



# EMPLOYMENT TRIBUNALS

**Claimant:** Professor Doreen McCalla

**Respondents :** Lichfield Diocesan Board of Finance Inc (1)  
Bishop of Lichfield (2)

## RESERVED JUDGMENT

**Heard at:** Birmingham by CVP                      **On:** 19 & 20 December 2022

**Before:** Employment Judge **Algazy KC**

### Appearances

For the claimant: **Mr K. Ennis – Solicitor**

For the respondent: **Mr E. Kemp – Counsel**

## JUDGMENT

The judgment of the Tribunal is that :

1. The claim for discrimination by an “employment service provider” under the Equality Act 2010 is dismissed as neither respondent was, or acted as, an employment service provider in its dealings with the claimant at any material time.
2. The remainder of the Claimant’s claims are dismissed on withdrawal by the Claimant.

# REASONS

*References to page numbers in [ ] are references to the Hearing Bundle*

## INTRODUCTION

1. The Claimant is a practising Christian who entered into the Discernment of Vocations process within the Church of England in February 2016, which process ended in June 2021.
2. The First Respondent (the “DBF”) is a charitable company limited by guarantee. It acts as the financial and legal executive of the Litchfield Diocesan Synod. The DBF funds the training of candidates for the ministry, both clerical and lay, it does not decide who should receive such training. It does not claim to provide vocational training or guidance in the sense of providing training for employment or work experience.
3. The Bishop of Lichfield (the “BoL”) acting in his corporate capacity is, by agreement, substituted for the former Second Respondent, the Church of England which is not a legal entity. I so order by separate Order.
4. The Claimant has brought a variety of discrimination claims in respect of her treatment by the respondents, and others for whom the respondents are alleged to be vicariously liable, during the discernment process (the “DP”) and in respect of the termination of the DP. The discrimination claims are presently on the grounds of sex, age and race and there is an extant application to add religion.
5. The claims are all resisted by the Respondents who challenge the jurisdiction of the Employment Tribunal to determine any of the claims on the basis that the Claimant was not an applicant for employment or a personal office within the meaning of the Equality Act 2010 (“EqA”) and further that neither Respondent was an “employment service provider” under the EqA.
6. At a telephone case management hearing on 14 February 2022, an Open Preliminary Hearing was listed to determine the jurisdictional challenge and the other preliminary issues detailed below.
7. The Claimant was represented by Mr R. Ennis (Solicitor) and gave evidence on her own behalf. The Respondent was represented by Mr E. Kemp (Counsel) and called four witnesses. They were Julie Jones, the CEO/Diocesan Secretary of the DBF and Company Secretary of that entity; the Reverend Romita Shrisunder, the Bishop's Director for Ordinands (“BDO”) for the Diocese of Lichfield; the Right Reverend Bishop Chris Goldsmith, Director of The Ministry Development Team in the Church of England (“CoE”); the Right Reverend Sarah Bullock, Bishop of Shrewsbury who acted as the Claimant’s Sponsoring Bishop in the DP.
8. There was an agreed bundle which ran to 631 pages and both sides produced helpful written submissions.

## THE ISSUES FOR THE OPEN PRELIMINARY HEARING

9. These had been agreed as follows, with the addition of a fresh application to amend the claim on 12 May 2022:

### PRELIMINARY

- (i) Who is the correct Respondent to the claim?

### JURISDICTION - STATUS UNDER EQUALITY ACT 2010 (“EqA)

- (ii) Was the Claimant an applicant for employment within the meaning of s.39(1)(a), s.39(3)(a),s.40(1)(b) and within the definition of “employment” in s.83(2) EQA?
- (iii) Was the Claimant an applicant for a personal office within the meaning of s.49(3), s.49(4), s.49(5) and within the definition of “personal office” in s.49(2) EQA?
- (iv) Was the correct Respondent to the Claimant’s claim an “employment service-provider” for the purposes of s.55(1) or s.55(2), s.55(3), s.55(4) within the definition of “employment service” in s.56(2) and s.56(6) EQA?
- (v) To the extent that the Tribunal concludes the Claimant fell within any of the above provisions, over which aspects of the Claimant’s claims (in principle) does that jurisdiction extend, having regard to the ambit of the prohibited conduct within s.39, s.40, s.49, and s.55 EqA 2010?

