

IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY

COVENTRY: HOLY TRINITY

RE: A MEMORIAL TO BRENDA TAYLOR

ON THE PETITION OF RONALD FREDERICK TAYLOR

JUDGMENT

- 1) Holy Trinity is a mediaeval church in the city centre of Coventry. It has a comparatively small churchyard containing a considerable number of memorials some of which are in the form of upright headstones while others are small plaques set into the grass. The church is in a prominent position very close to Coventry Cathedral. The parish boundary encompasses part of central Coventry including the cathedral and parts of Coventry University. I suspect that the residential population of the parish is quite small (albeit supplemented by some student accommodation). However, the church is regarded as “their” church by a large number of Coventrians.
- 2) The churchyard was closed by an Order in Council dated 1st May 1855. On 2nd August 1956 a faculty was issued authorising the use of “a suitable portion of the churchyard for the interment of ashes of the dead (such persons having been members of the congregation of Holy Trinity Coventry aforesaid)”.
- 3) On 23rd June 2007 the Parochial Church Council passed a resolution implementing a policy in respect of the interment of cremated remains. The material parts of the resolution are:

“8.2.1 Council resolves the following with respect to the interment of cremation ashes:

8.2.1.1 that for new plots, only the ashes of those on the electoral roll at their death and whose name has been on the roll continuously for at least the last

ten years, should be allowed to be interred in the churchyard with exceptions decided by the Standing Committee. ...

8.2.1.2 that with immediate effect no further memorial stones are permitted. Existing stones may be replaced in the event of further interments in the plot

...

8.2.1.4 to begin the process of creating a garden of remembrance.”

- 4) I understand that this policy has been applied since June 2007 although I do not believe that a garden of remembrance or other formal area for the burial of cremated remains has been created pursuant to that resolution. Indeed, the 1956 faculty envisaged the creation of such an area would follow the grant of the faculty. It appears that the faculty has been interpreted as permitting interments throughout the churchyard.
- 5) The Parochial Church Council Secretary, Keri Husband, has explained that the reason for adopting this policy was that “Holy Trinity received a number of requests for burials from people not connected to the church or who had been members for a short time (with the intention of being buried there). Due to space issues it was decided by the PCC that only longstanding members of the church might be buried in the graveyard.”
- 6) Brenda Taylor died in March 2016 aged 90 and there was a funeral service in Holy Trinity the following month. However, her cremated remains have not yet been interred. Her widower, Ronald Taylor, wishes to inter Mrs. Taylor’s cremated remains in a new plot in the churchyard and to install a memorial at the point of interment. He petitions seeking a faculty for such a memorial. The memorial proposed is in wholly unexceptionable terms recording her date of death and age and describing her as a “dear wife and mother”.
- 7) At the date of her death Mrs. Taylor was not resident in the Holy Trinity parish. However, she was on the church’s electoral roll and had been since February 2013. Moreover, she and her husband had a longstanding connexion with Holy Trinity. Mr. Taylor was born in the parish in 1924. Mr. Taylor’s great grandfather

was baptised, confirmed, and married in the church as was Mr. Taylor's mother. Mr. Taylor and his parents lived in the parish and worshipped in Holy Trinity. They had to leave the parish when their home was destroyed by German bombing. Even after moving out of the parish Mr. Taylor and his family continued to worship at Holy Trinity. Mr. Taylor is able to point to a history of committed service to this church including various donations of communion silver. It is noteworthy that the then vicar of Holy Trinity was Mr. Taylor's chaplain when Mr. Taylor was the Master of the Coventry Freeman's Guild. The cremated remains of Mr. Taylor's parents and of his brother and sister in law are all interred in the churchyard of Holy Trinity. They are in two plots each marked with a small memorial plaque.

- 8) The incumbent and the Parochial Church Council are content for Mrs. Taylor's remains to be interred in the plot already containing the remains of Mr. Taylor's parents and for that to be interment on the footing that Mr. Taylor's own remains will in time be interred in that plot. They are also content for the existing memorial on that plot to be replaced by a memorial commemorating Mrs. Taylor as well as her parents in law. They contend that if Mrs. Taylor's remains are interred in a separate plot then there should be no memorial at that point in line with paragraph 8.2.1.2 of the resolution set out above.
- 9) Initially the competing positions did not appear clearly from the documents before me and I sought clarification. However, the position now is that the difference between the stance of Mr. Taylor and that of the incumbent and the Parochial Church Council is that the former seeks interment in a new plot with a memorial at that point whereas the incumbent and council contend that if there is an interment in a new plot there should be no memorial.
- 10) The Diocesan Advisory Committee has recommended approval of the Petition. The Notification of Advice was accompanied by a note explaining that the Committee "felt that due to the long association of the family with this church the recent non-attendance was a relatively minor point." The competing positions were not entirely clear at the time the Committee considered this matter and I suspect that the Committee was under the impression that the Church Council was opposing interment as well as the memorial.

