

**IN THE CONSISTORY COURT OF THE DIOCESE OF ST ALBANS**

**IN THE MATTER OF PODINGTON, ST MARY THE VIRGIN**

**Introduction**

1. Daniel Richards died on Easter Day 2018 and is buried in the churchyard of the grade 1 listed St Mary the Virgin, Podington. The plot where he is buried is a double-depth plot shared with his mother, Susan Mary Richards, who died and was buried in 2014. Daniel's father (and Susan's husband), Stephen Richards, and Daniel's wife, (Stephen's daughter-in-law) Caroline Richards (together the "Petitioners"), seek a confirmatory faculty in respect of a memorial that they have caused to be erected over the grave.
2. This matter has endured a difficult pastoral route to this point. The memorial has been erected without permission and is not compliant with the Diocesan Churchyard Regulations<sup>1</sup> (the "Regulations") in terms of material, inscription and, as far as can be determined, mode of installation. A particular sticking point relates to the inscription the memorial bears, which is contentious but also reflects matters of personal significance to the Petitioners, whose grief is deeply felt and whose instincts to honour the wishes of the deceased, Daniel Richards, are understandable.

**Procedural history:**

3. It is a matter of dispute between the parties whether, before introducing the memorial, the Petitioners were aware of the need to obtain permission to do so and of the existence of Regulations. I will consider this in more detail in due course. However, for present purposes

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<sup>1</sup>Churchyard Regulations 2004 were in force at all relevant times for the purposes of this judgment. (The latest version was promulgated on 2020 and do not affect the reasoning).

it is relevant to note that when the matter was put to them formally and efforts commenced to address the issues raised by the introduction of the memorial, Stephen and Caroline Richards<sup>2</sup> were invited to and did submit a Memorial Application form to the Team Vicar, the Reverend Peter Turnbull<sup>3</sup>. I note that this was accompanied by a note of apology for failing to seek permission first and an indication that the need to do so had not been appreciated. By the time the matter reached me in July 2020, a number of attempts to resolve matters had been made but pastoral relations were difficult and there was deadlock as to how to proceed.

4. Therefore on 6 July 2020 I gave directions to move the position on which, pursuant to rules 5.3(3) and 20.6 Faculty Jurisdiction Rules 2015, allowed the Memorial Application (which had been lodged at the Registry on 6 May 2020) to stand as a petition for a confirmatory faculty for the introduction of the memorial. The matter has, since then, proceeded as a petition with the correct payment of fees and the usual process of PCC resolution<sup>4</sup>, public notice and DAC Advice.
5. The Petitioners, the Team Vicar and the Archdeacon have all provided written materials for my consideration. They have all been approached for their views on, and indeed their consent to, this matter being determined on the basis of written representations. All have consented. The Petitioners initially did so on a conditional basis<sup>5</sup>, requesting my adherence to a number of procedural matters they wished to feature in the proceedings. However they subsequently (on 19 August 2020) wrote giving unambiguous and unconditional consent to proceeding without a hearing. There appeared to be some backtracking on this in a letter dated 13 November 2020 where their earlier assent to proceeding in writing was expressed as having once again become conditional upon “*setting to one side*” the written representations of the Team Vicar, but having been pressed for further clarification of their views<sup>6</sup>, none has been forthcoming.

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<sup>2</sup> October 2019

<sup>3</sup> Ibid

<sup>4</sup> The PCC meeting (held on 14 July 2020) resolved “*that as this is such a delicate and sensitive matter that they [the PCC] would not support or oppose this retrospective application.*”

<sup>5</sup> Letter from Petitioners to Registry dated 17 July 2020

<sup>6</sup> Letters from Registrar to Petitioners dated 2 and 17 December 2020

6. The Petition (as the Memorial Application form has been constituted pursuant to my directions) was lodged with the Registry on 6 May 2020, which post-dates the introduction of amendments to the Faculty Jurisdiction Rules 2015 including the substitution of Rule 14.1 in the following terms:

*“14.1. (1) The chancellor may order that any proceedings in the consistory court be determined on consideration of written representations instead of by a hearing if the chancellor considers, having regard to the overriding objective in Part 1, that it is expedient to do so.*

*(2) Before making an order under paragraph (1) the chancellor must invite the parties to submit in writing, within a specified period of time, their views on such a course; and the chancellor must take account of those views before deciding whether to make the order.”*

7. Pursuant to rule 14.1 I have taken account of all of the views as to how to proceed (which overwhelmingly support a written process and contain no reasoned basis in favour of proceeding otherwise), together with the multiple opportunities that have been afforded to all concerned to provide statements, express their views and comment on each other’s written representations. My view is that this matter is capable of being dealt with fully and fairly on paper. There is no advantage to delaying this matter or adding further expense by proceeding via an in-person hearing (which would, in current circumstances, have been conducted via a remote platform in any event).

**Background:**

8. The history of this matter is as follows. Susan Richards died in 2014. At that point the parish was in an interregnum, which persisted for around 11 or 12 years until 2016 when the Team Vicar, the Reverend Peter Turnbull, was appointed. I draw from the Petitioners’ account that, having buried Susan in the churchyard at St Mary’s and there being no-one in post, Stephen Richards informed the churchwardens about his plans to install a memorial stone. He apparently met no resistance and from there proceeded to install a memorial stone for Susan according to his own design. His account is not gainsaid by other evidence.

