

In the Consistory Court of the Diocese of Leeds

16-88C (2016-002295)

16-105C (2016-003082)

In the matter of St John the Baptist, Adel  
And in the matter of St Michael, Markington  
And in the matter of the Churchyard Regulations for the Diocese of Leeds

## Judgment

1. One of the most time-consuming activities since assuming the chancellorship of England's youngest diocese has been the creation of standardised Churchyard Regulations. Those applicable in the three historic dioceses (of Bradford, Ripon and Leeds and Wakefield) were very different in style and content, and the rigour of their enforcement by parochial clergy, archdeacons and chancellors was inconsistent. My task was to draft a single set of Churchyard Regulations for the Diocese of Leeds (or West Yorkshire and the Dales, as it then styled itself) which would be readily comprehensible and of universal application throughout the diocese.
2. The Regulations (which are an appendix to the Chancellor's General Directions, and are accessible on the Consistory Court webpage) are annexed to this judgment for ease of reference. They came into force on 1 January 2016, coterminously with the Faculty Jurisdiction Rules 2015, Lists A and B, and the phased introduction of the online faculty system. The Regulations will be kept under periodic review

### **Delegated authority for the introduction of memorials**

3. The nature and purpose of Churchyard Regulations do not seem to be fully understood. As their full title makes plain, they are an instrument of delegation pursuant to which the discretion to permit the introduction into churchyards of certain categories of memorial is devolved from the chancellor to the parish priest. Parochial clergy have delegated authority to allow memorials which fall within the certain specified categories; but they are perfectly at liberty, should they wish, to decline to permit a memorial even though it complies with the Regulations. However, if a priest purports to permit the introduction of a memorial which does not comply with the Regulations, the permission will be a nullity. See by way of example, *Re St Mary's, Wath* [2015] ECC Lee 8, where an order was made for the removal of kerbstones introduced without authority.
4. In some dioceses it would seem that Churchyard Regulations are treated not so much as instruments of delegation but in a more prescriptive manner setting out the limits of what is acceptable and adopting, in one diocese at least, the term 'standard memorial': *Re St Mary, Kingswinford* [2001] 1 WLR 927. A departure from the prevailing regulations permitting a 'non-standard memorial' requires, it has been suggested, 'a powerful reason' and should be confined to 'cases which are truly

exceptional': *Re St James, Newchapel*, Lichfield Consistory Court, April 2012, unreported, paragraphs 21 and 24. Elsewhere the term 'substantial reason' has been deployed: *Re St Peter, Church Lawford* [2016] ECC Cov 3, at paragraph 8. The expression 'powerful reason' was also adopted recently in *Re St Mary, Prestwich* [2016] ECC Man 1, at paragraph 34, although it was solely in the context of kerbstones. A reference to 'dispensing with the rules' is to be found in *Re Footscray, All Saints*, Rochester Consistory Court, 7 February 2013, unreported.

5. I consider these various formulations to be unhelpful and I will not be imbuing the Churchyard Regulations of the Diocese of Leeds with the enhanced normativity afforded by some other chancellors to their regulations. My approach will follow that of McGregor Ch in *Re St John's Churchyard, Whitchurch Hill*, Oxford Consistory Court, 31 May 2014, which records with simplicity and clarity at paragraph 16:

As is the case with any petition, the burden of proof lies on the petitioner to show why a faculty should be granted to authorise the particular proposal set out in the petition.

6. It follows that there will be no requirement for petitioners to discharge a higher burden of proof, rebut a presumption, demonstrate a 'substantial' or 'powerful reason' or show an 'exceptional' case. Each petition will be determined on its own merits, the only constraint being the inability of the court to permit something which is contrary to, or indicative of any departure from, the doctrine of the Church of England in any essential matter.
7. The terms and content of the Churchyard Regulations will, of course, be a relevant factor – often highly relevant and doubtless on occasion determinative. But they will be one of the constellation of infinitely variable factors which the court must consider on a case-by-case basis. I anticipate that the same outcomes may well result irrespective of the differing approaches, but as I have the responsibility and privilege of creating clear practices for the Diocese of Leeds, justice requires that I set out in advance which mine will be. There will be no presumptive preference for what is contained in the Churchyards Regulations, nor a bias in favour of the standard, bland or anodyne.

