

Neutral Citation Number: [2018] ECC Her 1

IN THE CONSISTORY COURT OF THE DIOCESE OF HEREFORD

Before: THE DEPUTY CHANCELLOR

Petition no: F2016/95

IN THE MATTER OF HIGHLEY CHURCHYARD

and

IN THE MATTER OF THE PETITION OF DEAN LAW AND JUNE LAW

Introduction and procedure

1. This petition by Dean Law (Mr Law) and June Law seeks reservation of a double-depth grave space in the Churchyard of St Mary, Highley, Salop. The petitioners are husband and wife and live in the parish. The petition was originally coupled with another, by Robert and Claire Smith, also husband and wife and resident in the parish; Mrs Law and Mrs Smith are sisters. Unfortunately, however, Mr Smith has since died. He has been buried in the churchyard, in a double-depth grave, where his widow will no doubt be interred when her time comes. It is therefore no longer necessary to determine the Smiths' petition. Mr Law has represented both himself and his wife in this matter, a function he also undertook for the Smiths.
2. The petition does not have the support of the rector of the Severn Valley Benefice, the Revd Michael Harris, or of the Parochial Church Council of Highley. There were in addition three objections raised in response to the Public Notice. Two of the objectors are members of the PCC and the third is the husband of one of the others; none of them sought to become parties opponent.
3. Mr Law indicated that he nevertheless wished to proceed with the petition. He also indicated that he required an oral hearing if the petition was not to be granted on the papers, despite the cost of that procedure to him. Although it might be thought that a petition of this nature, even if contested, would be suitable for determination by written evidence and representations, rule 14.1 of the Faculty Jurisdiction Rules 2015 prohibits a judicial decision on the form of procedure unless the parties agree in writing to determination by written representations.
4. I therefore held a hearing in Highley parish rooms on 9 March 2018. I am very grateful to all those who made the arrangements for that to happen. As well as Mr Law's submissions in support of his petition, I heard sworn evidence from Mr Harris, from Mr David Tremellen, Chairman of the Parish Council, and member of Shropshire Council, from Mr David Rayner, one of the churchwardens and a retired Chartered Surveyor, and from Ms Linda Ross, a parishioner and former churchwarden. Nobody else present at the hearing wished to say anything. There was written evidence, produced on behalf of the parish and in accordance with my directions, largely by the secretary of the PCC and Mr Rayner from parish records and inspection of the churchyard. At the end of the hearing both Mr Law and Mr Harris confirmed that there was nothing further to which my attention should be drawn.
5. During the course of the hearing I visited the churchyard in the company of Mr Harris, Mr Law, and other residents of the parish. I was able to see the layout of the churchyard, the space

available for further burials, and other aspects of interest and relevance. I am particularly grateful to Mr Law for pointing out the places where relatives (including two infant children) are buried, and explaining why the space he seeks to reserve, which is near them and next to Mr Smith's grave, is important to him and his wife. Mrs Law's and Mrs Smith's parents, and two of their grandparents, are also buried in the churchyard.

