

DIOCESE OF SHEFFIELD
In the Consistory Court
Her Honour Judge Sarah Singleton QC
Chancellor

In the Matter of the churchyard at Christ Church Brampton Bierlow
and the Memorial to Irene Poole

Judgment

Summary

1. This Petition which was issued ultimately in May of this year (2021) seeks retrospective permission for the installation of a memorial introduced to the churchyard without permission in November or December 2019 at the site of the grave of Irene Poole (1912-1952).

Background

2. A neutral summary of the background is as follows:
 - 2.1 Irene Smith passed away in March 2019 and her cremated remains were interred in the churchyard within the grave of her mother Irene Poole under arrangements made by the Petitioner Janice Wood who is the daughter of Irene Smith and the granddaughter of Irene Poole.
 - 2.2 The cremated remains of other children of Irene Poole have previously been interred within the grave including those of George Poole.
 - 2.3 A new memorial stone with a matching flat stone slab was introduced at the grave site in November 2019 by Eden Memorials Limited of Barnsley upon the instructions of the Petitioner. No permission was sought for the new memorial and slab which are therefore unlawfully installed and liable to be removed unless permitted by this judgment.
 - 2.4 According to the then church warden, Mr Steven Scutt, the first the Parish knew of the memorial was that it appeared in the churchyard and Mrs Harrod called to complain about the removal of the old memorial and items from it. This account conflicts with that offered by Ms Hollie Parker, a director at Eden Memorials Limited.
 - 2.5 Protracted correspondence and negotiations followed between the Petitioner, Eden Memorials Limited, the Area Dean, the PCC and the Diocesan Registrar resulting in the filing of an incomplete Petition in this matter in September 2020. A completed Petition was ultimately lodged having been signed on 14th May 2021 by the Petitioner.
 - 2.6 Public notice of the Petition was displayed, according to the certificate lodged, inside and outside the church between 13th February and 14th March 2021.
 - 2.7 The PCC of the Church, after a unanimous vote, lodged an objection to the retrospective Petition both because the memorial is said not to be in keeping with the churchyard and

because it was installed without permission. The PCC do not seek to become parties to the application but request that their objection is considered.

- 2.8 The Petitioner and Eden Memorials Limited have submitted evidence in support of their arguments that the memorial is in keeping with the churchyard.
 - 2.9 In July 2021, after the submission of the Petition and documents to the Chancellor, Mr Scutt was asked to arrange the burial of the cremated remains of Vera Poole within the grave. Vera Poole is the widow of George Poole and daughter in law of Irene Poole. That request was made by Mrs Kathryn Harrod, daughter of George and Vera Poole and granddaughter of Irene Poole.
 - 2.10 Mrs Kathryn Harrod informed the church warden that she was not aware of plans for the new memorial for which permission is sought and indicated her objection to it in December of 2019.
3. I gave directions in this matter on 7th August 2021. By those directions I:
- 3.1 Set out my understanding of the background for the Petitioner to confirm or not;
 - 3.2 Provided for Mrs Harrod to have the documents lodged herein and to be invited to respond and/or participate in the proceedings;
 - 3.3 Provided for the Directors of Eden Memorials Limited of Barnsley to be served with the relevant documents and for them to be warned it was possible that I would order them to remove the memorial at their own expense and in any event to pay the Petitioner's and the Registry costs of this matter;
 - 3.4 Directed an explanatory statement of evidence from the Petitioner;
 - 3.5 Provided for the relevant documents to go to the PCC for them to keep their position under review.
4. The Petitioner has confirmed that she is content for this matter to be dealt with by me on the papers and I consider that it serves the overriding objective of the 2015 Faculty Jurisdiction Rules that I should deal with the substantive application on paper. Unfortunately, there remains a dispute between the Petitioner and Mrs Harrod which lies outside the scope of this Petition which I do not propose to resolve. My intention with regards to the Registry costs in this matter may necessitate a further determination by the court but I would not intend to oblige the Petitioner, Mrs Harrod, or the church wardens to be burdened by further involvement in the proceedings.