9. The memorial was constructed from brown ironstone and included a verse from The Rime of the Ancient Mariner by Samuel Taylor Coleridge. This verse was chosen by Daniel Richards and echoed another verse from the same poem which apparently appears on the memorial stone for his brother Marcus Richards who, I am informed, is buried elsewhere in Podington churchyard.
10. Although the churchwardens ought to have directed Mr Richards properly and suggested he consult the Rural Dean, or at least to have drawn his attention to the Regulations, I can see how this may have come about in practice. It apparently led to an erroneous understanding on the part of Stephen Richards that nothing further was required and the installation could be taken into his own hands. Nonetheless this was incorrect information and the installation lacked the requisite permission amounting, I find, to a trespass.
11. I pause to note Mr Richard's reference to the death of another of his sons (Daniel's brother Marcus) and the existence of a memorial to him in the churchyard. I do not know the dates of Marcus' burial (other than it appears to have pre-dated that of Susan's burial), the nature of his memorial stone or the circumstances in which it came to be erected and therefore I draw no conclusions from the fact that it seems that Stephen Richards had already been involved in the installation of a memorial in the churchyard by the time he came to install the memorial following Susan's death. I simply observe that, despite the apparent acquiescence of the churchwardens in the case of Susan's memorial, in advance of the installation of the current memorial Mr Richards had already had cause to interact with, and therefore to check for accuracy, the rules and systems which govern burials and the installation of memorials in churchyards.
12. Subsequently, Daniel Richards was sadly diagnosed with cancer of the liver. He received his diagnosis on 20 March 2017. It is relevant to the issues which follow that he was prescribed the chemotherapy drug docetaxol. He died a little over a year later, on Sunday 1 April 2018 (Easter Sunday).
13. The Team Vicar, Reverend Peter Turnbull, was in post by this time. There appears to have been some tension between Reverend Turnbull and Stephen Richards. In particular there was apparently a phone call from Mr Richards to Reverend Turnbull indicating that he "*would make sure I had nothing whatsoever to do with the funeral at St Mary's*". However,

some discussion then followed this phone call and it was eventually agreed that both Petitioners would meet with Reverend Turnbull. He has provided written representations in this matter on 25 July 2020 which state as follows:

*“At the meeting in my vicarage to discuss funeral arrangements around my dining room table, I clearly made reference to the fact that for gravestones to be placed in churchyards that an application was necessary and I also explained very clearly that there were Churchyard regulations that needed to be adhered to. Obviously the level of grief at this time makes it very difficult for people to comprehend or remember everything that is said to them. This was an emotional-charged time compounded by the fact that Stephen did not want me involved in the funeral.”*

14. This is disputed by the Petitioners in their response (dated 30 September 2020) to Reverend Turnbull’s written representations. They state:

*“We would hardly have got on to the subject of gravestones and churchyard regulations that needed to be adhered to so soon after my son dying. Even if that was so I have no recollection and may I say it was not the time to be dealing with such matters.”*

15. In an earlier statement, provided under cover of a letter dated 19 August 2020, the Petitioners had made the following statement, which appears to conflate the installation of the original memorial following Susan’s death in 2014, and the circumstances in which they came to introduce the present memorial in 2019:

*“...we must remind you that there was an interregnum of 10 or 12 years before this vicar was appointed and during that time the church wardens would have been aware of what proposals we had for the headstone. As by then both church wardens had resigned there was nobody locally to offer guidance. We simply got on with the job in ignorance of what permissions should have been sought.”*

The accuracy of this statement is in question given that, as stated earlier, Reverend Turnbull was appointed in 2016 and therefore had been in post for some three years at the time at which the installation of the present memorial took place. Moreover, there seems to be no

dispute that the Petitioners were in touch with Reverend Turnbull regarding funeral arrangements at the relevant time.

16. Having reviewed these statements, I prefer the clarity of the account provided by Reverend Turnbull and find, on the balance of probabilities, that the issues of permission and the impact of the Regulations were raised with the Petitioners at their meeting and that they were aware of them. It is entirely understandable, given the circumstances, that their memories of details may have been affected. Nonetheless, a reasonable person would still have understood the gist of the information, namely that permission was required before removal of the existing stone and before installation of a replacement, and that there were rules to follow in design and content. It was open to the Petitioners to seek out Reverend Turnbull or to consult a copy of the Regulations for clarification of any details that had not been remembered or understood at the time.
17. Despite having been informed of the Regulations and the requirement to obtain permission, the Petitioners did not seek any such permission and instead proceeded to remove the existing memorial to Susan Richards (the “2014 Memorial”) themselves.
18. I pause here to add that although the introduction of the 2014 Memorial was itself a trespass (having been introduced without due authorisation), its removal from the churchyard still required a faculty from me (see the principles set out by Bursell Ch. in *St Mary the Virgin, Burghfield*<sup>7</sup> and paragraph 9 of the judgment of Iles Ch. in *Haughton-le-Skerne, St Andrew*<sup>8</sup>). The Regulations permitted a departure from the need to obtain a faculty where removal was for the purposes of repair, maintenance or inscription – requiring, in those circumstances, the prior consent of the parish priest. However I conclude that the removal was not carried out in order to introduce a new inscription onto the 2014 Memorial, but instead for the purposes of replacing it. The written representations of the Petitioners accept this and explain that the original memorial “...in any case was not large enough to accommodate the extra lettering”. Consequently the type of authority required for the removal of the original memorial was a faculty. In any event, no permissions at all were

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<sup>7</sup> [2021] P.T. S.R.

<sup>8</sup> [2021] ECC Dur 2

sought and the Petitioners simply entered the churchyard and removed it, damaging it in the process (“*The original having been damaged when taken down...*”).

