

## Neutral Citation [2017] ECC Bla 2

### In the Consistory Court of the Diocese of Blackburn

#### And in the Matter of Standish St Wilfrid

#### And in the Matter of a Petition for Reservation of a Grave Space by John Richard Jones QC

### Judgment

#### *Application and basic facts*

- 1) By a petition dated 20 July 2016, Mr John Richard Jones QC petitions on behalf of himself and his wife, Mrs Heather Jones, for the reservation of a double depth grave space in the churchyard, in Section R, Row 14 No 4. According to a plan provided to me, this area is about as far from the church building within the churchyard as is possible. The application is resisted by the PCC, who considered the matter at a meeting on 26<sup>th</sup> September. Public Notices were exhibited from 13<sup>th</sup> November to 15<sup>th</sup> December and a number of individuals expressed their objections to the Registrar, although none of them chose to complete Form 5 and thereby become formal objectors to the application. I am nonetheless required under Rule 10.5 (2) of the *Faculty Jurisdiction Rules 2015* to take into account their letters of objection in considering the petition.
- 2) Mr Jones is now 58 or thereabouts, and I assume Mrs Jones is of a comparable age. The petition recites that he was a resident in the parish from 1959 until 1995, which indicates he was born there and lived the first 36 years of his life in that community. They now live at Wrightington, which I am told is just over 5 miles away, and within the same postal district as the Rector, Rev'd Canon Andrew Holliday, who resides in the parish.
- 3) The endorsement on the petition by the Rector and wardens indicates that there are about 90 grave spaces still unused, and that there are approximately 20 burials a year. At that rate of usage about 4 ½ years only remain before all available spaces are used.
- 4) The basis for seeking a reservation, is that his grandparents and father are buried there and his mother will also hope to be buried there. He describes himself as a lifelong worshipper in the church, and was baptised, confirmed and, in 2000, married at St Wilfrid's.

#### *The legal position about burial.*

- 5) Before setting out the basis of objection to the request, I want to set out briefly the position in regard to burial in a Church of England churchyard. (Much the same applies to the interment of cremated remains).
- 6) Provided that the churchyard remains open, and there is space, parishioners have a *right of burial*. In the nature of the case, the 'right' can only be exercised on behalf of the deceased by family, or other representatives. This right is a purely a matter of residential qualification, and does not depend on attendance at worship, any adherence to the

Church of England or its tenets, or indeed to the Christian faith generally, let alone any financial or other support of the church or its activities. Membership of another Christian denomination is not a disqualification, nor is doubt about the validity of the faith as the Church of England holds it, nor any agnostic or atheist views expressed by the deceased.

- 7) The second basis on which the right is afforded is set out in section 6(1) of the Church of England (Miscellaneous Provisions) Measure 1976, as follows: *A person who apart from this subsection has no right of burial in the churchyard.....of a parish, shall have a right of burial therein if at the date of his death his name is entered on the church electoral roll of the parish.*
- 8) A third category covers those who do not enjoy either of the above rights, but die within the parish, perhaps by reason of a road traffic accident or by sudden illness. I have never come across this.
- 9) This does not limit those who *may* be buried in the churchyard. Section 6(2) of the above Measure provides: *No person, other than a person having a right of burial in the churchyard.....of a parish, shall be buried there without the consent of the minister of the parish, but in deciding whether to give such consent the minister shall have regard to any general guidance given by the (PCC) of the parish.....*
- 10) Thus, it is made clear that the minister has a discretion to bury someone not having a 'right' of burial, subject to any 'general guidance' given by the PCC. This is not an opportunity for the PCC to apply a veto in an individual case, but an opportunity to frame beforehand a policy on the matter for the guidance of the incumbent when asked to bury someone with no right of burial. It is well established there is no appeal to the Chancellor from the incumbent's refusal to bury, if he declines to exercise his discretion when asked to do so. To allow appeals to take place in such cases would be manifestly inconvenient, as well as distressing for those involved, and would give rise to unacceptable delays.
- 11) **Reservation** is the practice of setting aside a specific burial or cremation plot on behalf of named individual(s) and leaving it unused until required by the applicant. It can only be obtained effectively by an application for a faculty directed to the Chancellor. It is a discretionary matter, that is, granted after a consideration of all the circumstances, including especially any objections raised. A reservation is only effective if granted by the Chancellor and any private assurances by the incumbent for the time being, are not binding on his successor in the absence of a formal faculty. If the applicant already has a right of burial, the application is in effect to fix the plot, whereas in the normal way, a burial will generally take place in the next available space along the row currently being used, or into an existing grave. The incumbent has the general right, absent a reserved space, to direct where any burial shall take place. Applications for reservation can also be made by those with no present right of burial in the churchyard. *If granted*, which may be unlikely in the face of opposition from the parish authorities, then not only has the actual space been identified, but the applicant will thereby have effectively acquired a right of burial.

