

CASE NOTES

EDITED BY RUTH ARLOW

Barrister, Deputy Chancellor of the Dioceses of Chichester and Norwich

AND WILL ADAM

Rector of Girton, Ely Diocesan Ecumenical Officer

Re St Peter in the Forest, Walthamstow

Chelmsford Consistory Court: Pulman Ch, February 2008

Churchyard – tunnel – fee

Thames Water Utilities Ltd sought permission for the construction of a tunnel beneath one corner of the closed churchyard as part of a pipeline between a desalination plant and a reservoir. At the churchyard, the tunnel would be sunk to a depth of eight metres below the graves. The PCC and the DAC supported the petition. The incumbent opposed it. The chancellor held that the tunnel was not a ‘building’ for the purposes of the Disused Burial Grounds Act 1884 such that construction of the tunnel was not prohibited by that Act. The chancellor observed that the commercial value of a right to tunnel under the churchyard could have been substantial and that the PCC’s obligations to maintain the church fabric meant that it should look to all proper sources of income. He held that it was not an ‘improper ransom’ to sell a right that has capital value for which a commercial enterprise would be willing to pay a proper sum. The chancellor endorsed the figure of £25,000 broadly agreed by the parties as an appropriate sum payable to the parish by Thames Water. [RA]

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Re Lambeth Cemetery

Southwark Consistory Court: George Ch, February 2008

Exhumation – ‘Confucian-based’ religion

The petitioner sought permission to exhume the remains of his grandfather, who was buried in 1982, in order for their cremation and removal to Hong Kong for burial at their ancestral temple. The deceased had practised a ‘Confucian-based’ religion, in which clan members were traditionally exhumed and cremated three years after burial and then re-interred in the ancestral burial ground.

In applying the principles set down in *Re Blagdon Cemetery*,¹ the chancellor found that a fundamental mistake had been made, in that none of the family had appreciated or had had explained to them the concept of final Christian burial and that they had entirely failed to appreciate that ecclesiastical law does not readily recognise the idea of temporary burial. A faculty was granted. [RA]

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Noah v Desrosiers trading as Wedge

London Central Employment Tribunal, May 2008

Religious dress – headscarf – hairdresser – discrimination

The claimant, a Muslim, applied for a position as hair stylist. The respondent asked about the claimant's headscarf and indicated that the wearing of it was problematic, since the salon expected staff to display contemporary hairstyles to customers. The discussion of this topic was neither disparaging nor derogatory. The claimant was not appointed and the position was not filled. The claimant brought proceedings alleging direct and indirect discrimination on grounds of religion or belief. The tribunal found that there was no direct discrimination but that there had been indirect discrimination. In relation to indirect discrimination, the tribunal found that the provision, criterion or practice (PCP) applied was that an employee appointed to the position of assistant stylist would be required to display her hair at work. The respondent conceded that this PCP put persons of the same religion as the claimant at a particular disadvantage but contended that it did not put the claimant at a disadvantage since the claimant would not in fact have been offered a job, given that the position was never filled. Nevertheless the Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, rendered unlawful discrimination in relation to job applicants and in relation to arrangements made as part of the recruitment process, whether or not an appointment was ultimately made. Despite the fact that no job would, in fact, have been offered, the claimant was put at a disadvantage by the decision to proceed no further with consideration of her as a candidate.

This prima facie finding of indirect discrimination meant that the tribunal needed to consider whether the respondent had shown that the PCP she had applied to the claimant was a proportionate means of achieving a legitimate aim. The tribunal found that a compromise situation of the type present in *Azmi v Kirklees Metropolitan Borough Council*,² was not an option in the

1 *Re Blagdon Cemetery* [2002] Fam 299, [2002] 4 All ER 482, Ct of Arches.

2 See *Azmi v Kirklees Metropolitan Borough Council* [2007] ICR 1154.