

COMMENT

Assessing the Risk

NICHOLAS COULTON

Dean Emeritus of Newcastle

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While the English Church shared in celebrating the 800th anniversary of Magna Carta, not least its own part in gaining those rights for everyone, the Church of England was reversing the principle that people are innocent until proved guilty. Such is the pressure of today's concern about child abuse, historic and present. As evidence mounts of the injustices done by false accusations against some high-profile public figures, we are less aware of the toll on other individuals whose turmoil does not hit the headlines. Those teaching and caring are often targeted for claims, and the Church of England has been toughening its procedures.

Clergy and others who are cleared of criminal charges still have to go through a rigorous ecclesiastical psychological assessment in which, by its nature, the odds are stacked against their proving that they are free of risk. How do you prove a negative? As HHJ Gilbert QC stated in a 2012 case about an Iranian claiming asylum as a Christian convert:

It is a dangerous thing for anyone, and perhaps especially a judge, to peer into what some call a man or woman's soul to assess whether a professed faith is genuinely held . . . It is a type of judicial exercise very popular some centuries ago in some fora.¹

He was referring to the Inquisition; who now believes that it truly assessed those who fell into its clutches?

Of course it is right that the Church must make every effort to provide an environment in which those who have been dreadfully abused can come forward.

¹ *R (SA (Iran)) v Secretary of State for the Home Department* [2012] EWHC 2575 (Admin) at para 24. See also F Houston, *You Shall Love the Stranger as Yourself: the Bible, refugees, and asylum* (Abingdon, 2015), pp 45–47.

It is absolutely essential to create a climate in which that can happen. But the cases of Paul Gambaccini (exonerated after a year of being bailed and repeatedly rebailed and only learning details of allegations through media leaks), Leon Brittan (questioned but never arrested and living his last five months not knowing that the police had long concluded he had no case to answer) and Sir Cliff Richard (not arrested, no bail and left for more than a year not knowing what was happening) tell us of the slow torture which can arise from false allegations.² When Wiltshire Police outside Sir Edward Heath's old home in Salisbury invited people to come forward, the *Times* columnist Matthew Parris wrote 'The police have gone mad and the media has lost its head.'³

In May 2016, following further 'failed' police investigations and the findings of the Hillsborough inquest, Parris accused the police of 'shockingly low standards of competence and honesty' and called for a three-year Royal Commission on Policing in England and Wales to examine police structure, recruitment, leadership and culture.⁴ In a published letter of response, Lord Wasserman, the Government adviser on policing and criminal justice, asserted that the last three of those matters were already under root-and-branch review by the independently led College of Policing and that structure had already been tackled by introducing democratically accountable police and crime commissioners, the establishing of the National Crime Agency and a major overhaul of the way in which complaints are handled. Lord Wasserman asserted that 'nothing would give the present police leadership greater pleasure than the establishment of a royal commission to delay action on these questions until the end of this parliament'.⁵

Reviewing Paul Gambaccini's book, the late Irish Supreme Court judge Adrian Hardiman wrote:

This conflict of feeling has radically undermined the presumption of innocence and has given rise, even in a thoroughly civilised country like Great Britain, to a climate of opinion in which some people, and some institutions, postpone, or forsake the idea of bringing an accused person to trial, which carries the possibility of an acquittal, preferring instead to use the powers of the criminal law to subject such people to public shaming so intense that it can destroy their lives.⁶

- 2 P Gambaccini, *Love, Paul Gambaccini: my year under the yewtree* (London, 2015). In an apology to Lord Brittan's widow in October 2015, the Metropolitan Police admitted that it had known for four months before his death in January 2015 that there was no substance to claims that he had raped a woman in 1967.
- 3 M Parris, 'If Heath was a child abuser, I'm an aardvark', *The Times*, 8 August 2015.
- 4 M Parris, 'We can't go on with such incompetent police', *The Times*, 7 May 2016.
- 5 'Letters', *The Times*, 10 May 2016.
- 6 A Hardiman, 'Kafka on Thames', *Dublin Review of Books*, 13 February 2016.