12) The PCC is entitled however to adopt a policy in regard to applications for reservation of space for burial, which will generally be considered by them at one of their meetings. As is shown by the references to a number of cases in one of the objections, the Chancellor will have regard to such a policy, provided it is reasonable and is a proper exercise of the PCC's judgement. Without discussing at length what that might mean, I can say that I would be unhappy at being asked for instance to enforce a policy that differentiated between residents of a parish, and those with their names on the church electoral roll, because it seems to me the Measure referred to above, has indicated the two categories should be treated on the same basis.

### ***St Wilfrid's policy***

13) The objections in this case are largely based on the contention that St Wilfrid's has a long-standing policy in the matter, formulated and adopted by the PCC, which in itself indicates that Mr Jones's application should be dismissed. If there is a clear and reasonably adopted policy, and he falls on the wrong side of the line, then I would follow the authorities indicating the Chancellor should accept the decision of the local community as expressed through the church council.

### ***Objections***

14) I will *summarise* the letters of objection, which understandably, overlap to some degree.

*Mrs Collinge* objects on the basis her brother, who had a long association with the parish was refused a burial plot around 2002 'because of a lack of burial land available, and because he was no longer living in the parish'. She believes the 'same rules should be applied to all'. It appears the brother no longer had a right of burial as a parishioner; it is not said he was on the electoral roll, (unlike Mr and Mrs Jones).

*Mrs Victoria Walder*: She is a worshipper and has a long personal history with the church, like other members of her family, and is on the electoral roll. The PCC have held a policy of non-reservation for a significant number of years', and the PCC 'voted unanimously against the proposal, upholding the non-reservation policy'.

Mrs Walder has legal qualifications and helpfully refers to a number of decisions that show Chancellors upholding the reasonable, bona fide and proper exercise of the PCC's discretion. She contends that the applicant lives outside the parish and is not a regular worshipper. To grant this application will prejudice the rights of parishioners and lead to many other requests and all remaining plots being reserved. Death should be the arbiter of who is interred in the churchyard. Along with everyone else in the parish or on the electoral roll, the applicant should wait and see if a space is available when the time comes. There are plans for very many new houses in Standish, and there is further authority that anticipated future demands should be taken into account when assessing an application. Only exceptionally should a Chancellor depart from a policy of non-reservation, especially when others have abided by it. That is only fair. She herself has abided by the policy although she would have liked to

reserve a plot. Mr Jones's role in the legal profession (as a distinguished leading counsel) should not place him in a privileged position.

***I want to make clear that I have no difficulty in accepting the thrust of the authorities she refers to, and in the circumstances consider there is no need to refer to them more specifically.***

*Mr Peter Walder* has a similar close association with the church over many years. He refers to the policy, which should be followed out of fairness. He, like his wife, has abided by the policy, and if this application is granted, will himself make an application.

*Margaret and Albert Hurst* have worshipped at the church for nearly 60 years along with their children and grandchildren. They recall a PCC meeting a few years ago, at which they were both present, when 'it was proposed and carried that no grave should be reserved'. The applicant does not live in the parish. He refers to 'floodgates', as others refer to a successful application being a 'precedent'.

