

In the matter of St Philip's, Scholes

Judgment

1. In or about April 2015, the font was removed from St Philip's Church, Scholes without permission. These consolidated proceedings have been largely an enquiry into how such an unhappy situation came about, but they have thrown up a number of subsidiary matters.

Background

2. Upon receiving information in October last year concerning the alleged disposal of the font, I caused enquiries to be made by the Archdeacon. This led to an email from the parish's inspecting architect, Sebastian Rowe, dated 12 October 2015, indicating that he had contacted Alan Stanley, one of churchwardens, who told him that, 'the font had indeed been removed'.
3. I thereupon issued directions on 16 October 2015 requiring the immediate return of the font and the cessation of works which were then being undertaken in purported implementation of an earlier faculty granted by the Acting Chancellor on 26 March 2015. I required a petition seeking a confirmatory faculty to be lodged by Tuesday 20 October 2015 in respect of the removal of the font. This was duly done (petition 15-190Ci), although the Schedule of Works (drafted by the Reverend Andy Nicholson without the benefit of legal advice) also included a raft of items which had been included in the faculty granted by the Acting Chancellor.
4. I issued a further set of Directions on 26 October 2015, consolidating this fresh petition with the earlier proceedings and permitting the petitioners to amend it so as to delete the unnecessary items. The amended petition was never served. I then gave detailed directions intended to have the matter brought on for a hearing before Christmas so that the matter could be resolved before the start of the New Year.
5. My optimism proved misplaced and my directions many were either overlooked or not followed.
 - i. I required the petitioners to serve witness statements within 21 days. The first petitioner complied (after an extension of time had been sought and granted) with a statement dated 21 November 2015. The second and third petitioners did not comply at all. The registry sent reminders and eventually their statements were lodged on 7 December 2015.
 - ii. I sought advice from the DAC under r 6.2 of the Faculty Jurisdiction Rules 2013, and this was not received until a statement dated 10 February 2016 from the Reverend Canon Simon Cowling, together with a bundle of

accompanying documentation, was lodged on 10 February 2016, but did not reach me until mid-March.

- iii. I directed consultation with the CBC under r 8.7, but for some reason the petitioners themselves corresponded with the CBC rather than the registrar using form 11 as prescribed by r 8.8. The advice from the CBC (such as it was) was not received until 8 April 2016.
 - iv. the petitioners, having instructed specialist ecclesiastical solicitors, decided to start an entirely fresh set of proceedings and issued a petition on 18 November 2015 (15-239C) . This caused a degree of confusion and slowed up case management as it required a further Notification of Advice from the DAC, and created a process outside and separate from the suite of directions I had constructed to bring the substantive matter to a swift and expeditious disposal. The Notification of Advice (the need for which I would have dispensed with had the matter been referred to me) was issued on 10 February 2016;
 - v. Finding, a date for the hearing proved then problematic due to the diary commitments of various individuals.
6. Concerned at the lack of progress, I made further Directions on 9 February 2016. These also dealt with certain matters which had been raised by the petitioners. I varied my earlier order staying the building works to the limited extent of allowing the fitting of an emergency door. This was on condition that the requisite planning permission was in place and that the petitioners gave security for costs in the sum of £2,000.
7. In response to a matter raised by the petitioners through their solicitor, I was required to make yet further Directions on 20 April 2016 directing, *inter alia*, the lodging of a further skeleton argument three clear days prior to the hearing. That direction was not complied with, but the matter raised was expressly abandoned at the start of proceedings. The petitioners also abandoned petition 15-190Ci, preferring instead to pursue petition 15-239C.
8. Notwithstanding the proliferation of proceedings, not all the issues for determination were raised on the pleadings. With the assistance of counsel for the petitioners, Miss Ruth Arlow, the matters for adjudication were agreed as follows:
- i. the amendment of the faculty issued on 26 March 2015 substituting the reference 09B for 09A under architect's drawing;
 - ii. a confirmatory faculty for:
 - a. the dismantling of the marble-clad font;
 - b. the storage of the brick, mortar and marble cladding constituting the pedestal and of the font bowl;
 - c. the retention within the church of a free-standing wooden font from St George's Church, Leeds and introduced without permission on a date unknown;
 - d. the retention within the free-standing wooden font of the bowl from the marble-clad font, which had been taken from storage inside the

church and placed within the upper section of the free-standing wooden font, again without permission.

