in the same position as, an employee of the Archdiocese. His position as a priest had given him a degree of general moral authority; his priestly functions included a duty to evangelise and he had had a special responsibility for youth work. He was able to develop his relationship with the claimant through a disco organised by him on church premises. Incidents of sexual abuse occurred at the presbytery where the priest resided because of his position. Smith LJ, though stressing that cases of this type would be fact-sensitive depending upon 'with what ostensible authority the church clothes its priests or pastors and for what legitimate purposes', held that a church would be vicariously liable for abuse where 'those legitimate purposes clothe the priest or pastor with the ostensible authority to create situations which the priest or pastor can and does then subvert for the purposes of abuse'.

The Court of Appeal upheld the High Court's judgment that there been negligence on the part of other priests in dealing with complaints against the priest. However, Neuberger MR doubted whether the High Court had been entitled to reach the conclusion that, in dealing with complaints, other priests had been negligent in not reporting them to the police and to their superiors. Jack J needed to apply the 'historic standards of 1974, rather than the contemporary standards of 2010'. Applying the standards of the time, the priest-in-charge would have been acting properly had he taken up the allegation of abuse and, having received a convincing denial, had taken the matter no further. In the event, he had been inappropriately casual in his supervision of the priest following the allegation and that negligence was causative of the claimant's loss.

The Court of Appeal held that the Archdiocese did in fact owe a duty of care to the claimant. It was misleading to regard that as a duty to the world in general, as the High Court had done; rather, it was a duty on the Church to look out for and protect young boys with whom the priest was associating after a complaint that he had sexually abused one of them. It was easy to envisage circumstances where an employer could owe, and be in breach of, a duty of care without being vicariously liable in respect of sexual abuse committed by an employee.

*This case note was supplied by Russell Sandberg and is an edited version of a case summary prepared for* Law and Justice. *It is reproduced here with permission.*

doi:10.1017/S0956618X10000633

**Re St Nicholas, Warwick**

Coventry Consistory Court: Eyre Ch, April 2010

*Organ – replacement – hybrid – innovative technology*

The churchwardens petitioned for a faculty for the removal of the old pipe organ and its replacement with a hybrid/combination organ. It was common ground

that the old organ was of very poor quality and in need of replacement. Further, it was common ground that a replacement pipe organ would be the ideal. Nevertheless, the petitioners submitted that the expense of a replacement pipe organ would not be an appropriate use of limited parish funds and resources and that the hybrid/combination organ was a good balance between quality and resources. The DAC and the CBC expressed strong reservations about the new and relatively untested technology of hybrid/combination (part pipe, part digital) organs and both preferred the option of a replacement pipe organ. The chancellor held that there was a presumption that a pipe organ would be replaced with another pipe organ and that the burden lay on the petitioners to rebut that presumption. He emphasised that the petitioners had based their decision to seek a faculty for replacement with a hybrid/combination organ on rational and considered assessment of the merits of the respective organs. The faculty was granted. Given the element of risk in using this relatively untested technology the chancellor imposed a condition that the petitioners should commission an independent expert to report upon the performance of the new technology 12 months after its installation, in order that others can learn from the success or failure of the experiment. [RA]

doi:10.1017/S0956618X10000645

**McFarlane v Relate Avon Limited**
Court of Appeal: Laws LJ, April 2010
*Unfair dismissal – counsellor - same-sex couples – religious objection*

McFarlane was employed by Relate Avon Limited as a relationship counsellor. He was a Christian and sought exemption from any obligation to counsel same-sex couples on sexual matters as he believed that he should do nothing to condone same-sex sexual activity. This was refused and he was dismissed for gross misconduct. The Employment Tribunal rejected his claims for unfair dismissal and religious discrimination, a decision upheld by the Employment Appeal Tribunal. McFarlane sought permission to appeal to the Court of Appeal. Laws LJ stated that the facts of this case were not sensibly distinguishable from the decision of the Court of Appeal in *Islington Borough Council v Ladele* [2009] EWCA Civ 1357, [2010] IRLR 211 and refused the application. [RA]

*A Comment on this case by Dr Russell Sandberg appears on page 361 of this issue.*

doi:10.1017/S0956618X10000657