### The factual background

#### (a) The church and churchyard

6. St Mary's church, of mediaeval or earlier foundation and with fabric of various dates, lies at the southern end of the sizeable parish. The area of the churchyard between the church and Church Street to the north is the ancient burial ground: it contains the war memorial but is largely free of gravestones. Immediately to the south of the south door of the church is the base of a mediaeval preaching cross, and from here southwards and eastwards, within the area known as the 'old churchyard', there are graves with gravestones and other memorials, and an area for the burial of cremated remains. At the very bottom, where the path bends round to the east, are the unmarked graves of the infants mentioned above.
7. Immediately south of that is a sizeable area added to the churchyard in 1966. It is bisected by a path. To the east is the area used first, and now occupied by 456 graves (including the grave of Mrs Law's parents) dating from 1966 to 2001, when the area to the west began to be used. That area has been filled row by row, the early rows containing 27 graves, but the number reduces towards the east because of the shape of the plot and other considerations including vegetation. There appears to be space for eleven rows in total. Six rows are full, and use of the seventh has begun. Mr Rayner has produced a plan showing that there are now potentially 116 vacant plots. The actual number may be less if outcrops of rock, or waterlogging, are discovered when a grave is dug. Mr Smith is buried in the grave at the northern end of the row currently in use, adjacent to the old churchyard. Mr and Mrs Law seek to reserve the next space, which would mean that their bodies would lie next to those of Mr Smith and in due course Mrs Smith, and as near as practically possible to the other relatives already buried in the old churchyard. Following the interment of Mr Smith, Mr Harris has directed that the row in question be filled from the other end, so leaving the space vacant for the time being.
8. Mr Rayner's plan shows that the 1966 extension has been occupied in an orderly manner, with each row being filled before starting the next. So far as concerns the area currently in use, there are exceptions in three classes, shown on the map. Spaces 464, 466 and 492 are reserved by faculty, for 50, 50 and 100 years respectively. Space 597 has been, by direction of Mr Harris, left unoccupied for the present. The reason is that it was expected that the adjacent space would allow a double interment, but when the grave was dug it became clear that because of a watercourse it would be unsafe to dig so deep. Space 597 is therefore being kept for the deceased's spouse, who would otherwise have occupied the upper half of the double-depth grave.
9. Spaces 527 and 550 are marked on Mr Rayner's map as reserved, but have not been the subject of any faculty. That these spaces appear to have been left in in the otherwise orderly occupation of the churchyard, appearing to show that a gravespace can be reserved without a faculty is, not surprisingly, a matter of considerable concern to Mr Law. I am told that a previous incumbent had a practice of making informal promises of the reservation of gravespaces. There was a suggestion that payments were made. I make no finding on that; but I anticipated that I should in this judgment have to say something about this practice and

directed that all identifiable persons who might think they had the benefit of an informal reservation of this sort should be served with notice of the proceedings and invited to make representations. Service took place; there was no response. I deal below with the law relating to this matter.

10. Mr Rayner's researches show that in the part of the churchyard in use before 2001, there are other spaces reserved by faculty, including four granted for 100 years, and one with no time limit. There is also another space informally reserved. None of the spaces in either part of the churchyard bears any physical marker, except the last two mentioned.

(b) Space in the churchyard

11. The population of Highley is some 4,000. The churchyard is the only burial ground in Highley. Roughly 150 gravespaces have been used since 2001, and there have been about ten burials a year for the last three years. The latter statistic was provided by Mr Harris as part of the information accompanying the petition, and does not distinguish between burials using new plots and second burials in a partially-used plot; but the use of spaces since 2001 also points to a need of about ten spaces a year or slightly less. Mr Rayner's detailed analysis of burials from the register shows that the number of burials in 2015 was 17, in 2016 19 and in 2017 18; the number of new graves was 8, 12 and 10 respectively, an average of exactly 10. Mr Harris' estimate made at the beginning of the process of preparing the parish's response to the present petition suggested that the space would be occupied within about six years: that was rather pessimistic, but not wildly inaccurate. I prefer Mr Rayner's careful survey, but on the most generous assumptions it looks as though the presently available space in the churchyard extension will be fully utilised within less than a dozen years. After that, unless some other arrangement is made in the village, Highley's dead will have to be taken a considerable distance for burial, to Bridgnorth or perhaps as far as Shrewsbury, 8 and 28 miles away respectively.
12. At the hearing I investigated the prospects of any extension to the churchyard being made available. Three possibilities have been considered in recent years. The first is to extend the churchyard by the purchase of an adjacent plot of land, as happened in the 1960s. This is in practical terms impossible because of the value (or perceived value) of the land, meaning that the church cannot afford the price the owner wishes to receive. The second is to clear the southwestern part of the 1966 extension, presently occupied by a belt of trees. There are difficulties with this. The process would be expensive; and the clearance of the trees might itself be objectionable. There is in any event no assurance that the land so released would be suitable for burials over its whole area. Expensive surveys would be needed even before reaching a view about whether the clearance should be undertaken. The amount of land available would still be limited. The third possibility is the use of Church Meadow, also called 'the triangle'. This is an plot of land at the northern end of the village, given to the church in the nineteenth century, apparently for the purposes of building either a daughter church or a church school (or both), but in agricultural occupation. The problems here are legal: there are thought to be covenants affecting the land, and there might be difficulties in obtaining consent for change of use.
13. I asked the witnesses who appeared before me whether thought had been given to the re-use of the area close to the church. Mr Harris noted its present attractive appearance, largely free of monuments and providing a setting for the church building. Everyone who expressed a view thought it unlikely that those now resident in the parish would want to disturb the resting-places of their predecessors, but Mr Tremellen said that he thought the parish as a

