be of concern to the Charity

Commission. Those instructing me have posed a number of questions for my consideration with which I deal, specifically, below.

Relevant events and dates

9. During the morning of 4 October 2020, at Christ Church Cathedral, X and the Dean were alone together for a short period of time. According to X events then occurred which were later to form the subject matter of the complaint. X's description of those events is well known to those instructing me and to the members of the Governing Body who will read this review. In my view, no useful purpose would be served by summarising the same; it suffices that I say that X's account described events which, objectively, could amount to sexual harassment. That lunchtime, X disclosed what she maintained had occurred to witness A and others.
10. One week later, i.e. on 11 October 2020, X spoke to the Sub-Dean about the events which she alleged had occurred on 4 October 2020. That same day, X compiled a written record of the alleged events and sent it to the Sub-Dean.
11. On Tuesday 13 October 2020 the Sub-Dean visited the Dean and notified him that an allegation of sexual harassment had been made against him. He did not disclose the identity of the person who had made the allegation and he did not provide details of what was alleged. He told the Dean that there would be an investigation.
12. On or about 18 October 2020, a formal investigation of the events of 4 October 2020 was instigated. Ms Kate Wood, a "safeguarding consultant" and a former detective inspector with considerable investigative experience was appointed to investigate and she was provided with detailed terms of reference.
13. On or about 27 October 2020 Ms Wood delivered a written report to officers on behalf of Christ Church setting out a detailed account of the scope of her investigations and what those investigations had revealed. Prior to writing her report Ms Wood interviewed X and the Dean and all the other persons whom she considered it appropriate to interview before reaching her conclusions. She also reviewed written material.

14. In his interview with Ms Wood the Dean categorically denied that events had occurred as between X and himself as described by her. Following his interview but before Ms Wood had finalised her report the Dean emailed her to make and/or emphasise a number of points. One point made by the Dean was to suggest that X might have been encouraged to make a complaint by individuals who had a strong interest in discrediting him.
15. In her report, Ms Wood set out in detail what the persons interviewed had told her. She then set out a number of conclusions which were based upon her assessment of the persons interviewed and her appraisal of the written material she had considered. In summary, she concluded that it was more probable than not that the events which X had described as having taken place on 4 October 2020 had occurred. She also reached a number of other conclusions which I need not repeat but which related to whether or not the events of 4 October 2020 gave rise to safeguarding issues and whether the events should be reported to the police and Church authorities.
16. On 20 November 2020, the complaint signed by the requisite seven members of the Governing Body was delivered to the Senior ex-Censor. The complaint set out the detail of X's account of events on 4 October, the fact that the Dean had denied that the events had taken place and the signatories' belief that the Dean has been guilty of conduct which was immoral, scandalous or disgraceful and that his conduct had also constituted a failure to comply with the duties and conditions of his office. The complaint provided information as to how the Statute could be found on the internet and it also attached the written description of the events in the Cathedral which X had sent to the Sub-Dean on 11 October 2020 and Ms Wood's report of 27 October 2020 but redacted in parts.
17. Following receipt of the complaint independent legal advice from leading counsel was sought by Penningtons Manches Cooper LLP acting on behalf of the Governing Body.
[REDACTED]
[REDACTED]¹
18. There were meetings of the Governing Body on 2 December 2020 and 4 December 2020. At those meetings a number of issues were discussed relating to the handling of the complaint. At the meeting on 2 December the Governing Body was informed that the

¹ Redactions made on data protection and/or privilege grounds.

Dean [REDACTED]. Governing Body was also informed that for that reason formal notice [REDACTED]. In the light of this information the Governing Body was asked to consider a motion to the effect that the complaint be circulated to the members of the Governing Body “as soon as practicable” notwithstanding the [REDACTED].² The motion was passed with one member dissenting and one member abstaining. Thereafter a redacted version of the complaint was made available to the Governing Body. On 4 December 2020 the Governing Body considered two linked motions. In substance the first motion asked the Governing Body to consider whether it would be lawful in principle to consider a complaint in a redacted form. The second motion required Governing Body to determine whether the actual complaint should be considered in a redacted form or whether Governing Body should consider it without redactions. By very large majorities the Governing Body determined that (a) it would be lawful in principle to consider a complaint in redacted form but (b) the actual complaint should be considered without redactions. Thereafter arrangements were made so as to allow members of Governing Body to view the complaint without redactions.