In *The Observer* in February 2016, Dr Nina Burrowes, a specialist in the psychology of sexual assault, who works as a trainer and consultant with police, prosecutors and judiciary, wrote:

The number of reports that turn into prosecutions is still too low, but the solution isn't to demand that police officers believe victims . . . [this] would be irrelevant if justice was based on investigations, instead of hunches about who has been telling the truth. The debates last week show how lost our criminal justice system is about sex offences. Our police forces, prosecutors and courts have failed to get to grips with the complexities of these crimes . . . We need investigators and prosecutors to up their game and to stop acting as if cases that rely on testimony are a dead end. We need them to be better at turning victim and suspect interviews into evidence that juries can use to make decisions with confidence. We need cases to feel less like they hang on belief and more like they are grounded in evidence.⁷

It remains to be seen what recommendations will be made by the Independent Inquiry into Child Sexual Abuse, which the Government has set up, chaired by Justice Lowell Goddard. In his opening speech at the first preliminary hearing, Ben Emmerson QC, Counsel to the Inquiry, said that the inquiry must remain sensitive to the particular needs of vulnerable complainants without unduly privileging their testimony. At the same time, he said that the inquiry will need to recognise the damage that can be caused by false accusations of sexual abuse, without hesitating to make findings against individuals and institutions if justified by the evidence.⁸ An investigation into the institutional responses to allegations of child sexual abuse in the Anglican Church is one of 13 institution-specific investigations that have been announced. Justice Goddard herself wrote in *The Observer*: 'As I announced last November, the inquiry intends to explore the balance that must be struck between encouraging the reporting of child sexual abuse and protecting the rights of the accused.'⁹

A PARALYSED CHURCH

When such allegations come to the Church, its clergy and officers, the leadership is paralysed. As in other institutions, there may be immediate suspension. A bishop simply wanting to write a pastoral note to say 'thinking of you' is told by

7 N Burrowes, 'There's no direct line between compassion and justice in sex cases', *The Observer*, 14 February 2016.

8 'Statement from the chair of the inquiry April 2016', IICSA, <<https://www.iicsa.org.uk/news/statement-chair-inquiry-april-2016>>, accessed 30 May 2016.

9 L Goddard, 'My child abuse inquiry is not just targeted on the famous', *The Observer*, 3 April 2016.

diocesan lawyers ‘on no account must you write anything’. The previous Code of Practice and the Canons make clear that the bishop is chief pastor of the diocese and has a duty of pastoral care for the whole diocese (both for those alleging abuse and for a person complained about) and also has the responsibility for discipline of the clergy.¹⁰ Following the July 2015 amendments to the Safeguarding and Clergy Discipline Measure and the Canons, the Regulations replacing the Code are more specific, though labyrinthine. To grasp the import and inter-relationship of all the various documents takes a very clear head – not easy in the stress of accusations.

New practice guidelines state that

An allegation of abuse made against a church officer always causes distress to the alleged abuser and members of his or her household and family, and the church has a duty to ensure that they are appropriately supported through the period of an investigation.¹¹

Now it is the responsibility of the Safeguarding Adviser in the diocese at every stage:

- i. [to] explain the internal management of the situation which the church is following;
- ii. [to] ensure that the support needs of the alleged abuser and his or her family are being met;
- iii. [to] ensure that the alleged abuser and his or her family and any potential victims can worship in a church where alleged victims are protected, any bail conditions are met, and the alleged abuser feels protected and supported . . .¹²

Sometimes an alleged abuser and family are forbidden to worship in any church within their own diocese: how does the Church value the importance of worship in such conflicted situations?

The Code of Practice¹³ accompanying the Clergy Discipline Measure 2003 provides that the bishop should not ‘personally give pastoral care to anyone connected with disciplinary proceedings’ (unless the disciplinary function is

10 Canon C 18(1), available at <<https://www.churchofengland.org/about-us/structure/churchlawlegis/canons/section-c.aspx#Head1-78>> (accessed 30 May 2016).

11 Church of England, ‘Practice guidance: responding to serious safeguarding situations relating to church officers’ (24 June 2015, revised December 2015), p 19, available at <<https://www.churchofengland.org/media/2254740/responding%20to%20serious%20situations.pdf>>, accessed 30 May 2016.

