

DIOCESE OF SHEFFIELD
In the Consistory Court

Her Honour Judge Sarah Singleton QC
Chancellor

In the Matter of St Alban Wickersley

Judgment

1. The Facts

The facts of this unfortunate matter can be simply summarised.

The incumbent and church wardens of the petitioning church seek orders for the removal of a headstone which was introduced into the churchyard in December 2016 as a memorial for the mother and sister of Mrs Bacon, the party opponent. The site where the memorial has been installed was previously marked by a memorial stone which commemorated the life of Mrs Bacon's mother who had died in 1974. Mrs Bacon's sister died in June 2016. A standard application form dated 4th October 2016 for permission to install a new memorial was submitted on behalf of the bereaved family by a local monumental mason, Mr Brian Croft of Beecroft Memorials. The incumbent, the Reverend Peter Hughes, duly approved the memorial on the standard form on 25th October 2016.

2. In December 2016, a memorial was installed in the churchyard which was substantially different to that for which permission had been granted, both as to detail and as to overall impact. It included a number of features which do not comply with the Chancellor's churchyard rules; the incumbent would not have permitted the memorial exercising his delegated discretion under those rules. This judgment is not about why the memorial does not comply, but concerns the flawed process which led to such a memorial being installed in the churchyard. I pause to note that there are other memorials in this churchyard which do not comply with the rules and that fact has caused a degree of perturbation to Mrs Bacon. However, the presence of other memorials not in accordance with the guidelines does not establish any precedent that such memorials can or should be allowed. The Diocesan Registrar has set this out clearly in correspondence with Mrs Bacon's solicitors.

3. The proceedings

The incumbent requested that the memorial be removed but the bereaved family did not agree. The incumbent and the churchwardens therefore petitioned for an order for the removal of the memorial. The DAC, at their November 2017 meeting, agreed with the position of the Petitioners and recommended removal. Mrs Bacon became a party to the proceedings to oppose the removal. Once aware of these facts, I came to two conclusions: the first was that the incumbent had been misled by an inaccurate description of the memorial on the standard form submitted by the monumental mason and that any permission he had given for the memorial was ineffective; the second was that responsibility for what happened largely rested upon Mr Croft, who had written the misleading application and carried out the installation

of the memorial. I therefore made Mr Croft a party to the proceedings following the special citation process under rule 19.4 of the Faculty Jurisdiction Rules 2015. This was with the consent of the other parties. The purpose of this was to enable consideration of whether Mr Croft should be responsible for carrying out the removal of the memorial, if ordered, and to decide whether he should be ordered to pay any part of the legal costs of the other parties to these proceedings under section 13(1) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991, whereby:

..... if in any proceedings by any person for obtaining a faculty it appears to the court that any other person being a party to the proceedings was responsible wholly or in part for any act or default in consequence of which the proceedings were instituted the court may order the whole or any part of the costs and expenses of the proceedings or consequent thereon, including expenses incurred in carrying out any work authorised by the faculty (so far as such costs and expenses have been occasioned by that act or default), to be paid by the person responsible.

4. Initially, Mr Croft, although aware of the proceedings, was disinclined to engage with the process and it was necessary for me to issue a second set of directions against him in June after he failed to comply with those issued in April. In addition to a certain level of recalcitrance on Mr Croft's part, I understand that he himself has suffered a close personal bereavement. He has now complied with the directions and demonstrates an admirable insight into the realities of the case.
5. Upon my evaluation of the incontrovertible evidence in this matter, I consider that it is appropriate to order the removal of the memorial stone at the expense of Mr Croft. Although Mrs Bacon has sought to argue that the memorial could remain and perhaps be altered to render it more compliant with the churchyard rules, such a solution is impractical and unattractive. The Petitioners are opposed to it in any event.

In this case, that the usual principle relating to costs in Faculty proceedings (i.e. that parties should be responsible for their own legal costs) should apply seemed to me likely to prove unfair. I wished to consider exercising my discretion under section 13 (1) after having heard from each of the concerned parties, including Mr Croft.