19. Governing Body convened again on 11 January 2021. At this meeting the motion for consideration was:-

“Whether on the available material the complaint is supported by sufficient evidence which could, if proved, constitute good cause for the removal of the Dean from Office.”

The minutes of the meeting demonstrate that the motion was the subject of wide-ranging and detailed debate prior to any voting commencing upon it. They also reveal the nature and extent of the written the material which was made available to the Governing Body in advance of the meeting commencing. The material was (a) the complaint with no redactions together with the documents which had accompanied it; (b) the report of Ms Wood with “minimal” redactions compared with the version which had accompanied the complaint; (c) [REDACTED]; (d) [REDACTED].

² Redactions made on data protection and/or privilege grounds.

[REDACTED]
[REDACTED]
[REDACTED]; (e) a letter sent to a member of Chapter by Reverend Jonathan Aitken (copied by him to all other members of Chapter) together with a written Advice obtained on behalf of Chapter from leading counsel [REDACTED]
[REDACTED].³

20. Voting on the motion opened at the close of the meeting on 11 January 2021. At a reconvened meeting on 13 January 2021 it was announced that the voting on the motion had been (a) 41 members of the Governing Body had concluded that the complaint was supported by sufficient evidence which, if proved, could justify removal from office, (b) 3 members had taken the contrary view and (c) 2 members had abstained. Thereafter discussions took place about the appointment of a Tribunal to hear and determine the complaint. So far as I am aware no decision has yet been made as to the composition of the Tribunal.
21. On 11 January 2021 Chapter considered a motion in identical terms to that which was passed by the Governing Body. It approved the motion with no member of Chapter voting against.
22. Against this background I turn to consider the specific questions which my instructing solicitor has raised for my consideration. For the sake of brevity, I have shortened the wording of some of the questions posed but I trust that I have provided all necessary answers.

Did the members of the Governing Body act in accordance with their responsibilities and duties as charity trustees?

23. This, obviously, is a very wide-ranging question which could be answered at great length. However, it suffices that I say that I am satisfied that every decision taken by the Governing Body at its meetings on 2 December 2020, 4 December 2020, 11 January 2021 and 13 January 2021 was justified and lawful and that the reasoning underpinning those decisions, as appears from the record of the discussions which took place amongst

³ Redactions made on data protection and/or privilege grounds.

the members present at those meetings, fully justified the decisions which were taken. My reasons for reaching these conclusions will become apparent as a consequence of the answers I provide to the more specific questions posed of me and which I answer below.

Were conflicts of Interest and conflicts of loyalty of members of Governing Body properly managed throughout the decision-making process?

24. This question must be considered in the context of the “history” between the Dean and the Governing Body and the publicity surrounding that “history”. It must also be considered against the Dean’s assertion that X’s allegations as to what had occurred on 4 October 2020 might be linked to this history in that she might have been encouraged to make a complaint by individuals who had a strong interest in discrediting him.
25. I am not aware of the detail of this history other than that which has been aired in newspapers. However, I have reached the conclusion that I can answer the question posed for my consideration by reference to the papers provided to me since I am concerned with the management of potential conflicts rather than whether any particular member was actually conflicted. Self-evidently, actual conflicts would only be revealed if declared by a member or shown to exist by virtue of a member’s conduct.
26. At the commencement of each of the meetings to which I have referred the person in the Chair reminded members to declare any interest that could give rise to conflict in relation to any item on the agenda. They were asked to declare such an interest at the beginning of the agenda item in question. The minutes of those meetings show that at each meeting scrupulous attention was paid to the issue of who should chair the meeting and/or parts thereof so as to avoid any possibility of the appearance of bias on the part of the Chair. No member of the Governing Body was permitted to vote upon any motion if that would give rise to the suspicion that voting by such a person was in breach of any provision of the Statute, the By-Laws made pursuant to Statute I or was otherwise inappropriate. Independent legal advice was taken as appropriate from reputable solicitors and Leading Counsel with the requisite expertise. While the Opinions of Leading Counsel did not deal, specifically, with conflicts of interest or conflicts of loyalty they did contain wide-ranging advice upon the proper interpretation of the Statute and the procedure to be followed by virtue of the provisions of clauses 39 to 42. It is clear from the phraseology

of some of the motions considered by the Governing Body on 2 December 2020 and 4 December 2020 that proper regard was paid to the obligation to avoid conflicts of interest and loyalty and it is clear from the debates at those meetings as recorded in the minutes that there was a proper understanding and discussion of issues which might give rise to such conflicts.