### VICARIOUS LIABILITY

- (vi) To the extent that the Tribunal concludes it has jurisdiction over any of the Claimant’s claims, to what extent can the correct Respondent be vicariously liable for the acts or omissions of the persons mentioned in the Claimant’s Amended Grounds of Claim, having regard to s.109 -110 EQA?

### APPLICATION TO AMEND

- (vii) Should the Claimant be given permission to amend her claim in accordance with her applications of 7 January 2022 and 12 May 2022.

10. During exchanges with the parties in closing submissions, Mr Ennis made a number of sensible concessions in light of the evidence that had been adduced to the Tribunal and indeed the lack of evidence in respect of certain issues.
11. The net result was that the Claimant withdrew her claims save in respect of the claim alleging discrimination against either or both of the respondents as employment service-providers under s.55 EqA.
12. This was further refined by Mr Ennis so that the only claim being advanced was a claim that in respect of her treatment by either or both of the Respondents in the DP and its termination, they discriminated against her in breach of s.55 (2)(b), and /or (c) and/or (d).
13. Accordingly, issues (ii) and (iii) no longer required determination by the Tribunal. It was agreed that the amendment application [issue (vii)] – would be considered after the Tribunal had ruled on the jurisdictional challenge in respect of the extant s.55 EqA claim [issue (iv)]. Insofar as they are still relevant, issues (v) and (vi), are contingent on a determination that the Tribunal does have jurisdiction to hear the s.55 EqA claim.
14. It is convenient to deal first with the question of whether the Respondents, or either of them were, or acted in the capacity, of an “employment service provider”- Issue (iv).

## **EMPLOYMENT SERVICE-PROVIDER – THE LAW**

15. Insofar as is material to the present claim, s.55 (2) EqA provides:

### **‘Employment service-providers**

**(2) *An employment service-provider (A) must not, in relation to the provision of an employment service, discriminate against a person (B)—***

**(a)....**

**(b) *by not providing the service to B;***

**(c) *by terminating the provision of the service to B;***

**(d) *by subjecting B to any other detriment.’***

16. S.56 EqA is the applicable interpretation provision, and the material sub-sections are:

### **‘Interpretation**

**(1) This section applies for the purposes of section 55.**

**(2) The provision of an employment service includes—**

**(a) the provision of vocational training;**

**(b) the provision of vocational guidance;**

**(c) making arrangements for the provision of vocational training or vocational guidance;**

**(d) the provision of a service for finding employment for persons;**

**(e) the provision of a service for supplying employers with persons to do work;**

**(f) the provision of a service in pursuance of arrangements made under section 2 of the Employment and Training Act 1973 (functions of the Secretary of State relating to employment);**

**(g) the provision of a service in pursuance of arrangements made or a direction given under section 10 of that Act (careers services);**

**(h) the exercise of a function in pursuance of arrangements made under section 2(3) of the Enterprise and New Towns (Scotland) Act 1990 (functions of Scottish Enterprise, etc. relating to employment);**

**(i) an assessment related to the conferment of a relevant qualification within the meaning of section 53 above (except in so far as the assessment is by the qualifications body which confers the qualification).**

....

**(6)“Vocational training” means—**

**(a) training for employment, or**

**(b) work experience (including work experience the duration of which is not agreed until after it begins).’**

***'Interpretation***

***Effect***

***190. This section explains what the provision of an employment service includes (such as the provision of training for employment or careers guidance), and what it does not include (such as education in schools), for the purposes of section 55.***

***Example***

- ***Examples of the types of activities covered under this section include providing CV writing classes, English or Maths classes to help adults into work; training in IT/keyboard skills; or providing work placements.'***

