Neutral Citation Number: [2016] ECC Wor 2.

In the Consistory Court of the Diocese of Worcester

Archdeaconry of Dudley: Parish of Droitwich Spa: Church of St Augustine

Petition 1: Faculty petition (14-46) by Mrs Renate Spickenreuther, for the removal of existing memorial to Peter Hanson (A) and replacement by a new memorial (B)

Petition 2: Faculty petition (dated 6 January 2015) by the Archdeacon for the removal of existing memorial to Peter Hanson (A) and replacement by a new memorial (C)

Judgment

1. This judgment concerns a problem that is, unfortunately, becoming more common, namely the question of who – if anyone – has the right or duty to erect a commemorative memorial above the grave of a deceased person. The related procedural issue is how, in the event of a disagreement between competing relatives or others, the matter should most appropriately be resolved.

Factual background

2. The factual background to this matter is not in dispute.

3. Mr Peter Hanson was born in 1933. He and his wife Dorothy had two children, Mark and Kay. He was apparently very successful in his business, and provided generously for his children, both high achievers in their chosen careers. In due course Mr Mark Hanson joined his father's firm. Mr and Mrs Hanson appeared to have a good marriage; they lived well, entertained well, and had a large circle of friends.

4. As to what happened next, Mr Peter Hanson's brother Bernard explains it as follows:

> "The split in their marriage came as a shock to all who knew them but most of all to their family. The new love in Peter's life was Renate [Spickenreuther], who had worked with him in the business for some years.
>
> This made for an uncomfortable situation as Mark, working in the same office, had watched the relationship evolve, and naturally found it hard to work alongside Renate. I am sure that anyone with feelings can appreciate how Mark could become angry and resentful of Renate as his father's new partner.
>
> Peter and Renate were devoted to each other in every way, each caring for and respecting the needs of the other. They had some very happy years together, saddened only by the rift between Peter and his family, which was never allowed to heal no matter how hard they tried. And they did try. As Peter's health began to fail, Renate was supportive through some very difficult times."

5. In April 2012, Mr Peter Hanson died, and his body was buried in a double grave in the churchyard at St Augustine's Church in Droitwich, with the intention that the body of Mrs Spickenreuther should also be buried there in due course.

6. There was some disagreement between Mrs Spickenreuther and the members of Mr Peter Hanson's family as to the design of the headstone to be erected above his grave. A conversation took place between her, his son Mr Mark Hanson and the vicar of St Augustine's, in the presence of a solicitor, at which it was agreed that a design would be agreed by both parties and then submitted for approval by the vicar.

The erection of the existing memorial (A)

7. In or about October 2013, Mr Mark Hanson caused to be erected a headstone, without having obtained the agreement of Mrs Spickenreuther. I refer to this below as "Memorial A". it was of conventional design, and contained the following wording:

> In
> Loving memory of
> PETER HANSON
> 31.5.1933 ~ 30.4.2012
> Age 78 Years
> Loving Father, Grandfather, Great Grandfather
> and Partner.
> Three Cheers for Pooh!

The reference to Pooh was because, it was said, Mr Peter Hanson had often read to his children and grandchildren from the well-known children's book.

8. Memorial A was erected without either the approval of the Vicar or the authority of a faculty.

Petition 1 for the erection of a new memorial (B)

9. Mrs Spickenreuther was not happy with the wording of the memorial, and submitted a petition (which I refer to as "Petition 1") for a faculty to remove Memorial A and replace it with a new headstone ("Memorial B"). The proposed inscription on the new headstone was originally to be in the form of two interlinked hearts, beneath a dove. The wording on the left heart was to be as follows:

Cherished Memories of
A Wonderful Partner,
Dad, Grandad,
Great Grandad &
Brother.
PETER
HANSON
31/5/1933 ~ 30/4/2012
Gone are the days
we used to share,
but in our
hearts you're
always there

10. Since she first submitted the petition, Mrs Spickenreuther has produced a revised, simpler design for the memorial, attached to her letter of 17 November 2014. The proposed memorial was to be in a standard "open book" design, with a dove above the open book. The wording on the left-hand page was to state:

PETER
HANSON
31.5.1933
~
30.4.2012

There was also to be an image of a golfer beneath the words, in view of Mr Peter Hanson's fondness for the game.

11. Petition 1 was the subject of Particulars of Objection by Mr Mark Hanson, who thus became a Party Opponent. Mrs Kay Weaver (Mr Peter Hanson's daughter) and Mr Robert Hanson, Mrs Emma Upton and Mrs Lisa Simpson (his grandchildren) also objected to Petition 1, but did not choose to become Parties Opponent. The DAC raised no objection to this petition.

12. It was not entirely clear whether those who objected to the proposed memorial in its original form also objected to it in its revised form, but in the event that is now no longer relevant.

13. On receipt of Petition 1, I explained to the parties that it raised important questions of law and procedure to which, as far as I was aware, there were no definitive answers – as outlined at the start of this judgment. I therefore indicated that it would not be expedient that it be determined on the basis of written representations. I also stated that I would be grateful to hear from all concerned, and possibly from the Archdeacon, their views as to the relevant law and practice applicable in such situations – or, in the absence of any such law, what principles should apply in order to ensure that justice is done.