19. On or about 15 February 2019 Stephen Richards, with the assistance of an unnamed friend, again entered the churchyard and installed, without permission, the present memorial in the site where the 2014 Memorial had stood<sup>9</sup>. The new memorial was designed by Stephen Richards and has the following features:

19.1. It is 4 feet high, 1 foot 10.5 inches wide and 3 inches thick. In these respects it complies with the prescriptions laid down in the Regulations as to the permissible dimensions of memorial stones;

19.2. It is made from brown ironstone. This is not a material permitted by the Regulations;

19.3. It is inscribed front and back with brown lettering in ‘Carved Times’ font. The brown colouring of the inscribed letters is outside that permitted by the Regulations;

19.4. It was not executed by a monumental mason. The identity of the mason has not been revealed by either of the Petitioners, Mr Richards simply stating (by a letter dated 13 November 2020) that “...*we are not at liberty to give his name. This work was done as a special favour and he does not usually do churchyard memorials.*”. Paragraph 1.5 of the Guide to the Regulations requires all work to comply with the code of working practice of the National Association of Memorial Masons insofar as compatible with the Regulations;

19.5. On the front of the memorial is the inscription:

SUSAN MARY  
RICHARDS  
1933 - 2014  
AND  
DANIEL RICHARDS  
1965 – 2018  
SON OF SUSAN AND  
HUSBAND OF CAROLINE  
RIP

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<sup>9</sup> Letter from the Petitioners to the Registry dated 30 September 2020

19.6. On the back of the memorial is the inscription:

DOCTORS CHEMO WAS THE DEATH OF ME  
DOCETAXEL MADE FROM THE YEW TREE  
LEAVE IT IN THE CHURCHYARD I PRAY  
THERE ARE BETTER CANCER MEDICINES TODAY<sup>10</sup>  
DANIEL RICHARDS

FAREWELL FAREWELL!  
BUT THIS I TELL TO THEE  
THOU WEDDING GUEST  
HE PRAYETH WELL  
WHO LOVETH WELL  
BOTH MAN AND BIRD AND BEAST<sup>11</sup>

19.7. There is significant disagreement as to whether the inscription falls outside the terms of the guidance to the Regulations (paragraph 2.6) which require that “*Dedications should be simple, reverent and appropriate. The purpose of the epitaph is to identify the resting place of the person’s mortal remains, to honour the dead, to comfort the living and to inform posterity.*” The Petitioners have expressed the view that there is nothing inconsistent with this requirement in the current inscriptions and they also refer to para 2.3 of the Guide to the Regulations which states “*Individually designed memorials with appropriate and interesting features and texts are strongly encouraged, provided they fall within the Regulations. People should see a memorial as an opportunity to make an individual statement about the deceased...*”. Whether the

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<sup>10</sup> NB some punctuation was indicated in the Memorial Application version of the verse but it does not appear to have followed through into the executed memorial stone per photos supplied on 19 August 2020.

<sup>11</sup> A verse (albeit modified in its layout and phrasing structure) taken from *The Rime of the Ancient Mariner* by Samuel Taylor Coleridge – not attributed on the memorial stone.

inscription on the reverse of the memorial is appropriate is one of the key issues in this case.

20. Reverend Turnbull discovered the memorial when walking around the churchyard on 7 May 2019. The Petitioners, in their written materials, dispute this and assert that he was alerted to it by a parishioner, Margaret Smith, whose late husband was the Petitioners' doctor. This assertion was put to Reverend Turnbull, who rejected it. I have no reason to doubt his perfectly reasonable account of having come across the memorial during a walk around the churchyard and I do not fully understand how the Petitioners claim to know better than he how he discovered it. Whilst I find Reverend Turnbull's account to be accurate, it is not incompatible with Margaret Smith having also drawn his attention to it at around the same time, which I accept may have happened in this case as well. Nothing much turns on this but it is evidence that (a) the Petitioners failed to inform Reverend Turnbull of what they had done and (b) the memorial stone attracted the attention of at least one parishioner shortly following its installation.

### **The Law**

21. There are two related main issues in this matter. One concerns the basis for retrospectively permitting a memorial that has been introduced without authority and which, in its design, falls outside the scope of the Regulations. The other relates to the question of whether the inscription on the memorial is permissible.

22. In considering both of these aspects I am satisfied that I must take into account the importance, effect and purpose of churchyards and memorials in them. Eyre Ch stated in *Re St James, Newchapel*<sup>12</sup>:

*“Churchyards are consecrated to God, Father, Son and Holy Spirit. Accordingly, they must be treated and cared for in a manner consistent with that consecrated status. Churchyards fulfil important spiritual roles. They provide appropriate settings for Christian places of worship and as such send out a message of the Church’s*

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<sup>12</sup> Lichfield

*commitment to worshipping God in the beauty of holiness. They contain memorials to departed Christians demonstrating the Church's continuing love for them and its belief in the communion of saints. In addition they are places of solace and relief for those who mourn. It is notable also that many people find comfort in knowing that their mortal remains will be interred in a particular churchyard and in a particular setting. That comfort derives in part from a confidence that the character of that setting will be preserved."*

23. This was quoted with approval by Ch Tattersall in *Re St. Saviour Ringley Stoneclough*<sup>13</sup> who went on to observe that:

*"It thus necessarily follows that this court has an important responsibility to ensure that what is placed in our churchyards is both fitting and appropriate and the Regulations are important in fulfilling such responsibility."*

24. The Regulations are an instrument delegating certain powers vested in the Chancellor to incumbents and parish priests – and, in the event of a vacancy, the Rural Dean. These include the grant of permission for the introduction of a memorial stone (of a type compliant with the Regulations). The Regulations set out clearly at regulation 3.1 that no memorial stone may be introduced into a churchyard without first obtaining the requisite permission. The Guide (paragraph 1.2) explains that *"Any departure from the Regulations requires permission under the discretionary procedure set out below."* The discretionary procedure (at paragraph 6 of the Guide) in respect of proposals which fall outside the Regulations but are not expressly prohibited, describes a route by which an application for such a memorial is first made to the parish priest, who in turn refers it to the DAC, requesting that the DAC advise the Archdeacon on the proposals and that either the Archdeacon may authorise the parish priest to permit the memorial or the matter may at that point be remitted to the Chancellor, who may either authorise the parish priest to permit the memorial, remit the matter to the Archdeacon or direct that the applicant should apply for a faculty.

