

NEUTRAL CITATION: [2017] ECC SEI 3

IN THE CONSISTORY COURT

DIOCESE OF ST. EDMUNDSBURY & IPSWICH

In the matter of

**ALL SAINTS AND SAINT ANDREW'S, HONINGTON WITH
SAPISTON**

-and-

In the matter of

**THE PROPOSED REPLACEMENT OF THE HEADSTONE OF PILOT
OFFICER HAROLD ROSOFSKY**

Judgment of the Chancellor

March 6, 2017

JUDGMENT

upon written representations

1. In this judgment I have affirmed that those burying the remains of a deceased person in an Anglican churchyard within the jurisdiction of this court are subject to that jurisdiction in respect of monuments (by which is meant memorials, headstones, ledger stones and the like) that may be erected and what may be inscribed upon them irrespective of the religious belief, if any, of the deceased or the person responsible for the deceased's burial. I have also affirmed that nothing may be placed upon a monument that is profane, offensive or inconsistent with the beliefs of the Church of England as enshrined in its doctrines. I have concluded that a religious symbol primarily indicative of a faith other than Christianity or of beliefs inconsistent with those of the Church of England as enshrined in its doctrines may not ordinarily be

placed upon a monument and never without a faculty. Therefore, the image of the Star of David, which is primarily indicative of the Jewish faith, particularly when placed upon the monument of a deceased person, is not ordinarily permissible as a symbol to be placed on a monument in an Anglican churchyard under the jurisdiction of this court and never without a faculty. However, and probably very rarely, there may be truly exceptional circumstances that justify a departure from the principle ordinarily applicable. In this case, the facts surrounding the burial of a young south African airman of Jewish descent in the opening days of the Second World War provide that true exception.

2. Pilot Officer (“P.O”) Rosofsky came to England aged 23 from South Africa in 1936 and joined the Royal Air Force as a Pilot Officer after he had completed his training. In the service of this country, aged 26, he set off on a mission on September 8, 1939. The aircraft fell from the air over Berners Heath before it had left Suffolk. P.O. Rosofsky and his crew were all killed. The Royal Air Force arranged the burial. All were interred in the churchyard of All Saints in the parish of Honington in separate but adjacent plots in 1939. From 1972 the parish amalgamated with St Andrews church in the parish renamed as Honington with Sapiston. There are 61 war and service graves in this churchyard, doubtless due to its proximity to RAF Honington.
3. Following the cessation of hostilities in 1945, the Commonwealth War Graves Commission (“CWGC”) began the process of permanently marking the war graves in this churchyard. In 1945, the CWGC wrote to P.O. Rosofsky’s family, by his mother, about a commemoration on the grave. No response was received. A reminder was sent in 1946. Again, there was no response.
4. Accordingly, the CWGC erected a standard pattern headstone on the grave which included the engraving of a cross in accordance with its procedures by default as no other belief had been confirmed. Thus did things apparently remain for around seventy years. In 2015, however, the Association of Jewish Ex-Servicemen and Women (“AJEX”) contacted the CWGC as did P.O. Rosofsky’s family. The CWGC understood from both AJEX and his family that P.O. Rosofsky was Jewish.
5. The Registry informed me originally of the family’s proposals in the Autumn of 2016 which included correspondence from the CWGC and Mr Martin Sugarman, who is the Honorary Archivist of AJEX. It seemed to me that I could and should give my preliminary view on the proposal that was being contemplated. My preliminary view was that P.O. Rosofsky’s present memorial could be replaced with one that did not have the image of a cross on it and that the requested verse could also be placed upon it. I expressed, however, a real reservation about whether the engraved image of the Star of David would be permissible. I made clear that the final decision was the court’s and not that of the Parochial Church Council of All Saints and St Andrews as there seemed to be some confusion about this in the correspondence.
6. I was shown a letter from Jennifer Hoffmann (nee Davidoff) dated November 12, 2012 in which she explains that P.O. Rosofsky (Harold), was the brother of her aunt. Jennifer Hoffmann now lives in Ontario, Canada. The family is Jewish and Jeanette Davidoff, Jennifer’s aunt and Harold’s sister, was the president of the Women’s International Zionist Organisation (“WIZO”) for many years. Amongst many other things, she founded an orphanage in Israel. She and her husband were buried in the Jewish cemetery as were all their family members. Jennifer states that Harold was Jewish. The nub of what she says is in the final line of her letter: “It seems wrong that he has a cross on his grave.”
7. I was also shown a number of cuttings and articles. In the *S. African Jewish Times*, of Friday, September 22, 1939 and under the heading “Jewish Officer Killed in Action”