12 Ibid.

13 Issued January 2006, revised February 2011 and July 2013. Re-issued with effect from 1 February 2014.

delegated elsewhere), but should ensure that ‘appropriate care and support is provided for all those who need it’. The bishop may, however, with a member of the diocesan staff present, meet either complainant or respondent to ‘discuss the complaint’ and to decide the appropriate course to determine it. Not only the bishop but archdeacons and other members of staff may feel inhibited from any natural contact with the person accused. It may not be precisely what the Code of Practice requires but it is how, out of extreme caution, it is playing out.

What was lost to the Church when it let in such separation between the bishop’s pastoral and judicial roles? It matters because of the long drawn-out nightmare for those falsely accused who feel so alone and robbed of their normal line of support and care. Bishops and archdeacons are increasingly dismayed by the procedures they are forced to operate. They may try to keep in touch but, if the accused starts to take a different line from what the diocese wants, legal considerations place them at arm’s length.

This applies also to those who say they are victims. *The Times* reported in March 2016 that, following Law Society rules, the Ecclesiastical Insurance Group (‘EIG’) had insisted that senior bishops must end all contact with someone who was claiming compensation for abuse: ‘communications about the claim had to be made through his lawyer’.¹⁴ An independent review of this case said that the Church hierarchy felt ‘shackled by its advisers with regard to financial considerations’. It added: ‘The pastoral and spiritual needs of the survivor must take precedence at all times. Sadly, this did not happen.’ *The Times* reported a spokesman for EIG saying that its advice ‘was not intended to deflect the church from any wish or intention to provide direct pastoral or counselling care’.¹⁵

While the Code of Practice advises ‘anyone involved in a complaint who is approached by the media to refer the enquirer straightaway to the appropriate communications officer’, that does not prevent a leakage of information to the media from other sources, on which Lord Justice Mummery commented as President of Tribunals to the safeguarding officers in the matter of the complaints against Bishop Wallace Benn (which were dismissed):

I do not know who is responsible for the media coverage. As there is a fundamental right to freedom of expression there is nothing that can be done to prevent it. Those responsible for the ‘extensive media coverage’ of unproven allegations may wish to consider at some point how they would react if they were on the receiving end of the full glare of a media circus.¹⁶

14 S O’Neill, ‘Anglican insurers told church to shun sex abuse victim’, *The Times*, 18 March 2016.

15 Ibid.

16 ‘Bishop Wallace Benn: all complaints and charges dismissed’, *Thinking Anglicans*, <<http://www.thinkinganglicans.org.uk/archives/006042.html>>, accessed 8 June 2016.

In that case, only a small number of people were privy to the information of which there was repeated leakage. Such media leakage of unproven allegations may well prejudice the possibility of suspended clergy and others being reinstated in their posts. The adage ‘no smoke without fire’ is easily quoted, but not so easily rebutted.

Reputational damage touches the long-dead as well as the living. Following a complaint, the Diocese of Chichester paid a complainant £15,000 compensation with an apology from the current bishop on the basis of allegations against the revered mid-twentieth-century bishop George Bell, a figure of such stature that he is commemorated in the Church of England’s liturgical calendar. A group seeking to obtain posthumous justice for Bell, the George Bell Group, claims in a 12-page review sent to the Archbishop of Canterbury that his valuable reputation ‘has been carelessly destroyed on the basis of slender evidence, sloppily investigated’. A spokeswoman for the Church of England told the *Church Times*,

The decision to settle the civil claim relating to the activities of Bishop Bell and make a formal apology was not taken lightly or without consideration of the impact on the reputation of George Bell. However, in this case, as in others, the overriding goal was to search out the truth and issues of reputation cannot take priority over that.¹⁷

The question at issue here is whether or not the truth had indeed been established.¹⁸

THE END OF OPERATION MIDLAND

The same *Church Times* article quoted Alex Marshall, Chief Executive of the College of Policing, as reiterating advice to police chiefs that the police should normally believe allegations of child abuse unless there was evidence to the contrary, and that many victims still did not want to come forward because they feared that they would not be believed. His letter followed an announcement by the Metropolitan Police that their £1.8 million Operation Midland investigation into claims of child abuse and murder by a supposed Westminster paedophile ring would be shut down with no-one having been charged.¹⁹

17 T Wyatt, ‘George Bell’s defenders say C of E must apologise for destroying his reputation’, *Church Times*, 24 March 2016.