Petition 2 for the erection of a new memorial (C)

14. After further reflection, I realised that there may well be situations – and this might well be one of them – where there is no particularly obvious way of deciding fairly between

the claims of the various parties, but where it would be wrong if a deceased person were to be left without a memorial merely because family members and friends could not agree on what form it should take.

15. I accordingly invited the Archdeacon – who was of course not involved in Petition 1 – to submit a new petition for a faculty for the removal of the existing memorial (and its return to Mr Mark Hanson, whose property it was); and for the erection of a new memorial to Mr Peter Hanson, recording (only) his full name and the dates of his birth and death.

16. I explained to the parties to Petition 1 (Mrs Spickenreuther and the parties opponent) that that new petition, if submitted, would be advertised in the usual way, and notified in particular to all those family members who had been involved thus far. They could, if they wished, circulate the details to other family members or others as they thought fit, to ensure that the matter was given the widest possible airing. And I ordered that the normal period for representations to be made (under Faculty Jurisdiction Rules 2013, r 9.2) be extended to three months, to ensure that no-one would be missed out. Further, the petition should be advertised on the church notice board for the full three months, and at least once in the local press.

17. I also indicated that, if a faculty were to be granted in response to the new petition, I would expect that it would be on the terms that:

    (a) it would be valid indefinitely, and

    (b) the works permitted could be executed by anyone.

    In other words, the newly permitted memorial could be erected by any party, at his or her own expense, at any time. It thus could not thereafter be said that Mr Peter Hanson was in danger of being left without any memorial. However, if the memorial thus authorised were not erected within a reasonable time (say, three years), the court would be able to order the removal of the existing memorial and the erection of the new memorial without further ado and without further reference to the parties.

18. Finally, I made it plain that if, at any time before the end of that three-year period, there were to be a further petition for a memorial that was supported in writing by all of those involved, I would consider it sympathetically. But I would not be inclined to approve a headstone supported only by one faction or the other.

19. In response to that indication, the Archdeacon duly submitted a petition ("Petition 2") for a faculty proposing the removal of Memorial A, and the introduction in its place of a different Memorial (C).

20. No proposed design accompanied the petition, which merely stated that the new memorial was to comply with the relevant guidelines issued by the Chancellor, recording Mr Peter Hanson's full name, the date of his birth and the date of his death. Given that the body of Mr Peter Hanson had been buried in a double grave, and that Mrs Spickenreuther was proposing that her body should in due course be buried along with his, the memorial would therefore presumably be identical to the revised version of the memorial proposed by Mrs Spickenreuther (see paragraph 10 above), save that there would be no images of a dove and a golfer.

21. Petition 2 was the subject of Particulars of Objection by Mr Mark Hanson and Mrs Kay Weaver, who thus became Parties Opponent. They have made it clear that they are objecting both to the removal of the existing memorial and to the introduction of the

new memorial. No-one else objected to Petition 2, and in particular Mrs Spickenreuther did not object to it. The DAC recommended the petition, and the PCC raised no objection.

The hearing

22. Although I initially stated that Petition 1 would need to be the subject of an oral hearing, I was aware that holding a hearing puts both parties to extra expense, and leads to further delay. In this case, I had been given a considerable quantity of written material both by Mrs Spickenreuther and by Mr Mark Hanson; and the issues in dispute seemed to be largely matters of principle, rather than factual matters that would be clarified by the production of further oral or written evidence. Having re-visited the papers, therefore, and in the light of the subsequent submission of Petition 2, I notified the parties that I was now satisfied that it would be expedient for both petitions to be disposed of on the basis of written representations.

23. But I was of course also aware that the Petitioners and the Parties Opponent (that is, Mrs Spickenreuther, Mr Mark Hanson, Mrs Kay Weaver and the Archdeacon) were all entitled to be heard if they so desired. In the event, Mrs Spickenreuther (the Petitioner in respect of Petition 1) and Mr Mark Hanson and Mrs Kay Weaver (the Parties Opponent in respect of Petition 2) all requested me to hold an oral hearing.

24. I accordingly held a brief hearing, in the Church, on Thursday 30 March 2016 – which, as it turned out, was very helpful. Mrs Spickenreuther and Mr Mark Hanson appeared as litigants in person – although she was accompanied by a solicitor, as an observer. Mrs Weaver chose not to make any further representations; and the Archdeacon did not attend. All evidence was taken on oath.

25. In the event, Mrs Spickenreuther made brief oral submissions, explaining her perception as to the relationship between Mr Peter Hanson, her, and his family, and noting the extent to which she felt she had been disregarded in the arrangements made before and after his death. However, she chose in the main to rely on the written material she had already submitted, which was broadly to the same effect. Mr Mark Hanson declined to exercise his right to cross-examine her.

