



Press Summary

30 July 2024

All Saints Spring Park Parochial Church Council (Appellant) v Church Commissioners (Respondent)

[2024] UKPC 23

Justices: Lord Hodge, Lord Sales, Lord Hamblen, Lord Leggatt, and Lord Richards

Background to the Appeal

This appeal concerns a scheme made by the Commissioners of the Church of England (“**Commissioners**”) under the Mission and Pastoral Measure 2011 (“**2011 Measure**”) to dissolve the parish of All Saints Spring Park (“**ASSP**”).

Following an episcopal visitation in 2016 that concluded that the ASSP parish was not financially viable, it was proposed that the ASSP parish be dissolved and its area divided between the neighbouring parishes of St John Shirley and St George Shirley. On 8 January 2020, a statutory consultation was initiated regarding this proposal and interested parties were invited to make written representations. On 21 February 2020, the incumbent of ASSP parish (the Reverend Yvonne Clarke) and the ASSP Parochial Church Council (“**PCC**”) made written representations regarding the proposal. The Bishop of Southwark approved the proposal on 10 June 2020.

On 21 July 2020, the Commissioners served a copy of a draft scheme that would give effect to that proposal on interested parties, including the PCC and the Reverend Yvonne Clarke, and inviting them to make written representations by 7 September 2020. The Reverend Yvonne Clarke and her son, James Clarke, the Secretary of the PCC, submitted representations by that deadline. The PCC submitted separate representations on 25 November 2020.

On 28 September 2021, the Commissioners decided to make the draft scheme without amendment. The Commissioners served a notice of that decision on all those who made written representations on the draft scheme by the deadline of 7 September 2020, informing

them that, should they wish to appeal against the decision, they must give notice of their intention to do so to the Board by 7 November 2021.

On 28 September 2021, the solicitors, Leigh Day, emailed the Board’s Registry enquiring as to the correct format for an application for leave to appeal to the Board against the Commissioners’ decision. In response, the Registrar wrongly purported to acknowledge receipt of a notice of intention to apply for leave to appeal. On 5 November, Leigh Day gave formal notice of intention to apply for leave to appeal. They did not identify on whose behalf the notice was given.

On 3 December 2021, Leigh Day lodged an application for leave to appeal with the Registry. The accompanying email and form named the PCC as the sole appellant. The enclosed grounds of appeal listed both the PCC and the Reverend Yvonne Clarke as appellants. On 14 July 2022, a panel of the Board granted permission to appeal to the PCC and the Reverend Yvonne Clarke. On 19 April 2023, the Commissioners wrote to the appellants and the Board contending that the Board lacked jurisdiction to hear the appeal.

Judgment

The Board unanimously dismisses the PCC’s and the Reverend Yvonne Clarke’s appeal. It concludes that it lacks jurisdiction to hear the appeal as both appellants do not have standing. If the Board had jurisdiction, it would have dismissed the appeal.

Reasons for the Judgment

Jurisdiction

The Board first addresses the question of jurisdiction. The Board concludes that the PCC lacks standing [59]. Under section 12 of the 2011 Measure, only those who have “duly” made written representations regarding the draft scheme may appeal to the Board against the Commissioners’ decision. While the PCC did make timely representations concerning the initial proposal, it did not make written representations regarding the draft scheme until well after the deadline of 7 September 2020 [56] – [57]. They were, therefore, not duly made. None of the other representations made before that deadline were made on behalf of the PCC. Specifically, while James Clarke was the secretary of the PCC and used his PCC email address to send the representation, the reasonable reader would conclude that he was writing solely in a personal capacity [58].

The Board also concludes that the Reverend Yvonne Clarke lacks standing [65]. Under paragraph 3 of schedule 2 to the 2011 Measure, the Registrar must verify whether an applicant for permission to appeal is entitled to appeal to the Board against the Commissioners’ decision [61]. To enable her to carry out this duty, a notice of intention to appeal must identify the applicant. The obligation is on the solicitor to identify the applicant; the Registrar is under no duty to ask a solicitor for whom he or she acts [61]. In this appeal, the notice of intention to appeal did not state on whose behalf it was given. Neither the Registrar nor the Commissioners would have known who the applicants for permission to appeal were. As such, the Registrar could not carry out her duty to verify whether an applicant is entitled to appeal against the Commissioners’ decision. The notice was, therefore, defective.

Section 12(3) of the 2011 Measure makes clear that, if no valid notice of intention to appeal is given by the deadline, the Commissioners are required to make the scheme [62]. As there

was no valid notice of intention to appeal, the Commissioners are required to make the scheme [64].

Substantive appeal

If the Board had jurisdiction, it would have dismissed the appellants' substantive appeal. The appellants argued that the Commissioners had breached their rights under articles 8, 9, and 14 of the European Convention on Human Rights as the draft scheme involved unlawful discrimination against ASSP parish's minority ethnic congregants and residents [33]. The Commissioners, in making the draft scheme, were not acting as a public authority under section 6 of the Human Rights Act 1998 [67] – [69]. The making of a scheme involves the reorganisation of parishes to make provision for the cure of souls to further the mission of the Church of England. That is an ecclesiastical function and not one of a public nature. As the Commissioners are not a public authority, the Board would have also dismissed the appellants' argument that the Commissioners breached the public sector equality duty under section 149(2) of the Equality Act 2010 [71]. In any event, the draft scheme did not involve unlawful discrimination or any failure to take into account the needs of minority ethnic communities [70]. The Board also stated that, as the 2011 Measure provides for an elaborate process for the obtaining and considering of interested parties' views and the draft scheme had the support of responsible bodies within the Church, the Board, in accordance with its established jurisprudence, would be slow to intervene in decisions of the Commissioners in this regard [72] – [73].

References in square brackets are to paragraphs in the judgment.

NOTE:

**This summary is provided to assist in understanding the Committee's decision. It does not form part of the reasons for that decision. The full opinion of the Committee is the only authoritative document. Judgments are public documents and are available at:
<http://www.jcpc.uk/decided-cases/index.html>**