6. The Costs Schedules

The Diocesan Registrar and the solicitors for Mrs Bacon have each, in response to directions made in June 2018, submitted schedules of the costs incurred in this matter. The Diocesan Registry's costs stand at £2,295 net of VAT (if calculated at the Registrar's solicitors' firm rate of £255.00 per hour) and £1,278 net (if calculated in accordance with the rate of £142.00 per hour provided by the Ecclesiastical Judges, Legal officers and Others (Fees) Order 2017). The schedule submitted by Mrs Bacon's solicitors relates costs incurred for her at £2,950 net of VAT.

Decision and Reasoning

7. Although Mrs Bacon initially resisted the removal of the memorial stone, that position has not ultimately been maintained. This is proper and sensible. It is sadly inevitable that the memorial stone be removed and I propose to direct this. I do not consider it either practical, proper or attractive that alterations be undertaken to the memorial

wrongly introduced to the churchyard in attempts to make it more rule compliant. The removal is to include the kerbstones unless the incumbent agrees that they may remain as part of the replacement memorial. Kerbstones do proliferate in this churchyard and thus the usual rationale for forbidding them to facilitate grass mowing cannot be fulfilled. I would therefore permit the incumbent to allow them in this instance if he thinks fit.

8. Mrs Bacon's position is that Mr Croft's conduct has led directly to the unfortunate situation here. She had no idea that the documents submitted in her name were inaccurate and had misled the incumbent; that is plainly right, although it was open to her at an earlier stage to accept the incumbent's stance and to seek her remedy against Mr Croft rather than his having to be pursued through the unwieldy process I have described in this judgment.
9. Mr Croft's position is to accept responsibility for removing the memorial headstone. It would seem that he and Mrs Bacon have reached an agreement that he will be undertaking the work to make and install a new headstone. That is entirely a matter for Mrs Bacon and Mr Croft. Both are now aware of the importance of gaining the permission of the incumbent for anything being introduced in the churchyard through the proper process being followed. Mr Croft also accepts that he should pay some of the Registry costs. He argues his contribution should be limited to half those costs. In support of that argument he suggests that some of the blame for what went wrong lies with the incumbent. I do not follow his arguments save to understand that he suggests that he had explained the nature of the memorial in a conversation before the misleading application was submitted. I am unimpressed by such an argument. Whatever the content of conversations between a stonemason and an incumbent, the written documents must be accurately completed. I do not know what the incumbent would say about Mr Croft's account of their conversation and do not need to resolve any such dispute. The informal and the formal process must be synchronised. The Court relies upon the written documents as the record of what has been approved and agreed and should not be expected to go behind those documents.
10. Mr Croft also challenges the amount of costs scheduled by Mrs Bacon's solicitors. I have given some considerable thought to the question of how much Mr Croft should pay in respect of the legal costs of the Registry and Mrs Bacon. The usual principle in the Faculty process is that each side pays their own costs. In this case, by reason of his conduct, an outside party has had to be brought into the proceedings in order for responsibility for the inevitable outcome and the expense of that outcome to be fairly allocated. The Diocesan Registrar has had to make most of the running in that process and the costs incurred by Mrs Bacon's solicitors on that issue are likely to be a smaller proportion of the whole incurred by them. It might well be thought that responsibility for pursuing Mr Croft should have fallen on them and not the Registry. The purpose of my proposed costs order is not to punish Mr Croft but to allocate to him a fair proportion of the liability for the legal costs of what happened. In all the circumstances, exercising my costs discretion somewhat summarily, I propose to direct that Mr Croft pays a contribution of £750 plus VAT to the costs of the Diocesan Registry and a contribution of £500 plus VAT to the costs of Mrs Bacon. I do intend that the Diocesan Registrar, who has had to undertake much more work on this matter than on a standard faculty, be able to claim the balance of the costs he has incurred from the Diocese at the 2017 Fees Order rate.

11. This has been a difficult and prolonged matter. I am sorry that Mrs Bacon and her family have had to suffer the process as well as their bereavement. Unfortunately, the stark facts of this case could not simply be ignored. Incumbents seeking to uphold the Chancellor's churchyard rules when exercising the discretion delegated to them cannot be left in the position where they are misled and unsupported. Monumental masons must know that the rules will be enforced and also that paperwork must be accurate; the costs of putting matters right can and will fall upon them if the rules are ignored or applications are not accurately completed.

Sarah L Singleton QC
Chancellor of the Diocese of Sheffield