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<sup>13</sup> [2018 ECC Man 3

25. I have already set out the procedural route by which this matter came before me. I note that in this case the DAC was not consulted before the matter was referred to the Archdeacon and in turn to me. Instead consultation followed the matter reaching me. However nothing turns on the timing of the DAC's input in this case. The DAC, having reviewed the matter, "*Does not recommend*" the confirmatory remedy proposed.

*The trespass*

26. A grave is not owned by the deceased (or that person's heirs) or by the relatives of the deceased. There is no right to erect a memorial over a grave without the permission of the Diocesan Chancellor, often pursuant to an authority delegated via the relevant Diocesan Regulations, as I have set out above (see Bursell Ch in *St Mary the Virgin, Burghfield*<sup>14</sup> and Iles Ch in *St Andrew, Haughton-le-Skerne*<sup>15</sup>). Any memorial introduced without due authorisation is a trespass and the incumbent (or in this case the Team Vicar) has a responsibility to prevent such breaches<sup>16</sup>.

27. The reaction to such trespasses necessarily depends upon careful consideration of the individual circumstances of each case, including the pastoral considerations. However, it is clear that the fact of a flagrant disregard of regulations and resulting trespass may be sufficient in itself to order the removal of a memorial. For example:

27.1. In *St Andrew, Haughton-le-Skerne* an illegally introduced horizontal memorial ledger in memory of the Petitioner's Royal Marine Commando son was ordered to be removed. There had been a failure by the Petitioner to engage in communication in the faculty process and a consequent lack of justification for the un-permitted introduction of the ledger;

27.2. In *Foots Cray, All Saints*<sup>17</sup> Gallagher Ch. ordered the removal of a memorial stone placed in a churchyard contrary to the relevant churchyard rules (and

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<sup>14</sup> [2012] P.T.S.R. 593

<sup>15</sup> [2021] ECC Dur 2

<sup>16</sup> I have already set out above the fact that even though a memorial is introduced illegally, it may not then be removed without permission – a faculty is required (or in limited circumstances pursuant to the Regulations, the parish priest's consent).

<sup>17</sup> [2013] John Gaagher Ch., Rochester

which did not comply in its type with the rules). The rules had been provided to the petitioner before interment of her brother's ashes. The Chancellor accepted that there was no deliberate flouting of the rules but found that the petitioner had actual or constructive notice of their terms, meaning and effect and had made no attempt to ascertain whether what she proposed was acceptable or not or to inform or seek the permission of the rector. In these circumstances the Chancellor ordered the memorial to be removed;

27.3. In *Farningham, St Peter & St Paul*<sup>18</sup> in the context of considering a petition in respect of a memorial deviating in many significant respects from those permitted by the relevant Diocesan Regulations, Gallagher Ch. was absolutely clear that a bench/shelter that had already been introduced at the head of the grave without any prior consent “*must be removed forthwith*”;

27.4. In *The Churchyard of Quarrington Hill*<sup>19</sup> Bursell Ch, after a very full consideration of both the individual memorial in that case - which had been introduced without due authorisation – and the surrounding churchyard and other memorials concluded that “*...the fact of the petitioner's flagrant disregard of the Churchyard Rules and the resulting trespass would in itself be sufficient grounds for ordering its removal forthwith*”. However, the Chancellor's assessment of the pastoral context of the petition led him to exercise his discretion in favour of granting permission for the memorial to remain, subject to compliance with a number of precise conditions which reversed the most obvious of the derogations from the relevant Diocesan Regulations. I note that the particular pastoral considerations in that case included the extremely tragic and unusual circumstances of the petitioner's son's manslaughter the day after the funeral of the petitioner's mother.

28. These cases indicate the importance of context and proportionality in the application of the principles, but also the weight which must be afforded to the fact that tolerance of trespasses, particularly in cases where there is knowledge of the relevant rules on the part of the trespasser and where the memorial in question does not comply with those, “*...is*

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<sup>18</sup> [2019] ECC Roc 3

<sup>19</sup> [2016] ECC Dur 1

*unfair on others who have accepted those rules and acted lawfully. Those who comply with the law justifiably feel aggrieved when others, who do not comply, are rewarded when church authorities turn a blind eye. Furthermore, as Chancellor Bursell pointed out at paragraph 29 in Re The Churchyard of Quarrington Hill, when breaches of the rules have been allowed to occur, there is a risk that others may feel entitled to follow suit with an incremental detrimental effect on the whole character of the churchyard.”* (per Iles Ch. in *Re the Churchyard of Haughton-le-Skerne, St Andrew*).

#### *Faculties falling outside the scope of the Regulations*

29. In addition I need to consider the principles applicable where a consistory court is deciding whether or not it should grant a faculty for a memorial which does not comply with the Regulations. This has been the subject of consideration in a number of judgments with varying views as to the approach to be taken, ranging from e.g. *St John’s Churchyard, Whitchurch Hill*<sup>20</sup> and *St John the Baptist, Adel*<sup>21</sup> supporting a view that no burden is imposed on a petitioner save that of demonstrating that on the particular facts a faculty should be granted, to others (for example *Re Church Lawford, St Peter*<sup>22</sup>) requiring a “powerful reason” be shown before a memorial outside the scope of the churchyard regulations be permitted. There are other expressions along the continuum set out in other cases.