The Relevant Law

5. Churchyards are consecrated and fall under the authority of the Bishop. Memorial stones (or any item) may not be introduced and installed in a churchyard without the permission of the Bishop, The Bishop delegates his authority over church buildings and churchyards to the Chancellor who is the Ecclesiastical Judge of the Diocese and responsible for all decisions affecting church buildings and churchyards. It is not practical or necessary for every decision concerning a churchyard to be made by the Chancellor via a legal Court process and Chancellors generally delegate their authority to incumbents (priests in charge). Incumbents are the custodians of the church buildings and churchyards. Responsibility for the appearance, care and maintenance of the churchyard lies with the Parochial Church Council. Usually Chancellors set out the parameters of the discretion delegated to incumbents by way of Diocesan Churchyard rules. The present rules in Sheffield were prepared by my predecessor Chancellor McClean in 2012. They are under revision but nothing substantive is

set to change in the new rules. Where a church is without an incumbent the authority to make decisions within the rules rests with the Area Dean for the church.

6. Where an incumbent or the Area Dean is unsure about how to apply these rules to a proposed memorial, they can seek guidance from the Diocesan Registrar who can, in turn, seek guidance about that matter from the Chancellor. I am content, upon such informal approaches, to indicate my likely approach to particular memorials in order that the incumbent or Area Dean may exercise their discretion without the need for a petition and formal proceedings. The Diocesan legal team seek to help people get things right - not to oppress them with regulation. This is particularly so in this area of the Consistory Court's work, where any dispute is likely to cause stress and worry to people who are bereaved and who deserve to be protected from stress and worry. To this end, it is essential that memorial stonemasons understand and respect the law which applies to churchyards and guide the bereaved through the process. Sadly, sometimes that understanding and respect is lacking.
7. Sections 69 and 70 of the Ecclesiastical Jurisdiction and Care of Churches Measure read as follows:-

Section 69

- (1) This section applies if, in proceedings brought by a person for obtaining a faculty, it appears to the court that another person who is party to the proceedings was responsible wholly or partly for an act or default in consequence of which the proceedings were brought.
- (2) The court may order the whole or part of the costs and expenses of or consequent on the proceedings to be paid by the person responsible.
- (3) The costs and expenses which may be included in an order under this section include costs and expenses incurred in carrying out any work authorised or ordered by the faculty, so far as such costs and expenses have been occasioned by the act or default concerned.
- (4) The court may make an order under this section only if it is satisfied that the proceedings were brought no later than six years after the act or default was committed.

Section 70

- (1) In proceedings for obtaining a faculty, the court may issue a special citation to add as a party to the proceedings a person alleged to be responsible wholly or in part for an act or default in consequence of which the proceedings were brought, even if the person lives outside the diocese concerned.

Rule 19.4 of the Faculty Jurisdiction Rules 2015 (as amended) reads:-

- (1) Where any person who is not already a party to faculty proceedings is alleged to be responsible or partly responsible for an act or default in consequence of which the proceedings were instituted the court may issue a special citation adding that person as a party to the proceedings.
- (2) A special citation issued under paragraph (1) must state—
 - (a) that the person is being added as a party to the proceedings in order that the court may consider making an order for costs against that person under section 69 of the Measure; and
 - (b) the grounds on which it is alleged that the person is responsible or partly responsible for the act or default in question.

8. I have also been assisted by the dicta of Chancellor Turner QC in *Re Holy Cross Woodchurch [2020] Ecc Chr 2* and Chancellor Hodge QC *All Saints Calverton [2021] Ecc Oxf 7* as to the principles to be applied when a petitioner seeks to establish that there are other memorials in a churchyard similar to that for which permission is sought and the balance to be struck between a parish seeking to enforce the rules and a petitioner who is set upon a particular form of memorial.

9. The Evidence

The Petitioner

Mrs Wood has written two careful statements in the form of letters dated 1st and 20th September 2021 in response to the 7th August 2021 directions:

Mrs Wood's evidence includes photographs of the contested memorial which show a relatively light grey headstone and a flat stone slab over the gravesite upon which the headstone is set.

Mrs Wood takes strong issue with the PCC's submission that the memorial installed is "not in keeping with the churchyard" and submits photographic evidence, as Eden Memorials have previously, of a number of other memorials installed at the church yard which are, in both form and colour, similar to the memorial unlawfully installed by Eden Memorials Limited at the Poole grave site.

Mrs Wood also argues that the memorial does not infringe the Chancellor's rules.

She states that Kathryn Harrod has not been in touch with her either to complain about the installation of the memorial or to ask that Mrs Harrod's mother's cremated remains be interred at the site of the memorial. She explains that none of the remains of spouses of the children of Irene Poole have been interred at the site. She asserts widespread consultation with other family members.

She explains that she believed that the necessary permissions had been sought for the new memorial and exhibits a receipted invoice of 9th July 2019 to her from Eden Memorials Ltd including an amount of £140 for "Brampton Church Fees".