- iii. a faculty permitting the removal and disposal of the remains of the marble-clad font on such terms as the court deems fit.
 - iv. the lifting of the stay on implementing the terms of the faculty dated 26 March 2015.
9. I gave leave for the admission of various witness statements out of time, and heard evidence from the priest-in-charge, the Reverend Andy Nicholson; the churchwardens, Peter Long and Alan Stanley; the Archdeacon of Leeds, the Venerable Paul Hooper, and Mrs Anne Smith, a member of the current Leeds DAC, whose evidence related to the time she had served on the DAC for the former Diocese of Ripon and Leeds and the transitional DAC. Witness statements were adopted as evidence-in-chief, there was some limited additional evidence led by Miss Arlow, followed by some questions from the court. There was no significant challenge to the evidence and thus I need not rehearse it fully in what is will prove, in any event, a lengthy judgment.

The uncontroversial history

10. The village of Scholes lies to the north east of Leeds and has a population in the order of 2,500. St Philip's comprises part of the united benefice of Barwick-in-Elmet with Scholes. The church was built in 1966 to a design of architect Peter Hill and is described as having a 'fortress' style. It is utilitarian in its construction, and gives little indication of its sacred purpose from its external appearance.
11. In the early part of 2014, the parish began exploring a substantial reordering project. The design of the building had not proved particularly successful and it was felt that it needed to change if it was to serve a growing population. The changes were planned to address the needs of the community, including a drop-in café for those with children at the local school, pensioners' lunches and a U3A venue. The principal aim of the reordering was the separation of the sacred liturgical area from a new community and social area by the introduction of a glazed partition and servery. The changes were all animated by the mission of the church.
12. Whilst this project was rooted in carefully thought through liturgical use of sacred space, it was not particularly complex in the context of an unlisted building of straightforward construction. It appears from the paperwork, however, that the DAC of the then Diocese of Ripon and Leeds made extremely heavy weather of the parish's proposals, considering them on no fewer than six occasions, including a site visit and the highly unusual step of inviting the priest-in-charge, churchwarden and inspecting architect to attend a meeting of the DAC and make a presentation.
13. In due course, on 7 November 2014, the DAC issued a Form 2 Notification of Advice recommending the proposals. After this came, successively, a petition dated 23 March 2014 and a faculty dated 26 March 2015. These documents all adopted identical text in the relevant Schedule. I understand that the form of words was drafted by the DAC secretariat in the Diocese of Ripon and Leeds. As subsequent

events have made all too painfully clear, the text was infelicitous and inaccurate in two material particulars. First it made reference to an architectural drawing ending with the suffix 9A (notwithstanding that it had been superseded by version 9B). Secondly, and of greater moment, it included the following: 'Relocation of Baptistry and lectern', the significance of which was later to become all too painfully apparent.

The unauthorised disposal

14. The witness statements of Mr Nicholson, Mr Long and Mr Stanley (which stood as their evidence in chief) relate what subsequently took place as they purported to implement the faculty. To quote from Mr Nicholson,

'15. The existing font was removed by Peter Long, after discussion with Alan Stanley and with me. [...]

16. In the course of the removal of the font, it became apparent that the marble cladding covering the brick core of the font base could not be removed intact in way which would enable its re-use. Notwithstanding this, Mr Long proceeded to remove the marble cladding in pieces, and then, with the assistance of another member of the church congregation, Mr Malcolm Ambler, the brick and mortar core of the font base was demolished and carted away.

17. The metal bowl from the font was removed and stored in the church, where it has remained since the font was dismantled.

18. The marble and aggregate remains of the font base were removed and buried in the garden of Mr Alan Stanley ... The area around the church building is open ground, readily accessible to the public. I and my colleagues believed it would be preferable to inter the remains of the font in a secluded place, not open to public interference. There is a tradition, though it is no more than that, that redundant fonts may be buried in the churchyard. If it had been possible to dismantle and relocate the font intact or in pieces capable of being re-assembled, then some other form of disposal such as use in an alternative setting, donation to a museum, or sale, might have been proposed. In the circumstances, burial in a safe location seemed to be an appropriate course of action. In any event, the bowl of the font, to which particular significance is attached by Canon F1, has not left the church building'

Honest but mistaken belief

15. The difficulty with the dismantling, removal, disposal and burial of the font was that it was not authorised under the terms of earlier faculty dated 29 March 2015. Mr Long accepts that he never saw the faculty but took it on trust from Mr Stanley when he informed him that it did. It is unclear whether Mr Nicholson himself had sight of the faculty.
16. Mr Stanley and Mr Long very fairly conceded in their witness statements that 'in the context of the substantial re-ordering proposals for the church, insufficient attention was given by myself and my fellow petitioners to the proposed relocation and possible new design of the font'. More particularly, they accepted 'although the faculty clearly anticipated and permitted the relocation of the font, it did not

authorise the destruction of the font base or its disposal'. They state that they were acting in good faith 'albeit in a mistaken belief that the faculty permitted the actions taken'.