and beneath a photograph of Harold Rosofsky is written: "One of the first officers to die bravely in action was a South African Jewish recruit to the Royal Air Force, Pilot Officer Harold Rosofsky...Pilot Officer Rosofsky was the youngest son of Mrs D. Rosofsky of Johannesburg. He received his education at the King Edward VII School and early manifested an interest in flying. He spent some time in training for aviation in this country and went to England three years ago where he completed his training and received a commission in the Royal Air Force." It was also stated that he had flown to France with his squadron before the war and had also been presented to the King of the Belgians.

8. He is also listed in the South African Jewish Board of Deputies Roll of Honour, in a publication dated 1950 and is mentioned by name in Chapter XII.
9. In her application to the CWGC, Jennifer Hoffmann submitted a design for the headstone in substitution for the one presently standing. It is now Appendix 1 to the petition. It has an engraving of the familiar insignia of the RAF; underneath is the name of Pilot Officer Harold Rosofsky, Pilot of the Royal Air Force, and the date of his death and his age. Underneath that is a proposed engraving of what is often simply called "The Star of David" and finally the simple and moving verse "May His Memory Be For A Blessing".
10. In the Death Notice of Harold Rosofsky, his father is said to be deceased and his mother, Bertha Rosofsky is said to live at 38 Daventry Court, Killarney, Johannesburg. His siblings are stated to include his sister, Jeanette Davidoff (Jennifer's now deceased aunt) and the Notice is signed on March 3, 1941 by his mother.
11. I had some questions. I was not confident many of these could be answered authoritatively by anyone at this remove of time. The questions are contained within a letter sent by the Registrar to the CWGC. Summing them up, the Registrar asked on my behalf why the issue with his memorial had arisen now, so long after his death. Clarification was also sought of the family's wishes and whether they were insisting on requesting a stone with the Star of David engraved upon it.
12. The matters on which I duly received further assistance were that his burial was arranged by the RAF and that All Saints, Honington was chosen because it was the church used by the air base. It was clarified that the family, in the form of Mrs Hoffmann, did want the image of the Star of David engraved on his memorial. I note in passing that on the appropriate form used by the CWGC the Star of David is one of the options for engraved religious emblems that can be chosen. On the other matters, I received no further material or evidence. This is in no way surprising given the passage of time, save perhaps for the question of what the family knew about Harold's place of burial and whether any interest had ever been shown in it until, at the earliest, 2012.
13. It was proposed that any petition for a faculty, if needed, would be presented to the court by the CWGC and that this body would be responsible for the costs involved.
14. I clarified that the proposed monument would require a faculty and an application this was submitted bearing the date of December 2, 2016. The CWGC is the sole petitioner, although I accept it is, in effect, petitioning on behalf of Mrs Hoffmann and the family. No other party has sought to be joined as a petitioner. The petition is unopposed. I am satisfied that the petitioner itself can give no further assistance. I make clear that the CWGC has been both efficient and helpful in dealing with this matter and has given me all the information that has been within its power to provide, for which I am grateful.