whole should have a vote on the matter. Both he and Mr Harris expressed willingness to continue to explore options to enable realisation of the expectation that Highley people could be buried in Highley.

14. It appears to me, and I find, that there is at present no realistic prospect of any extension of the space available for burials in Highley. Some solution may be found, but that is at the level of pure speculation. This petition has to be determined on the basis that the space available is that delimited by the boundaries of the churchyard, and that within those boundaries only the unoccupied part of the 1966 extension is available for use.
15. The shortage of space in the churchyard was already an issue when Mr Harris arrived in September 2015. The PCC asked him to consider what steps ought to be taken. On 8 March 2016 the PCC resolved that no petitions for faculties for gravespace reservations could be made. The Council subsequently came to appreciate that it had no power to prevent petitions being made to the Court, and on 13 September 2016 it clarified its position by a unanimous resolution that it would no longer support petitions for faculties for the reservation of gravespaces. It nevertheless will and does consider any application on its own merits. In the present case it decided not to depart from its general rule of non-support, as recorded in the minutes of the meeting of 29 November 2016.
16. The PCC's position has been made clear to the parish. The original resolution of March 2016 was posted on the notice board at the entrance to the churchyard, and Mr Harris wrote an article explaining the position in the local magazine 'Forum' in September 2016.

(c) The present petition and the petitioners

17. Mr Law is in his fifties; Mrs Law is in her sixties. He has lived in the parish for 38 years, she all her life. Mr Law is not in good health. As I have noted above, a number of Mrs Law's relatives are buried in the churchyard, and her brother is buried next to the space Mr and Mrs Law seek to reserve. Mr Law does not claim to be a donor to the church, although some years ago he, like many others in the parish, provided generous support to the church's annual village garden fete. Neither Mr Law nor Mrs Law is on the church electoral roll. I record these facts because some queries arose from the original presentation of the petition. They are not now disputed.
18. Mr and Mrs Laws' petition is dated '5.10.16'. It was sent to the Registry some weeks later and was received on 5 December 2016; Part B is dated 2 December 2016. It was completed by the payment of the statutory fee only on 19 April 2017, by which time the Public Notices had been on display for the required period, and the objections to which I have referred had been made.

The law

(a) The right of burial

19. The common-law right to be buried in the churchyard of the parish church extends to those who die in the parish and those who at the time of their deaths were resident in the parish. The right was enlarged by s 6(2) of the Church of England (Miscellaneous Provisions) Measure 1976 to include also those who at the time of their death were on the parish electoral roll (that is to say the church's electoral roll, not the register of electors compiled under the Representation of the People Acts). The bodies of persons not falling within any of these categories may be buried in the churchyard if the incumbent gives his consent, and by s 6(2) of the same Measure the incumbent is required to take into account any guidance issued by the Parochial Church Council.

20. The right of burial does not, however, extend to a right to burial in any particular part of the churchyard or in any identified gravespace. The location of any new grave within the churchyard is a matter solely for the incumbent for the time being to decide: St Mary's Alderley [1994] 1 WLR 1478; Re Marks (deceased) (1994) The Times 28 October, HL. The right of burial also does not entitle anybody to require a burial to take place in a churchyard which is full: *lex non cogit ad impossibilia*, the law does not compel what is impossible; and, what is more, a burial which because of the fullness of the churchyard would require the exhumation of other remains, identified or not, would for that reason require a faculty. If a churchyard, being full, is closed by Order in Council, any further burial there is a criminal offence under the Burial Act 1853.

