

Neutral Citation No. [2020] ECC Nor 4

IN THE CONSISTORY COURT

DIOCESE OF NORWICH

In the matter of

KESSINGLAND, ST. EDMUND

-and-

In the matter of

THE PETITION OF THE REVEREND MANDY BISHOP (RECTOR), PATRICIA BRIGGS and HELENA LORD (CHURCHWARDENS)

-and-

In the matter of

OBJECTIONS BY LISA CATCHPOLE and LOUISE MANTHORPE (Parties Opponent)

Judgment of the Chancellor

November 30, 2020

Churchyard — introduction of prohibited items — application for faculty to dispose of such items — case being decided on written submissions in accordance with Part 14.1 FJR — whether a faculty is required to move or remove items unlawfully introduced into a churchyard — cases of Petitioners and Parties Opponent — matters raised by Objectors taken into account — status of online petition — applicable Canon Law — the faculty jurisdiction — the applicable case law — the Churchyard Regulations 2016 for the Diocese of Norwich — discussion of “Burghfield” — the arguments of the Parties Opponent and the Objectors — decision to grant the faculty as prayed — concluding observations — general guidance to the diocese

Etherington, Ch:

1. This is a case that has aroused a good deal of feeling and attention. At its heart is the decision of the Rector and Churchwardens to remove what they say are unauthorised items from the churchyard of this church and, if not collected within a reasonable time, to dispose of them. The court received around 40 letters of objection from parishioners within the time period allowed which ended on July 22, 2020. An online petition has also been presented in this case. The parties to the case are the Reverend Mandy

Bishop, Patricia Ann Briggs and Helena J. Lord (*Petitioners*) and Lisa Catchpole and Louise Manthorpe (*Parties Opponent*).

2. I will decide this case on the basis of the evidence submitted in written form and on any written representations and I will not convene an oral hearing, having considered carefully Part 14.1 of the Faculty Jurisdiction Rules 2015 (as amended). I consider this basis for deciding the case will allow me to deal with it justly having judged that both the Petitioners and the Parties Opponent will be on an equal footing, that it will save expense and that it is a method proportionate to the issue I actually have to decide, allowing me to deal with the application and the opposition to it both fairly and more expeditiously than if I had to try the case in the Church itself or by some remote hearing process. I gave both the Petitioners and the Parties Opponent a proper opportunity to say whether they wished to argue against that course and, although the final decision is mine, both the Petitioners and the Parties Opponent agree with my deciding the case on the written evidence.
3. The judgment is longer than I had expected on my preliminary study. This is largely because it became clear to me that the case of *St Mary the Virgin, Burghfield* (see paragraph 4 below) required more detailed examination and it also became apparent that some additional guidance was necessary on undertaking works of this nature.
4. The Parties Opponent have cited to me, *In Re St Mary the Virgin, Burghfield* [2012] PTSR 593 (“*Burghfield*”), a decision of the Oxford Consistory Court in which Chancellor Bursell concluded that in general (but with certain exceptions) a faculty is required to remove items from a churchyard notwithstanding that they were placed there unlawfully or irregularly. I have also considered in detail *Ritchings and Cordingley* LR 3AE 113 (“*Ritchings*”) and *Vincent & Thominson v. Eyton* [1897 P1 12] (“*Eyton*”) as well as *Durst v. Masters No 2* 1 PD 373 and particularly at 383 (“*Durst*”) together with Newsom and Newsom *Faculty Jurisdiction of the Church of England* [2nd and Revised Edition, June 1, 1993] (“*Newsom*”) particularly at pages 192-3. I also read the other authorities considered in *Burghfield* in respect of other matters associated with the issues in this petition.
5. It is impossible to escape the fact that in this case there is considerable and mutual antipathy between the Petitioners and those supporting them and the Parties Opponent and those who agree with them. This means that on both sides there are allegations and counter-allegations about each party’s behaviour and motives.
6. **THE FACTS. The Case in Brief.** The Petitioners seek my permission by way of faculty to dispose of items that they have removed or caused to be removed from on or around graves and placed in another location within the churchyard pending collection by their owners or by disposing of them. They say they gave notice long before so doing and have made contact, or attempted so to do, with the families of those who have had items removed or, where that was not possible, left notices on the memorials

concerned following the removals. They say that they did so in reliance on the Churchyard Regulations for this diocese that were issued by Arlow, Ch. in 2016. The Parties Opponent argue that the Petitioners should have sought a faculty before removing any of the items and that such notice that was given was rendered useless because of the lockdown imposed by H. M. Government in response to the Covid-19 Corona Virus Pandemic which began on March 23, 2020. They also contend that previous incumbents permitted, either expressly or by inference, these and other such items to be placed on or around the graves and that the Rector is inconsistent and arbitrary in her approach: enforcing the rules in respect of this churchyard but not in others for which she is also responsible.

7. The Petitioners' Case in Detail. The Petitioners have provided this chronology of events:

11-01-20: the PCC met and agreed the wording for posters announcing the clear-up;
12-01-20: posters were displayed in and around the churchyard (this conflicts with the date of early February given in the faculty petition itself);
23-03-20: lockdown commenced;
17-05-20 to 19-05-20: the items were removed and placed by the side of the shed in safe crates;
27-05-20: the PCC were emailed and requested to support a faculty application to dispose of the items collected on 17-05-20 to 19-05-20 if not collected by September 2020. The PCC supported this unanimously;
29-05-20: the faculty application was made using the online faculty system “OFS”;
18-06-20: this faculty was granted by the court subject to objection.
22-06-20: notice of the faculty was displayed in and around the churchyard for a full 31 days;
06-07-20: a substantial number of items were collected by their owners; in some cases new items were placed on graves and these memorials were ticketed by authority of the Rector. No additional items have been actually removed since 19-05-20.
Further, the petitioners presented a sketch map of the church showing that the churchyard is divided into eight sections. Seven are full. The churchyard is open and it imposes a huge burden of cost and labour on the PCC. The Rector states that public worship was suspended from 16-07-20 for 2 weeks because of postings on Facebook from those opposed to the Rector's actions allegedly urging likeminded people to come to the Sunday services.

8. The Petitioners' Faculty Application. The schedule of works or proposals states “Disposal of items that do not comply with Churchyard Regulations (2016) and so removed from several graves and cremation plots. These are being kept in the churchyard for collection or otherwise. Items removed and placed together during w/c 18th May 2020. Notices have been placed in the churchyard in several prominent locations advising what is compliant or otherwise since early February. These notices also advise that items will be removed and placed together in a specific place of the churchyard for collection. We would like to dispose of any uncollected items at the

start of September 2020.” The Diocesan Advisory Committee recommended the works or proposals to me. In my judgment on the Faculty *Nisi*, I said in my short summary judgment on the OFS: “This is a worthwhile drive to clean the churchyard of doubtless sincerely meant items which detract from its appearance and thus affect users as a whole. Initially, I had some concerns as I thought it might involve interfering with actual memorial fabric. If there are unlawful memorials (unlawful at the time they were erected) then contact would need to be made with the Registry before doing anything. Sometimes faculties for memorials are granted outside of the Rules where a special case can be made out, so this would enable the Registry to check whether there was a faculty. However, from the photographs, I can see that these items are rather different.”

9. **The Petitioners’ Witness Statements.** The Petitioners state that the Churchyard Regulations (2016) paragraph 14 state that they must remove items outside of the regulations that have not received permission to be brought into the churchyard. They say that in November 2019 they had received complaints from regular visitors to the churchyard about the volume of items on graves and their inappropriateness.
10. They also refer to the task of lifting items in and around memorials and replacing them and the number of broken items which posed a hazard, particularly in respect of pots and vases of all shapes and sizes on memorial headstones’ bases and weaved in and around memorial tablets. They point out that they have not removed any stone vases.
11. Their case for disposal is that removal of items unlawfully placed will create a mountain of memorabilia if disposal of uncollected items is not permitted. A number of items are described as black, mouldy and very unsightly.
12. The Petitioners also comment that the quantity of plastic, paper and artificial items being retrieved from the hedgerow is significant and a danger to wildlife.
13. I have seen some witness statements suggesting that the notices announcing the clear up were on view from the first week in January, but that cannot be correct on the Petitioners’ own chronology. The Parties Opponent have made observations as to whether the proper procedures were followed in respect of certain witness statements. I am satisfied that they are the statements of the people whose names appear as the makers and I am satisfied there were notices displayed for at least 7 weeks before lockdown, although, of course, this does not mean that people whose items were subsequently removed from graves necessarily saw them even assuming they visited the churchyard in that period which they were under no obligation to do, even if there had not been a lockdown.
14. Video footage has been provided that, say the Petitioners, shows items on or by graves that have yet to be removed. The Petitioners also ask for guidance from the court on exactly what is allowed and what is not allowed, particularly in respect of section 7 of the churchyard. They also add that they do not remove items on new graves for a period

of 13 months. In dealing with the question of what is allowed and what is not in each section of the churchyard, the regulations say what they say. If it is said there is ambiguity then the court will seek to clarify the position: if it is said that the regulations should not say what they do for reasons particular to this churchyard then that would require the Petitioners to set out their proposal for a variation of the regulations, consult upon it, and apply for a faculty in the usual way. This faculty is only about the disposal of items that have been removed and which the Petitioners say are clearly not permitted under the rules.