*Freda and Peter Donnelly*: They also have close connections with the church and after discussion at great length by the PCC, several years ago, 'it was agreed, after all the facts had been considered that no one would be entitled to reserve a grave space in the future'. It would be inappropriate to reverse this decision now.

*Mrs Kathleen McGuirk* refers to the non-reservation policy and urges continued adherence to it. She herself would have liked to reserve a plot. She is concerned lest all remaining plots become reserved.

*Matthew McGuirk* contends that the PCC decided unanimously some years ago that there would be no reserved plots at St Wilfrid's. Both refer to limited space.

*Mrs Mary Byron* writes in a similar fashion, and seeks to draw a distinction between those living within and outside the parish.

*John and Jean Riley* also speak of the long held policy. They consider there is only occasional attendance at worship by the applicant. He complains about the positioning of the Public Notices, but there is nothing in that. Many people have objected to the application for largely similar reasons and it is obvious to me that there is a widespread feeling the application should be refused, extending probably well beyond the present objectors. The Public Notices have in fact been successful in making the fact of the application widely known, which is their sole purpose.

All these have long and close associations with St Wilfrid's.

*Canon Andrew Holliday* also believes there is a policy and wishes it to be upheld. To do otherwise will cause upset and division.

### ***This application***

15. *I have a copy of the lengthy minute of the discussion at the PCC on 26<sup>th</sup> September 2016. I believe the identity of the applicant was not made known to the PCC at that stage. There is a reference to a decision to close grave spaces to non-village people. The PCC declined to approve the present request. The Rector abstained in the vote, which was otherwise unanimous, for pastoral reasons.*

16. On receiving the papers for the first time in early January, it seemed to me a number of points of clarification were needed, and I am grateful for

the clear and detailed response from Canon Holliday dated 2<sup>nd</sup> February, together with a number of enclosures. I am particularly glad that I took the step of seeking greater clarification for reasons that will shortly appear. I do not take the answers in the order given in what follows.

17. Canon Holliday confirms Mr and Mrs Jones have been on the electoral roll for a number of years. They have been 'occasional' attenders but more recently, with their son being confirmed, they have been weekly attenders. I prefer this assessment to the comments of some of the objectors about the family's attendance for obvious reasons, but the objectors need to understand, as I explained above, that under Church of England legislation, having your name on the church electoral roll gives the same rights in regard to burial as being resident in the parish. There are no extra 'Brownie points' to be gained in this regard by frequency of attendance or other marks of adherence and loyalty. I have to apply that approach, however much that viewpoint may not accord with the objectors' feelings about the matter.

18. There is a possibility that once the current identified 90 spaces are used, around 30, more spread about the churchyard in various areas, could be found. However, in common parlance, that would be it.

19. Canon Holliday tells me there is a lack of clarity about how the 'policy' was communicated, but it seems to have been by word of mouth. That would be sufficient in my view. There is no standard way of circulating or advertising such a policy. I fully accept there is a widespread belief that the policy referred to by the objectors has been in operation for a long time.

### ***Response***

20. At my invitation, Mr Jones has sent me a lengthy comment on the individual objections, and the whole issue of the policy, in a letter of 17<sup>th</sup> February. It will not be necessary to deal with his comments at any length, which largely confirmed the view I had formed (see below).

### ***The policy relied on***

21. I now turn to the Minutes of the PCC for 17<sup>th</sup> March 1999 which are said to record the policy decision. Canon Paul Warren was then the incumbent, and subsequently on 12<sup>th</sup> May 1999 he signed a copy of the Minutes, signifying their accuracy. Paragraph 8 reads as follows:

#### ***'Church Yard Burials***

***The Parish Church Council resolves that from now on Burials in new graves in St Wilfrid's Churchyard shall be confined to:***

***Residents of Standish and to those whose names are on the Electoral Roll of St Wilfrid's or the Membership Roll of Standish Methodist Church.'***

(The first part of the preceding sentence reflects the two main categories of those entitled to burial, ie those who have a *right* of burial.)