17. With the benefit of hindsight, they each state, 'when it became apparent that the font base could not be dismantled in such a way as to enable its re-use, work should have been discontinued and an application made via the Diocesan Registrar for further directions from the Court as to the manner in which the font should have been dealt with'. I interpose to say that had that course been taken, this matter is likely to have been resolved within a day or so. The consistory court has power under r 19.3 to set aside or amend any faculty or order if it appears 'just and expedient to do so'. Here, however, a sacred object was removed from the church and disposed of unlawfully, necessitating an application for a confirmatory faculty. A hearing in open court was inevitable.
18. Although Mr Nicholson adopted the words of Mr Stanley and Mr Long in the concluding paragraphs of his own witness statement, I regret that I found his evidence rather less convincing. At paragraph 15 of his witness statement he said, 'I believed and still believe, that we were acting under the authority of the faculty in proceeding with the removal of the font' (emphasis added). I questioned him about this, inviting him to reconsider whether he still believed that the faculty authorised the removal of the font, notwithstanding the ordinary and natural meaning of the words used, that Mr Stanley and Mr Long both conceded that it did not, that the archdeacon similarly accepted that it did not, and that the petitioners' counsel's skeleton argument was predicated on the fact that it did not. He was surprisingly unwilling to yield.
19. There were further problems with Mr Nicholson's evidence. In a letter to the court dated 7 November 2015, Mr Nicholson stated, 'I am writing to confirm that the remains of the old font, including the bowl itself and the broken parts of the marble cladding, have been returned to the church building and are in storage there'. When I took Mr Nicholson to the letter he immediately realised and accepted that it was not factually correct. I am troubled that when serious matters were being investigated, Mr Nicholson was so remiss as to send a letter to the court confirming something which he knew not to be accurate. I do not suggest that he was deceitful or deliberately misleading, simply that he failed to appreciate the importance of getting his facts right and expressing himself with care.
20. More disturbing, however, was the fact that it emerged during the course of the evidence that the bowl of the font was not safely and securely stored in a cupboard in the church building (where the court had been told that it was), but that Mr Nicholson of his own volition had inserted the bowl into the free standing wooden font (which had itself been introduced into the church without permission, albeit quite some while ago). This information seemed to come as a surprise to the petitioners' legal team. Mr Nicholson stated that he had not sought legal advice before taking the bowl out of storage, nor had he sought guidance from the

archdeacon who, when giving evidence, indicated that he treated this development as a matter of regret.

21. Although Mr Nicholson gave a credible explanation in terms of the continuity of sacramental ministry of baptism using the same bowl as had been used in the marble font, this was not entirely convincing as on his own evidence the latter had effectively been out of use for the majority of his ministry.
22. It causes me some concern that Mr Nicholson still does not appreciate that in the exercise of his ministry he is obliged to follow the ecclesiastical and canon law of the Church of England. The fact that he does something so ill-advised as take the bowl out of storage (where it had been placed pursuant to a direction from the court under the oversight of the archdeacon) and restored it to use within the church whilst these proceedings were yet to be determined shows a distinct lack of judgment and common sense. Miss Arlow suggested that the exposure of his shortcomings during the hearing will doubtless have proved a salutary experience for him. I very much hope that has been the case.
23. Mr Stanley wrote an email to the court on 15 February 2016, the contents of which were intemperate and rested on a misapprehension concerning the mechanics of security for costs. In the course of his evidence he offered a gracious and fulsome apology which I was pleased to accept.

Justification for mistaken belief

24. Miss Arlow took me to a range of evidence suggestive of the source of the petitioners' mistaken belief, not least the manner in which the original proposal had been presented to and considered by the Ripon and Leeds DAC. She made reference to the Statement of Significance which clearly states that 'the only features to be removed totally are the font area and the communion table', although I refused to allow her to adduce evidence relating to the altar as this was not in issue within these conjoined proceedings and it would be improper for the court to trespass outside the issues raised on the papers.
25. There is also what might be styled 'independent' evidence which adds weight to the source of the mistaken belief. Mrs Smith records the various dealings which the Leeds and Ripon DAC had with the proposal including a site visit on 30 April 2014. She recalls how the Statement of Significance made reference to the commissioning of a new font, communion table and lectern. It made the point that all other marble items had been removed from the church in a reordering of 1997. The font therefore looked somewhat incongruous, and the sunken baptistery area created a trip hazard. There was discussion about the commissioning of a new font, fabricated in wood, to occupy a position in front of the west window visible from the entrance which would be befitting for the rite of initiation and also say something about journey and sacrament.
26. Mrs Smith's recollection is that there was no expectation that the marble-clad font would be relocated to another part of the church, but instead she uses rather

convoluted language to describe moving the 'function' of the font. She recalls discussion of the agenda item as 'getting a bit convoluted' on the last occasion it was on the DAC agenda and the recommendation was made. She told the court she did not see the terms in which the Notification of Advice was drawn up as this was the responsibility of the secretariat. She agreed that the terminology adopted was inelegant and inaccurate in not recording what she believed to be the understanding of the DAC.