(b) Reservations of gravespaces

21. The Court has power to grant a faculty reserving an identified gravespace for a named petitioner for such period of time as may be provided. A faculty gives legal rights. While the faculty remains in force the person or persons in whose favour it is granted have the exclusive right to be buried in the identified space: that is to say they can be buried there and nobody else can (Re West Pennard Churchyard [1992] 1 WLR 32); and the right continues even if the persons in question lose (or never had) the common-law right of burial in the churchyard. While burials are taking place regularly in the churchyard the only other effect of the faculty is that the particular space has to be left unoccupied until it is occupied by the remains of at least one of those in whose favour the faculty has been granted. When the churchyard is nearly full, however, the faculty has a wider impact, because of the proportionate reduction in the amount of space available for the burial of others. When the unreserved places are all occupied, the next person to die will have to be turned away, because such space as is physically available is reserved for others. Thus, in these circumstances, by the process of obtaining a faculty, the petitioner secures not merely a particular spot in the churchyard for his grave, but also priority over others having a right of burial, that may serve to nullify the others' rights.

22. It is for this reason that, when a petition for reservation of a gravespace is submitted, the court requires information about the available space in the churchyard and the rate at which it is likely to be occupied by those having the right of burial. In St Nicholas, Baddesley Ensor [1983] Fam 1 it was said that the court will generally need to be satisfied that there will be sufficient space available to meet the needs of parishioners in the reasonably foreseeable future, but it seems to me that that is not exactly the test. The question is whether the faculty is likely to extend beyond the time when the churchyard has capacity for new burials. If it is likely to do that, then it raises the question of whether the petitioner ought to be granted the potential priority explained above. That is an issue requiring the balance of the petitioner's claim against the claims of others with the right of burial who might, sometime in the future, be excluded from burial in the churchyard by the petitioner's reservation. I would venture to suggest that save for a petitioner with an extraordinary close connexion with the building or the churchyard itself, the balance will nearly always fall to be struck in those circumstances against the petitioner. I also observe, without making any decision on the point, that a reservation that has the effect of excluding a person from being able to exercise a right of burial might need to be justified as an interference with that person's family's rights protected under article 8 or the person's own rights protected by article 1 of Protocol I of the European Convention on Human Rights

23. In many dioceses, this one included, any faculty for reservation of a gravespace is granted for a limited term, normally specified in published guidance as either 20 or 25 years. Guidance of this sort enables petitioners to have some idea of what they may obtain from the trouble and expense of the petition (they know, of course, that there is no assurance of obtaining anything at all). It follows, however, from what I have said, that the term of the faculty ought to be determined with some reference to the estimated capacity of the churchyard measured in years. To put this another way but using the phraseology employed in Baddesley Ensor, the court will generally need to be satisfied that there will be sufficient space to meet the needs of parishioners for the period for which the reservation is granted.
24. Thus, the potential result, of excluding a person who dies in the future and would have an exercisable right of burial but for a reservation by somebody else, can be avoided by closer attention to the period of time or term for which any faculty is granted. The calculation of the appropriate period will be a matter of judgment in an individual case. In some dioceses, the practice of the Court appears to show that after the PCC has decided not to support new petitions for gravespace reservations, the Court will be very slow indeed to interpose its own discretion and allow reservation. In some reported cases on the other hand, Chancellors have been prepared to grant the faculty for exactly the period of time for which the churchyard is estimated to be open (Re All Saints Ashwicken [2016] ECC Nor 4); but it seems to me that a term as long as that will not avoid the risk.
25. In my judgment, as a general rule, the risk is adequately covered by limiting the term of any reservation to the time when there will be about five years' space remaining. I would not claim that the Court is capable of predicting the future with greater accuracy than that. The period can be affected by a larger than expected call on gravespaces by those who die: there may be an epidemic or an accident in the parish, or changes in the local arrangements for cremation, or simply a 'bulge' in the parish's age profile. The number of available gravespaces may also be reduced by geological or other similar reasons not apparent in advance of an attempt to dig a grave.