30. The diverging cases were thoroughly reviewed and summarised by Tattersall Ch in *Re Saviour Ringley Stoneclough*<sup>23</sup>. He ultimately concluded that the appropriate test is “*whether the Petitioners have shown a good and substantial reason why I should approve this proposed memorial which constitutes a departure from the stance adopted in the Regulations.*”

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<sup>20</sup> [2014] Alexander McGregor Ch., Oxford

<sup>21</sup> [2016] ECC Lee 8

<sup>22</sup> [2016] EC Cov 3

<sup>23</sup> [2018] ECC Man 3

31. I note that, pending any ruling on the point from the Court of Arches, none of the judgments I have mentioned are binding on me and I simply have to articulate the approach that will be applied by the St Albans Consistory Court.
32. I take as my starting point the nature of the Regulations, namely an instrument of delegation founded on the inherent acceptability of certain sorts of memorial which are likely to be relatively uncontroversial, and, by contrast the exclusion of others which are likely to be generally unacceptable in the context of the churchyards in the Diocese. This, it seems to me, supports an approach based on refusal of permission unless a good reason can be shown for departure from the Regulations. This approach places me on the same page as Tattersall Ch in his thorough analysis in *Re Saviour Ringley Stoneclough*.
33. By reason of the points Tattersall Ch drew from that analysis he concluded that the more nuanced standard of “*good and substantial reason*” was the correct approach. I gratefully adopt his thorough review and its analysis and agree, particularly in light of the considerations of justice and fairness to other families who have put aside their personal preferences in complying with the Regulations, that the augmentation of the simple “good reason” starting point to “good and substantial” is appropriate. I therefore adopt the same approach here.
34. The key points of Tattersall Ch’s analysis and summary were helpfully distilled by Deputy Chancellor David Rees QC in *Worthington, St Matthews Graveyard*<sup>24</sup> as follows:
- “(1) *Diocesan Regulations should not be seen as laying down the sole standard of good taste but nonetheless...can be seen as representing a considered collective understanding of what is generally acceptable and appropriate (Re Saviour Ringley Stoneclough at [35] citing St Leonard Birdingbury*<sup>25</sup> *at [53]);*

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<sup>24</sup> [2019] ECC Lei 2

<sup>25</sup> [2018] ECC Cov 1

(2) *In those circumstances, a “good or substantial reason” should be required before a memorial falling outside the scope of such regulations [is permitted] (Re Saviour Ringley Stoneclough at [35] citing St Leonard Birdingbury<sup>26</sup> at [53]);*

(3) *This is a matter of justice and fairness to other families who have put aside their personal preferences and accepted a memorial which conforms with the Diocesan Regulations (Re St James Newchapel<sup>27</sup>);*

(4) *Circumstances which might provide a sufficient reason for authorising a memorial falling outside the Diocesan Regulations might include:*

(i) *A proposed memorial that is in its own right a fine work of art;*

(ii) *A memorial that is suitable for a particular churchyard, although not perhaps for others covered by the Diocesan Regulations;*

(iii) *A memorial of which there are already so many examples in the churchyard “it would be unconscionable to refuse consent for one more”; or*

(iv) *Compelling personal circumstances suggesting a faculty should nevertheless be granted.*

*(Re St Mary Kingswinford<sup>28</sup> at [38])*

(5) *However it is not possible to definitively identify in advance all matters which are capable of constituting a sufficiently exceptional reason to justify the granting of a faculty (Re Christ Church Harwood<sup>29</sup>);*

(6) *There may be circumstances falling within the examples set out at (4) above where it will nevertheless be appropriate to refuse a faculty and there will be circumstances falling outside those examples where there will be exceptional reasons for granting a faculty. The above examples are not to be regarded as a judicial straightjacket (Re Saviour Ringley Stoneclough at [29] and [30].”*

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<sup>26</sup> [2018] ECC Cov 1

<sup>27</sup> [2012] Eyre Ch., Lichfield <sup>27</sup>

<sup>28</sup> [2001] 1 WLR 927

<sup>29</sup> [2002] 1 WLR 2055

*The inscription*

35. Finally, in this case there is the important and contentious issue of the inscription. Under the Regulations inscriptions must be “...*simple, reverent and appropriate. The purpose of the epitaph is to honour the dead, comfort the living and to inform posterity.*” (Guide to the Regulations, para 2.6). The Guide also states (para 2.3) that “...*appropriate and interesting features and texts are strongly encouraged, provided they fall within the Regulations. People should see a memorial as an opportunity to make an individual statement about the deceased.*” The question is whether the proposed wording complies with these requirements and can be permitted in the particular circumstances of this case.
36. In *Standon: All Saints*<sup>30</sup> Eyre Ch refused permission for an inscription including the phrases “*It’s only rock and roll*” and “*Finally fell off his perch*”, concluding that those phrases (respectively) risked being read as “...*trivialising God’s precious gift of life*” and “...*cross[ing] the line going beyond quirkiness and humour to undue flippancy and irreverence.*” He reluctantly (“*just about acceptable*”) permitted the words “*Now Then*” as recalling something of the deceased’s character and personality. In reaching those conclusions, Eyre Ch stated (at [14]):

*“My consideration...must be undertaken in the context of the nature and purpose of a churchyard. Churchyards are consecrated to God, Father, Son and Holy Spirit and what is set out on memorials therein must be consistent with that consecrated status. It follows that inscriptions must be consonant with orthodox Christian belief. Not only is this because of the purpose of the churchyard but also because inscriptions convey a message to those who visit churchyards. It is important that the message that such visitors receive is one which proclaims (or at the very least is not inconsistent with) the message of hope and faith being given to them by Christ’s Church. In addition it is to be remember that the memorial will be read not just by those who knew the deceased in question but by those who did not. Indeed, the message conveyed to those who did not know the deceased is in many ways more important than the message being given to those who did know him or her. Moreover, the memorials placed in churchyards must be fitting and appropriate not just for today but also for the future.”*

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<sup>30</sup> 03.06.13, Diocese of Lichfield

(see also the reservations of Deputy Chancellor Rees QC at [33] *Worthington, St Mary's Graveyard* regarding an inscription using the word “Daddy”, although I also note the contrary view in *St Mary, Syderstone*<sup>31</sup>).