18 The allegations against Bishop Bell, and the Church of England’s handling of those complaints, are among the matters being considered by the Independent Inquiry into Child Sexual Abuse. See <<https://www.iicsa.org.uk/investigations/investigation-into-failings-by-the-anglican-church>>, accessed 30 May 2016.

19 Wyatt, ‘George Bell’s defenders’.

An NSPCC spokesman said:

This police operation has been at the centre of huge controversy with suspects and their families often under great pressure. Being accused of one of the most heinous crimes on the statute book obviously casts a dark shadow over those at the centre of such claims. It's vital that child sexual abuse allegations are fully investigated by police with an open-minded approach. Whilst many cases are extremely complex, swift resolutions with charges being brought or the accused told they will not be prosecuted is in the interest of all parties.²⁰

The former Tory MP Harvey Proctor, who had spent a year under suspicion until Operation Midlands was closed down and who was told that there was insufficient evidence to proceed with the investigation, said in a statement,

I believe Operation Midland should now be the subject of a truly Independent public inquiry. I consider that Sir Bernard Hogan-Howe, Patricia Gallan, Steve Rodhouse and Kenny McDonald should tender their resignations from the Metropolitan Police Service forthwith. I believe 'Nick' and Exaro News agency should be prosecuted for seeking to pervert the course of justice.²¹

The *Daily Telegraph* report added:

Scotland Yard has admitted one of its senior officers was wrong to describe Nick's allegations as 'credible and true'. The phrase used by Det Supt Kenny McDonald, who was later moved off the investigation, appeared to 'pre-empt' the conclusion of the inquiry, the [Metropolitan Police] conceded last year.²²

The renowned and much admired Sister Frances Dominica, who founded Helen House, the children's hospice in Oxford, and Douglas House, its sister hospice for young adults, has found herself now barred from entering it. Allegations against her of conduct long ago (which she denies) led to a police interview under caution, but no charge. In July 2014 she was told by the Crown Prosecution Service that it would be taking no further action 'due to insufficient evidence'. Not only has she had no opportunity to defend herself and

20 M Evans and D Barrett, 'Operation Midland: Harvey Proctor told he faces no further action', *Daily Telegraph*, 21 March 2016.

21 Ibid.

22 D Barrett, 'Harvey Proctor: Theresa May stood idly by amid "bizarre" VIP child sex abuse inquiry', *Daily Telegraph*, 29 March 2016.

to be found formally innocent but, after a lengthy confidential risk assessment, the Trustees of Helen and Douglas House have made permanent the ban on her entering their premises. The denied allegations relate neither to Helen and Douglas House nor to children. In a statement the Trustees said that, although ‘no conclusions about the allegations could be made’, the safeguarding standards of their regulator, the Care Quality Commission, obliged them to bar her permanently: ‘Our unswerving dedication to care and proper governance made any other course of action unthinkable.’²³

One priest who also had the experience of being interviewed about allegations from 35 years ago (which he denied, and which were said to be unlikely by the only other person interviewed) was left in limbo after the case was dropped. Despite the denial and the doubt voiced by the other person interviewed from long knowledge of the complainant, when the priest applied to his diocese for his DBS Enhanced Certificate the police first proposed to contribute the words ‘it is *believed* that he raped [someone] . . . *unfortunately* . . . he could not be prosecuted’, indicating to the priest that he might prefer to withdraw his application. If they actually believed the accusations, they should indeed have prosecuted. Following legal protest, these words were replaced by a brief statement of arrest, interview and the priest’s denial, together with his assertion that the offence could not have taken place. This is now stated on the Enhanced Certificate, together with a further note that

the Police investigation was concluded as No Further Action. We conclude that this information is relevant and ought to be disclosed to an employer, in this instance, because it relates to alleged offences that involved a child and [the priest] is seeking employment.

That priest comments: ‘*You* try proving that something didn’t happen 35 years ago when you are suddenly asked about one person among hundreds you ministered to’ – even more so if even a finding of not guilty still results in being summoned to one-sided, heavy-handed and maybe bullying interviews by psychologists, committees or potential employers.