27. The Governing Body has made By-Laws and Regulations as it is entitled to do. Clause 5 of the By-Laws provides that “There shall be a Code of Practice Governing the Management of Conflicts of Interest as set out in Appendix I of these By-Laws.” By Clause 5(2) Members of the Governing Body are obliged to declare material conflicts of interest as required by the Code of Practice.
28. I have read the Current Code of Practice. I am satisfied that it is fit for its purpose of providing appropriate direction upon conflicts of interest. The management of the potential conflicts of interest arising in consequence of the complaint was in accordance with the Code of Practice so far as relevant.

Did Governing Body follow the correct process when considering whether or not to constitute a Tribunal and did it correctly identify the material which it was or was not entitled to consider?

29. The role of members of the Governing Body begins when some or all of them receive information about alleged conduct on the part of the Dean which, if proved on balance of probabilities, is reasonably capable of being “immoral, scandalous or disgraceful which is incompatible with the duties of the office” or conduct which, if proved on balance of probabilities, constitutes a “failure or persistent refusal or neglect or inability to perform the duties or comply with the conditions of office”. At this stage the members have to consider whether they are prepared to make a complaint to the Senior ex-Censor pursuant to clause 39 of the Statute seeking the removal of the Dean from office for “good cause”. The complaint pursuant to clause 39 may be made by “Any seven members”.
30. In this case the complaint pursuant to clause 39 was made in writing to the Senior ex-Censor on or before 20 November 2020. It was signed by seven members of the Governing Body.

31. The Statute is silent as to the means by which members of the Governing Body are to be made aware of alleged conduct on the part of the Dean which could justify his removal from office. Clause 1 provides that the Statute must be construed so as to give effect to a number of guiding principles and sub-clause (c) requires those interpreting the Statute “to apply the principles of justice and fairness”. While, as I have said, there is no provision within the Statute which deals with the process by which information is provided to the members of the Governing Body about alleged conduct on the part of the Dean which could justify his removal of office, I would expect that a court or employment tribunal would be persuaded that the process should accord with the principles of fairness and justice. So, by way of example, there is a reasonable prospect that a court or employment tribunal might consider that the principles of fairness had been infringed if the information provided by X and the redacted report of Ms Woods had been provided **only** to members of the Governing Body who were known to be very likely to make a complaint about the Dean because they had an interest in discrediting him.
32. However, my understanding is that following receipt of Ms Wood’s report members of the Governing Body were given an oral briefing in which they were provided with sufficient information in order to make an initial assessment of the seriousness of the conduct alleged. Thereafter, a number of members of Governing Body sought further information and had conversations with officers of Christ Church. It became clear that a number of members of Governing Body were prepared to make a complaint including the seven members who signed the complaint. Once it was apparent that those seven were prepared to make a formal complaint to the Senior ex-Censor they were shown a redacted version of Ms Wood’s report.
33. I am satisfied, on the basis of my instructions, that there was nothing which can be categorised as unfair or unjust in the way that information was provided to members of Governing Body prior to the making of the complaint.
34. However, even if I am wrong about that, it seems very unlikely to me that unfairness in the process of providing information to members of Governing Body prior to the making of the complaint would invalidate the decisions made by the Governing Body about the complaint thereafter provided always that those decisions were made in accordance with

the provisions to be found in clauses 40 to 42 and were reasonable. Clause 40 provides that the complaint must be referred to the Governing Body “exclusive of the Dean and the members making the complaint”. If those members of the Governing Body initiating the complaint are excluded from participating in the decisions made upon it and if the remaining members of Governing Body lawfully address the issues identified for them by clauses 41 and 42 in making their decisions about the complaint it seems to me that it is very unlikely that a court or tribunal would strike down the decisions on the basis that there had been unfairness to the Dean in the manner in which information had been provided to those who signed the complaint prior to the complaint being made.