27. The Archdeacon of Leeds was of a similar view:

'The phraseology is unfortunate as it was clear from all discussions at the DAC, both with the parish and within the committee, that no-one contemplated that the baptistery in its current form would be relocated within the church [...] the phrase 'relocation of baptistery' in the DAC Notification of Advice referred to a relocation of the function of baptism within the church rather than a wholesale relocation of the existing baptistery area. With hindsight, that phraseology could be seen to be unfortunate, but the paperwork was being drafted at a time when the DAC was under significant pressure as a result of the transition to the new diocese which may go some way to explaining the 'looseness' of the language used.'

He concludes by expressing his view that the actions of the parish 'were taken in the honest belief that those actions were authorised by the faculty which had been granted'. I am particularly grateful to the Archdeacon for the candour of his evidence and for the pastoral support he has given to the parish.

The disposal of the marble-clad font

28. Having addressed these various procedural and other matters, I come now to what lies at the heart of the proceedings, namely the disposal of the font. During oral argument I used the disparaging term 'builders' rubble' to describe the remnants of concrete blocks, mortar and marble cladding which had formerly constituted the pedestal housing the bowl of the font. The bowl itself was an ordinary stainless steel mixing bowl of the type one might see in a commercial kitchen or as part of a food mixer. I confess that I still find it extraordinary that the petitioners chose to take the material and bury it in Mr Stanley's garden. On one view this is suggestive of sly, secretive conduct evidencing a guilty conscience. But all the evidence points to their honest, though mistaken, belief and their concern to give appropriate reverence to the font's previous sacramental purpose. Each petitioner claimed to be aware of a tradition that redundant fonts be buried in the churchyard. When asked, Mr Nicholson thought he had read about it in the *Church Times*. I did not explore the source of the knowledge of the other petitioners about this curious and arcane practice which might be medieval in origin.

29. Mindful that this was controversial territory, I considered it prudent for the court to seek assistance from the DAC and the CBC who each have a statutory function within the faculty jurisdiction and are made up of experts such that collectively they are a repository of information and experience which can assist in the promotion of best practice.

Diocesan Advisory Committee

30. I sought advice from the DAC under r 6.2 in my directions of 16 October 2015. I had in mind that a restoration order might have to be made and seeking the DAC's advice is a pre-requisite for this. The functions of the DAC under Schedule 2 to the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 are much broader than merely issuing Notifications of Advice to putative petitioners, and it is unfortunate that my direction seeking advice was not treated as it should have been, and it may be that the registrar served to foster this misapprehension. The occasions when a chancellor will call upon the DAC to give specific advice on a particular matter will be relatively few, not least because chancellors are all too well aware of the DAC's already heavy workload. However, for the future when I give a direction seeking advice from the DAC, I would expect a response within 21 days, if necessary seeking an extension of time within which to furnish a fuller response.
31. Once this misapprehension had been cleared up, the advice from the DAC which came in March 2016, was extremely thorough and helpful. It comprised a note from the Chairman, the Reverend Canon Simon Cowling (who took up office some time after the events in question) together with an appendix and timeline prepared with the assistance of the DAC secretary, who similarly came into post during the transitional arrangements. She helpfully traced the paperwork through the records of the former Ripon and Leeds DAC even though she had had no involvement with those activities.
32. The salient part of the DAC advice reads,
'The font that has been removed from St Philip's had no intrinsic merit: it was constructed of breeze block, infilled with rubble, with a thin layer of marble cladding to its outer edge. The font bowl is simple stainless steel with no decoration or inscription. The DAC would therefore not consider it as a significant piece. All that can be said is that it as designed as part of the 1966 interior of the church which is itself unlisted. The Statement of Significance states: *The white Sicilian marble lectern, pulpit and communion rail top were removed ... in 1997. Only the font and communion table remain unchanged from the original design.*'
- Canon Cowling also helpfully drew attention to various extracts from the minutes of DAC meetings from the former Diocese of Ripon and Leeds, including during the transitional arrangements prior to the establishment of a single DAC for the whole diocese, during which the three 'holdover' DACs met separately.

