



Neutral Citation Number: [2020] EWHC 182 (Fam)

Case No: PR19C00551

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/02/2020

Before :

MRS JUSTICE LIEVEN

Between :

LANCASHIRE COUNTY COUNCIL

Applicants

and

E & F

First Respondents

and

MOTHER

Second Respondent

and

FATHER

Third Respondent

Ms Irving QC and Mr Buchan (instructed by **Lancashire County Council**) for the
Applicants

Mr Rothery (instructed by **Forbes Solicitors**) for the **First Respondents**

Ms Hobson (instructed by **Farleys Solicitors**) for the **Second Respondent**

Ms Goodman (instructed by **Steele Smith Solicitors**) for the **Third Respondent**

Mr Achonu (instructed by **Christian Congregation of Jehovah's Witnesses**) for **A & B**

Hearing dates: **28 January 2020**

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Mrs Justice Lieven DBE :

1. This is an application by A & B who are elders (or ministers of religion) of the “Weatherbury” Congregation of Jehovah’s Witnesses (the Congregation). I have changed the name of the place to preserve the children’s anonymity. The application is to set aside a witness summons to A and B issued by HHJ Singleton QC on 29 November 2019. The application raises an important issue about the circumstances in which disclosure can be resisted on grounds of a religious duty of confidentiality, in the context of allegations of child sexual abuse. As I explain below, the facts of this case raise very great concern about the safeguarding of children within the Jehovah’s Witness community. I am therefore intending to publish this judgment, but will anonymise it in a way that will protect the children’s identities.
2. A and B were represented by Mr Achonu a solicitor advocate employed by the Legal Department of the Christian Congregation of Jehovah’s Witnesses (CCJW). The Local Authority was represented by Ms Irving QC and Mr Buchan, the Mother by Ms Hobson, the Father by Ms Goodman, and the children, through their Guardian, by Mr Rothery.
3. The children are E (a girl) aged 12 and F (a boy) aged 10. The parents are both from Asia but have lived in the UK for some years. The children have been brought up in the UK. The parents have both been members of the Jehovah’s Witness community. The Mother remains a member of the Jehovah’s Witnesses. Mr Achonu argues that the Father should no longer be considered a Jehovah’s Witness because he was “disfellowshipped” in 2017. It is not entirely clear to me what this means, given that he continued to attend services, but was apparently “shunned” by the community.
4. On 27 July 2019 A informed the police that the Mother had, in 2016, disclosed to the Elders of the Community that the Father had sexually abused E. The police log records that A had told the police that there had been two incidents; one of the Father masturbating in front of E, and the other of simulating sex with her. The police went to the family home and found the children in the sole care of the Father whilst the Mother was at work. The police referred the matter to Social Services.
5. The Father was arrested and provided a “no comment” interview. He was released on police bail, including a condition that he did not reside at home. However, on 22 August 2019 the bail conditions were cancelled by reason of time, the Father being advised to continue to abide by the bail conditions. The police conducted ABE interviews with both children. E alleged that her Father had committed inappropriate sexual conduct with her between 2011 and 2019, starting when she was 4 years old.
6. The Mother says that she disclosed E’s allegations to A and B in 2016. In her witness statement dated 4 November 2019 the Mother says;

Within the social work statement, it states that I commented that I did not want to inform professional agencies because I was worried that the children would be taken from me. This is not correct. [E] had told me in 2017 that her father had touched her on one occasion and I immediately believed that I should have called the police. However, as a Jehovah’s Witness, we are told to report to the Elders, any misconduct by a family member. This is why my first thoughts were to speak to the Elders and

seek their guidance and support. The Elders spoke to me, came into my house and had a meeting with me to clarify what had happened and what [E] had said. They spoke to the father to confirm the report to him and advised that he would be removed from the congregation. The Elders informed me that I had to think about the consequences of my actions as mentioned, I wanted to go to the police but the message I felt I was receiving was that police involvement was not the appropriate thing to do. I fully accept that this was not being said to me but this is what I was feeling. I did fear that my children would be taken away from me but I didn't keep it to myself, I did talk to the Elders. The Elders took disciplinary action with the father and advised me to change my work hours to ensure that I was home for the children when the father was home. I dropped my hours but I was still going out of the house leaving the father at home with the children. I believed that I had put in place protective measures. The father had been disciplined and he promised me that he would not do anything again. Our marriage did effectively come to an end at that stage and he remained only as a provider for the family.

