



the protected characteristic'. On the basis of Lord Leggatt's opinion in *Efobi*, SEC Ltd had been required to show that the reason for the decision had 'nothing to do with' a protected characteristic (here, religion or philosophical belief) of the BGEA—and it had not done so.

It was accepted that the event was a lawful evangelical outreach event. That being so, it followed 'that the decision to cancel was a breach of the Equality Act 2010 in that the event was cancelled as a commercial response to the views of objectors' and there was no business case defence in law. Accordingly, on that basis alone, SEC Ltd had breached the terms of s.29(2) Equality Act 2010 by terminating the provision of the service to the pursuer. Furthermore, although the concern of Glasgow City Council for people from the LGBTQ+ and Muslim communities might be understandable, that missed the point: 'The lawful opinions of others based here on religious or philosophical belief (whether mainstream or not) are not to be preferred one over another. All are protected.' SEC Ltd had discriminated against the BGEA on the basis of a protected characteristic for the purposes of the Equality Act 2010 and the Sheriff awarded the BGEA £97,000 plus expenses. [Frank Cranmer]

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Re All Saints, Pontefract

Leeds Consistory Court: Samuel Dep Ch, 28 October 2022

[2022] ECC Lee 6

Interment in closed churchyard

The new incumbent became aware of a re-interment in the churchyard, in 2015, of 14th century remains unearthed in nearby archaeological excavations, when the local archaeological society asked for permission to install a stone plaque to mark the re-interment. The churchyard had been closed by an Order in Council in 1857, so the interment was unlawful under s.3 Burial Act 1853. The re-interment had been conducted by the deacon and a Roman Catholic priest, without the knowledge or permission of the incumbent, the ordinary or the court; or of the local authority, which was responsible for the maintenance of the churchyard. Furthermore, the archaeological society had procured the re-interment contrary to their exhumation licence, which required them to ensure that any discovered human remains be re-interred in a burial ground in which interments may legally take place.

Following consultation, the court concluded that the position in law was that while the interment of cremated remains in a closed churchyard could be permitted by faculty under s.88 Ecclesiastical Jurisdiction and Care of Churches Measure 2018, there was no power in the court to permit the

interment of a body in a closed churchyard, whether by faculty or otherwise. The only way in which such an interment could be lawfully carried out is pursuant to an exception in the closure order. Nevertheless, exhumation of the re-interred remains would require a faculty, under s.25 Burial Act 1857.

Four possibilities were considered by which interments in a closed churchyard could be lawful: burials permitted under an original Order in Council; burials permitted by an amended Order in Council (although the court doubted that the Privy Council would ever make such an order retrospectively); re-burial of human remains disturbed in the same cemetery, following *re St Mary's Barnes* [1982] 1 All ER 456; and interment of cremated remains.

None of the above options applied to this case at the time the petition was brought. The only two options, therefore, were to grant a faculty for the exhumation of the remains, so that they could be re-interred in compliance with the exhumation licence; and leaving the matter to lie as an irregularity (a course with which the Ministry of Justice did not agree). In the event, the Privy Council, following a petition from the Ministry of Justice, varied the 1857 Order in Council to permit (albeit not retrospectively) the re-interment of the remains in the closed churchyard.

Recognising that it would be ludicrous to permit, and require, the exhumation of the remains simply so that they could be immediately re-interred lawfully, the court granted a confirmatory faculty in respect of the re-interment, on condition that the burial register and Church records be updated to reflect the fact that this re-interment stood as unlawful for some seven years prior to these proceedings. [Jack Stuart]

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