#### **Bespoke regulations for particular parishes**

8. The Churchyard Regulations for the Diocese of Leeds include a narrative explaining the rationale for legal regulation of sacred burial grounds. At paragraph 4 it is stated:

The bereaved must understand that by seeking a burial in consecrated ground, they are submitting to the jurisdiction of the Consistory Court which regulates the type of headstone or other marker which may be erected.

9. Prior to his retirement, the Venerable Paul Hooper set about compiling a selection of leaflets which various parishes had prepared to inform the bereaved of what is understood by Christian burial and what the consequences will be. These were drafted with great sensitivity because parochial clergy and others are required to minister to parishioners in moments of profound grief. I commend Archdeacon

Hooper's work and express the hope that the sharing of best practice throughout the diocese will continue.

10. The Churchyard Regulations continue at paragraph 7:

A headstone is a public statement about the person who is being commemorated. Making the right choice of stone, design and inscription is important not only to the relatives or friends who are going to provide the memorial, but also to the wider community because of the effect which the headstone may have upon the appearance of the churchyard. Attractive, well conceived designs by skilled and imaginative craftsmen should be encouraged.

11. They then deal with the dimensions, materials, appearance, position and fixture of memorials together with types of inscription. Specific matters (such as kerbs and chippings) are also discussed. The Regulations conclude with some important matters which are printed in bold type. These include at paragraph 16:

Parishes are encouraged to consider seeking a faculty for bespoke Regulations for use in a particular churchyard. Such Regulations must take into account local practice, tradition and custom and the particular environmental, architectural and aesthetic considerations of the church and its setting. They are likely to be more readily enforceable if the parish has a sense of 'ownership'. The provisions of these Regulations should be incorporated unless the parish can satisfy that chancellor that it is appropriate for a faculty to be granted which sanctions a specific variation.

12. The two conjoined petitions which form the subject matter of this judgment are made pursuant to this paragraph. As they raise issues of general application for the diocese as whole I propose to offer some general guidance for similar cases.

**Guidelines for future cases**

13. Under paragraph 16 of the Churchyard Regulations for the Diocese of Leeds, parishes are at liberty to apply to the Chancellor for approval of bespoke Churchyard Regulations which will have effect in a particular churchyard, or part of a churchyard, in substitution for the generic diocesan regulations.

- i. Applications should be made by the parish priest and the PCC directly to the Registry and not using the online system. The petition fee will be discharged by the Diocesan Board of Finance as is customary in the diocese.
- ii. Applications may be made by letter provided the following information is included:
  - (a) a draft of the proposed Churchyard Regulations, and ideally an electronic version capable of being revised and amended by the Chancellor;
  - (b) a copy of any previous Churchyard Regulations which have been in use in the churchyard in question;
  - (c) a brief statement of the reasons why the Chancellor's approval is being sought.
  - (d) an authenticated copy of the PCC's resolution to seek the Chancellor's approval

- iii. Since the application is for a variation of the Chancellor's Churchyard Regulations, there is no need to obtain a Notification of Advice from the DAC. However, the Chancellor will, when necessary, seek consult with the DAC and/or the relevant archdeacon.
- iv. Considerable weight will be given to the lawful introduction of memorials in the past, whether pursuant to generic diocesan regulations or bespoke parochial regulations. The onus will be on the applicant parish to prove the lawfulness of an existing practice.
- v. Little or no weight will be given to the presence in the churchyard of memorials which have been introduced without lawful authority.
- vi. Applications should be accompanied by illustrative photographs and an up-to-date churchyard plan.
- vii. Parishes should ensure that all funeral directors and monumental masons who have occasion to be involved in interments in the churchyard concerned are made aware of the bespoke parochial regulations. Ideally they should be asked to sign and return a copy confirming they are familiar with its contents which should be retained with the parish records.
- viii. In determining any petition for a faculty to erect a memorial in a churchyard, regard will be had to the content of any bespoke parochial regulations authorised by faculty and to the views (if any) of the parish priest and PCC on the particular proposal.