Church Buildings Council

33. In my directions of 26 October 2015, I required that there be consultation with the CBC under r 8.7. Unfortunately, the petitioners contacted the CBC directly, and it may be that they were encouraged in this course by the registrar. As is clear from r 8.8 where the chancellor seeks the advice of the CBC under r 8.7, the registrar must serve a request in Form 11. Time and effort were then wasted in Mr Stanley emailing the general enquiry address at the CBC and getting no reply. Mr Stanley chased the matter up and eventually received an email of apology from Mr David Knight on 27 January 2016 stating the following:

'I presume that the matter is now resolved. If it is not this email is to confirm that we do not wish to offer any comments on this case, save to encourage the provision of an appropriate new and permanent place of baptism in the church, with appropriate permissions in place'.

34. The registry was appraised of its mistake and duly wrote to the CBC on 26 February 2016. Enclosed was a Form 12, under the 2015 Rules, although strictly it should have been a Form 11, under the 2013 Rules which continue to govern these proceedings. However, the content is not materially different. It was clear that the request was being made because 'the Chancellor thinks that the advice of the CBC would be of assistance' and the Form was completed sufficient specificity:

'The chancellor seeks advice on the following: the disposal of a font once it has ceased to be used liturgically and removed from the church.'

35. Having received no reply or acknowledgment, the registrar sent a chasing email to the CBC on 11 March 2016, which also went unacknowledged and a further email was sent on 8 April 2016. Mr Knight replied by return:

'Thank you for your email prompting my response over the font at Scholes. Please see below the email that I sent to Mr Stanley at the parish on 27 January 2016. I confirm that the Council does not wish to add further comments on this case'.

I was concerned that a statutory body which has such an extensive experience of giving and collating advice across both provinces of the Church of England was so unwilling to give assistance in this case. The petitioners had already lodged in evidence an extract from the comment stream of a highly reputable blog (David Pocklington, 'They Bury Fonts Don't They', *Law and Religion UK*, 7 April 2015) on which the Reverend Michael Ainsworth, describing himself a CBC member and apparently contributing his comment in that capacity, addressed the disposal of fonts and stated:

'[the] CBC intends to produce some guidelines on this, and we will have to think carefully about this issue. Do we stand by the 'sacramental nature' of the font? I suppose it could be argued that a font could be sold, or displayed, with safeguards about its 'use', though there is no way of ensuring them'.

Mindful that the very point which the court had to examine was apparently under consideration by the CBC, I requested the registrar to revert to Mr Knight and underscore how much the court wished to have the benefit of the CBC's unrivalled experience and expertise, even if it was only work in progress in the formulation of guidance. Sadly, however, all that resulted was a brief email from Mr Knight reading:

'In the event that a confirmatory is issued, the Council would wish to see the removed font treated in accordance with the Canon F1, and not be available for any use apart from baptism after its removal. This is most likely to meant [sic] that it is put beyond further use.'

36. This impoverished response brings home just how much the CBC's advice, experience, records, data, analysis and statistics are valued by those concerned in administering the faculty jurisdiction. The rare lapse in this case allowed Miss Arlow to make the bold submission that not merely was the advice of the CBC much

delayed, perfunctory and unhelpful, it was also wrong in law. So it is to the legal framework that I now turn.

The law on disposal of fonts

37. In my directions of 9 February 2016, I directed the appointment of an *amicus curiae* to assist with the legal issues involved. At the request of the petitioners' solicitors, I cancelled that direction on the basis that Miss Arlow was to be instructed. The court does not have the time or the resources to carry out independent legal research and I am indebted to Miss Arlow for her diligence in trawling through the case law. In the best traditions of the Bar she has had to be entirely non-partisan bringing to the court's attention relevant material whether or not it assists her clients' case, and I am confident that I can place reliance upon the thoroughness of her research.
38. In addition to a thorough skeleton argument, Miss Arlow made oral submissions at the conclusion of the evidence. She took as her starting point the judgment of the Court of Arches in *Re St Peter's, Draycott* [2009] 3 WLR 2009. The CBC was given leave to intervene in that appeal and was represented at the hearing by Mr Alexander McGregor, instructed by the Legal Adviser of the Archbishops' Council. The case concerned an appeal from the decision of Briden Ch sitting in Bath and Wells Consistory Court. The chancellor had granted a petition permitting the sale of a font to a private collector. The Victorian Society appealed and the CBC intervened.
39. The relevant section of the judgment runs from paragraphs 37 to 57. I make no apology for the lengthy recitation, although I have sought to edit down the original where possible.

Can a font ever be sold or disposed of to another use?

37. Mr McGregor put forward three propositions in what he said was his primary submission on behalf of the council. These were (i) a font is an essential part of the interior of a church; (ii) a font may not lawfully be put to any other use than the administration of Holy Baptism; (iii) a font which is no longer required for the purpose of the administration of Holy Baptism should be put beyond use.