15. I did not consider I could grant a faculty under Rule 10.6 of the Faculty Jurisdiction Rules 2015 (“the 2015 Rules”) which confirms my discretion to grant unopposed petitions without further proceedings in view of my reservations as to the engraving of the image of the Star of David on a monument of this kind. I concluded that it was both fair and expedient to determine the matter on written representations under Rule 14.1 of the 2015 Rules but reminded the petitioner of its right to a full oral hearing. The petitioner, the CWGC, informed the Registry in writing that it was content I should decide the matter on the written representations for the same reason I had myself identified, namely there was nothing else it could usefully add, and that it had no further material it wished to put before me.
16. The churchyard of All Saints is consecrated ground. The church and churchyard are within the diocese of St Edmundsbury & Ipswich and subject to the jurisdiction of this court. This diocese has Churchyard Rules issued by the authority of Chancellor Blofeld in May 2009, with some updating in 2013 by my authority. These Churchyard Rules do not specifically deal with the question of imagery on headstones, ledger stones etc., which I shall hereafter term “monuments”, except to state that under Rule 6 of those Churchyard Rules memorials (monuments) should have a simple shape and shall not be in the form of a figure, heart, book or anything else unusual, that designs of a simple nature and/or words may be incised on one side only and that profane images or inscriptions are not permitted.
17. In cemeteries that are not within the jurisdiction of this court, such as civic cemeteries, considerations may be entirely different. It is not uncommon to find sections of a cemetery dedicated to a particular religious belief, such as Judaism. In the same way that Christian imagery might be wholly inappropriate within a part of a cemetery reserved for those of the Jewish faith, so may the use of the imagery of other faiths in a Christian cemetery. There is no disparagement of any faith intended in either instance.
18. It is then necessary to ask in respect of this churchyard, which is within the jurisdiction of this court and governed by the Churchyard Rules, whether the absence of an express and explicit prohibition in respect of something sought to be inscribed or engraved on a monument means that it is therefore permitted. In my judgment, it does not and cannot mean that any other image or inscription is therefore permissible provided it is not offensive or profane. For understandable reasons, the prospect of applications for monuments bearing symbolic representations associated with other religious faiths may not have even been contemplated by Chancellor Blofeld when the rules were promulgated, but I can infer readily from the rules generally, and the fact that the churchyard is under the jurisdiction of the Consistory Court, that monuments associated with the practice of religions other than Christianity or inconsistent with the beliefs of the Church of England enshrined in its doctrines would not ordinarily be permitted.
19. The regulation of a churchyard by this court has a number of potential objectives. I have considered some of these. The Churchyard Rules provide for order and some degree of uniformity bearing in mind that the churchyard is shared by a number of people including parishioners and many other people: some coming to bury a family member or friend, others to remember a person close to them and also those who simply wish to look at headstones, no doubt often with reflection.
20. Second, it recognises that at a time of deep grief and in a desire to do everything that can still be done for a deceased person, there may be a strong emotional wish to have a monument to mark that person’s final resting place which at a later stage, or to those not connected intimately with the deceased, may appear jarring or inappropriate, may

be of an unsuitable substance, colour or design or even in some cases be unsafe or unlikely to survive for any length of time. These features can affect substantially the overall appearance of the churchyard adversely and for the foreseeable future. One unsuitable monument may be cited as the precedent for another of a similar kind.