15. **The Petitioners’ Photographs (“PP”)** The Petitioners have exhibited photographs of the items removed both in their general response and in their specific responses to Objectors.
16. **The Parties Opponent and Objectors.** The Parties Opponent have served a joint witness statement. There are a number of letters from around 40 objectors which will be taken into account and also the hard copy of an online petition which I will deal with shortly.
17. **The Parties Opponent.** I am already satisfied as a matter of law that the Parties Opponent have a “sufficient interest” in the matter given the wider point they raise about the alleged removal of items on or around graves prior to the grant of a faculty. One of them raises concerns about data breaches which have apparently been referred to the Data Protection Commissioner (“DPC”) and makes a complaint against the Diocesan Registrar. Both of these matters do not affect my judgment concerning this petition. The DPC will doubtless consider the first and, if a formal complaint is made to the Registry about the second, I will review it together with the Deputy Chancellor as a separate matter.
18. The first point made by the Parties Opponent is that the enforcement of the Regulations in respect of this issue is only occurring in this parish churchyard and not in two others which it is said are also the Rector’s responsibility. They have submitted photographs (2-9) in the Parties Opponent’s Photographs (namely the photographs taken on July 12, 2020 in the two other parish churchyards). They say “the Church and the wardens” cannot pick and choose which laws they apply to which churchyards. They invite me to decide that the failure to carry out a similar operation in neighbouring parishes which are the responsibility of the incumbent amounts to a very unusual or exceptional circumstance that I can and should take into account. I do not consider on the facts of this case it has any bearing on my decision here and I will explain why later.
19. The Parties Opponent also ask me to consider that the previous two rectors, who were highly respected, cannot be considered to have failed in their duties under the Churchyard Regulations because, in effect, it would be unthinkable as they were highly respected and dutiful people. They also say that the previous two rectors were respectful of the community and that to find otherwise would disrespect their work and

the support they had in the community and undermine the faith that communities can put in the word of the church and its representatives. Again, although I understand the point that is being made, I shall explain later why it is not a relevant matter for this judgment.

20. In their second line of argument, the Parties Opponent cite the case of *In Re St. Mary the Virgin, Burghfield* [2011], Oxford Consistory Court (which is said in some publications to be unreported in the Law Reports, but which appears to me to have been reported at [2012] PTSR 593) and specifically paragraphs 2, 4 and 5 which they have helpfully highlighted in their copy provided in Parties Opponent Document 2. They quote Chancellor Bursell's judgment where he says "in fact, if an item is placed in a church or churchyard without permission, a faculty is required for its removal." From that they argue that, based on that judgment, the Petitioners have removed items from graves in St. Edmund's Church illegally in that the faculty they seek is only for the disposal of uncollected items. This is a key issue and one which I shall deal with in detail. However, in summary, I have concluded that the Rector did have the legal power without faculty to remove the items that she and the Churchwardens did, provided a faculty was sought prior to disposal as it was, although my guidance will be to obtain a faculty in future in advance of any general churchyard clear-up. If I am wrong in my conclusion, which may differ from that the learned Chancellor reached in *Burghfield* in respect of this class of objects, then, for the avoidance of doubt, I would have granted a confirmatory faculty without hesitation because I find the incumbent would have been put in the position she now is by following the Churchyard Regulations.
21. The Parties Opponent next submit it was immoral to continue with the proposals in respect of the churchyard when they say a significant number of persons would have had no knowledge of the Petitioners intentions or proposed actions, which, in turn, leads to a proposition that there has been insufficient notice of an intended disposal, which is a separate matter from removal from the grave or its surrounding area. That is an important matter for my consideration and directly affects the petition as prayed.
22. The Parties Opponent raise concerns that the Petitioners should choose to challenge their interest or bona fides. The Petitioners are entitled to argue that those objecting do not have a recognised interest under the Faculty Jurisdiction Rules ("FJR") or are acting improperly. I have however decided that they do have a sufficient interest. Issues as to whether some are a family grouping or have used a template for their letters in my judgment is irrelevant. The points made are made by each of them in their own names and will be taken into account by me individually. An objection made repeatedly does not make it a stronger objection: it is either a good or bad objection. An objection made once is not weaker because it is made by one person: it is still either a good or bad point.

23. The Parties Opponent make observations about technical irregularities in some of the Petitioners evidence to which I have already referred. The point made by the Parties Opponent is that it shows a lack of understanding and knowledge of the Petitioners' obligations. I have borne in mind that both the Petitioners and the Parties Opponent are acting on their own without legal representation and I commend both sides for the thorough way in which they have both presented their cases. I do not accept that the matters drawn to my attention by the Parties Opponent have any bearing on the Petitioners' knowledge of their obligations in respect of the churchyard and, as I have said, I am satisfied the witness statements come from those purporting to make them. A further procedural irregularity is raised, namely that the Petitioners did not serve the requisite papers on both Parties Opponent as they should have done. I do not need to investigate this further as, in this particular case, I am satisfied both Parties Opponent are both now fully aware of all the relevant evidence and indeed have, perfectly properly, decided to make a joint witness statement in response.
24. Within their joint witness statement, the Parties Opponent then turn to the issues they wish me to consider specifically in respect of each of them as individuals.
25. **The Parties Opponent's Photographs ("POP").** I have looked at all of the POPs with care. Specific photographs have been referenced: POPs 2-9 show the two other churchyards upon which the submissions have been made in respect of what is termed inconsistent application of the Churchyard Regulations by this Rector. POPs 12 and 13 show, say the Parties Opponent, items that were removed and notices relating to potential disposal. Lisa Catchpole draws my attention to POP 14 (in support of her allegation that the works have rendered the churchyard "manicured" and "sterile") and notes that her memorial vase was missing on May 28, (POP 15) and says that POPs 16 and 17 show that vases have been placed on or by graves for which they were clearly not intended. She says that POP 16 and POP 18 show that a wooden cross has been removed.
26. **The Parties Opponent. Louise Manthorpe.** Mrs Manthorpe states that an act of vandalism occurred upon the memorial originally erected in 1987/8 for the late Doris and Arthur Moyse. She states it occurred between July 4 and July 20. Mrs Manthorpe cannot say precisely how or when it happened. She alleges that had not the Petitioners taken the action they did it would not have happened. I will consider that proposition in due course. She says the vase has now been secured to the memorial as it was authorised by the then rector at the time it was placed there. I am happy to give guidance on the topic of memorials allegedly authorised by previous incumbents in this judgment but it would appear that the memorial vase is not an item that the Rector has either removed or seeks to remove or an item for which she seeks permission to dispose of if not collected.
27. The Petitioners exhibit in their PPs (Petitioner's Photographs) a photograph of the grave in question showing, they say, no evidence of any unauthorised items upon the

memorial or around it, no apparent damage and they say they did not ticket it. Mrs Manthorpe wrote to one of the Petitioners on July 22, 2020 asking why that Petitioner, Mrs Briggs, had found it necessary to take photographs of her husband's grave. Mrs Briggs wrote back to Mrs Manthorpe on the same day saying: "in response to your last message, the photo I took this morning was to send to you to confirm that your family grave has not been tampered with. If it had been when you visited, I can only apologise for someone unknown with malicious intent – it was certainly not the Rector or Wardens. I can only apologise for the upset this person or persons is causing you and we all look forward to the time when this matter can be closed and the churchyard once again becomes a place of peace and rest for those whose earthly remains are there whilst they themselves are in heaven."

28. I have found no evidence that the Petitioners either attempted to or did remove any items from the grave/memorial in question or that they caused any damage to it. If any deliberate damage has been caused to the stone vase, there is no evidence that it was caused by the Petitioners or that it can be attributed to them.
29. Mrs Manthorpe says that she sought to become a Party Opponent as opposed to an Objector because of a grievance she has against the Registrar.
30. Accordingly, I find that Mrs Manthorpe's individual objections (as opposed to her general propositions which I have already rehearsed) are not relevant to the matter which I have to decide.
31. **Lisa Catchpole.** Mrs Catchpole states that she visited her mother's grave on May 28, 2020 and found it had been vandalised and sustained damage. She said that, at the time, seeing the state of her mother's grave, she was too upset to try and locate the vase. Her impression of the churchyard was that it looked sterile, as if no-one had visited the graves of their loved ones and gave the impression no-one could approach or walk near the graves. Mrs Catchpole believes the "church" removed the vases on May 23 as it was stated in the relevant church minutes that they cleared such items for 90 minutes.
32. Her original objection states that a vase has been removed from the plot for her grandmother and mother. She states that the headstone cannot be drilled to make a vase. She also says that she discovered the headstone has been scratched and that she is unhappy about this. The Petitioners deny removing any stone vase from the grave, deny they have ever said that memorials of this kind require stone vases to be affixed by drilling and say that they are not responsible for the damage to the memorial stone or aware of when it even occurred. I have looked at POP 15. There are some signs of damage and possible scuffing. I can draw no sensible conclusion as to when and how these marks came to be there but there is no evidence whatsoever, either direct or inferential, that they were caused or made by the Petitioners or anyone acting under their authority. I find no evidence, therefore, that if the damage occurred deliberately

and maliciously as opposed to accidentally (and it is a major “if”) this can be laid at the door of either the Rector or the Churchwardens.