26. Mr Mark Hanson similarly chose to rely largely on his written material, although he too made brief oral submissions, emphasising that he was appearing on his own behalf and on behalf of his sister and "all of our family". He explained that he had applied for consent, and told the Vicar that he would pass the design by Mrs Spickenreuther. He subsequently apologised to the Vicar that he had not done that; because, he said, he and she would argue for ever. Mrs Spickenreuther declined to cross-examine him.

27. The written material and oral submissions by both Mrs Spickenreuther and Mr Mark Hanson highlighted various incidents in the life of Mr Peter Hanson and outlined the procedure that had been followed at the time of his death. Not surprisingly, there was significant discrepancy between the two accounts in respect of a number of details; but I did not explore in detail, as it did not seem likely to assist.

28. I was also assisted by helpful oral submissions from Mr Bernard Hanson. He emphasised that the memorial was not for Mr Mark Hanson or for Mrs Spickenreuther, but solely for Mr Peter Hanson. He was not on one side or the other.

29. I was told that in his will Mr Peter Hanson had appointed as his executors his son (Mr Mark Hanson) and his solicitor. He had left the flat in which he was living at the time of his death to Mrs Spickenreuther, and everything else to his children – although in the event his estate consisted of little other than the flat.

30. I am very grateful to all those who appeared at the hearing for the well-mannered, and restrained, way in which they conducted themselves, particularly in view of the emotionally charged history of this matter.

The law

31. The courts have had surprisingly little to say as to the manner in which a dead body is to be dealt with, and as to the practical difficulties that may arise in connection with a death – including the choice of a memorial over the grave. Davies, on *The Law of Burial, Cremation and Exhumation*, for example, notes the existence of the faculty jurisdiction, but offers little guidance on how contested petitions should be determined. Halsbury's Laws, 5th edition, vol 24, *Cremation and Burial*, and Vol 34, *Ecclesiastical Law*, are similarly of limited assistance.

Memorials in churchyards

32. As noted by the Blackburn Consistory Court in *Freckleton, Holy Trinity* [1994] 1 WLR 1588, the right to be buried in a churchyard does not include a right for the personal representatives, the next-of-kin or anyone else to erect a memorial to the deceased; a gravestone placed in a churchyard without permission (or not complying with the terms of a permission granted) constitutes a trespass.

33. Generally, the erection of a funerary monument over the grave is authorised by the incumbent or priest-in-charge of the church in question, in reliance upon authority delegated by the consistory court. In the event of any dispute – notably where it is not in accordance with the diocesan or churchyard regulations, or is likely to be in any way controversial – a memorial must be authorised by faculty.

34. It is against that background that there have been many cases decided by the consistory courts relating to the materials, design and wording of funerary memorials. Such decisions have thus usually been in the context of a single proposal by a relative of the deceased, or a group of relatives, for a particular memorial, which was considered by the court in the light of all relevant criteria, and allowed or refused as the case may be. That is the explanation for the sometimes well-publicised disputes over, for example, headstones referring to "Nan" or containing images of children's toys (as in the *Freckleton* case, cited above).

35. Relatively few of those decisions have dealt with a conflict between two or more relatives or others wanting different wording on a headstone. However, such a conflict did arise in *Haydock, St Mark* [1981] 1 WLR 1167. In that case, a vicar had applied to the Liverpool Consistory Court for a declaration as to who had a right to erect a memorial over a grave; he had received two proposals for a headstone: one from the estranged wife of the deceased, and one from a woman (Mrs P) with whom the deceased had been associating at the time of his death. The chancellor noted (at pp 1170A, D) that:

> "The courts have in recent years come to recognise that mistresses have certain rights. One could write a long and learned essay on the theoretical rights of a mistress against a widow in a case like this – if it was shown that Mrs P was a mistress. The case might be almost impossible to resolve on that basis. But I turn instead to broader principles, because this is an ecclesiastical court.
>
> It has been said that in heaven there is no marriage, nor giving in marriage. Equally there should not in cemeteries be any inclusion of one friend or relative to the pointed exclusion of another. … a controversial headstone would serve no good purpose."

36. The court was therefore not willing to contemplate allowing the inscription proposed by Mrs P, which included a reference to herself but not to the widow; to do so could make the gravestone a subject of sensation, curiosity or scandal. Instead, it directed that the headstone should contain a brief inscription, referring to neither of the ladies, nor to any other relatives of the deceased.

37. A similar approach was taken by the York Consistory Court in *St John of Beverley* (2004) 23 CCCC 38, where the competing interests of a separated spouse and a surviving partner were resolved by omitting both names from the headstone.