7. A child protection conference was held on 6 September and both children were made subject to child protection plans. Proceedings were issued on 9 October. On 8 November after a contested hearing the Court concluded that the children should be placed with foster parents and not with the Mother.
8. On 29 October HHJ Singleton ordered that the Local Authority file and serve statements from A and B setting out their investigation of the allegations of sexual abuse made by E and producing the following documents;

The local authority shall file and serve statements from [A] and [B], Elders at the [Weatherbury] Kingdom Hall, by 4pm on 20.11.19 which shall address their investigation into the allegations of sexual abuse made by [E]. The statements will exhibit:

- *Any notes, records, safeguarding reports or statements that were made in connection with the allegations;*
 - *Any records of interviews that they had with [the Mother], [the Father], and/or their parents;*
 - *Any risk assessments that were carried out;*
 - *The [Weatherbury] Kingdom Hall's child safeguarding policy;*
 - *Any other documents that were prepared in connection with the allegations.*
9. On 20 November the solicitor for the Local Authority wrote to the court explaining that A and B were not willing to provide statements or the documentation required. Permission to issue a witness summons was given by HHJ Singleton and time for service abridged. The summons stated that A and B were to produce "*any notes, records, safeguarding reports or statements that were made in connection with the allegations. Any records of interviews [with the parents] ... Any risk assessments that were carried out. Any other documents that were prepared in connection with the allegations*". It should be noted that it was clear from HHJ Singleton's order of 8 November, that she was asking whether there would be "serious criticism" of the

child protection procedures of the Congregation. Therefore both A and B, but also the Jehovah's Witness Congregation, was given full notice of the potential for serious criticism.

10. A and B initially declined service until they had received legal advice. Personal service was effected on 26 November and they both attended court on 27 November. The recital (k) to the order of that date states;

The Local Authority was further informed by the Elders during such discussions that since she informed them of the allegations they had met with her [the mother] on numerous occasions in the home for pastoral visits of which they made no notes. They admitted having documents relating to the allegations and in particular correspondence between themselves and the father including his dismissal from the congregation and his request to be readmitted. They denied having any notes of their conversations with the mother when she made the allegations but asserted that they had referred to the content of the allegations when discussing matters with the father.

11. A and B filed an application to "withdraw" the witness summons on 26 November and that application formed the Position Statement that was submitted by Mr Achonu to me. Neither A or B, nor anyone else from the Congregation have filed any evidence in this case. Save for three documents produced in December 2019 by A and B, which I will refer to below, the Congregation has not explained what A and B, or other members of the Congregation, knew about the alleged abuse. The three documents are as follows;

- a. A very short statement from A and B dated 27 July 2019 saying that they had reported the matter of child abuse to the police and that the police had called at A's home and talked to A and B.
- b. An undated and heavily redacted document headed "Judicial Committee Meeting Minutes", in which the unredacted section states;

In December, [Mother] reported to the elders that her daughter (aged 9) told her that her father had come to her room and had kissed her in a way that made [E] feel uncomfortable and in the course of the conversation, she said this was "not like the last time" at which point [Mother] asked her daughter about this.

The first incident had taken place 2 years ago when [E] was 7. Whilst [Mother] was at work, [Father] was cuddling his daughter in her bed. This was a regular practice and there was no mention of previous sexual activity. However, on this occasion, (may be influenced by alcohol), [Father] was sexually aroused, removed his clothing and that of his daughter and sexual activity (although not intercourse) took place. Nothing more was said about the incident until December 2016.

The matter was reported to the elders in December 2016.

- c. An undated and again heavily redacted document headed “Addendum to [Father] Case”, which states;

4/5 weeks later His wife reported another incident of improper conduct by [Father] on his daughter [E]. She told her mother about it straight away. He laid on the bed fully clothed and pulled her on top of him and rubbed her up and down his body.

[Mother] told brothers details as recorded above. She felt confident that this was the first conduct of this nature since the initial judicial case @15 months earlier.