18. The EHRC Employment Code gives this guidance:

***'What are employment services?***

***11.59***

***'Employment service' includes:***

- ***the provision of or making arrangements for the provision of vocational training, that is, training for employment and work experience;***
- ***the provision of or making arrangements for the provision of vocational guidance, such as careers guidance;***
- ***services for finding people employment, such as employment agencies and head-hunters. It also includes the services provided by, for example, Jobcentre Plus, the Sector Skills Council and intermediary agencies that provide basic training and work experience opportunities such as the Adult Advancement and Careers Service and other schemes that assist people to find employment;***
- ***services for supplying employers with people to do work, such as those provided by employment businesses.***

***11.60***

***The reference to training applies to facilities for training. Examples of the types of activities covered by these provisions include providing classes on CV writing and interviewing techniques, training in IT/keyboard skills, providing work placements and literacy and numeracy classes to help adults into work.'***

19. There is little, if any, authority of particular assistance on the interpretation and ambit of the term “employment service provider”. It is of note is that an organisation that provides some services that may fall within the scope of ss.55 and 56 but also exercises functions that are outside their ambit will not be liable for discrimination with regard to those other functions - see **Ibaka v Royal College of Pathologists EAT 0036/09/0312**

**DID EITHER RESPONDENT ACT AS AN EMPLOYMENT SERVICE-PROVIDER IN ITS DEALINGS WITH THE CLAIMANT?**

**The Discernment Process**

20. To answer this question, it is necessary to examine the nature of the discernment of vocation process in the CoE, its particular application to the Claimant and what “service”, if any, was provided to the Claimant.
21. It is the Respondent’s case that the true nature of discernment is a spiritual journey to explore and understand the nature of an individual’s calling to God. Further, ordination as such, being a calling to Holy Orders, is not a job or personal office and is outside the scope of Part V of the EqA.
22. The Claimant’s position as set out in her witness statement is that her discernment process was in fact an application for a job or “personal office”:

***“24. My entire discernment process was, in reality, a process of applying for and being assessed for suitability to be trained as a priest. Although I was following my vocation, in essence I was applying for a job.***

***25. Had I been successful in the process, the ultimate outcome would have been a paid post as a priest. This would have been carrying out paid work subject to the discipline of the Bishop.***

***26. I believe that this would have amounted to employment or alternatively to a “personal office” for the purposes of the legislation.”***

23. As an initial observation, I accept the evidence of Reverend Chris Goldsmith (“RCG”) that the process followed in the Diocese of Lichfield and applied to the Claimant is typical of the process at a national level.
24. The DP is helpfully summarised in a table provided as an annexe to the Respondent’s Skeleton Argument [622] and which is also annexed to this judgment (Table A). The evidence underpinning and supporting this tabular exposition of the process was given by Reverend Romita Shrisunder (“RRS”) and I accept her evidence as accurately describing the DP in general.

25. I also accept the evidence of RRS with regard to her role in the DP as it applied in particular to the Claimant. Professor McCalla takes issue with stage '2c' in Table A – *Placement to experience breadth of Church of England and/or address areas of development*. It is her position that others were not required to do placements, but that apart, the Claimant accepted that the document was agreed. A little later in her evidence, however, the Claimant opined that her DP with the BDO was unique. Insofar as there is any conflict here, I do not regard it as material to the question I have to determine and, in any event, as I have said, I accept the evidence of RRS on this point.
26. There was also a glossary [623] which had been agreed between the parties. The glossary is annexed to this judgment as Table B. In evidence, the Claimant added that a Curate can also be ordained as a priest after a year.
27. Professor McCalla accepted in particular the definition of the key term **"Discernment of vocations"** as the process by which an individual's spiritual vocation to ministry in the Church of England is discerned. She also accepted the definition of **"Ordination"** as the action of ordaining someone in Holy Orders and that once ordained, a person remains in Holy Orders till death.
28. The Right Reverend Sarah Bullock ("RSB") gave clear and compelling evidence in her witness statement about the nature of vocation in the context of the CoE as follows:
  5. ***Although vocation is commonly thought of as a vocation to the priesthood, many are called to lay ministry, of which there are three main types, locally recognised, authorised and licensed. Licensed lay ministers represent the Church in a public, representative or leadership role. Examples include Readers (who are also known as Licensed Lay Ministers) and Church Army evangelists.***
  6. ***A vocation is a calling. In the faith of the Church, this is seen as a calling by God to a particular area of ministry. In many (I would say most) cases, this ministry is not paid work and it is certainly not employment. This is partly because much of the Church's ministry is carried out by volunteers, both lay and ordained, but primarily because ordained ministry is a spiritual calling, not an occupation or career. There are many priests who continue in secular employment whilst also exercising a priestly ministry of some kind.'***



