

abatement notice, which required him to ‘immediately cease shouting, chanting and jumping on the internal floors to the property so as not to cause a nuisance to the occupiers of neighbouring properties’. The Crown Court had rejected the evidence of the environmental health officers that the noise that they heard constituted a statutory nuisance and were satisfied that Article 9 of the ECHR was not a bar to criminal proceedings. The Administrative Court was not persuaded that the Crown Court had not been entitled to reach the decision that they had. The Court agreed with the Crown Court’s provisional view that, if the service was conducted in such a way that the court found that a statutory nuisance existed, the fact that the nuisance was created in the course of religious worship, in premises registered and with planning permission for that use, would be unlikely to amount to a defence of reasonable excuse nor would a prosecution be disproportionate. [JG]

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Re St Mary, Sledmere

York Consistory Court: Collier Ch, January 2007

Exhumation – scientific research – public benefit

The deceased had died in 1919 in the second wave of the Spanish ‘flu pandemic and was buried in a lead-lined coffin. The petitioner, a leading influenza virologist, sought leave to exhume the remains of the deceased to obtain a tissue sample for the purposes of scientific research into the avian influenza virus. The family of the deceased consented to such exhumation. Tissue samples obtained from other sources had proved to be of inadequate quality for research purposes. The chancellor considered and applied the guidelines in *Re Holy Trinity, Bosham* [2004] Fam 125, per Hill Ch; and the decision of the Court of Arches in *Re St Nicholas, Sevenoaks* [2005] 1 WLR 1011. In granting the faculty, he considered the speculative nature of the proposal and applied the principles of proportionality, concluding that the greater the public benefit that might ensue from the proposal, the less weighty the ground required to tip the balance in favour of exhumation. [RA]

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Parochial Church Council of Aston Cantlow and Wilmcote with Billesley v Wallbank

High Court, Chancery Division: Lewison J, February 2007

Chancel repairs – quantum

The defendants argued that their liability was limited to keeping the chancel ‘wind and watertight’, relying on a statement on a website, www.churchlaw.co.

uk. The Court expressly rejected that as a correct proposition of law, stating that the liability had to be assessed using the test propounded in *Wise v Metcalfe* (1829) 10B&C 299 and *Pell v Addison* (1862) F&F 291. The matter was put beyond doubt by section 2 of the Chancel Repairs Act 1932. The Court rejected the defendants' arguments that the claimant was asking for a 'Rolls Royce job', that the Church ought 'to act in accordance with its own teaching and temper the wind to the shorn lamb' and that the law was anachronistic and unfair, pointing out that law reform was not the job of the courts, which had to take the law as they found it. The Court rejected the claimant's claim for the costs of surveys and a contingency fund as these were not required to put the chancel into a state of proper repair, and granted the claimant its full costs as the amount found to be due exceeded a without prejudice offer of settlement made by the claimant prior to the hearing. [JG]

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True Orthodox Church in Moldova and Others v Moldova

European Court of Human Rights: February 2007¹

Registration of churches – court order – ECHR Articles 9 and 13

The claimants joined together to form the True Orthodox Church in Moldova (*Biserica Adevărat Ortodoxă din Moldova*) and applied for registration by the Government on the basis of the Religious Denominations Act (Law No 979-XII of 24 March 1992). When the authorities refused to register the Church, the claimants initiated court proceedings and, in August 2001, the Moldovan Court of Appeal ordered the government to register the Church and awarded each of the claimants a small sum in damages. On 29 May 2002, the Supreme Court of Justice upheld that judgment. In spite of repeated requests by the claimants and intervention by the Decisions Enforcement Department, the State Service for the Protection of Religious Denominations failed to register the Church. The government made three attempts to reopen the proceedings, claiming that there was new and relevant information that had not been previously available: all three were rejected by the courts. In June 2004, the claimants submitted a new application, with accompanying documentation, requesting registration. They received no reply.

The claimants complained to the European Court of Human Rights, *inter alia*, that the refusal of the state authorities to register the Church had amounted

¹ The provisional full text is available under its Romanian title (*Biserica Adevărat Ortodoxă din Moldova and Others v Moldova*) through <<http://cmiskp.echr.coe.int/tkp197/default.htm>>, accessed 29 March 2007.