37. The encouragement of individuality and even of “quirkiness” in memorials is not inconsistent with this approach (and here I note the example of permission being granted for the family motto “The goat’s milk is sour” in *Rettendon: All Saints*<sup>32</sup>). In *Standon: All Saints* Eyre Ch further stated:

*“That does not mean that there has to be a characterless uniformity in the inscriptions in a churchyard. Human individuality and diversity – indeed human eccentricity and nonconformity – are gifts from God and are to be celebrated as such. Accordingly, individuality and diversity in churchyard inscriptions reflecting the diversity and different characters of those commemorated are to be encouraged. Very many churchyards are enhanced and their purpose reaffirmed by inscriptions which are varied (and often quirky or eccentric) and which convey something of the character or life of the departed person. The message that we are individuals and are loved by God as individuals with our God-given differences and eccentricities is an important part of the Christian message proclaimed in our church buildings and to which our churchyards should bear witness.”*

38. However, the expression of character and individuality in a memorial is limited by the essential qualification that “...*what cannot be permitted is anything which can be seen as inconsistent with the Church’s message.*” [12] *Standon: All Saints*.

## **Discussion**

39. Taking stock of the various issues that are raised in this case, in my view the fact of the trespass in installing the memorial and the permissibility of the inscription are the most serious matters. Deviation from the Regulations by the use of non-permitted stone and the

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<sup>31</sup> [2019] ECC Nor 1

<sup>32</sup> [2019] ECC Chd 1

colouring of inscription lettering are, by comparison, relatively less serious in this particular context.

40. I will therefore deal with those matters briefly first, before turning to the issue of the inscription and finally, taking into consideration the conclusions reached on those matters, will conclude with the question of whether the memorial should be permitted to remain in situ despite the trespass it represents.

*Deviation from the Regulations by use of non-permitted stone and brown lettering*

41. Although these matters are undoubtedly the least serious of those before me, nonetheless they require a principled approach. As set out above, the starting point is whether the Petitioners have shown a good and substantial reason for departure from the Regulations by the use of brown ironstone and the lettering in brown which is used in the inscription.

42. In their written representations the Petitioners have advanced the following reasons and justifications for using brown ironstone:

42.1. It is a “...*material that occurs locally and is used in churches. It is compatible with St Mary’s. It is a soft type of stone and after a few years weathers to a gentle shade.*”;

42.2. The same type of stone was used in the 2014 Memorial (also erected, and subsequently removed, without permission), which this stone purports to replace “*The actual stone used being from the same source as the original which it replaced*”. (The accuracy of these statements has not been disputed by the Team Vicar or the Archdeacon, both of whom have had sight of the relevant statements and the opportunity to comment upon them.)

43. I do not find that these constitute good or substantial reasons for permitting the use of the unauthorised stone in this case. Simply because a stone is local and has echoes with other (unspecified) church buildings does not qualify it for use as a memorial stone in this churchyard. The Regulations delimit the types of stone to be used in order to achieve a cohesive effect in churchyards, as well as because the particular qualities of the stones that are permitted are workable by memorial masons, are attractive and durable. If a petitioner

was permitted to use any type of stone they chose without prior consultation or permission, the harmonious impression of a churchyard, generally serving as a frame to the church itself, would gradually be eroded by the variety of colours, tones and finishes. It is not suggested by the Petitioners that, for example, there are an overwhelming number of other memorials in the churchyard constructed from brown ironstone such that the use of that material would fit in with the aesthetics of the setting. The inherent attraction of the stone to the Petitioners does not constitute a reason for departing from the specifications set down in the Regulations.

44. The Petitioners' point that the 2014 Memorial, which the new stone purports to replace, was made of the same type of stone is unattractive. It does not constitute any sort of reason for allowing the derogation requested in this case. Even taking into consideration that Stephen Richards appears to have been let down by the acquiescence of churchwardens at the time of his installation of 2014 Memorial, the introduction of that stone nonetheless constituted a trespass. Both the fact of the trespass and the fact that the stone was of a non-permitted material were matters that Mr Richards was, or ought to have been, aware of by the time he came to remove (without permission) the 2014 Memorial and to replace it (without permission) with the current memorial, given the advice I have found that he received from Reverend Turnbull as to the application of the Regulations.
45. I have also considered the fact that the DAC, although it "did not recommend" the petition for confirmatory faculty as a whole, did not raise any specific comment in relation to the stone used. However this does not persuade me that there is a good and substantial reason to permit its use in this case.
46. There is, accordingly, no basis to permit the use of brown ironstone for this memorial and I refuse permission for its use. There has also been no reason, good or otherwise, advanced in respect of the brown lettering of the inscription. For completeness the Regulations permit only black or gold lettering to be used and in the absence of any reason for the brown lettering in this case I conclude that it ought not to be permitted either.

## *Inscription*

47. The inscription on the reverse of the memorial stone is perhaps the most contentious issue in these proceedings. The DAC rightly raised the issue of the untidy and unattractive layout of the inscription as a whole (and I would add to that the specific observation that the layout and omission of punctuation in the verse from *The Rime of the Ancient Mariner* is a deviation from Coleridge's text, which might have been remedied by a more careful and skilfully executed laying out of the inscription). But the most pressing concern in assessing appropriateness lies in respect of the words of the original poem written by Daniel Richards, namely: *"Doctors, chemo was the death of me, Docetaxel made from the yew tree, Leave it in the churchyard I pray, There are better cancer medicines today."*
48. The inscription has been considered by the Team Vicar, the Archdeacon, the DAC and the PCC. The Archdeacon wrote by email to Reverend Turnbull on 29 October 2019 stating that *"...personally I believe that the whole of the poem/quote beginning "Doctors chemo was the death of me..." down to the words "Daniel Richards" should be removed"*. The DAC also indicated that it felt unable to recommend the wording or the layout of the text on the reverse, and recommended that the first paragraph (i.e. the poem written by Daniel Richards) be excised from the memorial. The PCC, having considered the memorial and the petition for a confirmatory faculty, did not express a view on the inscriptions in particular, simply deciding *"that as this is such a delicate and sensitive matter that they [the PCC] would not support or oppose this retrospective application."*
49. Reverend Turnbull has indicated that he has received comments, orally, from three people (a member of the congregation, a member of another church in the Chellington Team and a visitor to the churchyard) indicating that *"they were not sure about the inscription on the back of the grave"*. It is put no higher than that. Despite requests by me directed to understand what the comments were and who made them, this is all the information I have about the reaction to the inscription from visitors to the churchyard.
50. The Petitioners point out<sup>33</sup> that no letters of objection or of support have been received. However they indicate that they have discussed the wording of Daniel's poem *"...with doctors and other medical people who have all been quite happy with them."*