29. RSB went on to explain that under Canon law, there are three kinds of Holy Orders, bishops, priests and deacons. Once a person has been admitted to the order of bishop, priest or deacon, he or she cannot be “*divested of the character of his order*” - Canon C1.2 – [450]. 17. Holy Orders in the Church of England trace their origins back through the pre-Reformation church to the time of the apostles in the first century AD.

30. Canon C1.1 provides:

***“The Church of England holds and teaches that from the apostles' time there have been these orders in Christ's Church: bishops, priests, and deacons; and no man shall be accounted or taken to be a lawful bishop, priest, or deacon in the Church of England, or suffered to execute any of the said offices, except he be called, tried, examined, and admitted thereunto according to the Ordinal or any form of service alternative thereto approved by the General Synod under Canon B 2, authorized by the Archbishops of Canterbury and York under Canon C 4A or has had formerly episcopal consecration or ordination in some Church whose orders are recognized and accepted by the Church of England.”***

Underlining added [450]

31. The emphasis is on the “calling” which is a pre-requisite requirement, according to RSB, who went on to assert that a calling to Holy Orders cannot be equated to a job as it is something that involves the whole person and the whole of that person’s life. In cross examination, the Claimant agreed that the DP involved an examination of the whole life experience of a candidate in order to discern if they had a spiritual calling and the nature of that calling. This is also reflected in the reference forms that are to be completed for a candidate, an example of which is at [245].

32. RCG described the DP as a wholistic collaborative 2-way process. Further his unchallenged evidence as regards ordination, the culmination of the DP, was that it does not give anyone a job or office – see paragraph 15 of his witness statement

### **The Discernment Process stages completed by the Claimant**

33. By the time the Claimant’s DP was terminated by her Sponsoring Bishop, the Right Reverend Sarah Bullock in a letter dated 2 June 2021 [517-519] the Claimant had reached stage ‘2f’ in Table A – *Interview with Sponsoring Bishop*. Had she progressed further, the next stage that the Claimant would have gone to was the “Bishops Advisory Panel “or “ BAP” which is usually a three-day course.

34. The stages navigated by the Claimant by June 2021 were stages 1 and 2 of Table A, namely the DP with Vocations Advisor (“VA”) and the DP with the BDO.

35. VAs are matched to a candidate by a Diocese Vocations Coordinator. RRS as the Lichfield Diocese BDO is responsible for the VAs. The DBF is the employer of the Vocations and Training Team members, who appear on the Diocesan website [475-479]. This includes RRS, though as Julie Jones explained in her evidence, the DBF is the employment arm for the wider Diocese.
36. In respect of her BDO function, RRS is not line managed by anyone at the DBF. That line management goes to another cleric, Dr Jeanette Hartwell and from her to the BoL. Ms Jones explained that she does not have any involvement in any of the processes described by RRS regarding the DP in her witness statement.
37. The position so far as the DBF is concerned is that its role in this context is to finance certain Diocesan activity. I accept the Respondent's evidence that DBF did not provide any vocational training or guidance in the sense of providing training for employment or work experience. The DBF's Memorandum of Association and letter heading must be viewed in that specific context and it does not alter the DBF's essential function.
38. The VA stage of the process is informal and collaborative. The candidate and the VA meet to discern whether the individual has a calling and what that calling might be. There is no set time frame.
39. Towards the end of this stage, the VA provides feedback to the BDO on their view of the candidate's suitability for further exploration of ordained ministry or authorised lay ministry. A form called a 'confidential handover form' is completed and sent to the BDO or their assistant, the ADDO.