12. It is incontrovertible from these documents that the elders of the Congregation knew about E’s allegations since at least December 2016 (when E was aged 9). They did not report those allegations to the police until July 2019. This was despite knowing that the alleged abuser, the Father, remained living in the same household as E. It is not possible from these documents to work out the precise timing of events, but it seems from document (c) that the elders knew the abuse was occurring over a prolonged period and knew that it was alleged by E that it was continuing. It also seems from the limited information before the Court that the elders believed the allegations, or certainly did not disbelieve them. I can only say that on the documents that I have seen that the approach of the Congregation to E’s allegations, and their failure to take effective steps to protect a young child within their community, on the face of it gives rise to deep concern.
13. There are two policy documents produced by the Congregation which purport to deal with the safeguarding of children within their community. The first is dated 2013. This is titled Watch Tower Bible and Tract Society of Britain and Congregations of Jehovah’s Witnesses in the United Kingdom and Ireland “Child Safeguarding Policy”. It starts with the following;

Definition of Child Abuse

Child abuse is the abuse of a relationship with a child. It involves a misuse of power and a betrayal of trust. It may include physical, sexual and emotional abuse, or neglect, as defined by law. A child’s trust is usually given completely, without reservation. So if that trust is betrayed, it has a devastating impact on an unsuspecting young mind.

Sexual abuse occurs when someone uses a child to gratify his or her own sexual desires. It could include fondling of genitalia, sexual intercourse, oral or anal sex, or fondling of breasts.

Policy statement

Children are a sacred trust, an “inheritance from Jehovah” (Psalm 127:3)

Therefore, the care and safeguarding of children and the promotion of their welfare is of the utmost concern and importance to the congregation. In recognition of this responsibility, our policy objectives

are to ensure that if ever a matter requiring the protection of a child should arise within the congregation, it will be dealt with promptly and properly and that children in the congregation will be protected from avoidable harm. This policy is in harmony with the long-standing and widely published religious principles of Jehovah's Witnesses, as reflected in the articles that are set forth at the end of this Policy.

14. The most relevant parts of the policies are paragraphs 7, 10, 11 and 13. These state;

7:

Conversations with congregation elders relating to spiritual counselling or assistance are confidential and will therefore not be shared with third parties other than other elders and the branch office, as the case may require, based on Jehovah's Witnesses' established religious procedures. However, should such conversations include information which indicates that a child may be at risk of harm then that information will be conveyed to the extent necessary to ensure that the policies and procedures herein expressed shall be properly followed so as to safeguard children

10:

For the safeguarding of children and because child abuse is a serious sin, any congregation member who in any way learns of child abuse involving someone who associates with Jehovah's Witnesses should advise the coordinator of the congregation's body of elders or, in his absence, any other elder of the situation as soon as possible. (Leviticus 5:1). Congregation elders will comply with any relevant laws. (Romans 13:1).

11:

In the event a matter involving the abuse of a child is brought to the attention of congregation elders, the coordinator of the body of elders (who is also the designated coordinator for such matters), or in his absence another congregation elder, will arrange for contact to be made with a Safeguarding Elder at the branch office of Jehovah's Witnesses as soon as possible for guidance and direction. This will be done even if the allegation is unsupported.

13:

As soon as possible, the coordinator of the body of elders or, in his absence, another member of the Congregation Service Committee, will ensure that an alleged incident of child abuse is reported to (1) a parent, (2) a guardian, or (3) another holder of parental responsibility for the child (but in (1), (2), or (3) the report will be made only to a person who is not the alleged abuser). If a parent, guardian, or other person having appropriate parental responsibility for the child is not available, the congregation's coordinator of the body of elders or, in his absence,

another member of the Congregation Service Committee will again contact a Safeguarding Elder at the branch office of Jehovah's Witnesses to request situation-specific guidance and direction.