33. Mrs Catchpole then goes on to say that she believes vases were removed and replaced as it was realised that an error had been made. She evidences this in two ways, she says that a photograph taken of the graves shows that vases have been placed on graves and do not fit and also that the vase on her mother’s grave is not the original vase. She describes how this has caused her great hurt. She has also taken a photograph of a grave near to her mother’s where she says it is evident that a vase placed in a hole next to a grave has a different name from that recorded on the memorial stone. She says that was insensitive and disrespectful.
34. If Mrs Catchpole says the vase on her mother’s grave is not the original one then it would follow that someone has moved the original one and replaced it with this one. I am not quite sure why she says it follows that this was done hurriedly. As for other interference, I accept again in her photographs that it appears that there are stone flower holders on or adjacent to memorials which appear not to be related to them. She does not know, and nor do I, when this happened and in what circumstances, whether it was done by mischief makers including people who might have thought moving items around was funny or if the vase is something being utilised by the family concerned even though it bears someone else’s name or any other explanation. What I can see, however, is that there is no evidence that, if there has been any such interference, it has been done by the Rector and Churchwardens or by anyone else acting on their behalf. It is also clear to me from the items taken that the Rector and Churchwardens understood the Churchyard Regulations and the category of items they were removing.
35. Mrs Catchpole also says that when she visited the churchyard on 14/10/20, she noticed that a wooden cross that had been clearly visible in July had now been removed. She says that the Petitioners and the church do not appreciate the significance of the Cross which signifies resurrection and says that wooden crosses have been present in churches and churchyards for centuries. She accepts that Section 14.6 of the Churchyard Regulations 2016 permits only headstones (without faculty) but she does not understand the harm a simple wooden cross does.
36. There are a number of strands here: first the significance of the Cross. Mrs Catchpole says that she feels as if the removal of the crosses means that the Petitioners do not understand the significance of the Cross. That is highly unlikely to be correct for obvious reasons although Mrs Catchpole clearly believes what she says. It is because the Cross has extraordinary significance that its use in churchyards is often regulated. The Petitioners point out that wooden crosses are used in the churchyard by funeral directors as a temporary marker as to where a grave is to be situated or where a memorial has yet to be placed. No memorial monument may be erected or introduced until at least six months have elapsed to allow settlement of the soil and to give time to choose a memorial that is in accordance with the regulations. Those temporary

‘cross’ markers may remain for up to 12 months: Churchyard Regulations, Part I, paragraph 9. The Petitioners say these were the only wooden crosses they removed.

37. The final aspect raised by Mrs Catchpole is her opinion that wooden markers were used in times past and she does not see what harm they cause. A number of things were done in the past which are not done now. The Churchyard Regulations try to strike a balance between the individual rights of people (who may hold very different views on what is or is not suitable for a churchyard) and the proper appearance and maintenance of the churchyard. Churchyards and secular cemeteries have rules (similar in some cases, different in others) about what may and may not be introduced into their space. The purpose of a memorial is to be permanent and to identify the remains that lie below, usually with the date the person was born and the person dies. It may well be a joint memorial, for instance in the case of spouses, or close family members and, in which case it will publicly record both names and the relevant dates. In some cases, particularly when there has been the always-tragic death of a child that this child may be buried with his or her parents.
38. Where wooden crosses are used to signify a temporary marking for a grave to be dug or ground awaiting the memorial after the prescribed period, it is important these cannot be confused with anything else so there is an additional reason for not permitting wooden crosses as memorials. There is a danger that those placed without permission for that purpose may be confused with those that are temporary markers and which should be removed within 12 months.
39. Both ladies emphasise in conclusion that they believe the whole situation has been very poorly managed, that the Rector, who is new to the parish, lacks knowledge of its long history and traditions and its families. They deplore what has happened particularly during the pandemic and say that the measures should have been taken after that time and handled with far more care and compassion.
40. **Objectors.** As I have already noted, there are around 40 objectors to this faculty application and the clearance scheme in general. The Registry has the details of these objectors and, save in one case where no objection was actually made, I have taken them all into account in reaching my decision. Quite understandably a number of them make the same general points with specific reference to their own particular interest in the churchyard. A few deal with specific issues or make separate points and I will deal with these. A failure to mention someone’s name in the context of a particular objection does not imply I have not taken her or his view into account; I have considered them all. The Registry also received a couple of letters in support, one commending the removal of litter and respecting wildlife and the other deprecating the addition of mementoes to graves.
41. A number of the Objectors saw no problem in the existing practice in the churchyard prior to the arrival of the present Rector and said it had been acceptable to previous

incumbents. Some Objectors raised the issue of inconsistency with other churchyards which it is said are the responsibility of the Rector. Some said it was disrespectful for items to have been moved and spoke of the distress it had caused them. Some asked why the rules had to be implemented. Others wanted clarification of the rules. There were observations about this not being very Christian behaviour and a number said there should have been much more consultation with the village. Some stated no-one had attempted to contact them before items were removed. It was said by a number of Objectors that the timing had been insensitive and unfair and pointed out that some of the items had been there for a number of years. Quite a few people remarked on the cost implications of making their vases compliant with what they had been told was necessary. Some criticised the adequacy of the notices and some alleged the Rector was abrasive when challenged about the matter and blocked efforts to discuss the issue. Similar points are made by some people about the attitude of the Churchwardens. There are some allegations of damage to items that have been removed which are characterised as vandalism in some instances. There are allegations about rose bushes being ripped out and the moving of stone vases attached to the memorial itself in the cremation area which, it is said, have damaged the surface in some cases. The court is asked what will happen to items that have been removed if the relevant owner cannot be contacted. A number of the Objectors complain that the enforcement of the regulations will mean those visiting the grave will not be able to place other items there such as toys, trinkets, cards and letters. One Objector says officials should consider allowing people to place *any* object on a grave that helps them to grieve. Another says that the regulations smack of “snobbism” and says one old family friend wished to place stones on a memorial following the Jewish tradition and that a nephew who lived abroad left a small tub with some ivy which it is said has been well maintained.

42. It is the case that a number of the Objectors are from the same family groups and reiterate the same points sometimes in identical language and I will turn to this now, as it features in the Petitioners’ response to the Objectors.
43. The Petitioners respond that only 16 of the objections refer to the actual faculty sought (which is disposal of the items removed) and that of the 16, a number are members of the same extended families. They say that there is a duplication of circulated templates and many are repeating untruths that have circulated in the local media (including radio) and a poster and leaflet campaign. Objection is taken to two people claiming to be on the Church Electoral Roll who it is said are not. The Petitioners have submitted evidence of what they say is unpleasant and inflammatory material posted online. The Petitioners also set out rebuttals of what they say are incorrect statements about items which have been alleged to have been removed, dug up, damaged or otherwise interfered with when nothing of the sort has actually been done by the Petitioners. They say that nothing has been disposed of at all. Those items that were removed have been separated for collection: many have been collected by their owners and some have been unlawfully put back on graves. Allegations of moving objects around (that is removing them and then replacing them wrongly) is denied as is the removal of anything that

would have been permitted under the regulations. The Petitioners say that the volume of objections is inflated by a number of households making separate objections and that in a number of cases they have no record of communications from people who say they have communicated with the Rector or Churchwardens.

44. Those Objectors I have read, taken into account, but not mentioned by name are Mrs Kathy Tyrrell, Dorothy Pearson, Lisa Catchpole (as she is a Party Opponent), Louise Manthorpe (as she is a Party Opponent), Frances Bullard, Mrs Deborah Baldwin, Amelia Manthorpe, Bridget Thacker, Mrs Linda Ford, Miss Amy Baldwin, Lee Welch, Aileen Wilson, Callum Cleveland, Barry Hunn, Kim Symonds, Mr and Mrs Smith, Maria Cleveland, Mrs Shane Smith and Mr Tony Smith, Sarah Knights-Kruger, Jordan Weavers, Vanessa Clark, Gill Dove, Mr Daniel Cable, Jayne Utting, Bonnie Newrick, Karen Delf, Sara Waterman, Mrs Margaret Sutton, Mrs Barnes and Mrs Sylvia Barnes

45. Specific Objectors.

46. Jean Purkis

- a. She says that her stone flower holder has been in place for 19 years. She asks for permission for it to be kept there.
- b. The Petitioners say that the history is quite different and I have read what is written.
- c. However, since I am told the vase has now been removed by (it is thought) her son, I do not need to give the detail.

47. Debroa Garrod

- a. She asks what the specific rules about vases are and talks of two vases going missing.
- b. I am very sympathetic about problems involving any theft or vandalism in the churchyard but items placed there are at the owner's risk. In cases where there is evidence of theft or vandalism, particularly if the identity of the culprit can or may be ascertained, then that is a matter for the police. The rules about which vases are permissible are set out in the Churchyard Regulations, the relevant section of which I shall reproduce in the section of this judgment dealing with them.
- c. The Petitioners say no vases were removed from that section (section 7) at all.

48. Liam Martin

- a. He says that losing a family member is a major trauma and some express their grief by placing mementoes on a grave and that this might be done by both adults and children. Mr Martin makes the point made by others about the attitude of previous incumbents. Additionally, he complains of damage caused to memorials: he raises a potential irregularity in the vote of the PCC to obtain a faculty for disposal. He also talks about the damage to relations between the church and the community. He makes a number of points in common with other

Objectors and encloses a letter written to the Archdeacon of Norfolk. He makes a point in that letter relating to notice and the Churchyard Regulations, namely that notice was not given prior to removal.

- b. The Petitioners say there has been a campaign of misinformation and distortion and many of the allegations have no basis in fact at all.
- c. I agree with Mr Martin that death in a family is always a traumatic event and sometimes extremely painful. This is why the regulations permit mementoes to be placed on a new grave without faculty for a maximum period of 13 months, subject to the discretion of the incumbent, to allow people to come to terms with their grief. Children also usually understand that there are rules in life if those rules are explained. Some users of churchyards find these mementoes give a messy appearance to the churchyard as a whole particularly if the weather and the attentions of wildlife have made objects look rather sad and items such as cards, letters and light objects have blown off memorials creating litter. The Rector and Churchwardens have a positive legal duty to remove prohibited items, subject to that 13-month dispensation for new graves. Deliberate damage being done to the graves of others is a matter for the owners of those graves. Paragraph 14.6 in the Regulations does not actually say that the incumbent and wardens **can** remove prohibited items but that they **must** remove them. Further, under the regulations, the notice to be given is **of such removal**, not of an intention to remove items in the future. However, it is more sensible to obtain a faculty to apply to remove unauthorised mementoes (including unauthorised vases not attached to memorials) before doing so where it is part of a general clearing proposal and the court can then give directions for the whole scheme, including any consultation that should be undertaken, notice, and directions for any disposal where items have not been collected, but for reasons I will set out later, it is not in my judgment unlawful to proceed without a faculty to remove impermissible mementoes to a place still within the church or churchyard, provided a faculty is obtained before any disposal takes place.

