

‘principles of security and safe custody’ of human remains were threatened and that the purpose of the re-burial of the remains was to satisfy the emotional needs of the deceased’s daughter at this stage of the bereavement process. [RA]

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### **Re Holy Innocents, Southwater**

Chichester Consistory Court: Hill Ch, June 2009

*Faculty – interregnum*

In granting a faculty for a modest re-ordering the chancellor rejected the submission in certain letters of objection that such works should not be commissioned during an interregnum. The chancellor observed that twenty-first century constraints on clergy deployment and the empowerment of the laity in collaborative leadership meant that it could not be expected that the life, witness and ministry of a parish should go into abeyance merely because the benefice was temporarily vacant. [RA]

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### **Re St Mary, Westham**

Chichester Consistory Court: Hill Ch, June 2009

*Faculty – planning permission – re-litigation*

Planning permission had been granted for the erection of a storage shed in the old churchyard. In granting a faculty for such work the chancellor found that objections in relation to noise, materials and visual amenity were genuinely planning matters such that it would be inappropriate for them to be re-litigated in the consistory court. [RA]

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### **Jivraj v Hashwani**

Commercial Court: David Steel J, June 2009

*Ismaili community – arbitrator – discrimination*

The parties were members of the small Ismaili community, a branch of Shia Islam. When starting a business venture in 1981 they entered a joint venture

agreement, prescribing, inter alia, that arbitration on any division of the venture's assets be undertaken by members of the Ismaili community. The parties parted company in 1988, since when a panel and then an individual arbitrator were unable satisfactorily to conclude the winding up of the venture. The defendant appointed an arbitrator under the agreement who was not an Ismaili Muslim. The claimant considered this appointment to be invalid and brought proceedings in the Commercial Court. The court held (i) that the Employment Equality (Religion or Belief) (Amendment) Regulations 2003, SI 2003/2828, were of no application to the agreement, because an arbitrator was not an 'employee' of the disputants; (ii) that even if he were considered to be an employee, the insistence that he be a member of a particular religious community was a Genuine Occupational Requirement and thus exempt from the regulations; and (iii) that the restriction on appointment to members of a particular religious community did not breach the Human Rights Act 1998. The purported appointment was therefore contrary to the terms of the arbitration agreement. [WA]

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### **Re St Mary, White Waltham**

Oxford Consistory Court: Bursell Ch, July 2009

Court of Arches (permission to appeal): George QC, Dean, August 2009

*Extension – interim faculty – appeal*

The petitioners had applied for a faculty and for planning consent for an extension to the parish church. A lengthy process of fundraising, consultation and unsuccessful mediation between the petitioners and parties opponent resulted in the prospect of the planning consent expiring. The petitioners therefore applied for a 'conditional faculty' to level the ground on the site, insert four piles into the ground, re-site a memorial and erect a small sample panel of brickwork, sufficient to amount to implementation of the planning permission. This would allow further fundraising pending the application for a faculty for the full project, the works being reversible if the project did not go ahead.

At the first hearing before the Chancellor, counsel for the objectors argued that an 'interim' or 'conditional' faculty, as applied for, could not be granted by the court as a matter of law and that the only discretion enjoyed by the Chancellor to grant a faculty for something other than a 'comprehensive scheme' was in the case of urgency or emergency (Faculty Jurisdiction Rules 2000, SI 2000/2047, r 13(10)). The Chancellor ruled, however, that the Ecclesiastical Jurisdiction Measure 1991 and the Faculty Jurisdiction Rules (rules 8(3) and 2(1)) do indeed recognise this power, albeit (in the rules cited)