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<sup>33</sup> Letter to Registry dated 30 September 2020

51. As there is no detailed or attributed evidence of either specific objection or support, I place little weight on the assertions that are made as to the reactions of others to the inscription. Instead I look to make an objective assessment of whether the inscription is consonant with orthodox Christian belief and with the Regulations, conveying a message which proclaims (or at least is not inconsistent with) the Church's message of hope and faith.
52. The Petitioners strongly reject any suggestion that the inscription may be seen as being upsetting and have repeatedly asked for the basis upon which it is said to have that effect. There is dissatisfaction that what has been expressed in discussions to date is a sense of unease or an amorphous concern rather than a well analysed articulation of precisely the characteristics that make it potentially upsetting.
53. This is, in my judgment, the wrong approach. It is not for the Petitioners to demand that the Team Vicar or others articulate a reasoned breakdown of the ways in which the inscription potentially or actually gives offence. It is for the Petitioners to show that the inscription meets the requirements of the Regulations or, if it does not, that it is otherwise justifiable and, crucially, compliant with fundamental Christian belief and the messages set out above.
54. The Petitioners have also expressed views which suggest that they see a tension between paragraph 2.6 of the Guide to the Regulations (with its emphasis on simplicity and reverence) and paragraph 2.3 (which the Petitioners rely on, with its emphasis on interesting texts and expressions of individuality). They supply in support a number of newspaper commentaries on the recent ecclesiastical decisions dealing with the appropriateness of non-English language inscriptions on memorials.
55. I do not perceive any tension between these two paragraphs of the Regulations. The celebration of individuality and diversity is entirely possible in a way which is consistent with God's message, and I note that in this regard both paragraphs of the Regulations are underpinned by use of the word "*appropriate*".
56. Appropriateness is to be judged in the context of the Regulations' focus on ensuring that churchyards "*represent[ing] God's love and compassion for the whole community...*" and

are to be “...embellished to the glory of God, for the benefit of all of God’s people today as well as those to come...a place of peace, dignity and respect for the departed.” (Guide para 1.1 and see also paragraph 10 *Re Standon: All Saints*).

57. Rather than being consistent with these aims, in my judgment the inscription serves two very different purposes, namely the publicization of personal views on a prescribed medical treatment and also the compliance with the obligation that the Petitioners feel themselves to be under by reason of the expression of Daniel Richards’ wishes that this poem be inscribed on his memorial.
58. The words of the poem convey a tone of criticism, disappointment and despair. This, I find, is wholly inconsistent with the Church’s message of hope and faith. As such the poem is fundamentally at odds with what is acceptable in a churchyard and with the Regulations’ express purpose of embellishing the churchyard to the glory of God which is at the root of the basic principles which permissible inscriptions must conform with.
59. It follows from the foregoing that I find the inscription to be impermissible. I would also add the following for completeness:
  - 59.1. I reject the Petitioners’ assertions that no specific upset or offence having been named to them in discussions, none is capable of being caused by the original poem. As a strongly worded and despondent expression of a layman’s personal opinion of a prescribed medical treatment for cancer, the poem does carry a real risk of offence or upset. That risk is particularly acute in the case of, for example a person visiting the churchyard who is, or cares for, someone undergoing the particular form of chemotherapy referred to. But upset or other adverse reactions may well be experienced by others upon reading the inscription simply by reason of the unhappy tone of complaint, or by the earthly, corporeal and pharmaceutical focus of the poem and the consequent dissonance from the other reverent and compliant messages in the churchyard;
  - 59.2. The inscription on the reverse of the memorial, particularly when viewed as a whole including the incorrectly laid out verse from *The Rime of the Ancient Mariner*, also falls foul of the additional requirements in paragraph 2.6 of the Regulations that inscriptions be simple and reverent. The total length of the

inscriptions and the multiple and non-cohesive messages conveyed by the combination of inscriptions create a complex and contentious, rather than simple and reverent, effect. Furthermore none of the messages conveyed by the inscribed words contain a sense of the respectful worship of God.

*Introduction of the memorial without authorisation*

60. The memorial is unauthorised. It is a trespass. In considering the appropriate outcome for this petition for a confirmatory faculty I bear in mind Bursell Ch's statement in *Re The Churchyard of Quarrington Hill*<sup>34</sup> that "*The consistory court, being a Church court, has always been concerned to act pro salute animae - that is, with regard to the pastoral effect that any of its decisions may have – but that concern embraces a concern not only for the individual petitioner but also for all those who may be affected by its decisions.*"
61. In terms of the pastoral elements of this case I have the deepest sympathy for the Petitioners and their family, who are grieving and have, over the course of a relatively short space of time, lost not only a son and husband in Daniel, but have also experienced the deaths of Daniel's mother and his brother. The combined loss is a great one and the memorial has been designed to have some echoes of the memorial to Daniel's brother elsewhere in the churchyard. The family are concerned to honour Daniel's expressed wishes about what he wanted on his memorial, especially where he had also asked that his body be left to medical science and the family found themselves unable to honour that wish in the particular circumstances of his death. He is the author of the original piece they have inscribed upon it. I am also conscious that there appears to have been some form of either positive (innocent) misdirection, or turning a blind eye by churchwardens to the unauthorised introduction of the earlier 2014 Memorial which may have influenced Mr Richards approach in this case.
62. These matters form an important element of the context and assessment of proportionality required in the application of the relevant principles and in reaching my conclusions I have considered them very carefully.