(c) Informal reservation

26. The incumbent's right or power to direct where in the churchyard any burial is to take place has as an obvious corollary a right to direct that burials should *not* take place at some particular spot. Such a direction is not illegal; and one can readily imagine that from time to time an incumbent may be persuaded of the desirability of giving such a direction: at Highley, space 597, to which I referred above, no doubt falls within this category. It is, however, not legally possible to reserve a gravespace in a churchyard except by faculty granted by the Consistory Court of the Diocese. It follows that no 'informal reservation' can be legally valid; and any such arrangement gives no rights to any person. For this reason, I should have thought that it is extremely undesirable for anybody to be allowed to make any payment for a direction of this sort: whatever the payer may think, no benefit is being obtained. The incumbent cannot bind his successors, or even himself: he can change his mind at any time, and direct a burial in the space previously left vacant. No successor can be required to maintain the direction; it is doubtful whether an incumbent can even be required to consider whether to maintain it. It is quite inappropriate, and indeed unlawful, for any marker to be put on the space in question: the space is simply one of the parts of the churchyard in which there has not yet been a burial. And, as the churchyard gets full, although spaces reserved by faculty are not available for anybody except those with the benefit of the faculty, a space

'informally reserved' is available for burials in the same way as any other part of the churchyard.

27. The incumbent's role in choosing a place for a burial in a churchyard is no doubt theoretically capable of being exploited by parishioners. Incumbents ought not to have to regard themselves as required to direct burials in such a way as to favour the preferences of those who choose to put pressure to bear. In general, churchyards look better if the space is taken up in a regular fashion, and I cannot see that it would be wrong for an incumbent to adopt a practice of always directing that a burial requiring a new grave take the next available space, allowing for any spaces reserved by faculty. There might be scope for wholly exceptional cases, but they would need to go well beyond assertions that the deceased's relatives are buried nearby, or that the deceased always loved this spot or even a combination of those two.

(d) The roles of the Incumbent, the Parochial Church Council and the Court

28. The petition for a faculty for reservation of a gravespace requires, at part B, certain information to be supplied by the church authorities, including whether the PCC supports the petition, the population of the parish, the average yearly number of burials, and an estimate of the time for which the available space will fulfil the needs of parishioners. So the incumbent and the PCC have a role in every petition. It is also right that the PCC should from time to time consider whether it is necessary to have a general policy about gravespace reservations. In formulating such a policy they must bear in mind that the right of burial belongs to all those to whom I have referred above, and that those who presently form part of the congregation of the church have no expectation of favour or priority. The churchyard is church property, and subject to the faculty jurisdiction, but the space for burials has to be managed for the benefit of the entire community. That is particularly demanding in a place like Highley where there is no other convenient place of burial. A general policy, if adopted, should not be regarded as an inflexible rule, so each petition ought to be considered on its own merits. It will not be surprising in any individual case, however, if the PCC decides to adhere to its policy.
29. Whether a faculty is to be granted, and if so on what conditions and for what period, is a matter for the Court. The Court will take into account all the materials before it, including the petition itself, and accompanying evidence, and any objections. It is likely to give great weight to the views of the PCC, particularly if they implement a general decision, for a number of reasons. One is that the PCC can be taken to be well-informed about the needs of the community and the availability of space in the churchyard. Another is that where there has been a decision not to support petitions, the whole of the community will have been influenced by that and people who might otherwise have sought a reservation may well have been dissuaded. A policy thus promotes consistency. But it must be clearly understood that the view of the PCC is not determinative of the outcome of the petition. Even if it is supported, the Court may decide not to grant a faculty. If it is opposed, the petitioner knows that he is likely to be put to more trouble and expense than would otherwise be the case but is at liberty to see if he can persuade the Court to grant the faculty nevertheless.