21. Third, the Churchyard Rules make clear that, although a parishioner has the right to be buried in his or her churchyard and others with appropriate connections to the parish may also be permitted to be buried in it, there is clearly no right for anyone to demand that a deceased person has a monument in any form requested just because it was that person's wish or the wish of the individual responsible for arranging the burial of the deceased, without regard to the general appearance of the churchyard and its place within the Anglican church and all other relevant matters addressed expressly or impliedly by the Churchyard Rules.
22. It can be seen, therefore, that the question of what monuments are appropriate involve both aesthetic and theological considerations. There is no compulsion, forcing someone to be buried in an Anglican churchyard or in consecrated ground, at least in peace time and in normal circumstances. The bereaved must understand that those responsible for burying someone are accepting that the consistory court regulates the type of monument (headstone or other marker) that may be erected, what inscription may be placed on it, where it may be placed and how it is designed.
23. There is no doubt in my experience that the desire to incorporate images on monuments is growing. It is likely that the technological advances enabling this to be done more economically and more easily have fuelled this trend to a degree. The question of what images, and at what size or prominence, falls to be considered now more often it did previously. Nevertheless, the same considerations that apply to the general principles of, and justification for, churchyard regulation are as relevant to what if any images can be placed on a monument as they are to any other aspect of the memorial.
24. I have considered the regulations applied in other dioceses, particularly those revised most recently and therefore likely to take account of the trends referred to in paragraph 36 above unless the diocese of St Edmundsbury and Ipswich is alone in encountering these issues. The diocese of Oxford revised its regulations in 2016. It is instructive to see how these regulations approach the issue of images on monuments. The effect is this: *"A monument or ledger stone must not include a portrait, photograph or other image of an individual (whether of the person commemorated or any other person) or any other pictures or imagery except as permitted by regulation. A black, white or uncoloured etching or carving may be permitted provided that it is reverent and not indicative of beliefs contrary to the doctrine of the Church of England, does not depict an individual, and covers no more than one-fifth of the surface of the monument or ledger."* I should stress that this is my summary of that part of those regulations.
25. In exercising my discretion based on the current regulations in this diocese of St Edmundsbury and Ipswich, and subject to precise technical detail such as dimension, I find that the Oxford regulations make explicit for the diocese of Oxford what I infer from the existing rules in this diocese.
26. I have had no difficulty in confirming my preliminary view that Harold Rosofsky's monument could be replaced with one that did not have an engraving of a cross and which bore the words requested. The issue that has exercised my mind is whether it is permissible and appropriate for the monument to have an image on it of the Star of David and I now turn to this specific issue.

27. I requested advice from the DAC and also asked its Secretary, James Halsall, to make some enquiries as to whether any other monument bearing the Star of David was known of within the diocese, although with the important caveat that many things were permitted in the past that would not be now, because of more recent recognition that some degree of uniformity and regulation in churchyards is essential to preserve their character and dignity. Additionally, some monuments have appeared over the years that would have required a faculty at the time they arrived but, for whatever reason, do not have one and where investigation now is probably fruitless.
28. One such monument bearing the Star of David was found in the churchyard of Our Lady of Grace, Aspall. It is to the famous screenwriter, producer and director, Emeric Pressburger, who is often most remembered for his collaboration with Michael Powell. His is the only stone to have an inscription of the Star of David in that churchyard and it is thought that a faculty was not sought and that permission was given by the incumbent.
29. The DAC was of the unanimous opinion that it would be appropriate to raise a monument bearing the Star of David within the churchyard of an Anglican church. The DAC's advice would therefore not suggest a difficulty in the grant of the petition including the engraving of the image of the Star of David.
30. It so advised for the following reasons: both the Christian faith and the Jewish faith are monotheistic, placing their faith and hope in the same Godhead; the faith of Judaism is encapsulated in the Old Testament: an integral part of the accepted biblical canon of the Christian Faith; the Christian faith is the direct inheritor of much of the messianic theology to be found in the Old Testament; the two faiths have a shared origin and the imagery of the Star of David is to be found in many, if not most, churches as a decorative motif used in stained glass, wood carving and textiles, making it hard to argue, in the DAC's view, that it would be inappropriate for a monument in a churchyard.
31. The DAC also felt that as the CWCG itself recognised the two faiths by providing two distinctive grave markers, (one bearing a Cross, the other the Star of David) and that as All Saints had a number of CWCG grave markers already in situ because of the proximity of RAF Honington, it might be considered invidious not to allow the recognition of the particular faith of Pilot Officer Rosofsky on his own grave marker amongst the other dead of Christian faith or none.
32. This part of the DAC's advice raises two additional matters which are rather wider in ambit than its advice on the general propriety of the Star of David being inscribed on a monument in a churchyard under this court's jurisdiction. These are both interesting and potentially important questions, but are principally relevant to any consideration of exceptionality if the petition would fail on ordinary, general principles. I will turn to that aspect in its turn and in due course.
33. I also asked the DAC to consider the theology of consecration and its relevance and I accept its principal purpose is to set something apart for its special use such as, in this instance, the burial of the dead. The act of consecration by the bishop in no way limits those who might be buried there by virtue of their faith or lack of faith. Consecration ensures that a churchyard is not used in any way for profane purposes.
34. Therefore, on the general principle, the DAC advises me, in effect, that the inscription of the Star of David on a memorial is not inconsistent with the doctrines of the Church of England to the extent that it should result in the Star of David not being placed upon a monument within this court's jurisdiction.
35. My judgment is that because a symbol, in conjunction with other symbols, is appropriate inside a church, it does not necessarily follow that it is either appropriate

