

suitable as a permanent roof covering for a mediaeval church. If it was allowed to remain it should be inspected every six months. The DAC was opposed to the removal of lead remaining on roofs following theft.

The archdeacon intervened and put the petitioners to proof at an oral hearing. The evidence showed that Ubiflex was untried as a total roof covering and was not recommended by the manufacturer for that purpose. The Commissary General applied the guidelines set out by the Court of Arches in *Re St Alkmund, Duffield* (noted above). The works did result in harm to the significance of the church as a listed building but the harm was less than substantial. The justification for putting the church into a weatherproof state was compelling, although there was no justification for the way in which the PCC had gone about matters. Permitting the roof covering to remain for a limited period, and on strict terms, would result in public benefit; in particular, the building and its contents would be protected from the elements and the church could be used. A confirmatory faculty was granted subject to a number of conditions, including that the faculty be limited to five years and that there be inspections by an architect every six months. Proposals for re-roofing in lead or other sheet metal were to be formulated, a designated restoration fund established and a petition for re-roofing submitted within four years. The registry fees were to be paid by the petitioners. The builder was ordered to pay half of the archdeacon's costs (which were £4,560) and a further sum of £5,000 to the PCC under section 13(1) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991, on the basis that they had incurred expense that had been occasioned by his act or default. [Alexander McGregor]

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Catholic Care (Diocese of Leeds) v Charity Commission for England and Wales

UK Upper Tribunal (Tax & Chancery): Sales J, 2 November 2012

[2012] UKUT 395 (TCC)

Adoption agency – charity – same-sex couples

Catholic Care excluded same-sex couples from consideration as adoptive parents in accordance with what it perceived to be Roman Catholic teaching. The Equality Act (Sexual Orientation) Regulations 2007 outlawed that policy but gave voluntary adoption agencies until 31 December 2008 to comply. Regulation 18 of the 2007 Regulations allowed charities an exemption for restricting benefits to persons of a particular sexual orientation provided the

restriction was in pursuance of the provisions of a charitable instrument. Catholic Care therefore sought and was refused the Charity Commission's consent to amend its Memorandum of Association so as to bring it within the exemption regime.

In its second appeal to the Upper Tribunal, Catholic Care accepted that religious conviction alone could not in law justify the denial of its adoption services to same-sex couples but argued that its proposal was proportionate to achieving a legitimate aim of continuing its services because same-sex couples would be able to use other voluntary adoption agencies and local authorities. Moreover, if it could not discriminate it would lose its voluntary income; and if it were to close, the overall provision of adoption services and the number of children placed with adoptive families would be reduced. Sales J rejected Catholic Care's latest appeal. He agreed with the First-Tier Tribunal that it had failed to demonstrate sufficiently weighty reasons to justify the proposed discrimination. The fact that same-sex couples could seek access to adoption services elsewhere would not stop them from feeling discriminated against or mitigate the harm done to the general promotion of equal treatment for heterosexuals and homosexuals. [Frank Cranmer]

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Catholic Child Welfare Society and others v Various Claimants and The Institute of the Brothers of the Christian Schools and others

Supreme Court: Lord Phillips, Baroness Hale, Lords Kerr, Wilson and Carnwath, 21 November 2012

[2012] UKSC 56

School – sexual abuse – vicarious liability – religious order

The members of the Institute are lay religious. The Institute provided the teachers for St William's School, Market Weighton, which closed in 1994. The school had been managed by the Middlesbrough Diocesan Rescue Society until 1982 and thereafter by the Catholic Child Welfare Society (Diocese of Middlesbrough). The previous headmaster, Brother James, had been convicted of a series of sexual offences against boys; and 170 former pupils brought claims against both the managers of the school from 1973 (the Middlesbrough Defendants) and the Institute itself, arguing vicarious liability for alleged acts of sexual and physical abuse committed between 1952 and 1992. The brothers who taught at the school were not contracted to the Institute but to the Middlesbrough Defendants, under secular contracts of employment. On a preliminary issue the High Court held – and the Court