14. I turn then to the facts of the two individual petitions before me.

**St John the Baptist, Adel**

- 15. In this case, the parish seeks not an enlargement of the regulations but a narrowing of their scope. In particular the parish wish to depart from the extensive list of approved stone in paragraph 10.2 of the generic diocesan Churchyard Regulations and limit acceptable materials solely to York sandstone. The justification for this is to maintain the attractive appearance of the churchyard and to preserve the integrity of the historic burial ground by continuing the use of traditional local stone.
- 16. Strictly this revision is unnecessary since, as noted at paragraph 3 above, the parish priest is at liberty to refuse to give permission for a proposed memorial even though it is covered by the Regulations. The parish make the point that restricting memorials to those made of York sandstone has been parochial policy for many years, is well known locally, and has contributed to the attractiveness of the church and its burial ground. The current parish priest has indicated his willingness to continue the policy, but the parish are seeking the comfort and security of having this restriction formalised in a more lasting fashion.
- 17. The PCC seek two further revisions: one is to allow memorial slabs to be introduced over the place of cremated remains provided the slab does not exceed 12 inches by 18 inches in size and is fabricate of York sandstone. The other is to prohibit the addition of bases to memorials and to require them to be bedded directly into the ground. This is for visual and aesthetic reasons and to make easier the task of routine churchyard maintenance.

18. I have been impressed by the thoughtful and thorough manner in which the Reverend Dr Ian White, priest-in-charge, and the PCC have approached this matter. They clearly take great care of their scenic and tranquil churchyard and have the pastoral concerns of the bereaved uppermost in their minds. The photographs reveal that this small church and its setting are beautifully looked after and the rationale for restricting the choice of stone, for continuing the practice of tablets to mark cremated remains in the area set aside for that purpose, and for prohibiting the inclusion of bases is well made. In all the circumstances a faculty will pass the seal. I have indicated my approval by signing the drafts contained in the papers. The original of each will be kept on the court file and a copy of each will be attached to the faculty and retained by the parish.

**St Michael, Markington**

19. The revision which the petitioners seek in this case relates to an area either side of the north gate which has been set aside for the interment of cremated remains. The parish seeks to continue the practice of allowing tablets measuring 12 inches by 18 inches to be laid over cremated remains.

20. The parish has placed before me a clear and well maintained churchyard plan, together with photographs of the areas set aside for cremated remains. It has not furnished me with a copy of the faculty or other authorisation which permitted the creation of the small gardens of remembrance. Ordinarily, I would insist on this under the guidelines above. However as this matter has been delayed pending the drafting of this conjoined judgment, I am prepared to take matters on trust and assume the lawfulness of the current practice.

21. In truth, only a minor variation is sought in this case, sufficient to legitimise the continued use of the garden of remembrance until the remaining spaces have been filled. Thereafter other provision will have to be made and I would encourage the parish to be imaginative as they set about their planning.

22. In all the circumstances I am content to authorise the draft submitted by the parishioners subject to the minor amendment I have made in manuscript. I do however invite the petitioners to revisit paragraph 2 and to consider a narrower range of permitted stones having regard to the locality and the materials already used in the churchyard. I will then sign off the approved version which, similarly, will be filed at the registry with a copy annexed to the faculty for retention by the parish.

23. I will give to each set of petitioners liberty to apply should minor variations to their respective drafts be thought desirable in consequence of any matter raised in this judgment.

## APPENDIX

### CHURCHYARD REGULATIONS

THIS INSTRUMENT OF DELEGATION PRESCRIBES CATEGORIES OF HEADSTONE,  
THE INTRODUCTION OF WHICH MAY BE AUTHORISED BY PAROCHIAL CLERGY

#### **Introduction**

1. Incumbents and priests-in-charge are temporary custodians not merely of the church building but also, where there is one, of its burial ground. Responsibility for its care and maintenance rests with the PCC. Churchyards are an important feature of both rural and urban communities: an historic record of successive generations, a home for funerary monuments of architectural and aesthetic excellence, a setting for the church itself (many of which are listed buildings), and a place for reflection and prayer. Churchyards are consecrated and set apart for sacred use, and therefore different in their nature from municipal cemeteries.