49. Amanda Cleveland

- a. She wishes to object to the disposal of the unclaimed items because no one contacted her and she was not contacted before items were removed.
- b. The Petitioners say that she has refused to clarify if she has any relatives buried or interred in the churchyard.
- c. I am bound to observe that if she has any unauthorised or prohibited mementoes that have been removed by the Rector or Churchwardens, they have not yet been disposed of so I presume she has collected them by now.

50. Helen Thrower

- a. She explained that her stone vase had been moved and placed on top of the memorial and, on questioning the Rector, was told she was lucky to have got away with it for 35 years. She says the Rector denied any rose bushes from plots had been dug up or discarded but that she (Helen Thrower) knows it happened

to an unnamed friend in respect of her mother's grave. She also says the Rector told her that her mother's memorial needs to have a hole drilled in it to fit an internal vase.

- b. The Petitioners say that the tablet memorial is in Section 7 of the churchyard. It has not been ticketed and no vases have been removed. The Petitioners deny digging up and discarding rose bushes.
- c. As far as her own stone vase is concerned, it seems to be common ground that it has never been removed and it is not one of the items that the Petitioners seek to dispose of in this faculty petition.

51. Mrs Frances Hunn

- a. She talks of a couple of times when things have gone missing and says her granddaughter told her that when she visited her grandfather (Mrs Hunn's husband's) plot she found it had been completely stripped including the plaque with her husband's name and date of death and had just been discarded and that the vase she had been told to provide (with a spiked bottom) had also gone and that they had had no notice. She says her daughter contacted the Rector and was told something to the effect of "certain people didn't like how our churchyard looked". Mrs Hunn says the rules are that "plants or flowers may be placed in a removable container (not glass)".
- b. The Petitioners say they did not remove memorial plaques and did not remove the vase. The Petitioners say no vases were removed from that section.
- c. I am happy to look at Mrs Hunn's case separately if she can give me particulars of the plaque and the vase. However, if they have been vandalised that is a matter for the police. The actual regulation about removable containers is given in Paragraph 85 of this judgment.

52. Emily Baldwin

- a. She acknowledges there had been a problem with the "odd pot" going missing but, she says, no stone was ever touched. She heard about her grandad's stone being removed.
- b. See Mrs Frances Hunn.

53. Lisa Hart

- a. She makes a point about notice. I will deal with that requirement later although I am bound to note that if people do not visit the churchyard, or cannot because of distance or simply choose not to then, one, it is unlikely there will be any items to remove in the first place and, two, if there are unauthorised or prohibited items where the address of the owner of the memorial is unknown, I am afraid disposal will necessarily take place without their knowledge.
- b. The Petitioners say she (and others) caused three websites related to the church to have to be shut down because of the number of abusive posts received and that she has verbally abused the Rector and a Churchwarden at the churchyard and the Petitioners exhibited a number of the posts by some of the Objectors.

54. Julie Lander

- a. She asks why the “in-loving-memory” flower holder is no longer acceptable having been used for 30 years and says she has attached a photograph.
- b. The Petitioners point out no photograph was actually attached to her letter. They also say she has never been in touch with them.
- c. This is a separate issue from the disposal I am asked to consider and I suggest she contacts the Rector to show her what it is she seeks to use and obtains the Rector’s view.

55. **The Online Petition.** The online petition has some 411 online signatories. Some of these signatories are either Objectors or Parties Opponent. In this case, I will be considering their objections in any event. For the remaining signatories, apart from noting the number of signatures, I am not able to take the online petition into account. I appreciate that people reading this judgment might think this is unfair: after all, online petitions are part of everyday existence and no doubt many of us have signed one or more over the years since they were introduced. As we know, enough signatories on designated online petitions can even trigger a debate in Parliament.

56. However, the Faculty Jurisdiction Rules (“FJR”) make these stipulations about people who want to oppose, or have objections taken into account (FJR 10.2):

- a. An interested person may object to the grant of a faculty by sending a letter to the Registry, addressed to the Registrar.
- b. It must state the basis on which the person objecting is an interested person and
- c. The grounds on which the objection is made.

57. The Rules also describe the circumstances in which an Objector may become a Party Opponent: FJR 10.3.

58. In the documentation submitted under *change.org* is the heading “Greetings, Stop the church from removing items from loved ones’ graves.” There then follow 411 names with addresses from around the country. It is not in the form prescribed in the FJR. Except where the names are those of people already objecting or opposing, I cannot ascertain whether they are “interested persons”. An “interested person” is a person resident in the ecclesiastical parish concerned; any person whose name is entered on the church electoral roll of the ecclesiastical parish concerned but who does not reside there; the parochial church council; the archdeacon; the local planning authority; and any national amenity society; any other body designated by the chancellor for the purpose of the petition or, whether a body or a person, where it appears to the chancellor that a body or person has a sufficient interest in the subject matter of the petition.

59. I am not able to see what, if any, grounds each individual has for objecting.

60. In these circumstances, other than noting the fact that there was such a petition, I am unable to take it into account unless the signatory also submitted a letter of objection as some did.
61. **The Law.** I apply the ecclesiastical law relevant to a churchyard which falls under the jurisdiction of the Consistory Court for this diocese. Broadly speaking, ecclesiastical law requires the permission of this court to introduce and retain any item in a church or churchyard. That would be a huge burden for both parishioners and others and also for the court because in the churchyard burials and interments sadly will be happening frequently. Therefore, the chancellor of the diocese delegates his power to introduce certain things into the churchyard to the incumbent or priest-in-charge.
62. The Churchyard Regulations clarify which those objects and items are that do not require the chancellor's grant of a faculty and may be allowed by the incumbent without the intervention of the court. If the incumbent declines to allow for the introduction of an item within the regulations, the person wishing to do so may apply to the court for a faculty and if the court decides that the request was clearly within the regulations, then costs may be awarded in favour of the petitioner(s) notwithstanding the usual position that the petitioner pays the costs of any faculty application.
63. However, if the item or object it is proposed to introduce is not permitted, or even prohibited, under the regulations then the incumbent or priest-in-charge cannot lawfully grant consent for it to be introduced into the churchyard (or church). In this situation the only lawful means of introducing such an item is by faculty. Whilst permission can be granted by the court, and sometimes is, there would have to be some very unusual, special or exceptional circumstance to justify it and the person seeking to introduce the item would almost always pay the cost of the faculty application, win or lose. Sometimes exceptions are made to the rules about what can and cannot appear on memorial stones or slabs. However, where something is expressly prohibited the likelihood of such an application succeeding is statistically very small, particularly given the incumbent's discretion to allow loose items to be placed on the grave of a recently deceased person for a period not exceeding 13 months.
64. If an unlawful item or object is introduced to the churchyard with the consent of the incumbent and churchwardens, without their consent, or where they have turned a 'blind-eye' to its introduction it is liable to be removed by the incumbent and churchwardens either by faculty or, in the case of mementoes, without and to be disposed of with the permission of the court, if not collected within a specified time. Whereas the incumbent and wardens are obliged to use their best endeavours to contact those affected, it may be that this is not possible and so such objects may be removed and disposed of without the person who placed them there being aware.
65. Where the incumbent and wardens have introduced items unlawfully into the churchyard or permitted their retention or been unaware of their introduction and

where any other person has introduced items or objects unlawfully into the churchyard, a faculty to move or remove them may be required in some cases. It is therefore necessary to consider the law.

66. **Canon Law:** Canon F13.2 states that “...churchyards be kept in such an orderly and decent manner as becomes consecrated ground.”
67. **The Faculty Jurisdiction:** One of the issues that arises frequently both in the objections and the cases of the Parties Opponent is whether the Petitioners had the right to remove anything from where it was situated to another part of the churchyard. I am using the word ‘churchyard’ here in its broad sense of being any consecrated land outside of this church itself. In other words, did the Petitioners need a faculty to remove items from one part of the churchyard to another whether they were there lawfully or unlawfully?
68. The court’s faculty jurisdiction applies to both the church and the churchyard. It is a permissive jurisdiction: faculties give permission and authority to do specified things. When anything is done in the church or churchyard which required a faculty and one was not applied for or granted, or where a faculty has been obtained but the subsequent works exceeded the permission given or were carried out in breach of specifications or condition(s), the court has two principal options: to grant a confirmatory faculty (perhaps accompanied by a rebuke or warning) or, assuming it is physically possible, to compel the person or people at fault to restore the position as near as possible to what it was prior to the unauthorised works (a Restoration Order). It has a third option, if the breach is insignificant, namely to take no action at all.
69. **The Case Law.** The starting point for the case law is the decision of Chancellor Bursell in *In Re St Mary the Virgin, Burghfield* [2012] PTSR 593. Decisions of other chancellors in the Consistory Court are decisions by courts of equal standing and are of persuasive but not binding authority in respect of the legal issues in common and informative when looking at the facts. In this particular case, the Chancellor was an experienced and highly respected judge of the Consistory Court. He reviews a number of older cases in reaching his decision as well as considering some of the apparent tensions that his decision produces, particularly when considering the duties imposed by Canon F.13.2 and the Churchyard Regulations. Accordingly, I have considered his judgment with particular care and also reviewed the authorities he himself considered.
70. *Burghfield* was concerned with the regularisation of a churchyard to deal with items that were not in compliance with the diocesan Churchyard Regulations then in force. There had been, and were, several issues of particular concern. Plastic railings around individual grave plots had been successfully removed but two wider problems had arisen connected with an area in which graves for babies were situated and two graves marking the burial place of two teenagers who had both died in tragic circumstances and which had become highly decorated with ornaments which was approved of by some and opposed by others. 67 graves were found to have added to the permitted

memorial items, objects such as kerbs, lights and ornaments, not permitted under the regulations.

