

**THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY**

Church of All Saints

Stretton-on-Dunsmore

Re grave of John Bilclough (deceased)

**Private Petition for installation of non-conforming headstone**

**C6936/2022**

**Tracy Denise Bilclough**

**Petitioner**

1. By a petition number C6936/2022 Mrs Tracy Denise Bilclough seeks permission to have a headstone erected upon her husband's grave. Mr Bilclough died over three years ago and was buried in the Churchyard in February 2020. As recommended by the Diocese of Coventry Churchyard Regulations a period of at least twelve months elapsed before Mrs Bilclough sought to raise a memorial to her late husband.
2. Unfortunately, as a part of the headstone the Petitioner seeks to include the design of three stylised heraldic lions. Although Mrs Bilclough has stated more than once that these are 'just three lions' and are not intended to be heraldic, I do not find that to be the case. The Petitioner has confirmed that she chose the

three lions ‘to represent England’ because her late husband proudly bore a tattoo of the three lions to show his love of England. I fear that the chosen design shows the lions which are a part of the Royal Arms of England, and similar to the three lions worn by the England football team and the England cricket team (albeit the English Cricket Board emblem includes the royal crown and the Football Association crest also includes ten roses as well).

3. On the proposed headstone the intention is to use the three lions heraldic device to represent England generally. Unfortunately the heraldic device belongs to the Crown and all uses must be duly authorised. The English Cricket Board and the Football Association have both been licensed to use the emblem, but I am reliably informed that any variation to the usage must be approved by the Crown in advance. Paragraph 46 of the Coventry Churchyard Regulations make it clear that “*Where it is proposed to use a badge or the equivalent, confirmation should be obtained that the relevant body or organisation is content for its badge to be used on the memorial.*”
  
4. There is a common misconception among the bereaved that the grave of a loved one ‘is our grave, so we can put any memorial we like’. I must repeat the legal position that there is no ownership of a grave by the family of the deceased. That legal position was set out by the Chancellor of the Diocese of Oxford when he gave judgment in 2011 **In the Matter of the Churchyard of St Mary the Virgin, Burghfield**. The relevant points of his judgment were set out at Paragraph 4. “*Although a grave space may be reserved by a faculty issued by the diocesan chancellor (see The Perivale Faculty, de Romana v Roberts [1906] P 332 at 338; Re West Pennard Churchyard [1991] 4 All ER 124), the grave itself is not owned by the deceased or by his relatives whether before or after the burial (see Cripps on Church and Clergy (8th ed., 1937) at 572; Hill Ecclesiastical Law (3rd ed, 2007) at 7.113), even if there is an exclusive right of burial confirmed by faculty after 1964: see the Faculty Jurisdiction Measure 1964, section 8(1). Indeed, there is no right even to erect*

*a monument over a grave without the permission of the diocesan chancellor, although this permission is usually given through an authority delegated to the [clergy]: see Re Woldingham Churchyard [1957] 2 All ER 323.”*

5. It would seem important for all people who intend to use a consecrated churchyard for the burial of a relative or loved one to have regard to the following statements:

*“First and foremost churchyards are consecrated to Almighty God, Father, Son, and Holy Spirit. Accordingly, they must be treated and cared for in a manner consistent with that consecrated status. Churchyards can also fulfil important spiritual rôles and can be a powerful part of the Church’s witness to the world. They provide appropriate settings for Christian places of worship and as such send out a message of the Church’s commitment to offering to God the very best products of human artistic skill. They contain memorials to departed Christians demonstrating the Church’s continuing love for them and its belief in the communion of saints.*

*The circumstances of interment and the memorials in a churchyard can be powerful evidence of the Church’s love for the local community and are an important part of our ministry to the bereaved. Churchyards are places of solace and relief for those who mourn. In addition many people find comfort in knowing that their mortal remains will be interred in a particular churchyard and in a particular setting. That comfort derives in part from a confidence that the character of that setting will be preserved.*

*Finally, churchyards are an important part of our national and local heritage. Our care for them is part of the Church’s work of stewardship of our heritage and of the created world.*

*Accordingly, the memorials placed in our churchyards must be fitting and appropriate and they must be fitting and appropriate not just for today but also for the future.”*

The statements above appear in the introduction to the Churchyard regulations of Coventry Diocese. I would suggest that they give some important

background explanation for why there are churchyard regulations controlling what memorials can be authorised by the clergy throughout almost all of the country. That does not mean that memorials falling outside the churchyard regulations cannot be allowed, but the circumstances are that a faculty must be sought for such memorials from a judicial officer of the relevant Diocese.