Assessment and decision

(a) The Petition

30. I take into account all the material before me, including the letters of objection, which in essence restate the PCC's position. As I have indicated, a faculty for the reservation of a

gravespace has two effects, and I need to consider them separately. The first question is whether Mr Law has shown that he and his wife should be granted a right to be buried in Highley churchyard that will give them precedence over others who may die first but for whom there will be no room. I am perfectly satisfied no such case has been made out. That Mr and Mrs Law live in the parish is no more than a partial restatement of the right of burial; that they have (or more precisely Mrs Law has) relatives buried in the churchyard is no more than could no doubt be said by a very large proportion of the population of Highley. Given that the churchyard has to be seen as a community and not merely a church asset I have some doubts about the relevance of arguments based on connexion with the current work of the church or its congregation, but in any event no such argument has been pursued on behalf of Mr and Mrs Law. The decision of the PCC that petitions will not be supported because space is running out is entitled to great weight and is clearly appropriate. From this point of view Mr and Mrs Law are parishioners like many another, and like the others they must face the risk that the churchyard is full by the time either of them needs it.

31. It follows that it would in my judgment be wrong in this case to grant a faculty that might risk lasting for longer than the time for which the space in the churchyard will be adequate for the needs of the parish.
32. The second question is whether it would be right in the circumstances of the case, and within the confines given by the answer to the first question, to grant a right to be buried in a particular spot rather than any other within the churchyard. On this point Mr and Mrs Law's claims are stronger. The two infants are buried near the plot under consideration, and a powerful factor is the burial of Mr Smith in the plot next to that which Mr and Mrs Law seek to reserve. If there had been no overall concern about space, those two points taken together would probably have merited the grant of the faculty sought. There are other factors, which I treat as of less weight: they are matters perhaps of sympathy rather than specifically going to the merits of the decision. As I have noted, the PCC resolution was based on what appears to have been a rather pessimistic assessment of the space still remaining, although if Mr Rayner's calculations had been available I have little doubt that the answer would have been the same. There is no doubt that the death of Mr Smith during the course of the disposal of the petitions has affected both Mr and Mrs Law, no doubt bringing home to them the inevitability of death. As I have also noted, Mr Law's health is not good. Finally, there is the point about the 'informal reservations': nobody was entitled to think they had any legal validity, but Mr Law raised concerns about them and may feel a sense of injustice that the same apparently pragmatic option was not available to him.
33. In these circumstances I have concluded that it would be right to grant a faculty, reserving the plot next to Mr Smith's grave, but for a period that will not risk exceeding the time during which the churchyard is open generally for burials. The appropriate period in my judgment is six years, which (subject to the condition set out below) will begin on 1 July 2018. The effect of starting then is that the delay since the issue of the petition does not count against the petitioners; and the period is, doing the best I can, one which will expire when there is about five years' space remaining, for the reasons given in paragraph 25 above.
34. It will be a condition of the grant of the faculty that the petitioners make a contribution of £200 to the PCC towards its costs of maintaining the churchyard, no later than 26 June. If the payment is not made by that date the faculty will not be granted. When the faculty is granted the petitioners must place a small wooden or metal marker on the space reserved, in such form as Mr Harris may approve.



35. The petitioners must also pay, by the same date, the statutory fees for the hearing and consequent expenses, and the parish and registry costs, to be assessed if not agreed. The costs are recoverable as a civil debt
36. I apprehend that both Mr Law and the parish will want to know what happens if the six years expires without use of the gravespace. The position is simply that the faculty has expired. The marker must be removed. The space will be available for any burial. If Mr Law or Mrs Law seek to reserve the space for a further period there will need to be a new petition and if there has in the mean time been no change in the arrangements for the burial of Highley's dead it is extremely unlikely that it would be granted.
37. By then, however, the space reserved by this faculty will have been surrounded by other graves, and it may be that the incumbent at that time is prepared not to direct burials in that space while there is other space available in the churchyard. That will be entirely a matter for the incumbent from time to time, whenever there is need to dig a grave at Highley. No assurance can or should be given by anybody.

(b) 'Informal reservations'

38. I have already set out the law relating to 'informal reservations'. Those believed to be affected by the practice of the former incumbent and perhaps his predecessors had the opportunity to make representations to me. There would appear therefore to be no injustice in now simply applying the law, which is that spaces 527 and 550, and any other spaces in the churchyard said to be the subject of arrangements of this nature, are available for use for any (including the next) burial, unaffected by any arrangements that may be said to have been made in relation to them. Any markers on them constitute a trespass and must be removed forthwith.