ENHANCED CERTIFICATES

An Enhanced Certificate with any such comments constitutes what is officially called a ‘blemished’ certificate and invites any potential employer to carry out its own enquiry, or more probably to proceed no further: in effect a bar on any further employment as a parish priest despite, perhaps, 40 years of

23 E Adley, “‘I want to be a voice for the voiceless,’ says nun left in limbo over sex abuse allegations’, *The Guardian*, 2 April 2016.

conscientious service. Put yourself in this situation: you never did anything wrong, but you can never work again because system after system will be protecting itself at your expense. This would block not only employment but also, for a priest, the possibility of permission to officiate on a voluntary basis in the years after retirement, for instance at the weddings of friends or family. The latest Canon passed by General Synod now also prohibits those not holding a permission to officiate (or other authority) from vesting in clerical garments during divine service in church or chapel.²⁴

It should be noted that the police contribution to an Enhanced Certificate may not have been written by an officer who conducted the investigation but by some other person looking through a file of papers, perhaps influenced by their own instinctive response to, and interpretation of, what has been written. In these circumstances, the complaint has never been tested in the courts but the police are able to put into permanent prejudicial print the view which they alone have formed. Thus may be cast aside a person whom the Church has accepted, trained and ordained, and to whom the Church owes a duty of care as well as gratitude for years of ministry in often stressful circumstances. Sadly, there are not a few people now in this situation.

The only way to change an Enhanced Certificate is by judicial review, at considerable cost. In March 2013 the Court of Appeal found for ‘T’, who had challenged the issue and retention of a ‘harassment warning notice’.²⁵ The case was the first of its kind to be heard by the courts, despite thousands of such warnings being handed out annually and then retained on file for many years, for easy access by police officers and other police staff. Giving the judgment of a unanimous Court of Appeal, Lord Justice Moore-Bick found that retention of the warning had been ‘disproportionate’ and so a breach of T’s right to respect for private life. All records of the warning were then expunged.

The warning notice had been pushed under T’s door by a Metropolitan Police officer who had never questioned her about the allegation – a highly offensive homophobic comment – that it was said she had made towards the friend of a neighbour. It also warned her that harassment is a criminal offence and that a copy of the warning notice could be disclosed in subsequent criminal proceedings against her as proof that police had spoken to her about the allegation. It emerged during the course of the case that the police planned to keep records of the allegation for at least 12 years and possibly indefinitely. It could have been disclosed to a potential employer as part of an enhanced criminal records check. Commenting on the Judgment, T’s solicitor said:

24 Canon C 8, paras 6 and 7.

25 *R (on the application of T) v the Commissioner of Police of the Metropolis* [2013] EWCA Civ 192 (Admin).

In preparing T's case we unearthed evidence demonstrating that most forces around the country issue harassment warning notices but that very few have any safeguards built into their systems to deal with cases such as T's, where the recipient of the warning notice denies the action alleged, for example, by requiring the police to speak to the alleged harasser first. This is particularly important where, as has become clear, the police retain warning notices and the underlying allegations for many years and individuals are at risk of the information being disclosed, for example if they apply to the Criminal Records Bureau for an enhanced Criminal Records Certificate.²⁶

Also in 2013 the High Court held that inclusion of information in the police's draft Enhanced Certificate that 'RK' had been acquitted of six counts of indecent assault and sexual activity with a child constituted a breach of his Article 8 ECHR rights.²⁷ As well as information about the allegations, the draft referred to them as 'offences'. Fundamental to the court's judgment was the conclusion that the Constabulary had impermissibly treated the allegations as if they had been proven, notwithstanding the fact that RK had been acquitted. Indeed, the court lamented the 'unblinking equation' between the unproven allegations with the so-called sexual offences. While the judgment makes clear that an acquittal does not automatically bar the police from referring to the original allegations in the ECRC (see paragraph 37), it does confirm that an acquittal is likely to be an important factor weighing heavily in the balance when it comes to determining whether or not a particular disclosure should be made.

On the facts of the case before him, Coulson J found that inclusion of information about the allegations relating to RK was unlawful having regard to the fact of the acquittal; to the fact that, even if proven, the incidents would not have been particularly grave or serious; and, further, to the fact that there were aspects of the prosecution case which raised serious questions about the reliability of the information. Anya Proops QC has commented:

Critically the judgment highlights the dangers attendant on the police unthinkingly substituting their own view of an individual's guilt or innocence in the face of an acquittal by the criminal courts or other important evidence raising questions about the reliability of the information in issue.²⁸

26 'Court of Appeal test case "upholds the right to a clean record"', *Bindmans*, 13 March 2013, <<http://www.bindmans.com/news-and-events/news-article/court-of-appeal-test-case-upholds-the-right-to-a-clean-record/>>, accessed 30 May 2016.