71. By July 2010, it had been decided to remove all unauthorised items. Contact was made with some of the relatives personally and in other cases letters were left at the appropriate grave sides. Prominent notices were also left in the churchyard. Some readily agreed to move the items, some did so with varying degrees of reluctance and others were hostile. Two people argued that, as in their cases the items had been at the relevant graveside for 15 years, they were acceptable and should not be removed because of the passage of time.
72. The Chancellor granted a faculty for removal of all of the items not authorised by the regulations. He found that the PCC was entitled to treat the two graves with the items that had been there a number of years in the context of the churchyard as a whole and approved the removal of those items. He pointed out that “if churchyard regulations are not enforced there is a grave danger of a very real pastoral upset occurring in the future, even when the original turning of a blind eye may itself have taken place for seemingly good pastoral reasons.” He made the important point that “the relatives of a deceased person are always entitled at any time to apply to the court (whether on pastoral or other grounds) to alleviate the strict letter of the regulations and this ability in itself provides some flexibility in the regulations’ application.
73. He also said that if an item is placed in a church or churchyard without permission, a faculty is required for its removal, although he said a faculty is not required if it is a very minor matter. He also pointed out that the incumbent is under a responsibility to prevent breaches of the law and observed that the continuing presence of an item not permitted within the churchyard cannot create a legal right for its retention.
74. The Chancellor also noted the reason for the requirement for a faculty to remove items unlawfully or irregularly placed in a churchyard, commenting that “at first blush the rule may seem strange”. He said the point of the requirement was that, even with the best of motives, unfortunate mistakes may otherwise occur: it may be overlooked or forgotten that permission had been given by the appropriate authority. It may place a break upon over-enthusiastic liturgical change. It is also because pastoral reasons strongly militate against the one-sided removal of items that are dear to those who placed them in the church or churchyard originally, especially as the passage of time may appear to give them a semblance of legality.
75. In considering the right (under the Oxford Regulations) to leave toys or other similar objects at the graveside for a period of 12 months after burial or interment which must be removed by the incumbent or area dean after sensitive consultation with the family, the Chancellor says that if an “appreciable” (my quotation marks”) period of time passes, by reason of the failure of the incumbent to fulfil his or her responsibilities, there comes a time when the toy can only lawfully be removed under the authority of a faculty. The Chancellor also said generally that if a toy or ornament is introduced

without authority then a faculty is required for its lawful removal if it is not removed as soon as possible after its introduction, or, in the case of new graves, after 12 months. He concludes by saying that the incumbent and churchwardens were right in law to apply for a faculty for their removal rather than just going ahead with their disposal.

76. I have, as already said, read the underlying authorities and sources that were considered in *Burghfield*.
77. *Newsom* states the general principle thus at page 192: “A faculty to remove an article [from a church] is required if the article was dedicated to God, even if its introduction was not authorised by faculty... Similar considerations apply if an article was unlawfully introduced into a churchyard...”
78. *Ritchings* concerned the introduction of a ledge or super-altar that was placed on the holy table in a parish church by order of the incumbent and without the consent of the bishop. A vestry meeting resolved to remove it. The defendant, a churchwarden, went to the church to do so and, finding it locked, instructed a workman to break the lock and pull down the super-altar. This was held in the Arches Court (Sir Robert Phillimore) to have been illegal as “ornaments which have been illegally or irregularly placed in a parish church by the incumbent cannot be lawfully removed, save under the sanction of the ordinary”. This case doubtless was touching on the ground mentioned in *Burghfield* for not permitting such removal, relating to disputes about liturgical issues.
79. *Durst* involved the removal of a moveable wooden cross, without the sanction of a faculty, which a vicar had permitted to be placed on a wooden ledge at the back of and immediately above the communion table. It was intended to be permanent. A churchwarden, without authority, removed it. The Judicial Committee of the Privy Council found that both the introduction of the cross in the first place and its removal subsequently required a faculty and that both parties were in the wrong.
80. *Eyton* reached a similar conclusion in respect of the removal of military colours that had been affixed as church ornaments to the walls of a chancel in a parish church. A quarrel arose between parishioners who noticed the removal and wished the colours to be put back and Canon Eyton, the incumbent, who refused. The Consistory Court of London found that although they had been placed there (having originally been granted by George III and then rediscovered subsequently in the church) with the approval of the then rector, they had required a faculty, notwithstanding the fact that a large congregation, including the Speaker of the House of Commons, had gathered for the ceremony marking their re-dedication and re-placement. The court found that they had been removed originally by an incumbent who had no idea of their history but who had discovered that no faculty had ever been granted for their placement then had them replaced (with the ceremony just mentioned) and then removed again presumably by Canon Eyton. The court found that, once there, they could not be removed without

faculty. The court resolved the matter by granting a confirmatory faculty for their reinstatement which (by then) Canon Eyton did not oppose.

81. **Churchyard Regulations.** There has been movement to have proper regulation of churchyards particularly since the 1950s. The present Churchyard Regulations were issued by Arlow, Ch. in 2016. I have looked at earlier versions of the regulations that were issued in 2010 and in 2002 but they do not differ substantially in their effect except for a discretion, granted to the incumbent to allow mementoes to be placed on new graves and memorials for a period of 13 months following burial or interment which features in the **2016** regulations. These can be accessed and downloaded by typing into a search engine: “Churchyard Regulations 2016 – Diocese of Norwich” and clicking on the link or directly by pasting-in:

<https://www.dioceseofnorwich.org/app/uploads/2020/03/Diocese-of-Norwich-Churchyard-Regulations-Feb-2016.pdf>.

82. **2016.** At paragraph 3, this is said:

“Incumbents and priests-in-charge are temporary custodians not merely of the church building, but, where there is one, of its burial ground. Responsibility for its care and maintenance belongs with the PCC. Churchyards are an important part of local and national heritage in the communities they serve: a place for reflection and prayer, an historic record of successive generations, a home for funerary monuments of architectural and aesthetic excellence and a setting for the church itself (many of which are listed buildings). It should be borne in mind that churchyards are different in their nature from municipal cemeteries. In addition, the upkeep of a churchyard is a considerable burden upon the limited resources of PCC funds.”

83. The Chancellor in this diocese has delegated to the incumbent power within his or her sole discretion, to permit the introduction into their churchyard of memorials, falling within the specifications of the regulations. The regulations identify these. If the incumbent or priest-in-charge refuses to permit the introduction of a memorial which is compliant with the regulations, then, absent some exceptional feature, a faculty would be granted to the petitioner to permit the memorial to be introduced.

84. The management of the churchyard – its care and maintenance – was a duty laid upon the PCC by the Parochial Church Councils (Powers) Measure 1956, section 4 (i) (iii) (b).

85. Part III of the Churchyard Regulations are the Management Regulations. They give guidance to assist PCC’s in the management of the churchyard. Relevant to the issues in this case are the following regulations:

Paragraph 14.2 “Bulbs and small annual plants may be planted in the soil of a grave being within the area previously excavated. Plants or flowers may be placed in a

removable sunken container (preferably of unpolished aluminium). Unless they are kept tidy the PCC may remove such containers and treat the grave as part of the turf and mow it over.”

Paragraph 14.3 “Wreaths or cut flowers may be laid direct on any grave or in any vase authorised by these regulations. Where a vase incorporated into the headstone has ceased to be used for a period of thirteen months or more, the PCC may insert a matching core.”

Paragraph 14.4 “No artificial flowers (other than silk flowers, i.e. having a mixture of polyester/cotton) may be placed in the churchyard and if they are so placed the PCC may remove them.”

Paragraph 14.6 “Otherwise than as stated above no object or other thing may be placed upon or near a grave. In the event that any such object or thing is so placed the incumbent or churchwardens **must** (*my emphasis*) remove it. A member of the family should be notified of such removal (directly where this is reasonably practicable or otherwise by a notice on the grave) by informing him or her of the place from which the object or thing is so removed is available for collection.”

Paragraph 11.3 “Mementoes and objects such as statues, toys, wind chimes, windmills, photographs and candles. Such items **must** (*my emphasis*) be removed by the churchwardens, who may, at their discretion, allow such articles to remain on new graves for a period of up to thirteen months.”

Paragraph 10.3 explains that vases may be incorporated into the base of a headstone. It must be a natural stone vase: glass containers are prohibited.

86. My analysis of *Burghfield*, the underlying case law and the Churchyard Regulations 2016 for the Diocese of Norwich: In most respects, I agree with what the Chancellor said in *Burghfield* and, indeed, if “removal” is read as “removal from the church/churchyard or disposal” then I agree with him entirely. However, I am troubled by the implications for churchyard management if, particularly in respect of loose items such as toys, letters, candles and ornaments, the PCC truly needs a faculty even to remove the items to a place within the church/churchyard from where people can collect them voluntarily and from where, subject to the obtaining of a faculty, they can be disposed if not collected. I am also concerned that some of the tests applied may produce ambiguity when clarity may be preferable, given the sensitive nature of the issue. For instance, if “minor” things can be removed without faculty, the question of “minor to whom” arises. If toys (in the Oxford example) have to be removed before any appreciable time has elapsed, what is “an appreciable time” would need to be clear. Why should the removal of a toy or ornament introduced without authority not require a faculty if it is removed by the incumbent as soon as possible after its introduction?