Bishop's Director of Ordinands – Stage 2

40. This follows an outcome that a calling to ordained ministry has been discerned. It can involve some or all of the following: meetings, reading, spending time in churches of other traditions, assessments, references, study groups and paperwork.
41. RRS described this part of the DP as follows:  
  
**"17. ...  
Although this stage in the discernment process is slightly more formal than the initial stage, the purpose remains the same: to discern whether the individual has a calling from God. Accordingly, the process remains a spiritual journey rather than training, though a candidate's progression through the various parts of this stage is noted and if at any point I (or the ADDO) discern that the candidate's vocation lies elsewhere, we will encourage the candidate to explore other options."**
42. The 5 substages of the DP at the BDO process are as follows:

a	Diocesan Registration Form [78-84] and reference [86-88]
b	One-to-one meetings with the BDO or the ADDO to see evidence of candidates spiritual calling
c	Placement to experience breadth of Church of England and/or address areas of development.
d	Provisional booking onto BAP several months in advance
e	BAP paperwork to be completed by candidate [271-312]
f	Interview with sponsoring Bishop

43. In her evidence to the Tribunal regarding placements during cross-examination, although not in her witness statement at paragraphs 14 and 15 where she deals with placements, Professor McCalla maintained that she was required to work when on placement. Challenged that she had produced no documentation to show that she was required to work on placement, the Claimant replied that she had produced such documents. What the Claimant was describing was her being asked to write up “Reflections” on her time in placements for RRS. Those placements were before the involvement of RRS. The Claimant accepted that she had attended as a congregant on such placements. The Claimant said this in one of her answers, **“It depends what you mean by work... Ministry can be activities”**.
44. Ms Jones in cross-examination did not agree that a placement was akin to work experience in a secular role. Rather it was about understanding different manifestations of the faith and broadening that understanding. Further she did not accept that participating in Ministry, or even leading it, was work.
45. RRS explained placements in her witness statement at paragraph 22:

**“Despite the use of this word “placement” in, for example, a flowchart showing the process of discernment for Ordained Ministry [page 85], I should explain that at no point are candidates required to work. It is simply a question of the candidate being asked to attend worship and become involved in the life of a certain church or group of churches, just as any other committed lay Christian might do. They would make themselves known to the incumbent and take it from there, but their involvement in the parish would involve some form of voluntary activity, to be fitted around their work or other commitments. It would be discussed and agreed with the incumbent and very much depend upon the candidate’s previous experience and inclination as well as the parish needs. This is intended to further allow the candidate to discern the nature of their calling.”**

I accept the Respondents’ evidence as accurately describing a “placement”.

46. The decision to send a candidate to a BAP lies with the Sponsoring Bishop who considers the detailed paperwork and references arising from the candidate’s discernment journey before interviewing the candidate and making a decision. it was at this stage that the Claimant’s exploration of a vocation within the CoE

ended. The Bishop of Shrewsbury, RSB, did not feel that she could sponsor the Claimant to a BAP as she did not discern the required vocation in the Claimant.

47. The Claimant did not therefore participate in the remaining stages identified in Table A which are not reproduced in these reasons. This meant, as RRS observed, that the Claimant was some way away from being ordained, much less being able to look for any kind of permanent office or employment related to being in Holy Orders.

## CONCLUSION

48. I begin this part of my reasons by identifying what I am deciding. The exercise I undertake is limited to deciding whether or not, in their specific dealings with the Claimant, such services as were provided by either or both of the Respondents fell within the scope of s.55 and s.56 of the EqA.

49. In the Claimant's skeleton, the submission in respect of employment service-provider is put succinctly at paragraph 19:

*"The discernment process was intended to provide the Claimant with vocational guidance and was part of a means of assisting suitable candidates for employment, as such those carrying it out come within the definition of employment service providers outlined above."*