27 *RK v (1) Chief Constable of South Yorkshire (2) Disclosure and Banning Service* [2013] EWHC 1555 (Admin).

28 A Proops, 'Enhanced criminal records certificates – teachers on trial', *Panopticon*, 13 June 2013, <<http://panopticonblog.com/2013/06/13/enhanced-criminal-records-certificates-teachers-on-trial/>> (accessed 30 May 2016).

Has the Church of England thought through clearly enough the introduction of safeguarding officers? People inescapably bring into new work the training and presumptions which they learned in their original disciplines, affecting their functioning authority. If, as some are, safeguarding officers are former police, they naturally tend to look suspiciously on those whom the police accuse, assuming them likely to be guilty though not proven. This may well colour their treatment of the accused and increase power-play within the organisation.

THE EVOLUTION OF MAGNA CARTA

Magna Carta was born out of the barons' immediate concerns for their own privileges and to stop the king abusing justice at their expense but, over the centuries, it has taken on a life beyond narrow self-interest. English law evolved by stages, often through routine practical decisions and sometimes through determined judges and courageous jurymen, giving supremacy over kings to the law of the land. When the common law was too slow or inflexible, appeal could be made to the Court of Chancery, where the equity jurisdiction could force rigid precedent to bend to the good sense and conscience of the king's judges. From the 1354 version of Magna Carta comes the vital tenet 'no man of what estate or condition that he be shall be put out of land or tenement, nor taken, nor imprisoned, nor disinherited, nor put to death, without being brought in answer by due process of law'.

So from the evolution of Magna Carta came the injunctions which prevent illegal actions and the more recent invention of judicial review, a necessary way in which individuals can hold authorities to account. In the last few years the twin demons of security post-9/11 and the perceived challenge of the national deficit have, piece by piece, eroded the structure of the law and civil liberties as the country sleepwalks towards authoritarianism. The scope for judicial review has been cut back by government and its availability put beyond the purse of poorer people. Lawyers who protested against cuts in legal aid were portrayed as fat cats; many were in fact working at the criminal bar well below average earnings. Unrepresented people increase the costs of justice – unless the scale of new court charges force people to plead guilty when they are not. Fresh emphasis on letting victims' feelings dictate sentence will not always make things fairer. The introduction to the April 2016 report 'Justice denied?' published by the charity Transform Justice prints a letter from a magistrate:

The disquiet amongst the magistracy over Criminal Court charges ... is only one of the disturbing threats to the criminal justice system now becoming increasingly apparent ... Most worrying for the adversarial system of which we are rightly proud is the significant reduction in legal aid. At the heart of the adversarial system is the concept of 'equality of

arms', with both sides being equally able to present their case. This has been so seriously undermined by the lack of access to legal aid that it has become a regular and disquieting feature of the magistrates' court to find defendants attempting to respond to a charge they don't fully understand, with no experience of the law or of legal procedures, against qualified professionals with all the resources of the CPS behind them . . . They constitute a real threat to the long tradition of a fair trial for all who appear before us.²⁹

For those with low incomes, such as many clergy, failure to obtain legal aid makes the cost of lawyers to give them adequate defence formidable indeed. Their dioceses may feel unable to give them financial support lest they themselves are held to be compromised. In such circumstances, as with many who go through the family courts, there is likely to be strain in mental and physical health, relationships and finances.³⁰

Questioned on the Radio 4 *Today* programme on 7 October 2015, the Norfolk Chief Constable Simon Bailey, the Association of Chief Police Officers' lead on child protection and abuse investigations, said that the 70,000 claims now being investigated in Britain were likely to be but the tip of the iceberg.³¹ The previous December he had provoked a furious backlash and petition for his dismissal from child safety campaigners when he said that a large proportion of people viewing child abuse images online do not 'need to come into the criminal justice system in terms of being put forward before a court' but would be better treated by the NHS.³² He cited academic research which suggests that between 16% and 50% of those who view indecent images of children are likely to abuse a child physically; over 50% are not.³³