38 We have no difficulty in accepting the first proposition. Baptism is a principal sacrament of the Christian Church and the provision of a font in a church has long been a requisite of ecclesiastical law. It is enshrined in the current Canons of the Church of England where Canon F1 requires that "In every church and chapel where baptism is to be administered, there shall be provided a decent font with a cover for the keeping clean thereof".

39 Mr McGregor's second proposition is a wide ranging one. Briden Ch did not hear any argument on this point, but if it is correct that a font may not lawfully be put to any other use, then it would mean that no faculty could ever be granted authorising the disposal of a font into private use, and any decisions to the contrary would have been incorrect.

40 Mr McGregor provided us with [various authorities – Gibson, Phillimore, Lyndwood,] [...]

43 On the strength of these passages Mr McGregor submitted that the pre-Reformation Canon law continues to apply if it has been followed and acted upon since the Reformation. [...]

46 [...] we find that Canon 81 of the 1603 Canons is devoid of any restriction against disposal of a font. Furthermore no evidence has been drawn to our attention to demonstrate that any pre-Reformation restriction has been uniformly recognised and acted upon since the Reformation.

47 It is only since 1969, with the abolition of the 1603 Canons and the introduction of new canons, that any restriction in relation to a font has appeared in the Canons. Canon F1.3 now provides that "The font

bowl shall only be used for the water at the administration of Holy Baptism and for no other purpose". We interpret this as simply protecting the font bowl whilst it is in use in the church for the purpose of the administration of Holy Baptism. The canon says nothing about what is to happen, if and when, a font bowl is no longer in use for that purpose. [...]

49 For the reasons we have given, and on the basis of the information before us, we are unable to accept Mr McGregor's second proposition that there is a long standing legal principle prohibiting the disposal of a font under faculty in any circumstances whatsoever.

50 In support of his third proposition Mr McGregor submitted that two post-1969 consistory court decisions reflected a rule that a font no longer required for the administration of Holy Baptism should be put beyond use. Ms Arlow, on the other hand, submitted, correctly in our view, that the decisions simply demonstrated that in certain circumstances a faculty may be granted for the disposal of a font in one way or another. (emphasis added)

40. Under the strict principles of *stare decisis*, a judgment of the Court of Arches is not binding in the northern province, but in the absence of any contrary statement in the jurisprudence of the Chancery Court of York, the proper course is to treat it as being a persuasive decision which is to be followed. Miss Arlow submits that the advice from the CBC in this case is a restatement of the third proposition advanced by Mr McGregor in *Draycott* on the instructions of the CBC and roundly rejected by the Court of Arches at paragraph 50 of the judgment. If it is right, as Mr Ainsworth suggests, that the CBC is intending to produce some guidelines on this matter, then it is to be hoped that they will reflect the opinion of the Court of Arches.
41. In deference to submissions of Miss Arlow, it might be helpful if I seek to draw some general statements of principle from the authorities to which she has taken me. Section 76 of the Mission and Pastoral Measure 2011 states that in the case of a church building being disposed of, unless the scheme itself makes other provision, 'the bishop shall ... give directions as to how the font, communion table and plate used for the purpose of Holy Communion shall be dealt with'. In previous iterations of these provisions in earlier legislation, the font, altar and communion plate are conventionally singled out for separate and particular attention. The reason for this may perhaps lie in the *Thirty-nine Articles of Religion*, and particularly Article XXV, 'Of the sacraments', which includes the following: 'There are two Sacraments ordained of Christ our Lord in the Gospel, that is to say, Baptism, and the Supper of the Lord'. A special status is therefore afforded to liturgical items which have been set aside and sanctified for use in the performance of the two sacraments expressly ordained by Christ which sets them apart from other liturgical furniture such as a lectern, from which the word of God is read, and a pulpit, from which it is preached. Accordingly when determining petitions relating to fonts, altars and communion plate, the court should give particular regard to their heightened sacramental significance and symbolism.
42. Dealing particularly with fonts, reference must be made to Canon F1 and, where disposal is concerned, to paragraph 3 in particular:
 'The font bowl shall only be used for the water at the administration of Holy Baptism and for no other purpose whatsoever.'
The Court of Arches in *Draycott* considered these words with some care and stated in clear terms:

‘We interpret this as simply protecting the font bowl whilst it is in use in the church for purpose of the administration of Holy Baptism. The canon says nothing about what is to happen if and when a font bowl is no longer in use for that purpose.’

In other words, so long as a font remains in use it should have no other concurrent secondary uses, but this clear and unequivocal prohibition ceases once a font is redundant or superfluous and is no longer used for the administration of Holy Baptism. There is no legal principle prohibiting the disposal of a font under faculty in any circumstances whatsoever. There is no rule requiring redundant fonts to put beyond use. A faculty may be granted for the disposal of a font. Each case will turn on its own facts, but at one end of the scale where disposal may be permitted, (as identified in paragraph 57 of *Draycott*) is ‘a liturgical re-ordering in which a font of no distinction becomes superfluous’, which seems to be precisely what was envisaged in the scheme proposed here at St Philip’s, Scholes.

