

**Neutral Citation Number: [2025] ECC B&W 2**

**In the Consistory Court of the Diocese of Bath and Wells**

**Re: Chew Magna Churchyard**

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**Judgment**

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Introduction

1. Although its facts fall within a small compass, this matter gives rise to an important point of principle which needs to be addressed in a reserved judgment. It arises from a report made to the Registry by the Reverend Richard Greatrex, Rector of the Church of Chew Magna, in respect of a memorial stone recently introduced in the churchyard there. The report dated January the 23<sup>rd</sup>, 2025 sets out details of contraventions of the Diocesan Churchyard Regulations which are outlined in paragraph 5 below.
2. In this Diocese it is the practice, whenever possible, to resolve issues concerning churchyard memorials by correspondence leading to directions given by the Chancellor. In this way applicants are spared the expense and delay of formal faculty proceedings. Following consideration of the Rector's report Mrs Sue Cox, who had commissioned the memorial in question, was invited to make representations in writing; her response is dated February 12<sup>th</sup>, 2025. The Rector provided further observations on February 20<sup>th</sup>, 2025. The Registry also wrote to Allstone Memorials, the memorial masons concerned, but received no reply. The judgment is based upon the documents submitted to the Registry.

The Illegal Conduct

3. The Rector's report has to be understood against the background of the Diocesan Churchyard Regulations, under which incumbents and other clergy have the power delegated to them by the Chancellor to authorise the introduction into churchyards of memorials complying with the designs and specifications set out in the Regulations. For this purpose the memorial mason has to complete an application (known as a "blue form" because of its colour) which the minister of the parish is responsible for assessing. If the proposal complies with the Regulations in every respect, permission is given under the minister's delegated authority; if not, the application is referred to the Chancellor (via the Archdeacon) for directions. Although the giving of such delegated powers is soon to be replaced by an Additional Matters Order issued under Rule 3.4 of the Faculty Jurisdiction Rules 2015, in substance the procedure will be unchanged.
4. It is implicit in the process outlined above that the application must identify any feature which may depart from the strict requirements of the Regulations; that the minister's

powers are limited to applications which comply with the Regulations; and that works in the churchyard may be undertaken only after the minister's permission has been received by the memorial mason.

5. The conduct of Allstone Memorials fell short in two respects. First, although the application identified "a poppy design" as a decorative feature, no indication was given of the intention to colour it in red with a green stem. The Regulations permit only colouring in black, white, silver or gold. Had proper disclosure of the proposal been given, the Rector would have been bound to refuse permission and to refer the application to the Chancellor. Secondly the application reached the Rector's office on December 16<sup>th</sup>, 2024; on December 17<sup>th</sup> (the Rector's day off) the memorial with its coloured poppy design was erected in the churchyard before the Rector had considered the application and without any permission from him. Accordingly there was an obvious breach of ecclesiastical law both by installing a memorial without permission and by including a coloured design in contravention of the Regulations.
6. During the subsequent weeks the Rector made commendable but unsuccessful attempts to secure at least retrospective compliance with the law. Thereafter he rightly referred the matter to the Registry, a course which should be adopted by other members of the clergy placed in similar difficulties.

#### The Duties of Monumental Masons

7. Those in the business of providing memorials for churchyards owe duties both to their clients and to the Church.
8. The duty to the client arises from the contract with the memorial mason. It will involve the exercise of reasonable care and skill in the provision of services relating to the design, construction and installation of the tombstone or other memorial. Bereaved individuals or families are likely to be unaware of the restrictions in the Churchyard Regulations; confronted by the considerable variety of styles, in many different stones and with numerous embellishments, which appear in catalogues or on websites, they may well suppose that they have an unrestricted choice. It is for the mason to correct such misunderstandings and to ensure that the application, when eventually made, either complies fully with the Churchyard Regulations or identifies any feature which falls outside the minister's delegated authority. As the present circumstances demonstrate, a failure in this respect will give rise to distress and disappointment.
9. The duty owed to the Church is regulated by ecclesiastical law. By law, the freehold of the churchyard is vested in the incumbent of the parish, while a licenced priest in charge has a possessory interest; in either event the churchyard is under the control of the minister who may exclude persons (such as monumental masons) without a legal right of entry. Furthermore, there is no legal right to erect a tombstone or other memorial on a grave, even though out of respect for the deceased the marking of graves by a stone is generally permitted without question. It follows that if arrangements for the introduction of memorials in churchyards are abused by memorial masons the freedom to undertake work there may be curtailed or even withdrawn.
10. It is within the power of a minister (ideally after consultation with the Chancellor) to prohibit a memorial mason from working in the churchyard of his or her parish, on the grounds of a failure to comply with the Churchyard Regulations or other