15. The second document is titled "Jehovah's Witnesses Scripturally based Position on Child Protection". It is dated April 2018. I was told this was a global wide policy, and not just for the UK and that the 2013 policy had been withdrawn and replaced by the April 2018 policy. There was reference to there being some other relevant policy document between 2017-2018 but that was not before me. I should explain that Mr Achonu, when I asked him what safeguarding documents had been produced by the Congregation to the Independent Inquiry into Child Sexual Abuse (IICSA), told me that he only represented A and B and would have to take instructions on what could be produced. I note that Mr Achonu had represented the Congregation at the IICSA proceedings, and therefore was well placed to know what the relevant child abuse policies were. Quite properly he asked for a short adjournment to take instructions, which I gave him, and he then told me that documents produced to IICSA which were not otherwise in the public domain were confidential.

16. The 2018 policy, as most relevant states;

Jehovah's Witnesses should abhor child abuse and view it as a crime (Romans 12:9). We recognize that the authorities are responsible for addressing such crimes (Romans 13:1-4). The elders do not shield any perpetrator of child abuse from the authorities.

In all cases, victims and their parents have a right to report an accusation of child abuse to the authorities. Therefore, victims, their parents, or anyone else who reports such an accusation to the elders are clearly informed by the elders that they have the right to report the matter to the authorities. Elders do not criticize anyone who chooses to make such a report. (Galatians 6:5)

When elders learn of an accusation of child abuse, they immediately consult with the branch office of Jehovah's Witnesses to ensure compliance with child abuse reporting laws. (Romans 13:1). Even if the elders have no legal duty to report an accusation to the authorities, the branch office of Jehovah's Witnesses will instruct the elders to report the matter if a minor is still in danger of abuse or there is some other valid reason. Elders also ensure that the victim's parents are informed of an accusation of child abuse. If the alleged abuser is one of the victim's parents, the elders will inform the other parent.

Parents have the primary responsibility for the protection, safety and instruction of their children. Therefore, parents who are members of the congregation are encouraged to be vigilant in exercising their responsibility at all times and do the following:

- *Have direct and active involvement in their children's lives.*
- *Educate themselves and their children about child abuse.*
- *Encourage, promote, and maintain regular communication with their children. (Deuteronomy 6:6, 7; Proverbs 22:3)*

Jehovah's Witnesses publish an abundance of Bible-based information to assist parents to fulfil their responsibility to protect and instruct their children.

Child abuse is a serious sin. If an alleged abuser is a member of the congregation, the elders conduct a Scriptural investigation. This is a purely religious proceeding handled by elders according to Scriptural instructions and is limited to the issue of membership as one of Jehovah's Witnesses. A member of the congregation who is an unrepentant child abuser is expelled from the congregation and is no longer considered one of Jehovah's Witnesses. (1 Corinthians 5:13) The elders' handling of an accusation of child abuse is not a replacement for the authorities' handling of the matter. (Romans 13:1-4)

17. There are a number of points to note about these policies. Firstly, Mr Achonu told me that the 2013 policy had been replaced in 2017, but the 2017 document was not produced before me. Secondly, the 2013 policy appears to be significantly stronger than the 2018 policy. The 2013 policy at para 7 refers to conversations relating to spiritual counselling being reported to third parties if the child may be at a risk of harm. However, in the 2018 document there is no reference to this, and the onus seems to be being placed very firmly on parents, with little or no responsibility being taken by the Congregation. It is a matter of real concern that the Congregation appears to be weakening its policy about safeguarding children. Thirdly, there is no reference in either of the documents for the need for consent to disclose otherwise confidential discussions before disclosure is made. Mr Achonu could not tell me where the alleged requirement by the elders that consent was required before disclosure given, had come from.
18. As I will explain below, it does not appear that either of these policies has been followed on the facts of this case. This can only raise a suspicion that the policies are drawn up, perhaps for public consumption, but not followed. I note that what has happened in this case does not appear to be an aberration just by the two ministers, A and B, because it is clear from the documentation that has been produced that E's allegations were raised and considered at a higher level within the Congregation. I cannot tell whether what has happened in this case is indicative of a more widespread problem within the Congregation, and that is a matter for the IICSA and not me. I will take steps to ensure that this judgment is brought to the attention of IICSA.