43. Further support for this general proposition is to be found in the *Opinions of the Legal Advisory Commission*, ‘Church building: improper removal of the contents’, issued in May 2007. Paragraph 9 reads:

‘Once a valid disposal, by way of sale or gift, of the contents of a church has been made, the goods in question become ordinary things in commerce and are wholly divested of any sacred character.’ (emphasis added)

In a clear statement from the Court of Arches in *Re St Gregory’s Tredington* [1972] Fam 236, Newson Ch (sitting as Deputy Dean) made plain that there is no authority binding on chancellors requiring that if a faculty is granted for the sale of communion plate, the vessels should be ‘protected from profane or secular use’. Of course, where fonts and altars are concerned, even though on disposal they become divested of their sacred character, the fact of their previous sacramental use will be a reason for particular care being taken when deciding on any conditions to be imposed in the event of disposal.

44. Whilst noting that all decisions in this area are fact-specific, it is helpful to bring together some of the clutch of recent cases where chancellors have not ordered the destruction of a font and its burial in the churchyard. In *Re St Luke, Norland* (Wakefield Consistory Court, 1 November 2002), Collier Ch permitted the disposal (without burial) of a font that ‘had been heavily painted with a matt cream paint which has obscured its decorative features’ and had ‘no historic or artistic value’. The case of *All Saints, Winterton* (Lincoln Consistory Court, 23 July 2014) illustrates a similar point: Bishop Ch reconsidered an earlier faculty which he had granted and which had included a condition for the burial in the churchyard of an Edwardian font. Having received representations from, amongst others, the Victorian Society, he varied his earlier faculty removing the condition requiring burial of the font and invited proposals for repositioning it within the church where it could ‘co-exist peacefully’ with the medieval font although not used for baptism. If such were not possible then he would consider alternative plans for the removal of the font to another church or a diocesan store.

45. In *Re St Bartholomew, Kirby Muxloe* (Leicester Consistory Court, 23 September 2015), a suggestion was made that a redundant font be left in the churchyard and used as a flower planter. Rees Dep Ch disagreed with this proposal and sanctioned a graduated approach by which an alternative home should be found for it elsewhere in the church itself, with storage in a diocesan store in the interim, failing which a new home should be sought in another church or a museum, or if none of these options is available, then he would countenance sale on the open market. The chancellor adopted comments of Clark Ch in *Re St Peter, Shipton Bellinger* (Winchester Consistory Court, 12 March 2015) to the effect that ‘burying the font in the churchyard should be regarded as very much a last resort’. I would be cautious in placing too much reliance on these comments of Clark Ch since the decision was subsequently set aside by the Court of Arches on the basis of procedural unfairness and a redetermination ordered: *Re St Peter, Shipton Bellinger* (Court of Arches, 19 November 2015).
46. There are also examples of cases where a chancellor did order the burial of the font. One such is the decision of Cameron Ch (as she then was) in *Re Christ Church, Cockfosters* (London Consistory Court, 3 December 1999), although the removal of the font in pieces and their burial in the churchyard was only to take place after four months had elapsed during which attempts were to be made to find another church willing to have it as a gift. In *Re St Michael the Archangel, South Malling* (Chichester Consistory Court, April 1985), Edwards Ch contemplated that the font might have to be broken up, but this was in the context of the disposal of a range of ornaments and was raised as one of number of means of disposal.

The matters for determination

47. As to matters for determination, which have taken a tortuous and frustrating route to reach a final hearing, I have come to the following conclusions. First, notwithstanding that the faculty dated 26 March 2015 did not give permission for the marble-clad font to be removed from the church and disposed of, I am of the opinion that the petitioners were of the honest opinion that it did. I have particular regard to the representations made to the DAC and the manner in which the DAC proceeded to deal with the matter. The loose and inaccurate wording which the DAC secretariat used in the Notification of Advice, and which the petitioners adopted in the Schedule of Works in their petition, did not embrace what the petitioners intended, and to which the DAC had been favourably disposed.
48. Whilst I do not wish to condone the unlawful introduction into the church several years ago of a free-standing wooden font from St George’s Church, Leeds and I despair at Mr Nicholson’s decision in the run up to the court hearing to take the bowl from the former marble-clad font out of storage where it was to be safely kept pending this hearing and place it in the wooden font, I regard it as an aberration on his part and not wilful violation of the faculty jurisdiction. The free-standing font is perfectly serviceable and sits well, framed against the west window. The stainless steel bow fits surprisingly well, and may remain.

