

religions. She was content that their father should teach them about Islam, pray with them and take them to the mosque and said that she would not intentionally feed them non-*halal* meat; however, she told the sheriff that she would find it difficult to comply with an order requiring their upbringing as Muslims. Sheriff Dunbar agreed and concluded that a specific issue order that the children be brought up as Muslims would not be in their best interests; but he accepted the mother's undertakings in relation to their participation in Islam when staying with their father. [Frank Cranmer]

doi:10.1017/S0956618X13000082

### **Re St Mary the Blessed Virgin, Eastry**

Commissary Court of Canterbury: Ellis Com Gen, 1 November 2012  
*Confirmatory faculty – lead theft – replacement material*

Following the theft of a quantity of roof lead from a Grade I listed church, the parochial church council (PCC) contracted with a builder to remove and dispose of the remaining roof lead and to re-cover the whole roof in an artificial, non-metal roofing material known as 'Ubiflex', at a cost of approximately £90,000. The remaining lead was sold to a recycling company. The works, and sale, were undertaken without the authority of a faculty. The archdeacon considered whether to apply for a restoration order but did not do so provided that a petition for a confirmatory faculty was issued within a specified period. A petition was submitted, accompanied by statements of significance and need. The Commissary General gave directions for an expert report on the state of the roof and the adequacy of the re-roofing works from an architect approved by the Diocesan Advisory Committee (DAC). She also directed consultation with English Heritage, the DAC, the local planning authority and relevant amenity societies, and added the building contractor as a party to the proceedings. The architect reported that the removal of the lead had resulted in a loss of significance of the building, that the replacement roof covering was likely to be effective in the short to medium term (10–15 years) and that the change in material had had a minimal effect on the aesthetic qualities of the church. He recommended that the covering be regarded as a temporary measure that should be replaced by lead or other suitable metal when the risk of theft had reduced. In the meantime, it should be inspected on an annual basis as to its effectiveness. The bodies who were consulted all disapproved of the decision to use Ubiflex and of the removal of the remaining lead. The DAC advised that Ubiflex was not

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]

doi:10.1017/S0956618X13000094

### **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