The parties' submissions

19. Mr Achonu argues there is a duty of confidentiality by elders or Ministers of religion and they are unable to disclose information which has been communicated to them in the course of confidential "spiritual counselling" without the express consent of the individuals concerned. He says that that duty of confidentiality is protected by article 9 of the European Convention on Human Rights (ECHR). In the light of this argument he says that A and B are prepared to disclose information given to them by the Mother, because she has provided her consent, but not by the Father because he has not given consent. It is not at all clear how in practice this would work, given that much of the information sought relates to both of them. However, this issue is somewhat academic given the conclusions I have reached in this judgment.

20. Mr Achonu argues that A and B are under a spiritual duty not to disclose confidential religious communications and that if such confidence is breached then individuals might no longer confide in their ministers.
21. He relies by analogy on the approach in the Police and Criminal Evidence Act 1984 (PACE) Schedule 1, and the provisions therein, which protect confidential information, including that relating to spiritual counselling in s.12 (b), and a balancing exercise has to be undertaken under Schedule 1 of PACE when disclosure of such records is sought. He argues there is an analogy with the position in *R v H* 2019 1 WLR 3744 where the Court of Appeal refused to order the disclosure of discussions between an offender manager and an offender. The Court said that it would only order such confidential discussions to be disclosed if there was a very good reason, because it would be contrary to public policy to do so. I note that at [39] the boundaries of the confidentiality being asserted are expressly said to be “*apart from child protection issues....*”. Therefore this case is of no assistance to Mr Achonu on the facts of the present case.

22. *R v H* at [53 states];

Firstly, it would in our view be contrary to public policy to breach the confidentiality of discussions of the kind save for very good reason. Such discussions are not subject to privilege in the sense that something a defendant or appellant tells his lawyers would be; and the internal rules of Camden social services (or of any other local authority’s officers) are not binding in the courts; but we regard them as well drafted, sensible and worthy of respect. There is a distinction between disclosure necessary to avoid imminent future criminality (in particular a threat to someone’s life or safety) and the obtaining of admissions to past offences. It would be extremely unfortunate if convicted defendants (whether young or adult) were deterred from speaking to those charged with their supervision or rehabilitation until any appeal against conviction had been dealt with.

23. Mr Achonu argues that the communications with A and B, and the documents sought under the witness summons, should be treated in the same way as a religious confession. He relies on *R v Hay* (1896) 2 F&F4, which is cited in Archbold at 12-21, as support for the proposition that; “*the position of priest and penitent has not been authoritatively decided, but the tendency of judicial dicta is that, while in strict law the privilege does not exist, a minister of religion should not be required to give evidence as to a confession made to him.*”

24. The facts of *Hay* are that it appeared that the Roman Catholic priest had received, doubtless unknowingly, a watch that had been stolen. The priest was called to give evidence and was asked from whom did he receive the watch. He refused to answer saying that the reply would implicate the person who gave it to him and he would be violating the laws of the church, see p.935. The Judge then said;

I have already told you plainly I cannot enter into this question. All I can say is you are bound to answer. From whom did you receive that watch. On the ground I have stated to you, you are not asked to disclose anything that a penitent may have said to you in the confessional. That

you are not asked to disclose; but you are asked to disclose from whom you received stolen property on the 25th of December last. Do you answer it or do you not?

When the priest continued to refuse to answer the Judge sent him to prison for contempt.

25. In the report of Hay there are very extensive notes on the law, which provide an in-depth commentary on the sanctity of the confession, pre and post the Reformation. The view of the author of the notes is that there is a common law protection for what is said in the confessional, but not for what is said or done outside it. Therefore in the view of the author, the Judge in Hay was correct because the handing over of the watch was certainly not done in the confessional.
26. Mr Achonu argues that the duty of confidentiality is not limited to the confessional but can have a wider remit. He says that any information revealed during spiritual counselling is subject to the duty of confidentiality. It is not entirely clear to me what would be covered by spiritual counselling, but given that A and B are refusing to produce any information about what they knew or what investigations were made unless consent is given, it would appear to be being argued that all information relating to the alleged sexual abuse was related to spiritual counselling and thus confidential.
27. Mr Achonu relies on a Canadian Supreme Court case R v Gruenke [1991] 3 RCS 263. The issue was whether the communications between the Defendant, who was accused of murder, and her pastor were protected by common law privilege or under the Canadian Bill of Rights. The approach of the Court was not to apply a strict approach to what was a confession, see [291], but to look at all the relevant circumstances and apply what is known in Canada as the Wigmore criteria. These are set out at p.284 as follows;
 1. *The communications must originate in a confidence that they will not be disclosed.*
 2. *This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties.*
 3. *The relation must be one which in the opinion of the community ought to be sedulously fostered.*
 4. *The injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.*
28. These criteria are very similar to the approach taken in article 9(1) and (2). The communications must fall within the said religious duty of confidentiality and if they do so any order to disclose must meet a proportionality test.
29. Mr Achonu then relies on article 9 ECHR to say that an order to disclose information would breach A and B's religious freedom. Article 9 states;