38. This court considered, in *Oldswinford, St Mary* (1997) 17 CCCC 37, a petition to remove a headstone whose inscription was said to be factually inaccurate – in its reference to the parentage of the deceased. I considered the circumstances in which it would be appropriate for a court to exercise its powers under section 3(1) of the Faculty Jurisdiction Measure 1964 to grant a faculty either for the removal of words forming part of such an inscription and their replacement by different words, or for the removal of the stone and its replacement by a stone bearing a different inscription. I held as follows:

> "[30] … the circumstances, to justify the grant of a faculty in such a case, must be altogether exceptional. It would not be sufficient, for example, for a petitioner to point to the alleged inaccuracy of words within an inscription on a headstone that constituted a statement of opinion or a value judgement. Phrases, commonly found, such as "much loved father"; "loyal servant"; or, as in the present case, "precious son", may be the subject of much honest disagreement; and it should not be open to someone to produce evidence tending to suggest that the father was violent, or the servant disloyal. If the position were otherwise, there could be a succession of such claims, each indicating a revised inscription.
>
> [31] Secondly, if it were to be discovered that part of an inscription purporting to be a fact was inaccurate, and if it was felt to matter, it is unlikely that the owner of the stone would object to the offending words being altered. So, for example, if the place of birth or death was shown beyond reasonable doubt to have been wrongly recorded on a stone, a petition to replace it with the correct location would probably not be opposed, and would be readily granted by the Court. That might not always be the case, however – where, for example, a dispute about the precise date of birth of the deceased was in reality a dispute as to whether his or her birth was legitimate; in such a case, if the facts were uncertain, it would not be right to allow the stone to be altered against the wishes of its owner.
>
> [32] Thirdly, however, it may occasionally happen that a person seeking permission to erect a headstone proposes to put on it words which are either altogether inaccurate or at best highly misleading. That may be done either dishonestly or in the mistaken belief that the proposed words, though inaccurate, are appropriate. If the inaccuracy is discovered in time by the incumbent (or, as the case may be, the chancellor), it is very unlikely that the memorial would be authorised. However, where the inaccuracy was at the time of the granting of consent unknown, then if it subsequently comes to light, it may be that in an appropriate case a faculty would be granted for the inscription on the stone to be altered.

> [33] The reason for that is, first, that a headstone is a public statement relating to a deceased person; it follows that accuracy is in general important. Secondly, and following on from that, any consent for a headstone is based on an application made to the incumbent or to the chancellor; it is reasonable for the person to whom that application is made to rely on it as being accurate in all particulars, especially as to facts of which he can have no personal knowledge but which lie peculiarly in the knowledge of the applicant.
>
> [36] … An incumbent should always be alert to the possibility that there may be several claimants to the right to erect a headstone over a grave, and should always inquire of applicants whether a proposed memorial has been approved by the widow/er, parents, children, brothers and sisters of the deceased, as appropriate, as well as by any person (including a former spouse) with whom the deceased may have been living for a significant period. If the incumbent forms the view that there is likely to be any dispute, he or she should attempt if at all possible to resolve it informally with the applicant and with any others involved, before consent is granted; if that proves impossible, it is always open to him or her to refuse to grant consent, and refer the matter to this Court with an indication of the nature of the possible problem. But I do not consider that there is any specific duty on an incumbent to check the accuracy of any information supplied as part of an application, including any proposed inscription."

39. It will be noted that the decision in *Oldswinford* related to a dispute as to the factual accuracy of the inscription of the text on a headstone. It did not deal with the situation where two there are two designs for a headstone, each of which may be entirely accurate, but which reflect simply different preferences.

Memorials in non-consecrated cemeteries

40. It may be noted that, in relation to local authority cemeteries, article 10(1) of the Local Authorities' Cemeteries Order 1977 (SI 1977/204) provides as follows:

> "A burial authority may grant, on such terms and subject to such conditions as they think proper—
>
> (a) to any person—
>
> (i) the exclusive right of burial in any grave space or grave, or the right to construct a walled grave or vault together with the exclusive right of burial therein; or
>
> (ii) the right to one or more burials in any grave space or grave which is not subject to any exclusive right of burial;
>
> (b) to the owner of a right described in (a)(i) or (ii) (or to any person who satisfies them that he is a relative of a person buried in the grave or vault, or is acting at the request of such a relative and that it is impractical for him, or such relative, to trace the owner of the right so described), the right to place and maintain, or to put any additional inscription on, a tombstone or other memorial on the grave space, grave or vault in respect of which the right so described subsists; …"

41. In other words, after a person's body or ashes have been buried in a cemetery, any person who satisfies the burial authority that he or she is a relative of the deceased may place a memorial on the grave. There is no definition of "relative" in the Regulations; and it is not clear how closely the person has to be related to the deceased; nor whether a person who had been living with the deceased up to the time of the death (or indeed at an earlier time) would be included.

42. Further, the 1977 Order is wholly silent on the question as to what is to be done where two relatives wish to place different memorials on a grave in such a cemetery.

The general law as to rights and duties in the event of a death

43. In the absence of any clearly stated principle as to who has the right to decide the wording of a memorial, it may be helpful to consider briefly the general law as to rights and duties of executors and others in the event of a death.

44. The starting point appears to be that a person's rights cease at the moment of death. That is to say, the shroud or coffin containing a dead body (or, in the case of cremation, the casket containing the ashes of the deceased) cannot be owned by a dead person, and so must remain the property of the person who owned it immediately before they were put to use (see *Haynes's Case* (1613) 77 ER 1389). On that basis, the memorial to a dead person also remains the property of the person or persons who acquired it – rather than the heirs at law of the person commemorated. That conclusion is supported by the decision of the Peterborough Consistory Court in *Thornhaugh, St Andrew* [1976] Fam 230 (considered in *Oldswinford*, above). But that provides no guidance as to who has a right to place a memorial on a grave in the first place.