#### **The nature and legal consequences of Christian burial**

2. Parishioners, those named on the electoral roll, and those dying within the parish all have a legal right of burial in the parochial burial ground. This right is not restricted to the baptised nor to members of the worshipping community. Thus the clergy are brought into direct contact with relatives of deceased parishioners in circumstances of extreme distress and often in a highly charged environment. Whilst this provides a valuable opportunity for ministry and outreach it can also create pastoral challenges.
3. It is essential that the bereaved understand the meaning and consequences of burial in consecrated ground. The nature of the rite of burial is to say 'farewell' to the deceased and to commend them to the mercy and love of God in Christ and to await the transformation of resurrection. There is accordingly a theological finality to all interments, including those of cremated remains, in ground consecrated according to the rites of the Church of England. This is inconsistent with the concept of portability of remains and the future prospect of exhumation.
4. The bereaved must understand that by seeking a burial in consecrated ground, they are submitting to the jurisdiction of the Consistory Court which regulates the type of headstone or other marker which may be erected. This jurisdiction exists for reasons which are in part theological and in part aesthetic, since what may be unobjectionable in a municipal cemetery might be considered inappropriate (or even offensive) in an historic churchyard. It is the responsibility of the clergy to bring these matters to the attention of the bereaved at the earliest opportunity, and to inform them of these Regulations, so that their decision to seek an interment in consecrated ground is fully informed. A failure to do so, however traumatic the pastoral situation, is a dereliction of duty and may prove more damaging in the long term. Many parishes find it helpful to provide a handout containing this information which can be taken away and read by the bereaved, and the Chancellor commends this practice.

#### **The extent of the delegated authority of parish clergy**

5. It is unlawful for a headstone to be introduced into a churchyard without permission. For administrative convenience and to minimise expense, the Chancellor by this written Instrument delegates to parochial clergy the authority to permit the introduction of a monument provided it is of a type which complies with the detailed provisions which follow. During a vacancy, or in the absence of a priest-in-charge, this delegated authority is exercised by the area dean.

#### **Guidance on the operation of these Regulations**

6. Applications for memorials should generally not be made until six months have passed since the interment. Not merely does this allow the ground to settle, but the passage of time permits a more reflective decision to be made than is often the case in the naturally emotional state of the early stages of grief. All close family members need to be consulted and a consensus achieved. Parochial clergy can offer help at this time in making suggestions to the bereaved of the types of memorial which might be introduced by reference to photographs or by pointing out examples in the churchyard itself. If this conversation precedes a visit to the stonemason it should avoid the difficulty and disappointment engendered by the selection of an inappropriate design from a catalogue. The Archdeacon can provide templates of leaflets which some parishes have found helpful to provide to the bereaved. Although the grave itself is the property of the incumbent, any memorial will belong to the person who paid for its erection (during his or her lifetime) and thereafter the heir-at-law of the person commemorated and that person carries the duty to maintain it and the legal liability for its safety.
7. A headstone is a public statement about the person who is being commemorated. Making the right choice of stone, design and inscription is important not only to the relatives or friends who are going to provide the memorial, but also to the wider community because of the effect which the headstone may have upon the appearance of the churchyard. Attractive, well conceived designs by skilled and imaginative craftsmen should be encouraged. In the search for a wider range of designs than

those usually seen, reference should be made to the *Churchyards Handbook*, the booklet *Memorials by Artists* and other resources which can be made available by the DAC. Sculpture or other statuary is not discouraged but must be authorised by faculty.

8. Also to be encouraged are fulsome inscriptions which give a flavour of the life of the person commemorated rather than blandly recording a name and dates. Epitaphs should honour the dead, comfort the living and inform posterity. They will be read long after the bereaved have themselves passed away. A memorial stone is not the right place for a statement about how members of the family feel about the deceased nor how they would address him or her were they still alive. Passages of scripture, which have a timeless quality, are to be preferred.

9. For further guidance, reference should be made to the *Chancellor's General Directions Concerning Churches and Churchyards* (Issue 1, 2016) and, in particular the following sections:

Churchyards	6.2	Graves	6.10
Exhumation	6.7	Inscriptions	6.13
Gardens of Remembrance	6.9	Reservation of grave spaces	6.18

**Types of headstones which may be permitted by parish clergy**

10. The incumbent has authority to permit the introduction of a headstone which complies with the following requirements.