35. The complaint made to the Senior ex-Censor complied with clause 39. Accordingly, he was obliged to refer the same to the Governing Body and Chapter with a request that each consider “whether the complaint is supported by sufficient evidence of good cause for the removal of the Dean from office”. The Senior ex-Censor complied with that obligation.
36. I have set out verbatim at paragraph 19 above the motion which was considered at the meeting of the Governing Body on 11 January 2021. It encapsulates, precisely, the salient parts of clauses 41 and 42. In my view the motion was crafted carefully so as to ensure that those members of Governing Body who were entitled to vote addressed the central issue arising by virtue of clauses 41 and 42.
37. The material made available to the Governing Body at the meeting on 11 January 2021 is identified at paragraph 19 above. In my view, the Governing Body was lawfully entitled to consider all that material before it reached its decision on the motion before it.
38. Clauses 41 and 42 do not stipulate what material may or may not be placed before the Governing Body in order to inform it about whether the complaint is or is not supported by sufficient evidence “which could, if proved, constitute good cause for the removal of the Dean from office...”. Somewhat surprisingly, clause 41 does not include the phrase “on the available material” whereas that phrase appears in clause 42 and, of course, the phrase was included in the motion which was debated and voted upon. However, I have no doubt that the two clauses would be construed, in accordance with principles of fairness and justice, as being consistent with each other.

39. In my view, the phrase available material should be interpreted to mean material which was available to be provided to the Governing Body and which was relevant to the decision under consideration. The decision under consideration on 11 January 2021 was whether or not the complaint was supported by evidence which, if accepted, could justify the Dean's removal from office. I am satisfied that all the material considered by the Governing Body was relevant to that decision.
40. I have already alluded to some of the decisions taken by the Governing Body at the meetings of 2 and 4 December 2020. I am satisfied that all the decisions which it took at those meetings were ones which it was lawfully entitled to take. For the avoidance of any doubt I am here referring to the following decisions: decisions relating to whether or not By-Laws should be suspended; a decision about whether the Senior ex-Censor should continue to act in that capacity in relation to the complaint or whether an alternate should be appointed; decisions about who should vote upon each motion to be considered and who should chair the meetings/parts of meetings; a decision about whether or not the complaint should be considered without formal notification of the same being given to the Dean; and decisions about whether or not the complaint should be considered with or without redactions.
41. It follows from the above analysis that I am satisfied that the correct processes were followed leading to the decision made upon the motion put to the Governing Body on 11 January 2021 and that in reaching its decision on the motion the Governing Body took account of material which it was entitled to take into consideration before reaching its decision.

Did Governing Body comply with its duty as a body of trustees to act in accordance with the Charity Commission's published guidance in relation to general governance (CC3), and decision making (CC27)?

42. Stripped to its essentials, in the context of this case the duty of members of the Governing Body, in their role as trustees, was to act in good faith, to act in accordance with the Statutes and By-Laws of Christ Church and to make decisions which were within the range of decisions open to trustees acting reasonably and objectively on the basis of the information provided to them.

43. It is impossible to be sure that all the members of the Governing Body acted in good faith on the basis of the information provided to me. I cannot rule out the possibility that the decisions made by individual members of the Governing Body were not based upon an objective appraisal of the information provided to them but rather based upon animosity towards the Dean. What is clear, however, is that there is no direct evidence in the documents provided to me that begins to suggest that individual members of the Governing Body were not acting in good faith in the decisions they made. That conclusion relates to the Sub-Dean from the moment that X made her disclosures to him to the moment in time that a formal complaint was made to the Senior ex-Censor. That conclusion relates, too, to the signatories of the complaint, to the Senior ex-Censor to whom the complaint was made, to the officers of Christ Church who were aware of the substance of the complaint and who handled the early stages of the process and to all those members of the Governing Body who were in attendance at the meetings on 2 and 4 December 2020 and 11 January 2021.
44. I am satisfied, too, that there is no basis upon which it would be proper to draw an inference that members of the Governing Body were not acting in good faith. Quite the contrary, on the basis of the information before me it would be proper to infer that the members acted in good faith. In the immediate aftermath of X's disclosures the Sub-Dean acted appropriately by informing the Dean of the fact of a complaint of sexual harassment and by appointing an independent investigator with considerable experience of investigatory work. Thereafter, he and other officers took appropriate steps to bring X's allegations to the notice of the Governing Body and they gave the members thereof the opportunity to make a complaint to the Senior ex-Censor. The makers of the complaint had seen a redacted version of Ms Wood's report prior to making the complaint. In my view the information provided to them from Ms Wood's report, even in its redacted form, justified the making of the complaint. That is clear from the terms in which the complaint is written. The minutes of the meetings of the Governing Body referred to above show that the debates which took place recognised that there was a need to explore a number of difficult issues. Two examples suffice. The Dean's illness was acknowledged and its impact upon how and when the Governing Body should determine the complaint was discussed fully. There was a full debate about whether the complaint should be considered with or without redactions. Nothing recorded in the minutes suggest that it would be proper to infer a lack of good faith on the part of the members of Governing