- or permissible on its own on a monument in a churchyard. Looking around the various images of different designs and colours appropriately found within a church, it does not follow that all of them would be suitable for inscribing upon a monument.
36. I must also make an assessment of how the placing of an image of the Star of David would likely be understood by those seeing it and what the dominant purpose is, or is likely to be, in placing it there. The inscription of the Star of David on a monument would in my judgment likely be taken to show that the deceased was of the Jewish faith and that, at the least, this would be one important purpose of placing it there. It is of course undeniable that Judaism and Christianity are very closely linked in the ways set out in the advice of the DAC but the beliefs and doctrines of Judaism and the beliefs and doctrines of Christianity in general and the Church of England in particular are not the same. Christianity and Judaism are two separate and distinct faiths, whatever their origins, and understood to be so by most Jews and most Christians alike.
 37. I find that the use of the image of the Star of David inside Church of England churches as described by the DAC is, and is understood to be, for an entirely different purpose than that of its being engraved on an individual's monument.
 38. Although the DAC's advice was helpful and informative, I depart from it on one aspect, namely whether the appropriate conclusion to be drawn from the facts correctly drawn to my attention is that the Star of David would generally be a permissible and appropriate symbol to be inscribed upon a monument in a churchyard under the jurisdiction of this court. For the reasons I have given, I have concluded that it would not and that therefore I would not ordinarily permit it.
 39. However, that does not end the matter. I now turn to the specific facts here to decide whether, notwithstanding the general principle I have identified, the image requested would be justified, exceptionally, by the particular facts of this case.
 40. Here there is much that may never be known: the precise employment and family dynamics that caused Harold Rosofsky to come to England; whether he had any particularly strong faith or much interest in religion at all and his own wishes as to his burial if he gave any thought to it. He died intestate and left no written indication of his wishes. It was also drawn to my attention in the correspondence originally sent to me that Jewish servicemen might with full permission disguise officially the fact that they were Jewish, because of what might happen in the Second World War if they were captured and the fact of their Jewish faith or descent was known to their captors.
 41. Likewise, it is not clear to me how close he was to his family when he left to come to England in 1936 although, equally, there is nothing to suggest that there was any rift between them. It remains puzzling to an extent why Harold Rosofsky's mother or family did not contact the CWGC when written to in 1945 and 1946, as it is why no-one has explained to me why things have remained as they have for so long but it may well be that nobody alive now actually knows the answer. There may have been a number of good reasons, assuming Harold Rosofsky's mother actually received the correspondence, but the reality now is that many of the facts that could have been made known or investigated at the time are probably lost.
 42. No-one could have anything but the utmost admiration and respect for this young man. At the very outset of the Second World War, he set out on a mission which he no doubt realised exposed him to great danger. This danger struck much earlier than expected when his aircraft failed. When he came to England from South Africa in 1936 and joined the RAF, he had the expectation of a full life-span. This was denied him. The reality is that he and his family had no choice over where he was buried and

there is something deeply moving in the fact that he lies in that churchyard, near to his base and next to his crew who died with him.