87. Further, if the owners wished to remove their vases, or their toys (or any other mementoes belonging to them) from the churchyard, whether there lawfully or otherwise, it would be odd if that required a faculty.
88. The cases and the review of the issue in *Newsom* makes clear that items used in the rites and services of the church or otherwise dedicated to the use of God requires a faculty for their removal even if placed in a church without one. The reasons given in *Burghfield* make such a rule both sensible and obvious: it may be that the item in question had been placed there with the necessary authority but that this had been forgotten or overlooked. It prevents liturgical disputes spilling over into ‘direct action’ as happened in *Ritchings*. It also acknowledges that articles placed in a church may now be very important to parishioners and have what is described evocatively in *Burghfield* as a “semblance of legality”. It is also accepted that there are cases where minor matters can be dealt with absent a faculty, subject to a proper understanding of what ‘minor’ means. It must, also be the case that items of greater significance discovered in a church, but which are plainly not meant to be placed there or used in the rites and services of the church nor dedicated to God, may and often should be removed at least to a place of safety whilst enquiries are made: a diamond necklace found under a pew, a bicycle that has found its way into the church and countless other examples. Clearly, such items probably do have an owner and immediate disposal of them would be improper. However, the notion that it would need a faculty even to remove them from where they had been found or placed, would obviously be absurd.
89. The principle that the churchyard of the church is subject to the faculty jurisdiction as much as the church building(s) itself is clearly established by authority. However, the status of items that might be placed in it needs to be considered carefully. At one end of the spectrum, there are permanent memorials placed in or on the ground which effectively become part of the churchyard. They were introduced to the church at different periods when different rules may have prevailed or at a time when such rules did not exist at all. They mark the burial place of someone (and more than one person on many occasions). They will often have been placed there as part of a service or rite and, finally, they will record the fact of the life of he, she or those who are buried there, giving names and dates. It is obviously the case that no memorial, even where it had required a faculty which had either not been applied for or which had been refused, should ever be removed without a faculty from this court.
90. I would extend that absolute requirement to anything permanently fixed on to the memorial stone or part of any such item. Any kind of stone, kerb or fencing around the memorial stone should also only be removed if and when a faculty has been granted.
91. However, I am not persuaded that either the rule established in *Ritchings* and other similar authorities, nor the commentary in *Newsom*, lays down any rule that other items placed on or around the grave require a faculty before they can be removed, although they do require a faculty before they are disposed of.

92. It seems to me that the distinction is this: these kind of items, entirely understandable and well-meant, are usually placed on or by gravestones as a solace for the person or people placing them. They could be placed there by anyone visiting the grave. By their very nature they are not permanent and fixed. Whilst meaning a good deal to the person placing them, they do not enhance the appearance of the churchyard as a whole. They can easily become damaged or fouled, they do not wear well and, in winds and storms, may end up a way away from their intended location including in hedgerows. They can on occasion hurt wildlife and they increase the maintenance costs and burden for the incumbent and the churchwardens.
93. These items have not been provided for the churchyard or given into the care of the church. They are not dedicated to God. They are mementoes, which doubtless have great meaning to the person leaving them on a grave and perhaps once had such meaning for the deceased or are of items of a type associated with him or her. They are personal. As many Objectors have said they are being used by some people to assist in their own grieving. Graves and memorials are also personal of course, but their significance is wider than that. They mark in a Christian churchyard the last resting place of the deceased. They are an integral part of that church and churchyard. There will often have followed a Christian burial. They are entirely different from mementoes.
94. Whilst the grief of a person when they lose a close relative or friend can be profound, and coming to terms with it can be difficult and everyone, especially those of the Christian faith, would want to respect that grief and try to help the person affected to come to terms with it, that is a very different thing from saying that a person in grief must be allowed simply to have free reign on what items are introduced into a churchyard. The right of burial is afforded to every person residing in the ecclesiastical parish and, with the permission of the PCC, or by grant of a faculty, to other persons who may want to be buried there for a particular reason, provided that this reason is valid and there is space available. It is not, and never has been, the case that the right to burial gives rise to ownership of the burial plot, even in the case of a plot that has been reserved.
95. In my judgment, the justification for the requirement of a faculty to move or remove items dedicated to God and brought into the church itself as well as permanent items (such as memorials) does not apply to prohibited items brought into the churchyard without permission and placed on or by memorials by family, friends or visitors. However, the *disposal* of such items does require a faculty except those that plainly fall into the character of minor items, which simple rubbish generally would. Care needs to be taken with designating items as ‘minor’. The word could be interpreted in a number of ways. It could mean objects of little or no monetary value and of no real aesthetic worth as well as items of no apparent meaning to anyone. For instance, an old teddy bear placed by a child on a parent’s tomb will have no monetary or aesthetic importance but will be exceptionally important to the child, beyond money or

aesthetics. Things that are clearly litter can in my judgment be both removed and disposed of without faculty provided that, looked at reasonably, they can have no particular significance to anyone or were obviously not deliberately placed in the churchyard to be kept within it or were plainly being disposed of by a person who had abandoned possession of them. Items that may have some value but were apparently dropped by someone or items of some value that have appeared mysteriously in the churchyard (but clearly not being placed there for any good reason) would ordinarily demand some degree of retention and investigation by the incumbent and churchwardens before disposing of them to protect themselves from any liability at civil law. I am again not satisfied that a faculty is needed in this situation, even for disposal, unless there is any reasonable doubt as to why the object is there.

96. Thus, any proposed removal of a monument or anything attached to it in whole or in part or forming part of the memorial requires a faculty to remove it from where it is placed. This category includes items that are expressly prohibited, namely kerbs, railings, fencing or chippings.
97. In the current regulations, Part II of the Churchyard Regulations 2016 (Memorials) at Section 11.3 (PROHIBITIONS) the regulation says that “For the avoidance of doubt the following items are not permitted...Mementoes and objects such as statues, toys, wind chimes, windmills, photographs and candles. Such items must be removed by the incumbent or churchwardens who may, at their discretion, allow such articles to remain on new graves for a period of up to thirteen months.”
98. Any loose item placed on or next to a memorial, tomb, or grave which is not permitted under the Churchyard Regulations 2016 or which is expressly prohibited under those regulations can be removed as a matter of law by the incumbent and churchwardens without a faculty from where it has been placed prior to giving notice under the regulations. However, a faculty is required to dispose of it or remove it from the churchyard altogether. That will require separate Public Notice. The Churchyard Regulations for this diocese impose a positive duty on the incumbent and churchwardens, in respect of items classed as mementoes as set out in Part III (Management) Paragraph 14.6, namely that “in the event that any such object or thing is so placed the incumbent or churchwardens must remove it. A member of the family should be notified of such removal (directly where this is reasonably practicable or otherwise by a notice on the grave) by informing him or her of the place from which the object or thing so removed is available for collection. The incumbent and churchwardens may, at their discretion, allow such articles to remain on new graves for a period of up to thirteen months.”
99. These loose items which are either not permitted or expressly prohibited differ from memorials and their attachments in one or more of the following ways. First, as stated, they are not dedicated to God in the way that an item placed in a church may be. Second, they are not permanent by their very nature whatever the intentions of the person placing them on or by the memorial. Third, the issue of error is unlikely to arise

since the Churchyard Regulations make explicit what is not allowed and in the event that a faculty had been granted that fact could be established easily and before disposal. Fourth, the protection of items from sudden liturgical changes is not relevant in this context. Finally, the item(s) cannot be disposed of without a faculty, so that even if a mistake had been made, it could be rectified simply and if the person whose item it is wishes to apply for a faculty to place the item where it had been located in the churchyard, that possibility is still open if there is a good and proper reason to make an exception to the prohibition in a particular case.

100. The Churchyard Regulations make clear that items in this category that were unlawfully introduced must be removed. That, by itself, does not logically conflict with the possibility of a need to obtain a faculty in order to carry out the duty, although that fact is not mentioned in the regulations. However, the second part of this regulation requiring that a member of the family should be notified of such removal (not the proposal to remove) clearly envisages notification after the items have been removed to a place from which they may be collected. This is inconsistent with a requirement that a faculty has to be obtained before the removal takes place and, as said, no such requirement is mentioned in the regulations. That is a different question from whether it would be *sensible* to obtain a faculty before such action, particularly in the case of a specific clean-up of the churchyard, because in my view it is both sensible and desirable.

101. Items that are clearly litter or, for example, flowers or wreaths which have died or wilted may be removed and disposed of by the incumbent and churchwardens. No faculty or notice is required.

102. Items of potential value which appear in the churchyard, which may have been dropped or otherwise deposited may be removed by the incumbent and the churchwardens and put in a place of safety. A faculty is not required in my judgment either for their removal or disposal. However, the incumbent and owners may have responsibilities towards the owners at civil law and should take all reasonable steps to discover their identity and reunite them with the property. It may be necessary to seek the assistance of the police.

103. Therefore, in my judgment the Churchyard Regulations 2016 are consistent with the law as I have decided it is.

104. **Arguments Raised by the Parties Opponent and Objectors.** One argument raised is that either there was express approval by a previous incumbent for the items in question to be placed on or by memorials, or that there was implied approval in that no one ever stopped the practice and that to suggest the previous incumbents should have removed the objects is to impugn their characters.

105. An incumbent may purport to permit the introduction of objects into the churchyard either in ignorance of the true legal position or in defiance of it. An

incumbent may choose to turn a blind-eye to such items either because he or she has enough other things to worry about or because of pastoral sensitivities and a desire not to upset people where a tradition has grown up amongst some parishioners to bring mementoes to memorials.

