

MEMORANDUM OF ADVICE (2)

Re: Anglican Diocese of Newcastle - Sexual harassment complaints

I refer to my advice dated 1 April 1996.

My opinion is further sought on a number of aspects of the Diocese's responsibility in relation to publication of sexual harassment matters, and I shall deal with my instructing solicitor's points in order.

1. The implications of allegations being made in the presence of a 'support person'.

The protection of qualified privilege will apply to publications to all persons properly concerned with the receipt and handling of complaints - secretaries in the Diocesan office, administrative officers, and support persons whose assistance to complainants is considered necessary and part of the resolution process.

It is not necessary for the support person to read a written complaint or a written response to a complaint, in that their role is to offer moral support (as opposed to legal or administrative assistance). For that reason it is not appropriate for support persons to be given the documents in the case. It may be foreseeable that a support person may have to read the final adjudication in order to discuss with the complainant his or her reaction to it, but it seems to me that is about all.

2. Uncorroborated complaints and malice.

There is no novelty to the idea of uncorroborated complaints. The question of malice will arise not because the allegations are not supported by witnesses, but because the allegations are untruthfully made or made for an ulterior purpose.

Determination of whether a complaint is maliciously made must be determined by the tribunal of fact, which will have to weigh the significance of the lack of corroboration in the particular circumstances that obtain.

3. Complaints against persons unlicensed.

Where complaints are made against Sunday school teachers, choir masters and other volunteers working in the various churches, those complaints will be entitled to qualified privilege so long as the complainants are not actuated by express malice.

It would certainly be safe to expand the Practice and Procedure to include them.

4. Complaints by priests.

Any priest is entitled to draw the attention of the appropriate person to the fact that he has been sexually harassed in his role as priest. Such complaints ought to be made to a person with appropriate authority, even if that authority were not the body set up to deal with complaints against Ministers.

Where a priest makes allegations against such people as are referred to in 3, above, OR where he makes them against such individuals as parishioners, his non-malicious publication to the appropriate person will be privileged.

Thank you for briefing me in this matter. My memorandum of fees is enclosed.



Stuart Littlemore QC
Chambers
2 April 1996