Body present at the meetings. Further, in my view, each of the decisions made at those meetings were justified upon an objective analysis of the material provided to the members which provides significant inferential support for the view that all those present and participating were acting in good faith.

45. I have dealt at length with the processes followed by the Governing Body in my answer to the previous question. I repeat the processes followed were entirely consistent with the Statute and By-Laws.
46. I have considered with care all the decisions made by the members of Governing Body at the meetings to which I have referred. I am satisfied that they were all within the range of decisions open to trustees acting reasonably and objectively on the basis of the information provided to them. Crucially, in my view, the Governing Body was entitled to conclude that on the available material the complaint was supported by sufficient evidence which could, if proved, constitute good cause for the removal of the Dean from office. Quite frankly I would have been surprised if the opposite conclusion had been reached.
47. For completeness I should say that I have read and considered the guidance contained in CC3 and CC27. No useful purpose would be served by a recitation of any or many of its provisions. It is sufficient for me to observe that nothing done in this case by any trustee was in material conflict with guidance relating to decision-making, conflicts of interest, serious incident reporting safeguarding and general governance. So far as I can judge from the papers, X, as a potential victim and a person who could properly be regarded as vulnerable in the context of this case, was dealt with appropriately. Every effort was made to ensure that members of the Governing Body did not participate in decision-making if that would lead to an appearance of bias or conflict of interest/loyalty. Fairness to the Dean was stressed at each important stage of the process leading to the making of decisions.

Were delegations authorised by the Governing Body lawful and did those exercising delegated power report adequately to Governing Body?

48. The answer to that two-fold question is yes. There is nothing in my papers to suggest that those exercising delegated powers did so unlawfully or that aspects of decision making had been delegated to persons unlawfully. I have explained in some detail the process by which information was provided to Governing Body prior to the complaint and I have no reason to think that Governing Body was not adequately informed at this stage. The information provided to Governing Body for its meeting on 11 January 2021 is recorded in the minutes of that meeting and described fully at paragraph 19 above. I am satisfied the body of information provided was wholly sufficient to reach an informed decision upon the motion put before the members.

Did Governing Body Members see sufficient information about the allegation of sexual harassment to make properly informed decisions?

49. I have, in effect, answered this question already. The answer, in my view, is yes. The documents identified at paragraph 19 above were clearly sufficient.

Did the Governing Body and Chapter each make a reasonable decision to refer the complaint to a tribunal?

50. In my view, the answer is clear and obvious. The referral was clearly within the range of reasonable decisions open to the Governing Body. I would go further. In view of the material available to it, a decision by the Governing Body to the effect that the complaint should not be referred to a tribunal would, probably, have been unreasonable. I should stress that the task of the Governing Body was not to determine the truth or otherwise of X's allegation. It was to determine whether on the available material the complaint was supported by sufficient evidence which could, if proved, constitute good cause for the Dean's removal from office. To repeat, in my view, a decision to the effect that the evidence was not sufficient would have been unreasonable.

Having received the complaint were there or are there any alternative paths for resolution which Christ Church could have explored further in relation to the Head of House?

51. Once a complaint is received by the Senior ex-Censor pursuant to clause 39 of the Statute he "shall" refer the complaint to the Governing Body (exclusive of the Dean and the

members making the complaint) and Chapter (exclusive of the Dean) requesting each to consider whether the complaint is supported by sufficient evidence of good cause for the removal of the Dean from Office (see clause 40). Once that referral has taken place those bodies must, in my view, consider the request and in so doing resolve the questions implicit in clauses 41 and 42. Neither clause 41 or 42 can be construed to mean that the Governing Body/Chapter can decline to answer the request.