Within Simon Bailey's figure of 70,000 people being investigated are high-profile people wrongly accused such as those mentioned in the opening paragraphs of this article, but there must also be more than a few others who have also been mistakenly, or maliciously, accused. They may not have many people rallying to their support and are left twisting in the wind, with not much hope of recovering their former position in life. Family life, and

29 From a letter by Christopher S Morley JP Buckinghamshire Bench in the *Magistrate* magazine, January 2016. See Transform Justice, 'Justice denied? The experience of unrepresented defendants in the Criminal Courts' (April 2016), p 1, <http://www.transformjustice.org.uk/wp-content/uploads/2016/04/TJ-APRIL_Singles.pdf>.

30 T McVeigh, 'Legal aid cuts add to strain on divorcees', *The Observer*, 27 March 2016.

31 "Unprecedented number" non-recent child abuse allegations', *Today*, 7 October 2015, <<http://www.bbc.co.uk/programmes/p034l2pg>>, accessed 30 May 2016.

32 Petition details available at <<https://petition.parliament.uk/archived/petitions/72825>>, accessed 30 May 2016.

33 D Barrett, 'Half of paedophiles "need medical help" and not jail, says chief constable', *Daily Telegraph*, 5 December 2014.

friendships too, may have been shattered by public knowledge of the accusation: 'there is no smoke without fire' is a seductively easy stance to take.

According to NSPCC statistics, over 90% of child sexual abuse is perpetrated by someone known to the child. A proportion of these happen within the home itself, through family or friends. The Church, in its position of trust, has a duty to ensure that those whom it holds out as its agents are worthy of that trust. As the Bishop of Durham said in the July 2015 debate:

Our emphasis has to be on prevention; so high quality training, safe recruiting at every level of church life and effective quality assurance are all high on the list of work being undertaken nationally and need to be implemented at every level of church life. We have to be primarily about developing a culture in our churches that recognises safeguarding is a gospel issue because it is about human wellbeing and wholeness.³⁴

But 'human wellbeing and wholeness' is also the rightful expectation of those who work for the church, as clergy or lay, stipendiary or volunteers.

Amid the heightened concerns about present and historic child abuse, clergy, church workers and church officers have particular vulnerability, not least to growing public ignorance about the Church and its ways: a sense that the Church is strange deepens among some people into anti-clerical hostility. That sense of strangeness makes both married and single clergy easy targets, single clergy especially so: an assumption that they are gay (they may not be) slides into a belief that, therefore, illogically, they are likely to be sexually interested in younger teenagers and then, further, that they would be capable of abusing them. The fact that far more child abuse comes from heterosexuals than from homosexuals is forgotten in the rush to judgement.

THE DIFFERENTNESS OF JESUS

Fear of eccentricity in the Church, and parochial pressure to appoint conventional 'family men and women' who conform to public norms, blind us to the differentness of Jesus. Matthew's Gospel begins with a genealogy listing women with morally ambiguous stories. Jesus' birth from a virgin is beyond normal chromosome expectations. Mary giving birth to her Creator produces someone both human and divine. The people of Nazareth question his parentage. He seems to reject family ties, and claims a different family formed not by blood but by bonds of friendship. He is homeless, unmarried, childless, keeping strange and scandalous company. He breaks through social norms, defies codes

34 See <<https://www.churchofengland.org/media/2261139/safeguardingfinalapproval.pdf>>, accessed 30 May 2016.

and conventions, subverts authority, touches people. Mark portrays him living with secrets, as do many people, gay and straight. He is fully human, drawing people to him by the strength of his love. The Resurrection, too, is new creation, not mere resuscitation. Truly God's ways are more queer than we like to acknowledge.³⁵ A church so focused on driving for numbers by being 'the church for the family' not only undermines its many single members but also sadly distorts the nature of the Christ whom we worship.

The Church of England has struggled to keep pace with the public acceptance of a more open morality. What is now taken for granted by most people under 40 used to be the subject of scandal, gossip, 'don't ask, don't tell' and desperate fear of disclosure. There are still politicians too scared to admit their sexuality to their family and who fear that it would blight electoral chances. Similarly, clergy and church officers wonder how safely they can acknowledge sexual difference; an 'understanding' bishop may be followed by one less sympathetic. Beyond all this, humiliating and secret initiation rituals of public schools, Oxbridge drinking clubs and armed forces bind establishment figures in politics, law courts, police and churches in a 'shaming' culture which leads to cover-up and mutual protection.