45. Secondly, it is commonly asserted that there is no property in a dead body (*Williams v Williams* (1882) 20 Ch D 659). By this is generally meant that no person can retain a body so as to deprive the executors (or personal representatives) of the deceased of the ability to carry out their duty to dispose of it. In *Williams*, the deceased (Mr Crookenden) had by a codicil to his will directed that his body should be delivered to Miss Williams, a friend, three days after his death, so that she could arrange for it to be cremated, but the executors had nevertheless had the body buried. Kay J held as follows (at p 665):

> "… although there is no property in a dead body the executors have such a right of possession that they may obtain a peremptory mandamus against the gaoler who was lawfully in possession of the body of the man while alive to have the dead body delivered up to them. Accordingly the law in this country is clear, that after the death of a man, his executors have a right to the custody and possession of his body (although they have no property in it) until it is properly buried.
>
> It follows that a man cannot by will dispose of his dead body. If there be no property in a dead body it is impossible that by will or any other instrument the body can be disposed of. I asked for any authority in conflict with these cases, but none was produced. I have referred to the books of the greatest authority on the question, and I believe there is no authority in the least degree in conflict with these cases.
>
> It follows that the direction in this codicil to the executors to deliver over the body to Miss Williams, who is not one of the executors, is a direction which, in point of law, could not be enforced, and was void. She had no right of property in the body under that direction, nor could she enforce the delivery of the body by the executors. I should have, therefore, no hesitation, if the case stood there, in saying that this direction contained in the codicil was a direction which could not be enforced at law, and was therefore void. Of course the purpose named in the letters cannot make it better or worse. If the purpose had merely been for burial in a particular cemetery, which would be entirely according to the law of this country, that would not make the direction to deliver the body to someone who was not an executor any more legal or enforceable; but the purpose confessedly was to have the body burnt, and thereupon arises a very considerable question whether that [is or is not] a lawful purpose according to the law of this country. That is a question which I am not going to decide."

46. The decision in *Williams* makes it clear that the executors (or, presumably, the administrators if the deceased was intestate) have the right to decide what happens to

a dead body, regardless of any provision in the will. But that does necessarily apply to the erection of a memorial.

47. Thirdly, the Chancery Division in *Holtham v Arnold* (1986) 2 BMLR 123 considered the question of who has the right to arrange a funeral. That decision (in a case described by Hoffmann J as "unusual and distressing") related to Mr Arnold, who had married Mrs Arnold (the defendant) in 1950, but following the deterioration of their marriage after the birth of their sixth child in around 1966 had moved into lodgings in 1982. He had moved to live with Mrs Holtham in 1984; and his wife had filed for divorce in 1985, although she had not proceeded with that petition. After he died, in 1986, Mrs Holtham had made arrangements for his body to be buried; but Mrs Arnold and their children wanted his body to be cremated. The judge concluded as follows:

> "Looking at the evidence on both sides, there seems to be no doubt that Mrs Holtham on one side and the family on the other both feel very strongly that it is their right and their duty to conduct the funeral. I think it is virtually impossible for a court to express any moral judgment as between them. The relationship between a man in the position of Mr Arnold and Mrs Holtham on the one hand and his family on the other are in the nature of things extremely difficult for an outsider to penetrate. This is particularly so when all that [the court] has is a series of affidavits. Not that I am suggesting that one would necessarily be more successful if the parties themselves gave evidence. Indeed I think it is a matter which it would be almost presumptuous to explore. In those circumstances the only course really open to the court is to decide the matter according to law; and the law, as I have said, is that the person lawfully entitled to administration has the duty to conduct the funeral."

48. That makes it plain that the decision as to the way in which a dead body should be disposed of is to be made in accordance with the wishes of the executors or administrators of the deceased's estate. That does not necessarily apply to the choice of memorial, however.

49. The decision in *Holtham v Arnold* – the facts of which are not altogether dissimilar from those in the present case – also emphasises that there can be no easy answers in disputes of this kind. It concludes as follows:

> "… I am conscious that in coming to this decision, or in coming to any decision, I will be bound to cause pain to one side or the other, but for the reasons I have given there seems to be no alternative."

50. Fourthly, a subsequent decision, *Grandison v Nembhard* (1989) 4 BMLR 140, established that the executors also have a right to decide on the location of the burial. Vinelott J held:

> "To my mind it is plain that, even if the performance of the executor's duty is capable of being controlled at the suit of a relative, the executor must have a discretion as to the mode and place for the disposal of the corpse of the deceased, and that on ordinary principles the court will not interfere with the exercise of that discretion unless it is exercised in a way which shows that he has not properly weighed the factors which ought to have been taken into account in that it is wholly unreasonable."

51. That also applies to the rights of family members appointed as administrators of the estate of an intestate under the Non-Contentious Probate Rules 1987 (see *Buchanan v Milton* (1999) 53 BMLR 176).