unacceptable conduct. At another level, the Chancellor may exclude a mason from the scope of the minister's delegated authority, so that all applications from that mason have to be referred directly to the Chancellor, who may require an application to proceed by way of petition for a faculty. Where an unlawful act in relation to a memorial (for example, the introduction of a memorial without permission) has been committed, Sections 68(3) and 69 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 enable the Consistory Court, as well as requiring works rectifying the illegality to be undertaken, to make a costs order against the party responsible for the breach of the law. There is accordingly a range of legal remedies available to enforce compliance with the Churchyard Regulations.

### The Relevance of Precedent

11. In her written representations Mrs Cox drew attention to various other contraventions of the Churchyard Regulations which she relied on to justify the presence of the coloured poppy on the memorial. Such non-compliance with the Regulations cannot, however be relied on for this purpose. Either it was authorised on pastoral or other grounds as an acceptable departure from the Regulations; or there was illegal contravention which for some reason had passed unnoticed or without challenge. Neither explanation is capable of giving rise to a precedent whereby the Regulations can be disregarded. Equally the Rector's concern that the presence of the coloured poppy amounts to a precedent for similar manifestations in the churchyard, is misplaced. Even if the colouring or part of it is allowed to remain, this represents an exceptional course of action which is unlikely to be repeated.

### Conclusion

12. It is unfortunate that the material in the Registry file points to a wilful attempt by Allstone Memorials to override the Regulations, both by including an unauthorised element in the design and by installing the tombstone without waiting for the Rector's decision to be received. There is no reason to doubt the explanation given by Mrs Cox who, after referring to the provision in the Regulations concerning colouring, wrote:-

“We were, as I think you understand, unaware of this regulation and were guided (as now it appears wrongly) by the memorial mason that a “red poppy” was acceptable.”

Mrs Cox was not, of course, directly involved in the installation of the tombstone which was in the hands of Allstone Memorials.
13. The result, again in the words of Mrs Cox, is not surprising.

“This whole situation has and continues to cause me and my family a huge degree of stress and anxiety - we completely trusted the memorial mason for his guidance, expertise and advice. ....”

The Rector has also been obliged to bear the burden of attempting to balance the needs of Mrs Cox and her family against maintaining the appearance of the churchyard and the integrity of the Regulations.
14. Taken in isolation, the conduct of Allstone Memorials would demand a rigorous response. The interests of Mrs Cox and her family have, however, also to be given

due weight; they were innocent parties caught up in an affair not of their making. In her representations Mrs Cox explained that Mr Tony Cox her late husband was both a regular worshipper and an active member of the British Legion after his service in the British Army. He was involved for 15 years in collecting funds for the British Legion. The desire of his family to include the recognised emblem of poppy on the memorial is, therefore, understandable.

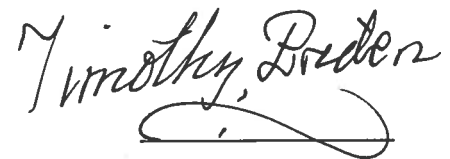
15. It is a further complication the grave is in a prominent position in the churchyard, prompting the Rector to write,

“My concerns are both that red/green colouring is not allowed by the Diocesan Rules and that the combination of red and green stands out quite sharply. If there was to be a compromise, might it be to remove the green.”

With some hesitation, and without in any way condoning the unacceptable behaviour of Allstone Memorials, I have decided that the suggested compromise is appropriate given the significance of the contribution made by Mr Cox to the community and the distress caused to Mrs Cox and her family while a resolution was being sought. As indicated in paragraph 11 above, the present decision is made on compassionate grounds and must not be interpreted as a precedent for future deviations from the Diocesan Regulations.

16. Mrs Cox has therefore my authority without the requirement of a faculty to retain in Chew Magna churchyard the tombstone relating to Mr Tony Cox her late husband on condition that within 42 days (or such further time as the Court may allow) the green colouring is removed and either that part of the design is left uncoloured or painted in a manner permitted by the Regulations, the red element of the poppy design remaining unchanged. In default of compliance with the condition further directions will be given.

Dated this 19<sup>th</sup> day of March 2025.



Chancellor