10.1 **Size**

No more than 1200 mm nor less than 750 mm high (4 ft; 2 ft 6 in)

No more than 900 mm 500 mm nor less than wide (3 ft; 1 ft 8 in)

No more than 150 mm nor less than 75 mm thick (6 in; 3 in)

In the case of infant burials, no less than 600 mm x 375 mm x 50 mm (2 ft x 1 ft 3 in x 2 in)

10.2 **Base**

A base forming an integral part of the design of a headstone may be included, provided it does not project more than 50 mm (2 in) beyond the headstone in any direction and provided that it is fixed on a foundation slab of an approved material which itself is fixed flush with the ground and extending 75mm to 125mm (3 in to 5 in) all round so that a mower may freely pass over it.

10.2 **Materials**

The following stone is permitted:

Limestone:	Derbyshire Ravensworth	Derbyshire Fossil
Sandstone:	Yorkshire Gloucester/Forest of Dean Allswick Blue	Derbyshire – Derby Dale Serena
Slate:	Cumberland North Lancashire	Westmoreland
Granite:	Bluehill Grey Cumbrian Grey Karin Grey New North Grey Creetown	Cornish Grey Devon Grey Indian Grey South African Dark Grey

10.3 **Appearance**

Polished stone or mirror finish is not permitted.

10.4 **Inscriptions**

Photographs or representations of objects or motifs such as a child's toy are not permitted nor the use of 'pet names'. Bronze or ceramic inserts are not to be used. Badges, crests or emblems may be used provided they are seemly and appropriate for the deceased. Any representation will need to be designed so that it may be accurately cut by a skilled craftsman. Masons' or carpenters' names, signs or marks may be inscribed on any monument provided their position and appearance are unobtrusive having regard to the monument as a whole. Incised lettering may be painted in gold, silver, matt white, matt black or matt grey. Plastic inserted lettering is not permitted.

10.5 **Position**

No memorial may be erected within 3 metres of the outer wall of the church building save by authority of a faculty.

10.6 **Fixture**

Regard must be had to health and safety concerns, and to current industry standards for the fixing of monuments safely and securely.

10.7 **Crosses**

An incumbent may NOT consent to the introduction of a cross. Such monuments require a high standard of design. However, the incumbent may authorise the temporary introduction of a simple wooden cross no more than 12 inches in height to mark a recent burial. Such cross must be removed upon the erection of a stone memorial or after a period of 18 months, whichever be the sooner.

**Prohibitions**

11. For the avoidance of doubt, the following are not permitted:

- i. kerbs, railings, fencing, chippings, pebbles and similar materials, and free-standing vases. These create difficulty or danger when mowing;
- ii. memorials in the shape of vases, hearts, open books;
- iii. memorials incorporating photographs or portraits;
- iv. mementoes, windmills, toys or little animals, solar lamps or similar;
- v. the use of 'pet names'
- vi. artificial flowers.

**Commonwealth War Graves**

12. Graves of the Commonwealth War Graves Commission are marked by memorial headstones of a distinctive design and size, indicating their particular significance. The incumbent may authorise the erection of these headstones where applicable.

13. The incumbent is authorised to permit the installation of discreet signage provided by the Commonwealth War Graves Commission denoting the presence in the churchyard or burial ground of one or more Commission graves. The following conditions however must first be met:

- i. The installation of the sign has been the subject of an affirmative PCC resolution;
- ii. The sign is of a standard design previously recommended by the DAC or adapted to the requirements of a particular location on the advice of the DAC;
- iii. The dimensions and location of the sign have the consent of the Archdeacon who may seek the advice of the DAC as the circumstances require.

**Important Notes**

14. **The Incumbent has no authority to permit the erection of a memorial which does not comply with these Regulations. Any non-compliant memorial (whether or not the incumbent has purported to give authority) may be removed by order of the consistory court.**

15. **A faculty may be sought for the erection of a memorial which does not comply with these Regulations. Such petitions are actively encouraged. Each case will be considered on its individual merits and the views and policies of the Incumbent and PCC will be taken into account. The opinion of the DAC will also be sought.**

16. **Parishes are encouraged to consider seeking a faculty for bespoke Regulations for use in a particular churchyard. Such Regulations must take into account local practice, tradition and custom and the particular environmental, architectural and aesthetic considerations of the church and its setting. They are likely to be more readily enforceable if the parish has a sense of 'ownership'. The provisions of these Regulations should be incorporated unless the parish can satisfy that chancellor that it is appropriate for a faculty to be granted which sanctions a specific variation.**