52. The court in *Williams* (above) also noted that the rights of an executor or administrator with respect to burial were simply stated in Williams on *Executors* (8th edition): "… first, he must bury the deceased in a manner suitable to the estate he leaves behind him".

Some 130 years later, the current (20th) edition of that work – now Williams, Mortimer & Sunnucks on *Executors, Administrators and Probate* – states, under the heading 'Monuments and memorials on consecrated land':

> "The extent of the representative's functions and authority in the erection of monuments is uncertain. In practice it is necessary to consult those interested in the residuary estate on whose interests the cost is likely to fall. The incumbent may give permission but, if he refuses, the matter comes under the faculty jurisdiction of the consistory courts. The jurisdiction of the consistory court is normally exercised on the basis of diocesan guidelines and covers design, materials, and the wording of inscriptions."

53. This does not provide any guidance as to the situation where there are competing relatives, but nor does it indicate that the executors have an overriding authority to make a decision.

Conclusion

54. It appears from the general case law noted above that the executors or administrators of a deceased person have both the power and, at least to some extent, a duty to make arrangements for the disposal of the person's body – that is, whether it should be buried or cremated, and where the body or ashes should be finally laid to rest. They should be guided primarily by the wishes of the deceased, insofar as they are known, and they may of course also take into account the wishes of relatives, (however defined), close associates and friends of the deceased. But the final decision is theirs; and the court will only rarely intervene to overturn their decision.

55. That makes sense, as every dead body has to be disposed of somehow, and someone has to be given the final decision. And if the overriding principle is to abide by the wishes of the deceased, the power to make a will at least ensures that the deceased can choose who will have the task of interpreting what those wishes were.

56. However, none of that necessarily applies to the erection of memorials. As summarised by Williams on Executors (above), "the extent of the representative's functions and authority in the erection of monuments is uncertain".

57. This may be because there is not an overwhelming need for there to be any memorial at all. Many people, especially in recent years, have arranged for their body to be cremated; and in many cases no memorial is erected to mark the site where the ashes have been disposed of – whether by burial, scattering or otherwise. And even where a body is buried, there is no need for a permanent memorial; hence the apparent gaps in a generally full churchyard or cemetery.

58. Further, rules as to the division of estates after death – either in accordance with a will or under the rules of intestacy – are not applicable, as the right to choose the wording of a memorial cannot be split between two or more people, as money can be.

59. It therefore seems that, whereas the executors are given the power to decide as to the manner of the disposal of a dead body, there is no overriding legal principle to determine who should have the power to decide as to the manner in which a deceased person should be commemorated – if at all.

60. There will thus be numerous situations where relatives disagree as to the intentions or likely preferences of the deceased – even as to whether there should be any memorial or none. Two siblings may thus be uncertain as to the wishes of a dying parent. Or a

man's two former wives (or other partners) may disagree as to who knew him best. And of course in some cases warring relatives may object to proposals simply on the grounds that they have been promoted by other relatives with whom they are on bad terms, for whatever reason. It would be unfortunate if the wording of a headstone reflected the disputes of the living rather than the character of the person being commemorated.

61. I am also mindful of Hoffmann J's observations in *Holtham v Arnold* as to the extreme difficulty of trying to penetrate relationships – and that it might indeed be presumptuous even to attempt such an exercise. This echoes the approach of the chancellor in *Haydock* (above). Further, if the matter is reduced to having to decide between two warring sets of relatives – or between the family and a quasi-marital partner (as in that case and in this) – there is bound to be pain caused to one side or the other. And where a man dies leaving two bereaved wives or quasi-marital partners, each of whom wishes a different memorial, it may be in practice impossible to decide between them entirely fairly.

62. Nor do I consider that the wishes and feelings of a quasi-marital partner should always be subordinated to those of blood relatives. That may be appropriate in some cases – where, for example, a lady who lived some years ago with the deceased for a few weeks wishes to erect a memorial in defiance of the wishes of his wife and family. And the general policy of the law, to provide greater rights for those who are in a conventional marriage, may be welcomed by some, as reflecting traditional Christian teaching. But to elevate that approach into a hard-and-fast rule would be to lead to significant injustice in some, possibly many, instances.

Other relevant statutory provisions

63. As to the question of whose wishes should be taken into account, it may be relevant to note the provisions in various statutory provisions dealing with the powers of those responsible for the management of cemeteries and burial grounds to interfere with burial places and memorials – either by the removal of graves, or by the erection of new buildings. In each case, a right of objection to the use of those powers is given to, amongst others, the relatives of the person whose grave is being disturbed; but in each case the definition of "relative" is slightly different.

64. Section 1 of the Disused Burial Grounds (Amendment) Act 1981 introduced a right to build on a non-consecrated disused burial ground – provided that, where the remains of a deceased person have been buried in the land in question in the previous 50 years, no objection has been received from the personal representatives or any relative of that person. "Relative" is for that purpose defined as:

    - the spouse or civil partner of the person,
    - the parent, grand-parent, child, grandchild, brother, sister, uncle, aunt, nephew, or niece of the person.