50. I do not accept that submission as adequately or accurately describing the DP as it was evidenced before the Tribunal. Mr Ennis in oral submissions accepted that there were "spiritual elements" but that did not take the carrying out of the DP by the Respondents outside of the legislation.
51. In my judgment, the correct analysis is that the DP, as it was applied to the Claimant, was the discernment of a spiritual vocation or calling to God and is not to be equated to a trade, occupation or a personal office within the meaning of the EqA.
52. That there are aspects of the DP that bear similarities to features that might also be found in an employment context (see the examples relied on at paragraph 16 of the Claimant's skeleton) does not alter the fundamental nature of that process. Similarly, the fact that a person undergoing the DP might at some stage become an employee or hold public office in the CoE does change the correct characterisation of the process of the discernment of a spiritual vocation, whatever may be the subjective desire of that person. In exchanges with the Tribunal, Mr Ennis correctly, in the Tribunal's view, eschewed any notion that the subjective intent of an individual undergoing the DP was a relevant factor.
53. The "services" provided by the Respondents to the Claimant up to the point of the termination of the DP were designed to assist with the process of discernment and selection for ordination training. As the Respondent put it in its submission, even if the Claimant had succeeded in obtaining a place on the BAP, that is not, even

remotely, an offer of employment or office. Indeed, it is not even an offer of ordination.

54. In light of my decision on Issue (iv), Issue (i) does not require determination.
55. Neither Respondent was, or acted as, an employment service-provider in any of its material dealings with the Claimant up to the termination of her DP. Accordingly, the Tribunal does not have jurisdiction to hear the Claimant's only extant claim which fails and is dismissed.

**EJ Algazy KC**  
30 December 2022

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**TABLE A : OVERVIEW OF THE  
DISCERNMENT PROCESS**

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This is a tabular overview of The Reverend Romita Shrisunder's witness statement: [§§6- 45/RS]

References are to paragraphs in RS's w/s: [§x/RS] and to pages in the agreed PH bundle [x]

<b>1.</b>	<b>Discernment Process with VA [§§12-15/RS]</b>
<b>2.</b>	<b>Discernment Process with the BDO [§§16-28/RS]</b>
a.	Diocesan Registration Form [78-84] and reference [86-88]
B	One-to-one meetings with the BDO or the ADDO to see evidence of candidates spiritual calling
c.	Placement to experience breadth of Church of England and/or address areas of development.
d.	Provisional booking onto BAP several months in advance
e.	BAP paperwork to be completed by candidate [271-312]
f.	Interview with Sponsoring Bishop
<b>3.</b>	<b>BAP [§§29-34/RS]</b>
a.	Candidate attends the BAP [265] (lasts around three days)
b.	Bishops' Advisors make their assessments and write their reports for the candidates' Sponsoring Bishops
c.	Sponsoring Bishop decides whether candidate will be selected for training
<b>4.</b>	<b>Initial Ministerial Education (IME1) [§§35-39/RS] (one or two years)</b>
a.	Assessments governed by the Formation Criteria
b.	Principal of theological college or training course reports on candidate's progress
c.	Penultimate and Final reports produced by theological training institution
d.	Ordaining bishop interviews candidate to satisfy themselves as to their suitability for ordination
<b>5.</b>	<b>Initial Ministerial Education (IME2) [§§40-45/RS]</b>
a.	Candidate to find curacy
b.	Curates licenced by the bishop to time limited ecclesiastical office under Common Tenure: may be paid a stipend or may be unpaid
c.	Ordination as deacon
d.	Curacy (three or four years full-time)
e.	Assessment and self-assessments with Formation Criteria
f.	Area Bishop decides if candidate's curacy completed satisfactorily. Assessment at End of Curacy: candidate signed off "Incumbent Status" or "Assistant Status"

g.	Candidate eligible to apply for post as priest in charge of parish (incumbent) or as an assistant priest (assistant)
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**TABLE B: KEY TERMS**

Curacy	A training role, deacon starts working in a parish under the supervision of a training incumbent
Curate	Licensed by the bishop to a time limited ecclesiastical office may be stipendiary or may be unpaid
Deacon	The lesser of the three ordained ministries (can be permanent or for those who expect to be ordained a priest), may be stipendiary or may be self-supporting
Discernment of vocations	Process by which an individual's spiritual vocation to ministry in the Church of England is discerned
Incumbent	Priest in charge of a parish, ecclesiastical office, may be stipendiary or self-supporting
Ordinand	Individual who is in preparation for, or who is undergoing the process of ordination
Ordination	The action of ordaining someone in Holy Orders
Priest	An ordained minister
Vocation	A spiritual calling