Final considerations

(a) Policy and other petitions

39. The fact that I have decided that a faculty should be granted does not mean that I think the PCC was wrong to oppose it. On the contrary, I think there can be no possible criticism of the PCC's formulation of its policy and its decision to apply it to the present case. The policy is what is required to prevent the churchyard as a community asset from being acquired exclusively by those who have the funds or the foresight to apply to reserve a space. That policy made it clear to Mr and Mrs Law, as it makes clear to others, that, as the churchyard fills up, anybody who seeks to hold a space that will prevent somebody else being buried in the churchyard at all will have a very particular task. In the present case my decision shows that I agree with the policy to that extent and for those reasons.
40. So far as concerns the application of the policy to the particular facts, I have no doubt that the PCC acted properly in the decision it took when faced with the petitions of Mr and Mrs Law and Mr and Mrs Smith. After that, the matter was before the Court, and this is the first opportunity to consider the matter since Mr Smith's death. Further, I have set out the position on the 'informal reservations' in a way that the PCC might not have felt that it could or should. In those circumstances there is no scope for speculating about what the position would have been if the facts available to the PCC had been precisely the same as the facts presented to me; nor should it be supposed that any future petitions have any expectation of success simply on the basis of the outcome of this case.

(b) The term of gravespace reservations

41. This petition has raised in an acute form the question of the appropriate period of validity for a faculty for reservation of a gravespace. Where such faculties are granted, the period is very often in practice governed solely by the practice of the Consistory Court of the Diocese, that is to say (as indicated above) often for a fixed period of 20 or 25 years. There are good reasons for the limit: circumstances and loyalties may change, or people may move away, and the churchyard ought not to be burdened for a long time with a reserved space that is unlikely to be used (the period is in any event limited to 100 years by the proviso to s 8(1) of the Faculty Jurisdiction Measure 1964). For this reason it is unlikely that faculties for unlimited periods, or with long terms such as those elsewhere in Highley churchyard, would be granted today.
42. But the facts of the present case indicate a different concern. If the churchyard is likely to be filled within the period in question, and particularly if it is the only burial place within the community or a reasonable distance outside, consideration ought normally to be given to fixing a shorter period. For the reasons explained above, a faculty probably ought not to be granted if it will last for longer than the time when about five years' space will remain. It follows also that no faculty is likely to be granted where there is estimated to be less than five years remaining. There may be rare exceptions for the special case of a person who is able to establish a right to be buried in the churchyard when it is too full for others to be buried there.
43. The consequence, no doubt, is that on an annualised basis the faculty is more expensive (because the fees are the same) but petitioners will know the risk, and a person who seeks a faculty will be aware of the circumstances. The information supplied by the incumbent, priest-in-charge, or churchwarden on Part B of the form or its equivalent, will give sufficient indication of what the maximum term of the faculty is likely to be if no exceptional case is made out.

(c) General

44. People have a great emotional attachment to the resting-places of the earthly remains of their loved ones. The Court's jurisdiction to consider petitions of this sort and to grant or refuse faculties for the reservation of gravespaces is part of its general jurisdiction over church property and its duty to ensure that all things are done decently and in order, in accordance with the law and with the exhortation of St Paul (1 Corinthians 14.40). The exercise of this jurisdiction by a church court must not under any circumstances be understood as implying that the church regards the place of burial or indeed the mode of disposing of the dead as of any importance in the sight of God. The reunion with our loved ones which we confidently expect is not dependent on our bodies being buried near theirs. The Christian's journey through death to life eternal is wholly unaffected by the fate or location of the body. 'I am persuaded that neither death, nor life, nor angels, nor principalities, nor powers, nor things present, nor things to come, nor height, nor depth, nor any other creature, shall be able to separate us from the love of God, which is in Christ Jesus our Lord' (Romans 8.38-39).

C M G Ockelton MA BD  
Deputy Chancellor  
23 May 2018