

In the matter of Halifax Minster

Judgment

1. By a petition dated 8 February 2016, the Vicar and Churchwardens of the Minster Church of St John the Baptist, Halifax seek a confirmatory faculty for the permanent disposal of 100 kneelers.
2. A letter of objection dated 17 May 2016 was received from Mrs Mary Crossley. She elected not to become a party opponent and accordingly I take the contents of her letter into account in this determination (together with its enclosure) as I do the written response on behalf of the petitioners dated 12 June 2016.

Background

3. The parish church of St John the Baptist, Halifax is a Grade I listed building, believed to date from the twelfth century. It was afforded Minster status in 2009. I need not rehearse the Statement of Significance which is a model of clarity, drawing particular attention to the major fifteenth century reordering and the restoration overseen by Sir George Gilbert Scott (largely through his son) in the nineteenth century.
4. Included with the petition papers is a document, *Assessment of Heritage Significance: Nave Seating in Halifax Minster* (The Architectural History Practice Limited, July 2010). That document concludes:

The nave and aisle seating at Halifax Minster is part of an assemblage of exceptional and high significance fittings within a Grade I listed building. The seating is of exceptional significance for its intrinsic value as a post-Reformation scheme of seating and for the sensitive restoration and adaptation by John Oldrid Scott in the 1870s.

The Report counselled against disturbance to the adapted seventeenth century seating to retain the integrity of the church interior which it describes as 'remarkable'.

5. The current petition proposes no change to the fabric of the church nor to its historic seating. It relates solely to the disposal of kneelers. They were apparently made by volunteer embroiderers in the 1970s to a suite of bespoke designs by Monica Lewin. There were 10 different designs and a total of 225 kneelers were produced and placed on the floor in front of the pews, presumably with the permission of the then archdeacon's. The proposal is to remove the majority of the kneelers, save for the retention of samples, and the motivation is one of public safety, in that following a reordering to the east end of the nave the kneelers are positioned on the floor in front of the box pews where they constitute a trip hazard. They would constitute a particular danger were there to be an emergency evacuation of the minster.
6. What is regrettable, however, is that the petition is confirmatory in nature and that a considerable number of kneelers were removed from the church with the

encouragement of the Vicar, churchwardens and the PCC in or about October 2015, following an invitation to members of the congregation to take them.

7. The *De Minimis Provisions* for the historic diocese of Wakefield applied to churches in the former diocese until withdrawn on 1 January 2016 when the Faculty Jurisdiction Rules 2015 came into force. Section 6 read as follows:

6. MOVABLES

No item may be disposed of unless the Archdeacon has been consulted and raises no objection

Introduction, removal or disposal of:

6.1 Kneelers, hassocks and cushions (not a substantial replacement of them)¹

8. Not only was the removal unlawful, it was somewhat insensitive, showing thoughtlessness to the feelings of those, including Mrs Crossley, who had worked on them or in whose memory individual kneelers had been fabricated.
9. In fairness to the vicar and churchwardens, once they were aware of their mistake, they sought to mitigate the effect of their actions by requesting the return of the kneelers, and have now quite properly petitioned for a confirmatory faculty. The test to be applied is whether permission to dispose of the kneelers would have been granted had it been sought prospectively.
10. Mrs Crossley, in her letter of 17 May 2016, places reliance upon a legal Opinion from Dr Andrew Buck, a copy of which has been supplied to me. Dr Buck asserts, 'I am unable to find legislation which would allow a faculty to be granted retrospectively'. He seems to be unaware that the confirmatory faculty is a familiar creature of ecclesiastical law. It does not retrospectively legalise what was done, but for the future brings the matter 'within the four walls of the law', to use the terminology of *Re St Mary, Balham* [1978] 1 All ER 193, Southwark Consistory Court.
11. Dr Buck's Opinion makes reference to emails and documents which I have not seen, and which I do not consider that I need to see for the just disposal of the petition. The Opinion is a curious document making reference to Hillsborough, Alan Turing, and Oliver Cromwell, as well as referring to Euodia and Syntyche. It asserts that if the incumbent had not acted so hastily the present impasse would not have come about. It recommends that Mrs Crossley should pass the Opinion to the vicar and churchwardens, and suggests that reconciliation will follow.
12. What neither Dr Buck nor Mrs Crossley seem to appreciate is that the vicar and churchwardens have very properly conceded that they acted in haste and without authority and they are seeking to put things right swiftly and discretely by obtaining a confirmatory faculty. Whilst I cannot understand why it has taken until June 2016 for the matter to reach me, the need for a confirmatory faculty ought always to have been self-evident because an archdeacon cannot give consent retrospectively.

¹ Since 1 January 2016 when the Faculty Jurisdiction Rules 2015 came into force, diocesan *Lists of Minors Works* have been replaced with national provisions. Section A5(3) of List A provides, *inter alia*, for the removal of kneelers and hassocks on condition that 'it does not result in a change to the overall appearance of the church'. The prior approval of the archdeacon is not required under the new regime, as signified by the inclusion of the matter in List A as opposed to List B.

13. There is nothing in Dr Buck's Opinion that constitutes a ground for opposing the grant of a confirmatory faculty, and it seems to conclude by asserting (incorrectly) that applying for a faculty is unnecessary.
14. Mrs Crossley, in her letter, quotes from various earlier email exchanges indicating her agreement to a compromise solution (which is what is now pursued in the petition) whereby specimen kneelers are to be retained. She seems subsequently to have resiled from her agreement.
15. The Vicar has apologised for permitting the disposal of the kneelers without seeking prior authority from the archdeacon. He and others have sought to provide pastoral support to Mrs Crossley, and to acknowledge the distress which has clearly resulted from their hasty action. Nonetheless Mrs Crossley persists in her objection to the grant of a confirmatory faculty for a compromise solution for which she candidly admits she previously gave her consent.
16. It is unfortunate that this uncontroversial petition to regularise a regrettable mistake has been so strenuously resisted on such fanciful grounds. It seems obvious to me that this is a case where a confirmatory faculty in the terms sought should clearly be granted. I rely on the following:
 - i. the action of the vicar and churchwardens was a genuine mistake, and not motivated by malice or performed in cavalier disregard of the law;
 - ii. the vicar has apologised unreservedly for the error and for the distress occasioned to Mrs Crossley;
 - iii. steps were promptly taken to recover as many of the kneelers as possible;
 - iv. every effort was made to come to a pastoral accommodation with Mrs Crossley;
 - v. on her own admission, Mrs Crossley agreed to the compromise solution which forms the proposal for which a confirmatory faculty is now sought, and she gives no legitimate reason for her subsequent change of heart;
 - vi. the legal Opinion produced by Mrs Crossley suggests no grounds upon which a confirmatory faculty might be refused;
 - vii. the basis on which the confirmatory faculty is sought, including reasons of health and safety, is cogent and convincing;
 - viii. had the archdeacon's permission been sought prospectively, I am in no doubt that it would have been granted;
 - ix. with effect from 1 January 2016 there is no longer a requirement under the new List A for prior consent from the archdeacon and the actions of the vicar and churchwarden, if repeated now, would be wholly unobjectionable.
17. I therefore allow the petition and grant a confirmatory faculty in the terms sought.