65. Schedule 2 to the Burial Grounds Regulations (Northern Ireland) 1992 provides that a local authority may not exercise its powers to remove monuments where they are the subject of an objection by a relative of the person buried in the grave in question. "Relative" is for that purpose defined (in paragraph 20) as in the 1981 Act, with the

addition of the step-parent, half-brother, half-sister and first cousin of the deceased person in question.

66. In section 74 of the London Local Authorities Act 2007, which provides for a power to disturb human remains, a right of objection to the use of such a power is given to the owner of the tombstone erected on the grave in question, and to any relative of the person whose remains are to be disturbed. "Relative" is for this person defined as:

- the spouse or civil partner of the person,
- the lineal ancestor, lineal descendant, brother, sister, uncle, aunt, nephew, or niece of the person; or
- the lineal ancestor, lineal descendant, brother, sister, uncle, aunt, nephew, or niece of the spouse or civil partner of the person.

67. Section 34 of the Burial and Cremation (Scotland) Act 2016 provides for a right of objection to a proposal by a burial authority to restore to use a lair (a burial plot in a graveyard). "Relative" is for that purpose defined as in the 2007 Act, with the addition of the cousin of the person whose grave is to be restored to use, and the cousin of the spouse or civil partner of that person.

68. The recent amendment to the Care of Churches and Ecclesiastical Jurisdiction Measure 1991, inserted by the 2015 Amendment Measure, provides a right similar to that introduced by the 1991 Act in respect of building on a consecrated burial ground – but in this case, there is no definition of who is a "relative" for the purpose of ensuring there are no outstanding objections.

69. The conclusion from these provisions is that "relatives" of deceased persons are in effect given a right to prevent the carrying out of the various actions that would result in the disturbance of the buried remains; and it is noticeable that the class of relatives benefitting from this is gradually being widened. But it is also noticeable that none of these provisions affords such a right to a person who has been living with the deceased, possibly for many years – although there would be nothing to stop such a person, or indeed anyone else, objecting to such a course of action.

Resolution of disputes

70. Given that there seems to be no definitive legal principle governing the right to choose a memorial, and that there is no overwhelming need for a memorial to be erected in any event, it may be better that there should be no memorial at all rather than one being erected that is bitterly opposed by some of those who were closely connected with the deceased – as was pointed out in *Haydock*, "a controversial headstone would serve no good purpose".

71. In the first instance, therefore, incumbents should be astute to detect situations in which a proposed memorial may be controversial – not simply because the inscription may be factually inaccurate (as in the *Oldswinford* case, noted above), but also where rival parties may have competing views as to how the deceased should best be commemorated (as in *Haydock* or *Beverley*). Where an incumbent detects that this is or might be the case, the person seeking the memorial should be asked to produce clear evidence that the proposal commands the active support of all those entitled to express a view. That may include all those "relatives" mentioned above, as well as former

spouses, quasi-marital partners, and even (in appropriate cases) friends or others able to show sufficient proximity. How far this needs to be taken in any particular case will be a matter of judgment.

72. Incumbents should also make it plain to all parties in such situations that approval will be readily forthcoming for a headstone that contains a brief, non-controversial inscription, recording simply the name of the deceased and the date of birth and death (unless those details are themselves controversial), and otherwise complies with the diocesan guidelines currently in force.

73. Where it becomes clear (or even seems likely) to the incumbent that there is a dispute that cannot be resolved, approval should be withheld, and the applicant invited to apply for a faculty – and the chancellor should be made aware of the reasons. Where no compromise emerges, the chancellor may then simply refuse the petition without more ado.

74. On the other hand, it would be unfortunate if that were to lead to the deceased being deprived of any memorial. It may therefore be appropriate that, in the event of a deadlock between competing wishes on the part of persons with close ties to the deceased, a faculty is sought for the introduction of a simple memorial to the deceased that records merely the full name, date of birth, and date of death. That can probably best be done – as it was in this case – by the archdeacon, as a neutral party; and the determination of such a petition would enable the wishes of all concerned to be expressed and taken into account. A faculty is of course merely permissive; so once such a memorial has been authorised, no-one has to erect it.

75. If there is subsequently a desire by some to see a memorial of some other character, perhaps one expressing more about the deceased, there is nothing to prevent a proposal being brought forward. That would probably need to be the subject of a faculty petition, rather than being simply authorised by the incumbent, and could be notified to all those involved (as above). If the proposal is not supported by everyone, it would then be possible for the chancellor to decide whether to authorise it, or whether to refuse it until a proposal comes forward that does command universal support. And hopefully that in turn would encourage a compromise to be reached that is acceptable to all.

76. However, in the absence of a generally supported proposal, and if the memorial authorised in response to the archdeacon's petition were not erected within a reasonable time (say, three years), the court would be able to order the removal of the existing memorial – if one has already been erected without authorisation – and the erection of the new memorial without further ado and without further reference to the parties.

Application to the present case

77. At the hearing in this case, Mrs Spickenreuther and Mr Mark Hanson made it clear that they entirely understood why I had invited the Archdeacon to submit Petition 2. Neither they nor the Archdeacon nor anyone else particularly wanted that headstone to be erected; its authorisation was thus merely a procedural device, to ensure that there was at least one approval in place that could be relied upon in the event of negotiations between the parties failing to achieve a form of wording that was acceptable to all.