106. Whilst I understand entirely why an incumbent might wish to turn a blind-eye to what is going on, in the end it is not a kindness. Sooner or later, it is likely that the regulations will be applied properly and the disappointment and upset to those affected is likely to be all the greater, as is the case here. I can understand that certain families, particularly those who visit the graves of family and friends frequently, may well have come to think that what they were doing was being allowed. That made them all the more angry when the Rector sought to apply the regulations properly. It should be the case that everyone burying someone in a churchyard, including those whose burial or interment is of right because they live in the ecclesiastical parish or those who have reserved their graves, has their attention drawn clearly to the fact that they are subject to the Churchyard Regulations. Similarly, in a secular cemetery, those burying or interring remains are doubtless made aware of the regulations that apply there.

107. Another argument is that the Rector has not enforced the Churchyard Regulations in respect of two other churchyards which are said to be her responsibility. This petition concerns the churchyard of Kessingland, St Edmund. If and when the court receives faculty petitions in respect of any neighbouring parishes, they will be considered on their merits. It is not a defence to a breach of regulations or laws to say that the authorities concerned have not proceeded against other people also breaching the regulations. Further, in view of the opposition expressed to the Rector's enforcement of the Churchyard Regulations in this parish, it is clearly wise of her to await the outcome of this petition.

108. I also understand that some people feel that the facts that the actual removal of items took place during the first lockdown was insensitive. However, the lockdown also provided an opportunity to carry out the clear-up during a time when the churchyard was not being used. This is not primarily a matter for the court and is a pastoral decision. There is some dispute as to whether notices were placed in the churchyard to announce the forthcoming clean-up which cited the Churchyard Regulations and which categories of objects were going to be removed to a place for collection. The Rector has produced a copy of the notice she says was exhibited. There is some dispute as to whether these notices were put up in January (what the Petitioners now say) or early February (as the Petitioners say in their petition). It is not in my view a matter of much significance. The lockdown did not commence until March 23, 2020 and I am satisfied that the notices were likely to have been put up in mid-January. Whether people saw them or even visited the churchyard depends on a number of variables. Experience suggests that some people are regular visitors to the graveside of family and friends, others visit more occasionally and some graves are only visited on particular anniversaries or even less frequently than that.

109. Objection or complaint is made that some people were not contacted even after the removal of items. The Petitioners say that people were contacted where names and addresses were known and, in other cases, tickets were left on the memorials themselves. Some Objectors say that the Rector and Churchwardens were rude and aggressive to them. The Rector has produced texts and emails showing, she says, that she was perfectly open to talking to people who contacted her. Some of these issues are pastoral rather than legal and it is clear to me that in the end feelings ran high.
110. The question of giving notice to anyone affected by the removals is clearly a legal one and for self-evident reasons, there is a requirement to give notice to people whose property is being moved or potentially disposed of and the Churchyard Regulations say this should be directly to a member of the family where this is practicable or otherwise by a notice on the grave.
111. This does not mean that objects of the type moved by the Rector and Churchwardens require notice to be given before removal, but it does mean that notice should be given before disposal.
112. This cannot be an absolute requirement. There may be no living relative of the deceased. The family may have moved far away from the parish and left no address. In my judgment incumbents and churchwardens are obliged to make reasonable and proportionate efforts to contact a member of the family or, where this fails to reveal a name and address of a family member who can be contacted, to leave a ticket or other notice on the memorial itself. The question of whether sufficient notification has been given may affect the time the court allows before disposal. The longer the period, the greater the likelihood that the family does know of what has happened or has no interest.
113. Another issue that has arisen from Objectors and Parties Opponent is whether other things have happened in the churchyard in addition to the removing of loose items, such as trying to move fixed objects, causing damage to memorials, moving and then wrongly replacing items that were lawfully in the churchyard, the ripping up of rose bushes and the like. The Petitioners adamantly deny that anything was removed except the items of the category displayed in the PP. They say items have been collected and removed and some have been replaced, again in breach of the Churchyard Regulations.
114. I am deciding whether the Petitioners have satisfied me that permission should be given to dispose of the items that have been removed. Allegations of criminal damage to property are a matter for the criminal justice system. I have seen nothing approaching evidence that the Petitioners have done anything except remove unauthorised loose items and then sought permission for their disposal. I appreciate that feelings have been running high. If there has been vandalism or moving of items unlawfully within the churchyard, I am not in a position to make a judgment as to who did it or why. It appears to me that the Rector is well aware of the Churchyard

Regulations and is highly unlikely to have removed, or caused to have been removed, items that were compliant with the Churchyard Regulations. If, contrary to my assessment, this was done by or on behalf of the Petitioners there is no *evidential* explanation as to why they would have tried to replace them or match flower holders to the wrong graves. Strictly speaking, it is not a matter I have to decide but I find that any presumption that this must be the Petitioners or being done on their instructions is not established.

115. Accordingly I now make absolute the faculty that I granted on June 18, 2020, subject then to opposition. In view of the fact that it has been contested and I have had a number of objections to take into account, I order that the period of 12 months granted to dispose of the items shall not begin to run until January 1, 2021 to give people one final chance to collect items. For the avoidance of doubt, items that the Petitioners can prove were taken from where they were stored and replaced on memorials are included in this permission. However, if there is any doubt as to whether they were originally removed and stored or whether they might be new items, then notice must be given where possible as specified in the regulations and a fresh faculty sought.

116. I have found that the Petitioners did not need a faculty to remove the items they did and of which they now have my permission to dispose on or after January 1, 2021. However, if it were subsequently found on appeal that I was wrong in this decision, then I should make the following clear: (1) it does not, in my judgment, affect the Petitioners' right to seek disposal of the items they originally moved and which have not been collected; (2) it does not affect my ability to grant the petition as prayed; and (c) had, contrary to my decision, the Petitioners been required to obtain a faculty even to remove the items which the Petitioners agree they did remove to another part of the churchyard to await their collection if wanted, then I would have granted a confirmatory faculty to authorise that removal retrospectively. My reason would have been that the Petitioners are entitled to say that the Churchyard Regulations in this diocese mandate the Petitioners to do what they did in respect of items of the type they actually did remove and to notify those affected (if possible) in the way set out in those regulations before then seeking a faculty to dispose of them.

117. The Churchyard Regulations cover the entire diocese. It is possible for certain churchyards to be permitted local variations to deal with unusual features peculiar to that place. Where these are individual and clearly relate to a specific churchyard, the court will consider a local variation. Separately, PCCs are encouraged to consider publishing guidelines that, whilst conforming with the regulations without variation, set out how they will be applied in this particular parish and how those using the churchyard can obtain information about, help for and approval of their use of the area.

118. I finish this judgment by coming to the issue that is perhaps the most central to the objections I considered and what lies behind a good deal of the concerns of the Parties Opponent. It is a strong sense that they were insufficiently consulted about what was going to happen which clearly was a major departure from previous practice and

at a time of lockdown. Whereas I have found that what the Rector and Churchwardens did was lawful and indeed required of them by the Churchyard Regulations, and whereas I also understand the attraction of carrying out any kind of clean-up in quiet times, I think that, unintentionally, the Petitioners may have overlooked a need for greater consultation. Even the Public Notice required in the faculty system is a somewhat limited notification and when embarking on something that is (a) a major departure from previous practice or (b) likely to cause upset to some of those involved or (c) involves a project likely to be assisted by general goodwill or (d) requires people properly to understand the reasons for having to do something they may not wish to do and gives them an opportunity to make their views known even if in the end the law must take its course, then consultation is by far the best method of achieving this.

119. It is easy to say that the Objectors here were fortunate that they were allowed to get away with breaking the regulations for so long, but this assumes that they knew what the regulations were, knew that the incumbents who I am told did not enforce them did not have the right to do so and therefore understood that they were potentially on “borrowed time” in respect of some of their practices concerning graves and burials. I have certainly been shown no evidence that this is the case and the implication of what is written by those objecting is that they genuinely did not have this understanding.

120. Lawyers are no strangers to the heat which disputes about land, property and associated rights can engender. They can be the most bitter types of dispute, sometimes going beyond reason. I can see how this all boiled up and indeed boiled over and I have some sympathy for both sides. I have explained above how I accept how this looked to those now objecting and I also accept that, as will happen in the modern era, the anger fed all kinds of hearsay, conspiracy theories, mis-information and probably deliberate exaggeration and misstatement. The Rector and Churchwardens have clearly felt a sense of threat about what has been happening and both sides have, understandably, to an extent retreated to their own barricades.

121. One letter of objection that particularly struck my attention, and which I have not yet mentioned, was by a Sarah Kruger. She presented her views in a very thoughtful way. I am going to quote a good deal of it. Having explained that her parents were both born in Kessingland and that she and her siblings were baptised there and that many of her family are buried in the churchyard, she goes on to say: “It saddens me to hear that there is such upset over the removal of personal items on the graves. I understand the need for rules and regulations, especially for safety concerns and general upkeep. I think the way this has taken place is insensitive, especially during a pandemic. I do not condone the personal attacks on the Reverend or any of the volunteers involved. I think that all meant well and wanted the churchyard to be cleaned up.”

122. She continued: “It is my hope that everyone will reflect on their actions and find a way past their anger and unrest. My wish is that the Reverend and the other church officials think about how their actions have hurt many people, however well

intentioned they may have been initially. The timing of removing the personal items during such a disruptive and difficult time in everyone's lives makes the decisions hard to understand."