There are still many in public life who were brought up when homosexuality was illegal and who grew up within a culture of secrecy and shame. Church prevarication perpetuates such difficulty for those born later. The 1991 report *Issues in Human Sexuality*, which began life as a consultation document and turned to tablets of stone, distinguishes clergy from laity in same-sex relationships.³⁶ This remains the case: lay partnerships are to be respected but clergy in civil partnerships must stay celibate. Quite apart from the peculiarity of this for any lay person partnering a priest, it ignores modern courtship rituals in which the vast majority of Church leaders will have taken part. It is rare today for anyone to find a partner, homosexual or heterosexual, without some sexual contact along the way. Dishonesty about this still clouds discussion in Church debates; anxieties about it may haunt risk-assessment interviews.

DOUBLE JEOPARDY

For centuries before Magna Carta and since, double prosecution for the same offence (double jeopardy) was against English law. In 2005 Britain changed that where 'new and compelling evidence' emerged. Church risk-assessment procedures are not a second trial but have worrying aspects for justice. The assessor is given police statements and the originating complaint; the assessee

35 K Sharpe, 'Beyond gays in the Church: new approaches to the histories of Christianity and same-sex desire', paper presented to University of London conference, September 2015.

36 *Issues in Human Sexuality: a statement by the House of Bishops* (London, 1991).

cannot call evidence or character references, nor have a friend or lawyer present in the interrogation. This last runs counter to British employment law and to humanity. The new Canon gives the bishop power to require a risk assessment whether or not the Clergy Discipline Measure has been invoked; a failure to comply without reasonable excuse is deemed a 'failure to do an act required by the laws ecclesiastical'. The bishop has simply to be 'satisfied' that there is sufficient risk of harm.

Pavlov, Sargent and others have long alerted us to the dangers of transmarginal stressing, akin to brain-washing, by which those interrogated are placed under such stress that they produce false confessions.³⁷ Subjecting those completely cleared of criminal charges to three-hour interviews on two successive days by a skilled interrogator (whose background work with convicted offenders shapes not just what they look for but also what they feel) risks permanent psychological damage as well as not getting a true result. The assessor's report can be challenged as to fact, not as to opinion. Nor may the person assessed see parts of the report that the assessor decides should be hidden. It is not capable of appeal. It goes to a panel of the bishop and senior advisers. How many assessors will risk their career on judging someone safe? Better for them to say they find little evidence but add a protective rider hidden by redaction.

What bishop and panel will reinstate a priest or lay officer if the assessor reports even the least shadow of risk, though stemming from interview under stress? How is someone so investigated to prove their innocence or that they are 'risk-free'? Should not the Church give greater support to those whom it has placed in ministries where pressures grow greater every year, which pressures the Church itself compounds by its own prevarications? How should the Church best help its workers to gain the 'human wellbeing and wholeness' of which the Bishop of Durham spoke at the Synod?

Courtroom trials have not been without miscarriages of justice or even police perversion: for over 27 years, until and including the Hillsborough inquest which concluded in April 2016 and resulted in a verdict of unlawful killing, the police persisted in attempts to blame the victims for the stadium disaster.³⁸ Almost one-third of asylum refusals have to be overturned on appeal.³⁹ The flawed processes of inquisition, Spanish- or Salem-style, have no place in English justice.

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37 I Pavlov, *Conditioned Reflexes: an investigation of the physiological activity of the cerebral cortex* (London, 1927); L Rokhin, I Pavlov and Y Popov, *Psychopathology and Psychiatry* (Moscow, 1963); W Sargent, *Battle for the Mind: a physiology of conversion and brainwashing* (London, 1957).

38 D Conn, 'Hillsborough inquests jury rules 96 victims were unlawfully killed', *The Guardian*, 26 April 2016.

39 Home Office, 'National statistics: asylum', 27 August 2015, <<https://www.gov.uk/government/publications/immigration-statistics-april-to-june-2015/asylum>>, accessed 30 May 2016.