that the ET was entitled to find that the doctrines of the Church were as stated in Canon B 30, with specific regard in relation to same-sex marriages to the statement of Pastoral Guidance from the House of Bishops. It was not necessary that there should be an express provision prohibiting a priest from entering into a same-sex marriage and spelling out the consequences if he or she did so. The teaching and doctrine of the Church was clearly spelt out in Canon B 30, paragraph 1 of which made it plain that marriage was regarded as being between one man and one woman and delimited the concept so as to exclude same-sex marriage. Furthermore, it was made clear in paragraph 3 that a priest was expected to uphold what was described expressly as the Church's doctrine of marriage. Although the Marriage (Same Sex Couples) Act 2013 had extended the meaning of marriage, the position of the Church of England had been carefully preserved in sections 1(3), 1(4) and 11. The EAT had not, therefore, erred in law in deciding that the ET had been entitled to find that the requirement had been applied so as to comply with the doctrines as found.

As to the claim of harassment, the court dismissed the appeal on that ground also. However profoundly upsetting Canon Pemberton had found the Church's official stance on same-sex marriage and its impact on him, it did not follow that it was reasonable for him to regard his dignity as violated or that he had been placed in an intimidating, hostile, degrading, humiliating or offensive environment by the Church applying its own sincerely held beliefs in a way expressly permitted by Schedule 9 to the Equality Act. If a person belongs to an institution with known, and lawful, rules, it implies no violation of dignity, and is not cause for reasonable offence, that those rules should be applied to that person, however wrong he or she may believe them to be. Not all opposition of interests is hostile or offensive. It would be different if the bishop had acted in some way which impacted on Canon Pemberton's dignity, or created an adverse environment for him, beyond what was involved in communicating his decisions; but that was found by the ET not to be the case. [Frank Cranmer]

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Re All Saints, Buncton

Chichester Consistory Court: Hill Ch, 11 April 2018

[2018] ECC Chi 1

Confirmatory faculty – architect's misconduct – removal from diocesan list – costs

Works of redecoration by a single coat of limewash were undertaken to the nave of this Grade I listed Norman church in 2013. The Diocesan Advisory Committee (DAC) had issued a notification of advice recommending that the proposed

works be subject to a number of stringent provisos, expressing concern about the need to address environmental conditions in the church. No faculty was ever sought, or granted, for the 2013 works. Over the winter of 2016–2017 significant algal growth was noted and the Parochial Church Council (PCC) decided that further work of redecoration was needed. That work was undertaken in April 2017, without a faculty, by the application of clay paint. When this was discovered after a visit by the DAC secretary, a confirmatory faculty was sought. The chancellor found that, contrary to his denial, the inspecting architect had advised the PCC that no faculty was needed for these works as they could be undertaken pursuant to the earlier permission. The chancellor found that the incumbent and churchwardens had accepted and reasonably relied upon the incorrect architect's advice. The chancellor did not accept the architect's account that he had advised the parish to seek the advice of the archdeacon and had not been instructed in relation to the redecoration contract.

The guiding principle in determining a petition for a confirmatory faculty is to consider what the court would have done had a faculty been sought prospectively. The DAC and the Church Buildings Council both advised that the works should not have been undertaken until the significant environmental problems in the church had been addressed. Among other things, rainwater goods were needed. In this case, had a prospective faculty been sought, it would have been refused, but here the court has been deprived of the opportunity of considering the merits and demerits of the proposal prior to implementation. This was a case where a bona fide mistake had been made through reliance on flawed expert advice, as opposed to one where there had been wilful disregard of canonical and other legal duties. It would not be appropriate simply to dismiss the petition, neither approving the works nor compelling their reversal. Rather, the chancellor granted the confirmatory faculty on stringent conditions as to the prompt preparation of a long-term management plan to address the environmental problems within the church, with a petition for the undertaking of the first phase of those works to be issued within 10 months. The chancellor indicated that the application of List B to this church should be lifted for 12 months, either by an indication from the archdeacon that such an approach would be taken or by the making of an excluded matters order.

As far as the architect's position was concerned, the chancellor noted that inspecting architects and contractors should always, invariably and without fail obtain a copy of the relevant faculty or other authorisation before they commence any works. The chancellor expressed concern about the architect's familiarity with the operation of the faculty jurisdiction, noting his failure to distinguish between the advisory role of the DAC and the adjudicatory role of the chancellor, his repeated use of obsolete language and his failure to accept that he was in any way responsible for the issues which had arisen in this case. This was of particular concern in light of the fact that he did not recall a

prior decision of the chancellor in 2011 where the chancellor had had occasion to criticise him. The chancellor directed that the architect had 21 days to make written submissions as to whether the chancellor should recommend to the DAC that his name be removed from the list of approved architects.

The chancellor noted that most of the court costs had been accrued by the need for a hearing to consider the conflicting evidence between the petitioners and the architect. That dispute had been resolved in the petitioners' favour and the architect was found to have been less than candid in his dealings with the DAC and less than truthful in his evidence to the court. The court costs would be paid by the petitioners with a two-thirds contribution from the architect, subject to the right of the parties to make submissions in support of an alternative costs order. [RA]

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R (Adath Yisroel Burial Society & Anor) v HM Senior Coroner for Inner North London

Divisional Court: Singh LJ and Whipple J, 27 April 2018

[2018] EWHC 969 (Admin)

Refusal by coroner to prioritise Jewish and Muslim burials – Equality Act 2010 – Article 9 ECHR

The claimants challenged the lawfulness of the policy adopted by the Senior Coroner for Inner North London, Ms Mary Hassell, that no death will be prioritised in any way over any other because of the religion of the deceased or family, either by the coroner's officers or by coroners – described variously by Ms Hassell as a 'cab rank rule' and 'an equality protocol' – on the grounds that it breached Article 9 of the European Convention on Human Rights (ECHR) (thought, conscience and religion) and Article 14 (discrimination), that it was indirect discrimination contrary to section 19 of the Equality Act 2010 and that it breached the public sector equality duty (PSED) in section 149 of that Act. The Chief Coroner, as an interested party, submitted that, as a matter of public law and quite apart from the Human Rights Act 1998, the policy was unlawful because it fettered Ms Hassell's discretion and was irrational. Ms Hassell's particular concern was that the Jewish families represented before the court were being prioritised over other families by her coroner's officers and she wished to stop the practice because she argued that what causes most distress for all families is a delay in decision-making and notification of that decision. She maintained that her policy took account of Articles 8, 9 and 14 ECHR and the relevant sections of the Equality Act.

The court concluded that the coroner's power in the present case was akin to a power derived from statute, that the principle against fettering a discretion