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<sup>34</sup> [2016] ECC Dur 1

63. However, I am also astute to the fact that the Team Vicar was appointed not long after the erection of the 2014 Memorial and the Petitioners were then in a position to check with him and to understand of the need for authorisation and compliance with the Regulations before the trespassing removal of the 2014 Memorial. I have also found that the Petitioners were advised of the Regulations and their effects ahead of the funeral of Daniel Richards and therefore knew, or ought to have known, of the correct position before the introduction of the current memorial. Furthermore, every memorial in any churchyard will have been placed by a grieving family and no doubt many will have had to inform themselves of the requirement for authorisation and to set aside personal preferences by accepting a memorial in keeping with the Regulations.

64. Tolerance of trespasses, particularly in cases where there is knowledge of the relevant rules on the part of the trespasser and where the memorial in question does not comply with the Regulations, “...is unfair on others who have accepted those rules, acted lawfully, and moderated their hopes or expectations accordingly. Those who comply with the law justifiably feel aggrieved when others, who do not comply, are rewarded when church authorities turn a blind eye. Furthermore...when breaches of the rules have been allowed to occur, there is a risk that others may feel entitled to follow suit with an incremental effect on the whole character of the churchyard”<sup>35</sup>.

65. For all of the foregoing reasons I am unable to permit the continued presence of this memorial in the churchyard of St Mary the Virgin.

66. I should add that I have carefully considered the question of proportionality and whether to adopt a less impactful route, for example leaving the stone in situ and simply excising some parts of the inscription. I note that discussion of this as a potential way forward formed the basis of much of the dialogue between the Team Vicar and the Petitioners and that it was also suggested by the DAC in its Notification of Advice. However, I conclude that this would not be an appropriate way forward in this case for the following reasons:

66.1. It would potentially leave an unsightly finish and unattractive, unbalanced spaces on the reverse of the memorial stone;

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<sup>35</sup> Re the Churchyard of Highton-le-Skerne St Andrew

- 66.2. Despite numerous requests the Petitioners have not revealed the identity of the memorial mason, stating only that he does not usually work on memorial headstones and that Stephen Richards was the person who actually installed the memorial in its site in this case. As paragraph 2.7 of the Guide to the Regulations emphasises, the safety of the installation of a memorial stone is a very important consideration in a churchyard and the requirement in the Regulations that only a member of the National Association of Memorial Masons is to do so is designed to ensure that safety. It follows that, without any such assurance in this case, I have real concerns about the safety of its installation which are most thoroughly addressed by its removal;
- 66.3. Allowing the memorial to remain fails to address the unfairness to others who correctly obtain appropriate authority and follow the Regulations;
- 66.4. Allowing the stone to remain would also fail to remedy the dissonance in the churchyard caused by the unpermitted use of brown ironstone and the poor quality of the presentation of its inscription, especially given its prominent position in the churchyard.

### **Decision**

67. Accordingly I refuse the petition for confirmatory faculty and instead grant a faculty for the removal of the memorial in the following terms:

- 67.1. The Petitioners have permission to remove it by 7 May 2021;
- 67.2. In default of removal, the Team Vicar and churchwardens are directed to remove the memorial (whether by themselves or by their agents) by 4 June 2021. They must thereafter notify the Petitioners (by recorded delivery via the Diocesan Registry) of the storage location of the memorial stone and when it may be

retrieved by them or on their behalf. If it is not retrieved within 3 months of the date of notification it will be deemed to have been abandoned and may thereafter be disposed of or destroyed as the Team Vicar and churchwardens see fit. The cost of such removal and/or destruction must be paid by the Petitioners.

68. I give permission to any person affected by this order to apply to the court for any further directions relating to the implementation of the above conditions, should any be required, such application to be in writing by 12 March 2021.

69. Although I have been compelled to order the removal of the memorial in its current form, there can be no doubt that including in the churchyard a fitting memorial to Daniel and Susan Richards is an important objective. I am conscious that the Petitioners will wish to find a way of celebrating Daniel and Susan's individuality. This is to be welcomed and encouraged. Any inscription included in a new memorial should convey something of their characters without being seen as inconsistent with the Christian Gospel and should be executed and installed in a way which is professional and safe, in accordance with the Regulations. I hope that the Petitioners can come up with a design which achieves that. Should the Petitioners wish to submit a revised design which is within the scope of the Regulations, a replacement memorial could be authorised by the Team Vicar without the need for any further reference to me. Alternatively, if there are elements the Petitioners wish to include which fall outside the Regulations, a petition for a faculty should be presented so that those elements can be considered and the Petitioners assisted in achieving a fitting result.

70. As is the norm, the Registry and Court costs are to be borne by the Petitioners.

LYNDSEY DE MESTRE QC

Chancellor

12 February 2021

#### POST SCRIPT

1. After concluding my judgment above I was notified by the Registry that a further letter had been received from the Petitioners. The letter is dated 10<sup>th</sup> December 2020 but it was not

received at the Registry until 15<sup>th</sup> February 2021. Save that I take judicial notice of the effect that COVID-19 restrictions have understandably had in producing some anomalies in postal deliveries, I am not able to explain the discrepancy in dates. However I wish to record that, having read it, in my judgment there is nothing in the contents of the letter that changes the substance of my decision. In the letter, the Petitioners repeat their previous consent to proceeding in writing, but also reiterate a more ambiguous position regarding subsequently making such consent conditional upon directions to exclude any further evidence. They also repeat and elaborate upon previous offers made during the course of earlier discussions regarding the possible removal of Daniel's poem from the memorial in the event that a single objection to it can be brought forward. These suggestions do not correctly address, nor go far enough in respect of, the issues raised in this case. Accordingly I have noted the contents of the letter but find that it does not necessitate any change to the conclusions I have reached.