78. I therefore indicated that I was minded to approve Petition 2, to provide a fall-back position on that basis. That remains my view, and I accordingly authorise Memorial C.

79. As to Petition 1, given the objections that had been raised, and in the light of the principles set out above, I had initially intended simply to refuse it, and await a further petition for a memorial that was supported in writing by all of those involved, to be submitted in due course. As noted earlier, I had explained to the parties that I would consider such a petition sympathetically; but I would not be inclined to consider sympathetically any petition supported only by one faction or the other.

80. However, all relevant parties were present at the hearing, and each indicated that no-one was aware of any other relative of Mr Peter Hanson whose views had not been ascertained. I therefore afforded them the opportunity of an extended adjournment, in which to seek to agree on a form of wording, possibly with the assistance of Mr Bernard Hanson, who had taken a broadly neutral position. I indicated that, if such an agreement could be reached, and provided that the resulting memorial was in all other respects uncontroversial, I would be content to allow an amendment to the petition, to substitute the revised wording, which I could then authorise without further ado.

81. Happily, a compromise was achieved, and a form of words as set out in the Schedule to the Order annexed to this judgment was approved by all ("Memorial D"). I therefore allowed Petition 1 to be further amended accordingly, and a faculty has issued to authorise the removal of Memorial A and its replacement with Memorial D, as set out in more detail in the Order. I explained that I would hand down a full judgment in due course.

82. I heard brief submissions as to costs, and it was agreed that the court costs be met equally by Mrs Spickenreuther and Mr Mark Hanson; and that there be no order as to the costs of the parties.

CHARLES MYNORS

Chancellor

20 May 2016

IN THE WORCESTER CONSISTORY COURT

IN THE MATTER OF THE CHURCH OF ST AUGUSTINE, DROITWICH SPA

AND IN THE MATTER OF FACULTY PETITIONS BY MRS RENATE SPICKENREUTHER AND BY THE ARCHDEACON FOR THE REMOVAL OF THE EXISTING MEMORIAL TO PETER HANSON AND THE ERECTION OF A NEW MEMORIAL

AMENDED ORDER

Upon considering :

(1) a faculty petition (14-46) by Mrs Renate Spickenreuther, dated 7 May 2014, for the removal of existing memorial (A) to Mr Peter Hanson deceased and its replacement by a new memorial (B) ("Petition 1"), as subsequently amended by a letter from Mrs Spickenreuther dated 17 November 2014; and

(2) a faculty petition (unnumbered), dated 6 January 2015, by the Archdeacon for the removal of Memorial A and its replacement by a new memorial (C) ("Petition 2");

(3) the particulars of opposition to Petition 1 submitted by Mr Mark Hanson;

(4) the objections to Petition 1 submitted by Mrs Kay Weaver, Mr Robert Hanson, Mrs Emma Upton and Mrs Lisa Simpson;

(5) the particulars of opposition to Petition 2 submitted by Mr Mark Hanson and Mrs Kay Weaver;

and upon hearing in person Mrs Spickenreuther, Mr Mark Hanson and Mr Bernard Hanson;

IT IS ORDERED:

(a) that Petition 1 be further varied by the substitution of a new memorial (Memorial D) to contain wording in the form particularised in the Schedule to this Order but in all other respects identical to Memorial A;

(b) that a faculty be granted (in response to Petition 1) for the removal of Memorial A and the introduction in its place of Memorial D;

(c) that Memorial D be not manufactured until designs for it have been approved in writing by Mrs Spickenreuther, Mr Mark Hanson, Mrs Weaver and Mr Bernard Hanson, and that the memorial thereafter be manufactured in accordance with the designs thus approved;

(d) that the costs of the removal of the Memorial A be met by Mr Mark Hanson and those of the introduction of Memorial D be met by Mrs Spickenreuther;

(e) that the court costs be met equally by Mrs Spickenreuther and Mr Mark Hanson; and

(f) that there be no order as to the costs of the parties;

(g) that a faculty be granted (in response to Petition 2) for the removal of Memorial A and its replacement by Memorial C;

(h) that in the event of any further disagreement, the parties shall have liberty to apply to the Court for directions;

AND FOR THE AVOIDANCE OF DOUBT IT IS FURTHER ORDERED:

(i) that the remaining space in the grave currently occupied by the body of Mr Peter Hanson be reserved for the body of Mrs Renate Spickenreuther, and that the parish records be noted accordingly;

(j) that the existing timber cross on that grave be removed without further ado;

(k) that in future no items other than natural or silk flowers be placed on the grave.

1 April 2016

Amended 20 May 2016

SCHEDULE. FURTHER REVISED PARTICULARS OF MEMORIAL

In
Loving Memory of
PETER HANSON
31.5.1933 ~ 30.4.2012
Cherished Partner, Father, Grandfather,
Great Grandfather and Brother

~~~~~~~~~~~~~~~~~~~~
~~~~~~~~~~~~~~~~~~~~