I do not set out the other assertions as to the intra familial dispute in this matter. This petition does not allow me to consider or decide those sad issues. The first that the Registrar or I was aware of this additional strand of dispute in this case was shortly before the funeral of Vera Poole. I also note the dispute between her and the Reverend John Parker as to what was said to her in July this year (2021) when Mrs Harrod had hoped that her mother's remains could be interred at the grave site. I note in passing that I have no evidence (and would not expect to have any in respect of this Petition) as to any further capacity at the grave site for the cremated remains of other family members.

I also note Mrs Wood's longstanding connections with this church and her palpable indignation at and challenge of the PCC's determination that the memorial is not appropriate for the churchyard.

Mrs Wood's letter of 20th September 2021 replies to the contentions of Mrs Harrod as to the history of the grave site. It is sad for an outsider to note this additional area of dispute and contention between extended family members. I understand from both Mrs Wood and Mrs Harrod's written evidence that it was the wish of Mrs Irene Poole that her children be buried with her and this has happened. During his life George Poole took responsibility for the maintenance of the grave site. I infer from the very fact of this dispute that the question of whether spouses of Irene Poole's children would have their remains buried within this grave has not been expressly discussed between all the surviving affected family members. That and the manner of the removal by Eden Memorials Limited of the edging stones introduced at the grave site by George Poole are substantial causes for resentment and unhappiness. The edging stones were simply deposited in some undergrowth adjacent to the site according to the photographs produced by Mrs Harrod. Mrs Wood agrees that this was wrong and I agree the way in which these stones were left shows little respect for the bereaved family or the churchyard. I pause to note that it may very well be that the edging stones and chippings at the gravesite prior to the

installation of the new memorial illustrated in Mrs Harrod's photographs were themselves introduced contrary to the Chancellors Rules.

Mrs Wood believes that the memorial stone installed has improved the appearance of the grave site and she says this in her letter of 20th September:

"This was supposed to be a loving and lasting memorial, which was also easy to maintain (not just for me) but for everyone else in the family who are too aging...."

I accept that this was Mrs Wood's sincere intention and that the problems that have arisen, for the reasons I have summarized, have caused her sadness and stress.

10. The PCC and Church Warden

Mr Steve Scutt is the Chair of the PCC and was previously a church warden at Christ Church Brampton Bierlow. He has written on behalf of the PCC to the Registrar on 19th February 2021 as follows.

"The PCC of Christ Church Brampton Bierlow discussed the application during an online meeting held on 16th February 2021. The PCC was unanimous in its decision to lodge a formal objection to the memorial on the grounds that it is entirely not in keeping with other memorials in the churchyard, both in terms of size and colour. The full cover slab is inappropriate and the PCC are concerned that once such a memorial is allowed then there will be nothing to prevent other similar memorials being introduced. The PCC also would like to voice its concern that this retrospective application, some 15 to 16 months after the memorial was put in place shows a lack of respect both for the parish of Christ Church Brampton Bierlow and for the rules which govern church yards in this Diocese."

In June 2021 Mr Scutt confirmed that the PCC did not wish to be a party to the proceedings but were content to have their letter taken into consideration.

On 17th September 2021 Mr Scutt, in response to some of the evidence already filed, emailed the Registrar to clarify the history of the installation from his perspective. He confirmed a preliminary conversation on 5th July 2019 with Eden Memorials Limited about the proposed Poole memorial. Later he emailed them with an application form and guidance leaflets. Nothing more was heard until the new memorial was found by Mrs Harrod in December 2019 and, after chasing, an application form was sent on 14th January 2020. No fee was ever paid. The Area Dean advised that the dimensions and colour were outside the rules and that a retrospective faculty was required.

11. Kathryn Harrod

Mrs Harrod has written a letter to the Registrar received on 8th September 2021 setting out her account of this matter. I have already summarized the core elements of the dispute between her and Mrs Wood as to the memorial and as to her and her brother's wish that the cremated remains of their mother be buried in this plot with those of her father George Poole. She has helpfully provided photographs and a history of the grave site as it was before the installation of the contested memorial. It would appear that before that installation the site had been marked by a cube shaped pot for flowers at the grave marked simply "in loving memory of Irene Poole 1912-1952". Ms Harrod says that her father installed the edging stones in the 1980s. He died in 2011 and his dying wish was fulfilled when his ashes were interred there. After his death Mrs Harrod and her brother placed polystyrene and limestone chippings on top of the grave. The original memorial pot was removed and then replaced after the death of Margaret Rowe (daughter of Irene Poole). Mrs Irene Smith died in 2019 and her remains were buried in the plot. Photograph number 4 provided by Mrs Harrod shows the site as it was with several different items placed inside the kerb stones amongst light grey coloured chippings. Those items include two

cube shaped pots for flowers, one of which was the original one for Irene Poole. There are two small angel ornaments, a book shaped ornament, a small stone, and a heart shaped ornament. Several pots with flowering plants and a solar power unit can also be seen.