49. I am also satisfied that confusion in the drawn out process of securing the Notification of Advice led to the wrong plan being incorporated by reference in the Schedule of Works in the petition.
50. Finally I am satisfied that, contrary to the proposition advanced by the CBC, there is no legal or other requirement for a redundant font to be put beyond use. In the particular circumstances of this case, the reality seems to be that the font comprises the bowl and that the breeze block and marble cladding constitute nothing more than the pedestal in which it rests. As the point was not argued before me, I need not come to a final determination, but in my judgment it is appropriate for the bowl to be retained with dignity, however, the 'builders rubble' which is all that remains of the pedestal can properly be disposed of in such manner as the Archdeacon may direct. I can see no difficulty in it being discretely buried in a corner of the unconsecrated field in which the church building stands, but having regard to the nature of the material, providing the bowl is reverently preserved, I can see no objection to it being dumped in a landfill site or similar.

Order

51. I therefore order as follows:
- i. that the stay on works being carried out pursuant to the faculty granted on 26 March 2015 which was imposed 16 October 2015 be lifted forthwith;
 - ii. that the said faculty be amended pursuant to r 19.3 of the Faculty Jurisdiction Rules 2013 by the deletion in the reference to the Architects' drawing in the Schedule of 09A and the substitution with 09B;
 - iii. that a confirmatory faculty be granted to permit the introduction of the free-standing font from St George's Church, Leeds and for it to be sited in front of the west window of the church;
 - iv. that a confirmatory faculty be granted to permit the stainless steel bowl of the former marble-clad font to remain inside the head of the free-standing wooden font;
 - v. that a faculty be granted for the removal from the church of the material which formerly constituted the pedestal for the marble-clad font in such manner as may be authorised by the Archdeacon of Leeds.
 - v. that the petitioners have leave to withdraw petition 15-190Ci.
- Items iii. and iv. above are to be time-limited and will cease after three years. Within that period I expect the parish to petition for a faculty for a bespoke suite of liturgical furniture to include an altar, font and lectern. I have chosen this relatively lengthy period so as to allow the reordering to be executed and bed itself in and for the parish to develop the vision and accumulate the funds for appropriate furnishings which will glorify God and bring dignity and grace to the mission and witness of the worshipping community.
52. As Miss Arlow rightly conceded, the costs of and occasioned by these consolidated proceedings will inevitably fall to be borne by the petitioners. This will include a correspondence fee for the registrar. Credit will be given for the sum lodged in court by way of security for costs. Miss Arlow acknowledged that the court cannot order the diocese to make a contribution but suggested it might care to do so voluntarily. I

consider that suggestion misplaced. In the faculty jurisdiction it is the petitioners who are in the driving seat and it is them to formulate their proposals carefully and accurately. The DAC merely offers advice on applications put before them. Even if, to assist a particular parish, the DAC sees fit to draft a Schedule, the petitioners are under a duty to check the text and to ensure that their petition accurately sets out those specific items for which they are seeking permission. Parochial clergy, churchwardens and inspecting architects should take particular care to ensure that they adhere to the terms of any faculty which is granted. And if there is any uncertainty, they should suspend work and contact the registry immediately.

Postscript

53. I wish to add a couple of observations. This has been the first hearing of the Consistory Court of the Diocese of Leeds and there will be learning outcomes for the priest-in-charge, the churchwardens, the parish more generally, the archdeacon, the DAC, and the diocesan registry, as well as for me as chancellor. Change is not easy and there will be growing pains in the diocese as three become one. My fervent hope is for smoother and swifter resolutions in future cases. In his evidence, Canon Cowling (whose chairmanship of the DAC post-dated the events in question) volunteered that he has no intention of summoning putative petitioners to address the DAC. It is not for me to interfere in the running of the DAC but I warmly welcome this departure from the previous practice which had the capacity to foster confusion, as was the case here. By acting as a quasi-tribunal it can be intimidating for parishes and it confuses the advisory role of the DAC with the adjudicatory function of the consistory court.
54. Having spent time with the people of St Philip's, Scholes - a good number of whom attended the hearing - albeit in the rarefied atmosphere of a consistory court, I am impressed by their sincerity of faith, and by their clarity of vision in promoting the worship and mission of their corner of the Church of England. They have strong lay leadership and a committed and godly priest in their midst. My hope and prayer is that they will move forward from this short hiatus in their corporate life, learning from the experience, and growing together in strength and love as a welcoming Christian community in this expanding part of Leeds and as a beacon to the salvific work of Christ. And I trust that their Christian ministry will be enriched through the reordering of this cherished church building.