6. Those considering the relevance of the Churchyard regulations should realise there must be good reason why restrictions are specifically raised, such as permission being sought for particular badges, emblems and heraldic designs. One issue is that memorials should not convey false or misleading information. The use of a recognisable badge is often sought, such as when the family of a supporter of a particular team want to use the team badge or crest. Permission must be obtained because some clubs withhold consent unless the individual was a player or official of the club, in case a wrong impression is given as to the background of the person buried in the grave. Many badges, emblems and most heraldic designs, are protected in law from unauthorised use.
7. When the design for this headstone was first proposed, the Area Dean (the Parish being in interregnum, so the application had to be referred to the Area Dean) correctly identified that to include the design of the three lions would be outside the authority delegated to clergy under the Churchyard Regulations, in particular under paragraph 46. The Petitioner was therefore informed that a faculty should be sought because of the intention to use the three lions design. As long ago as 24th May 2021 the members of the Parochial Church Council for All Saints Church considered the application and, having been advised of the issues raised by the Area Dean, purported to give their approval for the design. It remains, of course, a matter that any design for a memorial falling outside the churchyard regulations requires permission by way of faculty.
8. The issue of consent for use of an heraldic design was also identified by the members of the Coventry Diocesan Advisory Committee when they considered

the application on 8<sup>th</sup> March 2023. The certificate of no objection contained this observation : *“The memorial could not be unqualifiedly recommended because the committee were not convinced that the proposed symbols were consistent with section 46 of the Churchyard Regulations and were also unconvinced that enough had been done to ensure that these symbols did not infringe copyright protections”*.

9. There was no material put forward to suggest that either the Petitioner, or the Monumental Masons on her behalf, had obtained consent from HM The King, or potentially from the College of Heralds, to make use of a part of the Royal Arms upon this memorial. When the matter was referred to this court in April 2023 it was apparent that such permission would seem necessary before any heraldic image could be used, no matter how great a supporter of this country the deceased had been. It is of note that an heraldic design upon a headstone would ordinarily suggest that the Arms in question belonged to the deceased, which they did not in this case. At the very least consent of the owner of the design must be obtained before this Court could justify permitting the inclusion of the very recognisable image. The directions gave permission for the Petition to be amended should a different design be chosen and it was acknowledged that obtaining consent to use an heraldic device could take time, so permission to seek an extension of time to obtain necessary permissions was also given. The petitioner was also informed that the matter would be determined on written representations unless she sought a hearing in open court.
10. The Petitioner has not requested any extension of time, nor has she requested an open court hearing, nor has she submitted any different design. She has twice written to the Court to point out that it is now a long time since her husband died, so she wants to raise a suitable memorial, but still she requests the use of the three lions heraldic device. She states that she did write to HM The King seeking permission to use the three lions, but had not yet received a response. The Petitioner has also stated that there is a headstone in the

Churchyard containing a fleur-de-lys, which she asserts is also an heraldic design, therefore she should be permitted to use the three lions. I have not been provided with any photographic or other evidence of that other headstone, so cannot determine whether the design would be taken as an heraldic representation, or badge of an organisation, or simply an image. I must consider the current application based upon the evidence with which I have been provided, rather than speculating upon what other images may have been used in the Churchyard. Without needing to determine the issue of the fleur-de-lys, it seems likely that the juxtaposition of the three stylised lions in the prone position, one atop another with a third on top, is immediately identifiable as a particular heraldic design.

11. Given that the Petitioner has not provided proof that consent has been given for the use of what I have determined to be an heraldic design I cannot permit the inclusion of the requested inclusion of the three stylised lions on this memorial.
12. The requested wording on the headstone is in the main unlikely to cause concern. The Petitioner has requested that ‘John Boy’ be added beneath the name of the deceased, set in quotation marks to indicate that this was a nick name by which John Bilclough was also habitually known. Once it would have been considered inappropriate to include nick names on a gravestone, nor the requested descriptors Dad and Grandad, but those expressions of familial love and respect seem appropriate here. I therefore grant a faculty for a memorial bearing the requested wording:

*“Treasured Memories*  
*of*  
*John Bilclough*  
*‘John Boy’*  
*A Loving*  
*Husband, Dad and Grandad*  
*Born 13<sup>th</sup> March 1959*

*Died Suddenly 5<sup>th</sup> February 2020*”

The memorial may also feature the requested flower holder and have the lettering painted in black. The memorial may not bear the requested image.

Subject to the following conditions, let a faculty be issued :-

Conditions

- (a) The Petitioner shall within one calendar month of installation of the headstone formally notify the Churchwarden(s) of the Parish in writing that the works have been completed, so that details of the memorial can be entered in the church log book;
- (b) The memorial must not bear any image, badge emblem or design;
- (c) The Chancellor’s fees arising when directions have been given and in drafting a judgment are both waived. The petitioner must pay all other costs and fees arising from this petition

Glyn Ross Samuel  
Chancellor  
20<sup>th</sup> June 2023.