52. That does not mean, however, that no other processes could be followed either at the same time or sequentially. For example, there could have been a report on behalf of the Governing Body or Chapter to the police. There was, as matter of fact, a referral to the Church of England authorities. The Dean could have been investigated under the Sexual Harassment Policy. However, as it seems to me, the only procedure by which the Dean could be removed from office is that laid down in the Statute. In summary, if the allegation of misconduct is such that removal from office is a reasonably possible outcome the procedure laid down in the Statute must be followed.

Is establishing a tribunal (a) a responsible use of charitable resources and (b) in the best interests of the Charity?

53. Given the respective positions of X and the Dean, the nature of X's allegations and the need for such allegations to be investigated thoroughly and dealt with appropriately if proved, I have no doubt that establishing a tribunal is a responsible use of charitable resource and in the best interests of Christ Church.

Was it reasonable for the Governing Body to continue to deal with the disciplinary process when the police determined that there was insufficient evidence to prosecute? If it was not reasonable was there any mechanism in the Statute for halting the process?

54. In my view, it was not only reasonable for the Governing Body to continue to hear and determine the complaint but Governing Body had no option but to do so. There is no mechanism within the Statute whereby Governing Body can halt a referral under Clause 40 simply because the police have decided that the person said to have committed an act of misconduct should not be prosecuted for a criminal offence founded on the same

alleged facts as the misconduct specified in the complaint. No doubt there might be circumstances in which a power to halt the proceedings before the Governing Body might be implied e.g. the death of the person said to have committed the misconduct in question. I do not think, however, that there is any prospect that a court or employment tribunal would hold that an implied power existed to halt proceedings which was sufficiently widely drawn so as to allow the Governing Body to halt proceedings simply because the police had decided against prosecution. The decision about whether or not to prosecute must be taken against the acknowledged principle that criminal proceedings should be brought against someone only if there is a reasonable prospect of conviction. Assessment of a reasonable prospect of conviction inevitably involves the decision maker in assessing whether there is a reasonable prospect that the magistrates or a jury, as the case may be, would be sure that the person charged was guilty of the offence in question. The assessment for the Governing Body was entirely different as is obvious from the phraseology of the motion which it considered on 11 January 2021. In my view, the fact that the police decided not to prosecute the Dean (a complaint to the police having been made by X some time after she had made her disclosures to the Sub-Dean) was of no relevance to the decision which the Governing Body made when determining the motion before it on 11 January 2021.

Conclusion

55. I am satisfied that the Sub-Dean acted appropriately when he became aware of the allegations made by X. The appointment of Ms Wood was justified and she was provided with appropriate terms of reference for the carrying out of her investigation. Following the receipt of her report, sufficient information about X's allegations and Ms Wood's findings were provided to members of the Governing Body so as to permit of an informed decision about whether a complaint was justified. Once the Senior ex-Censor had received the complaint signed by seven members of the Governing Body he was obliged to refer it to the Governing Body (excluding the Dean and the seven signatories) and Chapter (excluding the Dean) with a request that they consider whether or not the complaint was supported by sufficient evidence of good cause to justify the removal of the Dean from office. Upon the reference of the complaint to the Governing Body it was obliged to consider that issue. Following a debate on 11 January 2021, the Governing

Body (excluding the Dean and the signatories of the complaint) determined by an overwhelming majority that the material made available demonstrated that the complaint was supported by sufficient evidence which could, if proved, constitute good cause for the removal of the Dean from office. In my view, the Governing Body was fully entitled to reach that conclusion on the basis of the material which it considered.

56. I am satisfied that the decision-making process undertaken by the Governing Body was in accordance with the Statute and By-Laws.
57. I am satisfied, too, that the members of the Governing Body, as trustees, discharged their duties as trustees and that there is no basis upon which the Charity Commission should be concerned about either (a) the decision to appoint a tribunal to hear and determine the complaint made against the Dean or (b) the process by which that decision was reached.

A handwritten signature in black ink, appearing to read 'Wyn Williams', with a horizontal line drawn underneath it.

Sir Wyn Williams
39 Essex Chambers
8 March 2021