

**Re All Saints, West Burnley**

Blackburn Consistory Court: Bullimore Ch, 7 June 2017

[2017] ECC Bla 6

*Seating – upholstery – Church Buildings Council*

The petitioners sought a faculty permitting the removal from this Grade II listed church of the central block of nave pews and the introduction of new chairs into the nave and aisles. The aisle pews had been removed under an earlier faculty in 2008. The chairs ultimately chosen by the petitioners were wooden-framed and upholstered. The case had a lengthy procedural history in which the Victorian Society became a party opponent, having objected to the removal of the pews and the replacement choice of chair. It later withdrew as a party, while maintaining its objections to the proposals, arguing that the upholstered chairs were inappropriate and not in line with the guidance produced by the Church Buildings Council (CBC) on seating.

The chancellor gave detailed consideration to the CBC guidance on seating, referring to the decisions in *Re Holy Trinity, Long Itchington* [2016] ECC Cov 7 and *Re St Mary Magdalene Ashton upon Mersey* [2016] ECC Chr 1. He observed that the CBC guidance should not be treated as expert evidence, being subject to none of the strict requirements in relation to such evidence found in the Faculty Jurisdiction Rules 2015. The guidance was undoubtedly helpful, but the chancellor had three concerns about it: first, the reference in the guidance to ‘highly listed churches’ was ambiguous and unhelpful; second, the suggestion that no upholstered seating was appropriate was inconsistent with the suggestion that cushions and pew pads could be used with wooden seating; and third, the argument that wooden chairs represented better value for money did not provide a reason for chancellors and the CBC to interfere with the democratic decision of parochial church councils about how to spend their money.

The chancellor reviewed the decision of the House of Lords in *R (Munjaz) v Mersey Care NHS Trust* [2006] 2 AC 148 in relation to the nature and status of statutory guidance in the context of compulsory detention in hospitals. He noted the dicta that such guidance should be considered with great care and any departure from it justified with clear and cogent reasons. The chancellor held that the CBC guidance on seating was not of the same nature and that such a rigorous approach to its application was not warranted; it was couched in such terms that to use such an approach would give it the nature of instruction rather than guidance. Rather, the chancellor would simply wish to be satisfied that the guidance had been considered and any departure from it explained. It would be helpful if the Diocesan Advisory Committee could also, in advising, explain why a departure from the guidance might be justified. Here the petitioners had gone to great lengths to consider the guidance. The faculty was granted. [RA]