Mrs Harrod says that she and her family were not consulted about the installation of the new memorial although Mrs Vera Poole had been visited by Mrs Wood to bring her some of the items from the grave for safe keeping. Mrs Wood has interpreted her lack of demur as consent to the plans to upgrade the memorial apparently agreed by all the other direct descendants of Irene Poole.

Mrs Vera Poole was upset by the stone slab over the grave. She thought it would prevent her remains being buried in the grave which appeared to her to seal up the site. Vera Poole died in June 2021. Her cremated remains have not yet been buried. I understand Mrs Wood's assertion to be that no other spouse of Irene Poole's children has had their remains buried in this grave and there remains a sad dispute, not the subject of this Petition but not irrelevant, as to whether Mrs Vera Poole's remains should be buried at the site. Should that dispute not be resolved and require a further Consistory Court application, I intend, subject to any reasoned objection, to reserve it to myself. However, I would strongly urge Mrs Wood and Mrs Harrod and the other affected relatives to consider an alternative means of resolving any ongoing dispute.

Mrs Harrod also explains, as I have already set out, that when she and her brother visited the grave in December 2019 they found the old kerbstones and the chippings thrown to one side in the undergrowth where she says they remain. Her photograph number 6 shows this quite clearly.

12. Eden Memorials

The evidence of Eden Memorials comes in a signed communication from Hollie Parker, Director, dated 27th August 2021. It read as follows (I have underlined some of the more contentious assertions and incorporated my comments aligned to the right in italics):

"Mrs Wood came into our showroom over a couple of years ago to order a memorial for her family.

I read the Dioceses of Sheffield rules and regulations and ensured that I followed all the guidelines set out. I reached out to the vicar at the time "Steve Scutt" who assured me that he did not see any problems with the proposed memorial.

*Mr Scutt was not the vicar at the time. He was the churchwarden.
He accepts a conversation of a preliminary nature took place but denies suggesting that
he did not see any problem with the proposed memorial.*

I submitted the permit form as I always did and when the memorial arrived we fitted the memorial.

*Mr Scutt says no such application was received until January 2020 after the memorial was
installed and challenged. He also says that no fee was ever paid. This is despite the fact
that Mrs Wood was invoiced £140.00 for such a fee.*

As I have always said from day one I thought the permit had been passed. I was new to the job at the time and made a mistake "Human Error" and I have apologised throughout this process. This was not done through ignorance or disrespect for the church/diocese or anyone involved.

Ms Parker does accept that the memorial was installed without permission.

The memorial does not look out of place. It's near the path side and does sit within all the rules and regulations. There are memorials all over the churchyard which do not meet the rules and regulations. Kerb surrounds are present throughout, there are black memorials,

ones that exceed the dimensions set out in the guidelines. The new vicar of the parish visited the churchyard and said he doesn't see a problem in the memorial.

In my opinion this memorial has been in place almost two years full and I am in complete disbelief that this is still an issue. I made an error and one that has put Mrs Wood through a lot of stress. No one has complained about the memorial, we have continued to provide you with everything you have ever asked for and I do respect there are rules set in place but this by all accounts was never done on purpose. We are a family run business with over 25 years' experience and respect every authority we work with in.

I would like to take this opportunity to apologise for making a mistake but at the end of the day we are all human and in the grand scale of things there are a lot more serious things happening.

Mrs Wood is going through a very difficult time and this is one of the last things she should be dealing with.

If there is anything else I can do to help please let me know.

Eden Memorials do not accept paying for the legal fees."

The underlining is mine. Unfortunately, these passages undermine the acceptance of responsibility, the apology and the assertion of respect for the rules or the law. The necessary Petition was not received correctly completed until May 2021 following the receipt of an incomplete one in September 2020. Protracted correspondence by the Registrar's office at the expense of the Diocese was required to secure compliance. Delay has occurred because of repeated failures by Eden Memorials to abide by the rules or follow correct procedure following their breach. Simple human error the original breach may have been but protracted inertia since has made matters worse. Plainly the defaults have not been Mrs Wood's but those of Eden Memorials who have undertaken this matter on her behalf, as would be expected.