123. She gives her own proposals: "I envision the role of a Church Reverend to encourage peace and unity. In order for the community to heal and come together I am asking that officials involved consider allowing people who have family members interred at St Edmunds be allowed to place any item that helps them find peace remembering their loved one. I think that discussions should be had one on one with family members if items are somehow causing issues for the upkeep of the churchyard. A notice at the church is not good enough. I would also like church officials to consider not disposing of any items without contacting family members first."
124. I am not going to go over the specifics of what is legally possible and what is not again and, of course, the Rector has never sought to dispose of items (and has not yet disposed of any) without first, seeking to notify a member of the family if that was possible and practicable or ticketing graves in the alternative; and, second, obtaining a faculty to do so. I quoted this letter because of its tone and balance. The Petitioners themselves in their response say they found it "thoughtful". Sarah now lives in Canada so is able to take a more objective view than those closely involved.
125. In concluding my judgment it causes me to say these things. Courts rarely manage completely to solve problems in people's lives despite our increasing tendency in this age to turn to them to do just that. Courts decide what the law is and, in contested cases, make decisions in favour of one side or the other. Sensible people will not see a favourable decision as a green light to brandish their triumph over the vanquished loser. Nor should those who lost feel that a court failed to understand what they felt about something and why.
126. Both sides have a choice in this sort of situation. The first path is the feud. Feuds have their satisfying moments for both sides, prolonging feelings of justification and grievance. Each side has its mini-triumphs and small defeats, often over the pettiest details. No-one wins ultimately. Everyone loses. The outcome is unproductive, unhappy and sterile. It leeches into every aspect of people's lives and those who try to be peacemakers are turned on with equal scorn by both sides. Eventually, if it goes on long enough, a permanent rift develops and half the people involved, who sometimes are not even the original protagonists, have forgotten what it was all really about in the first place.
127. The second path is resolution. It involves both sides facing things they could have done better, both sides being able to talk things through without losing their tempers or scoring cheap points, everyone being prepared to make some compromise and all understanding that far more is lost in a feud of this kind than is ever gained. It is the sort of advice most people would give to their children, their relatives and their friends faced with a similar problem. We all, however, find it sometimes difficult to

take ourselves. It is not an easy path and there will be mis-steps. However, in the end, it is the only way of moving forward.

128. I shall give guidance below as to the procedures that must be followed in the hope that it will provide assistance both to the parties in this case, and the diocese as a whole.

129. The costs of this contested Petition will be assessed by the Registrar and my provisional order is that they should paid by the Petitioners. (FJR 19.1, .2 and .3) unless, within 21 days following receipt of the assessment, written representations are made by the Petitioners and sent to the Registry as to why the order should not be made. In that case I shall consider the representations and make a final Order.

DIOCESE OF NORWICH

GUIDANCE ON THE CHURCHYARD REGULATIONS 2016

In this guidance, the word “incumbent” includes priests-in-charge. The word “item” covers anything that might be brought into a churchyard and placed or left there including memorials, vases, objects left on or around memorials, flowers and floral tributes.

1. This guidance supplements the Churchyard Regulations 2016. It does not alter or replace them.
2. It is unlawful for anything to be placed in the churchyard without the permission of the Consistory Court. The Chancellor and Deputy Chancellor are the judges of this court.
3. To save people having to obtain the formal permission of the court (a faculty) to place uncontroversial items in the churchyard, the Chancellor has granted to each incumbent in the diocese, within his or her sole discretion, the power to permit the introduction into his or her churchyard of items that are permitted by the Churchyard Regulations 2016 or any local variant of them that has been authorised by the court and published. There is a general permission, without specific reference to the incumbent, to place flowers or floral tributes (including wreaths) on or around graves *provided they are permitted by the regulations and displayed as the regulations require.*

Introduction into a churchyard of memorials and other items

4. If the item is permitted under the Churchyard Regulations then the incumbent may allow it to be introduced into the churchyard without any action by the court. It is sensible to draw *clearly* to the attention of the bereaved applicant(s) the Churchyard Regulations 2016 and to make clear to him or her that he or she will be bound by them. If the people concerned are not content to abide by the regulations then they will need to consider burying or interring the deceased elsewhere, such as in a cemetery – although they need to be aware that cemeteries generally also have regulations. Once a person is buried in a churchyard, that is generally final. Exhumation is only ever granted in very limited and special circumstances, justifying the use of the word “exceptional”.
5. If the item is not permitted under the Churchyard Regulations then the incumbent has no power to permit its introduction and, if he or she purports to give permission, the item will be being introduced unlawfully. The only lawful way to have the item brought into the churchyard will be by the court granting permission through a faculty.
6. Each faculty application is decided on its merits. The court will look at all the relevant facts and circumstances. However, it will generally follow the regulations because that is only fair to everyone else. The court also has to bear in mind that if it makes a particular decision that allows something outside of the regulations, others will say the same would be only fair in their cases also. Exceptional and very special individual cases sometimes do arise – particularly in relation to memorials – and in those cases the court may allow something that is generally not permitted. The cost of such petitions will almost always be born by the applicant.
7. So, where the incumbent decides something is outside of the Churchyard Regulations 2016 then the only course open to an applicant who still wishes to introduce a particular item or items is to apply for a faculty.
8. If the incumbent cannot resolve whether a particular item is or is not allowed, then an enquiry may be submitted to the Registry. It must be in writing and can be sent electronically. A photograph (or in the case of a proposed memorial a detailed drawing) should be submitted together with the dimensions of the item in question where such dimensions are relevant (such as with a memorial or a vase) and a description of its material substance (stone, plastic, marble etc.). A brief description of the issue causing concern should be given. The Chancellor will give guidance as to whether the item is within the regulations and may be allowed or whether it would require a faculty.
9. If the item is within the regulations, then the incumbent still has a discretion to refuse permission. However, if the applicant then seeks a faculty and the Chancellor grants it and decides the incumbent has withheld consent unreasonably, this may be reflected in costs. In other words, there would have to be a very good reason why the incumbent had withheld permission, otherwise the faculty will be granted.

Items introduced into a churchyard unlawfully

10. If something has been brought into a churchyard without permission, then unless a faculty is sought and granted to remedy the position, it is liable to be removed. Items that have been introduced lawfully, such as flowers and wreaths, can also be removed if they have wilted or died.
11. The method by which items can be removed depends on what they are. Memorials unlawfully introduced and items attached to them including kerbstones or chippings should only be removed by the grant of a faculty. The faculty, if granted, will include directions as to notice and disposal.
12. Loose items unlawfully introduced into the churchyard such as mementoes placed on or around graves, memorial stones and the like may be removed from graves provided they are placed elsewhere for the obtaining of a faculty to deal with disposal. Notice must be given as soon as possible after removal to a member of the family of the deceased preferably by written notification. Where this cannot be done for good reason then a ticket should be left on the grave. Alternatively, the incumbent may leave the items in situ on the grave and seek a faculty for their removal and disposal. It is very important there should be a proper record of what is removed and where it is placed. The simplest way is to photograph any loose items in situ and again photograph where it or they are placed. A written record should be made of the item, its photographic reference, the applicable grave, how notification was given and when this happened.
13. Items of value that appear to have been dropped, mislaid or left in the churchyard do not require a faculty to remove them to a place of safety whilst enquiries are made. The assistance of the police may be required, particularly to deal with disposal. The incumbent should be careful to observe the requirements of the civil and criminal law.
14. Litter includes items that have been discarded having served their purpose such as packaging and broken articles together with dead or wilting flowers and wreaths. Any loose items that have been blown away from a grave will often regrettably have to be treated as litter unless they can be properly associated with a particular memorial and are not broken, or in the cases of flowers and wreaths wilted or dead. Litter may be disposed of without notice or faculty.

Clear-ups

15. Where a clear-up of the churchyard or part of it is contemplated, particularly if this is occurring after a lengthy period in which the regulations have not been observed, the best way to proceed is to seek a faculty beforehand: this means the court can see the proposal in advance and give directions about consultation, notice and any particular precautions that need to be undertaken. The faculty will also set down a timetable for disposal of items that have not been collected or have been returned unlawfully to graves.

16. The incumbent and churchwardens are responsible for the actions of any volunteers who assist in a clear-up so it is very important that they are properly instructed.

Repeated breaches

17. Where a loose item is collected pursuant to a removal and then placed again unlawfully on a grave or graveside after the issue of a faculty authorising its disposal unless collected, it may be removed and disposed of without further notice.
18. If fresh unlawful items are introduced to the same grave or graveside in the churchyard, they should be removed, notice given and a faculty sought for their disposal where the owner may expect the period allowed for collection to be very short.
19. If there are continued breaches by an identifiable person in respect of the same grave or graveside, that person may find him or herself barred from entering the churchyard and visiting the grave altogether.

The 13 month extension

20. The incumbent has a discretion to allow mementoes to be left on or at new graves or memorials for a maximum of 13 months. This is to help people grieve at a time when it may be difficult to come to terms with the loss of family or friends. If an incumbent declines to exercise that discretion, a faculty may be sought by the person or family who wish to leave such items.
21. The best course will be to discuss the matter with the incumbent first for guidance over what mementoes would be suitable and how many. This will depend clearly on the circumstances of the death and the age of the deceased. Letters and cards left on or at gravesides are not encouraged because they will not survive long in the open air and will simply become litter. Sometimes putting things on paper can be a very helpful aid to grieving and imaginative use such as families reading them out together can be both emotional and helpful. They are not so suitable for graves. Foodstuffs and plastics, glass items and those that may attract the intention of wildlife can be unsafe and may also be fouled. Thought with the incumbent as to what is practical and best expresses the feelings of those involved is much the better way to proceed.
22. If agreement cannot be reached in respect of mementoes allowed under the 13 month provision application for a faculty is possible.

Etherington, Ch.

30th November 2020