1. *Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*
2. *Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of rights and freedoms of others.*

30. In *Jehovah's Witnesses of Moscow v Russia* (2011) 53 EHRR 4, when considering the treatment of the religious community of Jehovah's Witnesses in Moscow, the European Court of Human Rights said at [119];

The Court further reiterates that the state's duty of neutrality and impartiality prohibits it from assessing the legitimacy of religious beliefs or the ways in which those beliefs are expressed or manifested. Accordingly, the state has a narrow margin of appreciation and must advance serious and compelling reasons for an interference with the choices that people may make in pursuance of the religious standard of behaviour within the sphere of their personal autonomy. An interference may be justified in light of para.2 of art.9 if their choices are incompatible with the key principles underlying the Convention., such as, for example, polygamous or underage marriage or a flagrant breach of gender equality, or if they are imposed on the believers by force or coercion, against their will.

31. Mr Achonu accepts that the protection of confidential religious communications, however that is defined, is not an absolute right, whether under the common law or the ECHR. He argues that any order for disclosure must be proportionate, fully taking into account A and B's religious beliefs. He points out that it was A and B who reported the alleged sexual abuse which led to the children being ultimately protected by the Local Authority. They had a meeting with the police, although Mr Achonu did accept after some pressing by Ms Irving that A and B have not given statements to the police. He argues that the duty of safeguarding is not on the ministers or the Congregation, rather on the Local Authority. He then argues that A and B have not been told why the information is relevant. He seemed to suggest that there were other sources of the information sought, although it was not clear to me what the other sources were.
32. Ms Irving QC and Mr Rothery argued that it was clear that A and B held information which was highly relevant to the matters the Court would ultimately have to decide. This was in relation to the findings of fact sought in respect of the Father; the allegation that the Mother had failed to protect the children; and any assessment of future risk. The Congregation had known about the allegations since 2016 and had carried out some form of investigation but refused to disclose what. The information held by the Congregation is particularly important because the Father had given a no comment interview to the police, and has failed to respond in any substantive way to the threshold findings. Further, it was the Mother's case, as set out in the part of her

witness statement above, that she was discouraged by the elders from going to the police.

33. Ms Irving also argues that there is an ongoing risk to other children, because the Father apparently still goes to church, although Mr Achonu told the court that the Father was “shunned”. Therefore, quite apart from the court needing to investigate past conduct, there is an ongoing risk which the Local Authority has to consider.
34. Ms Irving argues that religious confidentiality is not absolute, and that issues of child abuse are plainly ones where it is appropriate to order disclosure.
35. Ms Hobson, for the Mother, agrees that disclosure should be ordered. Her case is that the clear message from her spiritual advisers was that the matter could be “managed in house”. Ms Hobson argues that the approach of A and B, and apparently of the Congregation, places the welfare of the children substantially below that of the Father. She reminds me that the Father continued to live in the house until July 2019 even though he was subject to “disfellowship” from the Congregation at some point in 2017.
36. Ms Goodman, for the Father, only met the Father for the first time this morning, and says that he continues to resist any order for disclosure against A and B. However, she did say that he didn’t want the children to have to give evidence.
37. Mr Rothery for the children, supports Ms Irving’s submissions. He said that the Guardian had substantial reservations about the practice of the Congregation in relation to safeguarding children. He also argues that the information sought was not given in a confession, and as such does not fall within the privilege referred to in Archbold, and implicit within *R v Hay*. What the Father said to the elders cannot be spiritual counselling. These were discussions initiated by the elders pursuant to their form of child protection.