Conclusions

13. The memorial

The dimensions of this memorial, so far as I can see, are not greater than those permitted by the Diocese of Sheffield rules.

The light grey colour of the marble memorial lies outside the rules but it is not so far out of keeping with other memorials in the churchyard as to render it unacceptable. The colour is closer to traditional stone memorials than black marble of which there are, unfortunately, several examples shown in the evidence submitted.

The flat slab is an unusual design for this church yard. Mrs Wood's still photographs show one similar and some with kerbstones on top of flat slabs. The design, however, is not unattractive or jarring in its appearance and I accept that it is likely to make maintenance easier for Mrs Wood and other family members particularly with regard to keeping the site in this particular area of the churchyard tidy and free of weeds.

Overall, I consider that this memorial has improved the appearance of this grave plot over what is shown in Mrs Harrod's photographs of what was there before. I hope that my description of Mrs Harrod's photographs is sufficient explanation of that conclusion.

Had a proper procedure been followed in this case it may well have happened that an informal approach to me would have been made before the memorial's installation for a preliminary view as to my likely approach were it to be the subject of a faculty petition. I think it likely that I would have offered a

neutral preliminary indication in favour of the proposed memorial. The breaches of rules, law and process should not change that evaluation in and of themselves.

The defaults, breaches and recalcitrance of Eden Memorials Limited both conceded and apparent have caused unnecessary delay which make it particularly frustrating that they should advance delay and Mrs Wood's distress in favour of the Petition being allowed. I do, however, take the delay into account. This memorial has now been installed for almost two years, an ordered removal after such a period would cause greater distress.

In all the circumstances I direct that a retrospective Faculty issue to permit this memorial to remain in the churchyard. I have taken into account the views of the PCC and Mrs Harrod and have some considerable sympathy with their perspective much of which is shared by me. However I do not consider that the defaults which have caused the issues here, however provoking, should detract from the essential evaluation of the memorial and whether it should be permitted. My essential evaluation is to permit it although I do so with deference and respect for the decision making of the church warden, the PCC and the clergy.

14. The dispute about Vera Poole's remains

Although this sad dispute is relevant to the history of this matter, I cannot resolve it within these proceedings. I offer strong encouragement to the bereaved family members to seek to resolve it by agreement and my hope that another set of Consistory Court proceedings on the issue is unnecessary. I offer a neutral preliminary indications in respect of that dispute as follows:

- 14.1 In response to Mrs Wood's suggestions in respect of this dispute, it is unlikely that a Faculty would be issued to permit an exhumation of George Poole from the grave to allow his remains to be buried with Vera Poole's elsewhere;
- 14.2 The fact that the remains of other spouses of Irene Poole's children were not buried in this grave would not prevent the burial of Vera Poole's remains there if that is practical and possible.

There may be many other facts and matters relevant to the fair and lawful resolution of this dispute of which I am unaware. I do hope that the family might be offered pastoral support in respect of this issue.

15. Costs and Eden Memorials Limited

The evidence, as it stands, establishes a number of unsatisfactory aspects in respect of Eden Memorials Limited in respect of this memorial:-

- 15.1 They failed to obtain permission for the memorial from the PCC or Area Dean.
- 15.2 Although they assert that such permission was asked for they agree that it was not received by them.
- 15.3 They installed it without permission.
- 15.4 They cleared away the old kerbstones and chippings and left them tipped into the undergrowth of the churchyard.
- 15.5 They invoiced Mrs Wood £140 for "Brampton Church Fees", an amount which has apparently not been paid to the Parish.
- 15.6 The Diocesan Registrar and her office wrote and telephoned Eden Memorials Limited repeatedly before the Petition was finally submitted correctly in May 2021. This incurred costs over and above those which would be incurred on a standard matter.

15.7 Eden Memorials Limited paid the standard Faculty Fee to the Registry. I assume that they have not invoiced their client for this. The pre-petition costs amount to £827.04 including VAT. This does not include the standard petition fee of £302.00.

15.8 The issues concerning this matter required additional work at the Registry following my directions of 7th August 2021. The costs of the ancillary work amount to £564.48 including VAT.

In the circumstances I do propose to issue a Special Citation alongside my directions that the faculty sought should be issued to make Eden Memorials Limited a party in order that I can consider ordering them to pay a substantial proportion of the costs of this matter.

HHJ Sarah L Singleton QC
Chancellor of the Diocese of Sheffield
31st October 2021