***'Persons dying in Nursing or Rest homes outside Standish but who have lived in the Parish before going into the Home shall be regarded as Residents of Standish. This resolution does not apply to burials in existing graves or to burials of cremated remains'.***

22. I fully accept that there is a widespread view, or even a strong conviction, that this is about reservation of grave spaces. It is not, and cannot be so read. It is unbelievable that a decision about the future approach of the PCC to applications for reservation of grave spaces, never uses the word 'reservation', and does not make clear if there is to be blanket opposition, or some more nuanced approach.

23. *A firm belief* that that was the effect of the resolution, even one accepted by individuals who themselves would have liked to reserve a plot, *cannot get round the clear wording*. In my view this resolution is not about reservation at all, but is more in the nature of 'general guidance' given to the minister of the parish under section 6(2) of the 1976 Measure (quoted above) when faced with a request for burial in the case of someone not having a right of burial. For completeness, after setting out those with such a right of burial, the PCC agreed that members of the local Methodist Church should be included among those who could be buried in the churchyard. They of course may also be parishioners, but unlikely to be on the electoral roll of the Anglican church, so if resident outside the parish, would not otherwise have an real expectation or hope of burial in the village graveyard. Likewise former residents of the parish, who are now in Rest Homes outside the parish are to be treated in the same way. That is all perfectly sensible, but that is not a statement about reservation.

24. I would encourage the parish to take an early opportunity to frame a clear policy about reservation, whether it be to oppose all such applications, or to differentiate between them on some more limited basis. (As set out above, I would find it impossible however to implement a policy drawing a distinction between residents and those whose names are on the electoral roll).

### ***Conclusion on policy***

***25. I conclude, on looking at the Minutes, there is not now, and never has been, a policy about reservation, that I could give regard to. Any amount of belief there is such a policy, however strongly held, or purportedly applied and accepted within the church family, is not enough. There needs to be a clear statement by the PCC about it, which will be recorded in the Minutes of their meetings, to which reference can be made.***

### ***Other objections***

26. As a *subsidiary argument against approval of the application*, there is the question of the amount of remaining space. This has given me more difficulty. First, there is no age limit set down within this diocese (and probably there ought not to be as a matter of general law relating to age discrimination) which would rule out an application by someone of 58, although the younger the applicant, the less likely I would in my discretion accede to an application. The younger someone is, the less likely decisions about marriage or a family home, and being settled, have become clear, and that would militate against reservation of a grave space. Also no one in their 30's or 40's would generally have a realistic expectation of being granted reservation of a grave space by me, simply

on the likely delay before the space will be required. Mr Jones's age of 58 is probably pretty near to the lower limit at which such an application would be likely to succeed in the absence of compelling reasons.

27. Second, the remaining space is obviously limited, even if a few more spaces might be found with a little effort. Again the point is approaching steadily when the proper approach is to say there is so little remaining room, that applications should all be refused, with death alone indicating who should be buried in any remaining plots. However, that is not in my view quite the position as yet.

28. It is a mistake to think that a decision in favour of this application will open the floodgates. Any decision of this kind is not a precedent. All such applications are considered on an individual basis. I anticipate the PCC will adopt a clear policy in the near future about reservation, reflecting what they consider (albeit mistakenly) is now in place. If that is not done, and I am faced with multiple applications for reservation, as the objectors threaten, then the question of filling the churchyard with reserved plots will require a firm approach.

#### ***Summary of conclusion***

***29. In the result, this case has been approached clearly and firmly by the objectors on the basis the application should be refused because of a longstanding policy. I find there is no such policy that I can implement. In my discretion, having considered all the circumstances, I grant the application as sought.***

#### ***Afterword***

30. In view of some comments in one of the letters of objection, I make clear I have no personal knowledge of and never had a professional relationship with the applicant. If I had, I would have asked the Deputy Chancellor to determine this matter.

31. As the outcome of this application will be a disappointment to the objectors, and probably others labouring under the same misapprehension about the supposed policy, may I ask that the basis of this decision is carefully explained to the congregation, so that everyone can see for themselves what the wording in question actually says, and what it does not say.

***Order Accordingly.***

John W. Bullimore  
Chancellor  
19<sup>th</sup> February 2017