Conclusions

38. There are a whole series of reasons, some overlapping, as to why the witness summons should be upheld and disclosure ordered and why I reject Mr Achonu’s submissions.
39. Firstly, there is no evidence that the material sought through the witness summons was in any sense a confession or akin to a confession. It appears that the allegation of sexual abuse came to the elders’ attention because the Mother reported it, not because the Father confessed to the elders, or sought spiritual counselling. The elders then carried out some form of investigation and met with the Father, probably on more than one occasion. It is possible that at some point the Father “confessed”, but I have no evidence this was the case. In any event, the investigation cannot itself amount to a confession. Therefore, to the degree that there is a duty of confidentiality in relation to a confession, which I am prepared to assume on the basis of *R v Hay*, but not decide, it would not arise here.
40. Secondly, the material that the Council seeks also does not, on the evidence, amount to “spiritual counselling”. There was an investigation into E’s allegations. The whole focus of Mr Achonu’s submissions on this point appears to me to be misconceived.

To describe the material sought as being the product of spiritual counselling is to focus on the Father and concerns about his religious confidentiality, rather than on the child. The elders appear to have been neither carrying out an investigation into the child's allegations and how she could be protected, nor providing spiritual counselling to the Father. Mr Achonu's submission in my view provides a plain example of his clients, with or without the agreement of the Congregation more widely, putting the Father's interests above those of the child.

41. Thirdly, and in any event, the Congregation's own policy, certainly that of 2013 and probably the 2018 version, indicate that where a conversation amounts to spiritual counselling but indicates that a child may be at risk of harm, then it "will be conveyed to the extent necessary to ensure that the policies and procedures herein expressed shall be properly followed so as to safeguard children." In the 2018 policy at para 5, it says that the elders will be told to report the matter if the child is still at risk of abuse. It seems highly likely that E was still at risk of abuse up to July 2019, yet the elders did not report the allegations.
42. The stance that Mr Achonu has taken in this case, namely that the material will only be disclosed when the individual consents, is not reflected in either of the policy documents and he could give me no support for that approach.
43. There does appear to be a strong suspicion that the Congregation's own published guidance, both 2013 and 2018 was not followed, not just by A and B, but also by more senior figures in the Congregation. From a child safeguarding viewpoint this is deeply troubling, not least because the policy documents are ones which seem to be produced for public consumption but not to be effective to protect children.
44. To the degree it is argued that although there might have been a requirement under the policy to report the allegations earlier, that does not mean that the information should now be disclosed, I reject that suggestion. The information held by the Congregation has the potential to be highly relevant both for the future protection and wellbeing of E and F, but also of other children. The information is likely relevant to three key questions for the Court – whether the threshold findings of fact in respect of the Father are made out; whether the Mother failed to protect E; and what future risk the Father poses to E if she lives with her Mother. It is also potentially highly relevant to whether the Father poses a risk to other children. This is a situation which is concerned with future child protection, and not simply past criminality, it therefore falls on the other side of the line applying the approach in R v H at [53].
45. Fourthly, Mr Achonu accepted that whether the duty of religious confidentiality is examined through the common law or article 9 it is not an absolute duty. This is clear from the caselaw, R v H, R v Hay and the words of article 9(2). Respect for A and B's religious beliefs is given by article 9(1), but that is qualified by article 9(2) including in the interests of public safety, the protection of health and morals, and the protection of the rights and freedom of others. It could not be more obvious that a freedom to manifest ones religious beliefs must give way to the need to protect a child from sexual abuse. That balance is to some degree reflected in the two policy documents, but has not been reflected in A and B's approach to this case. The evidence points inexorably to A and B having protected their and the Father's religious beliefs at the expense of the protection of the child.

46. Fifthly, it therefore follows that the witness summons and the requirement for full statements from A and B, together with the documents sought are a proportionate interference in A and B's right to manifest their religion. The interference in their religious rights is in my view relatively slight, given the terms of the two policy documents and the fact that the information does not appear to have been given in a confession or in any real sense as spiritual counselling. The other side of the proportionality balance is that the need for the protection of E and F, as well as other children is a highly weighty if not overriding factor.