43. The initial concern of Jennifer Hoffmann was that his monument bore a cross. There is no requirement for any monument in a churchyard to have a cross inscribed upon it. Many people of avowedly Christian faith have no cross placed on their monuments. The regulations do not require it nor is its absence in any way inconsistent with the beliefs of the Church of England. Accordingly, the provision of a monument without a cross is permitted and of itself does not require a faculty in this diocese. The verse wanted by the family is in my judgment a perfectly acceptable inscription for a monument and again would not of itself require a faculty.
44. The time to consider whether P.O. Rosofsky should in the event have been buried in an inter-denominational, Jewish cemetery, or Jewish section of a cemetery has long passed. I have no reason to think that there is any wish on the part of his family that his mortal remains should now be re-interred in a different cemetery after 70 years, even if it were feasible. He lies with his crew in this churchyard as he has done since September 1939 and there would potentially be forceful arguments against disturbing his remains.
45. I have given very anxious and careful consideration as to whether an exception to the general principle as I have found it to be should be made on the specific facts of this case. I have concluded that an exception *should* be made in the specific circumstances of P.O. Harold Rosofsky's case to the general principle about images on monuments, and specifically religious symbols, in Anglican churchyards within this diocese.
46. P.O. Rosofsky flew his aircraft in defence of this country and its empire as it then was. The family of the deceased had no say, and could have had no say, in where Harold was buried and he was compelled by circumstances to be buried in this churchyard without it being appreciated, it would seem, that he was Jewish. These are very radical departures from the circumstances normally pertaining to someone's burial in a churchyard. Not only are they not the fault of Harold Rosofsky but his death was as an airman fighting for this country in a war, and in circumstances where the ordinary ways of communicating one's religion may have been affected by the need not to allow any potential captor to discover the truth. These are highly exceptional features.
47. I do not know how much it would have meant to Harold himself to have had the image of the Star of David on his monument. But I accept that he was of the clearest Jewish descent and doubtless had been brought up in the Jewish faith and that the placing of the image of the Star of David on his monument really matters to his family today. Another way of looking at it is that if anyone were to ask why one monument in this particular churchyard bears the Star of David he or she could be told Harold Rosofsky's story as to how he was the one of the first Jewish airman in the RAF, and maybe *the* first, to die in the Second World War and how he came to be buried there, and the listener would doubtless readily understand why this exception had been made. The function of the doctrine of exceptionality is to provide for circumstances which cannot sensibly be envisaged by any rule or regulation, however carefully drafted. In my view, that is the reality of the case here.
48. Accordingly, I grant the petition applied for by the Commonwealth War Graves Commission in the terms requested and order that a faculty to that effect should pass the seal. The costs of the petition and the monument will be met by the Commission as it has always accepted.
49. Given that finding, I do not have to decide whether and, if so, to what extent the options for "a cross" "A Jewish Star of David" or engraved "Indication of Other

religious belief” might create a legitimate expectation on the part of the relative that the choice would necessarily be honoured. However, I will say that in many cases war graves are not in churchyards at all and where a churchyard burial has occurred it will usually have happened in the genuine belief and usually for good reason, such as a service record, that this was acceptable. Nor would any expectation have been created by the church or this court.

50. I stress that, save in exceptional circumstances of the sort demonstrated in this case, an image of the Star of David would not ordinarily be permitted to be placed on a monument in a churchyard or cemetery within the jurisdiction of the court for the reasons given in this judgment. It is also my judgment that, whilst not expressly prohibited by the Rules at present, the placing of a symbol primarily associated with any another faith than Christianity, as expressed in the beliefs of the Church of England and enshrined in its doctrines, on any monument in consecrated ground within the jurisdiction of this court is ordinarily impermissible. In any future application of a similar kind, a faculty would be required for this to happen and, as the court would primarily be looking at whether the particular facts and circumstances of the application demonstrated that it should be placed in the category exceptionally justifying a departure from the general principle, all the material capable of bearing on that matter should be placed before the court with the documents accompanying the petition.