11) The public notice resulted in a letter of objection from Lynn Jones. Mrs. Jones says that she is objecting because “the PCC took the decision not to take such requests some years ago. There is very limited space left in the churchyard and committed and long standing members of Holy Trinity would in the future find it difficult to obtain space themselves.” The nature of this objection is somewhat puzzling because it appears that Mrs. Jones is objecting to the interment of Mrs. Taylor’s remains in a separate plot rather than to the installation of a memorial on such a plot (which is the point of contention between Mr. Taylor and the Parochial Church Council). It may be that Mrs. Jones misunderstood what was being proposed and also the nature of the differing positions. Mrs. Jones has stated that she does not wish to become a party opponent. I have considered her letter but can give it little weight in circumstances where it appears to be based on a misunderstanding as to those matters in respect of which there is dispute between the Petitioner and the Church Council. It also seems to overlook the facts that Mrs. Taylor was on the electoral roll of Holy Trinity at the time of her death and that Mr. Taylor has a longstanding connexion with the church.

The Procedural History.

12) Mrs. Jones confirmed that she did not wish to become a party opponent. The incumbent and PCC of Holy Trinity have also declined to become parties. However, Keri Husband has provided information explaining the approach which has been taken since the resolution of 2007 and the motivation for that resolution.

13) I concluded that it was expedient for this matter to be determined on the basis of written representations. Mr. Taylor consented to that course and has provided submissions which I will address below.

The PCC’s Policy on Interments.

14) In this case it is accepted that Mrs. Taylor’s remains can be interred in the churchyard. The issue is whether there should be a memorial if that interment is in a separate new plot. It follows that the policy set out in paragraph 8.2.1.1 is not directly in issue in this case. However, it is appropriate that I set out the considerable reservations which I have as to that policy. The policy purports to limit those whose remains can be interred in the churchyard to those who were not only on the electoral roll at the time of their death but had been on that roll

continuously for the preceding ten years. It is apparent from Keri Husband's explanation and from Mrs. Jones's letter that this is the approach which has been adopted.

- 15) The faculty of 1956 envisaged that interments would be limited to the cremated remains of those who had been "members of the congregation of Holy Trinity" but did not impose any greater restriction. There is a potential ambiguity in the terms of the faculty. On one view the words "persons having been members of the congregation of Holy Trinity Coventry" could be seen as referring solely to those who were members of the congregation at the time of their death. Alternatively, it could be seen as a reference to those who had been members of the congregation at any time in their lives. Of course, the words a "member of the congregation" are not a legal term for the purposes of Ecclesiastical Law. One can identify those who are the members of a congregation at a particular service but that is a matter of factual identification and an Anglican parish church does not have a separately defined "congregation". In context the reference in the faculty should probably be taken as a reference to persons who participated in the worshipping life of Holy Trinity with a degree of regularity. For present purposes I need not decide whether such participation could have been during a period of time which ended before the death of the relevant person. That is because the Parochial Church Council do not oppose the interment of Mrs. Taylor's remains and she was on the electoral roll at the time of her death.
- 16) Even if the narrower interpretation of the faculty is adopted with the category of those falling within its scope being limited to those who were regular worshippers at the time of death it is apparent that the Church Council's policy imposes a restriction going substantially beyond the terms of the faculty. The Church Council has gone further and has required membership of the electoral roll for a continuous period of 10 years' concluding with the death of the person in question. I am conscious that the point is not in issue in this case and that I have received no submissions on this aspect of the matter. Nonetheless I have serious doubts as to the appropriateness of such a policy imposing as it does a restriction greater than that in the faculty.

17) The legal position in respect of churchyards which are open is that provided there is space in a churchyard at the time when interment is sought then all parishioners; all those who are on the electoral roll at the date of their death; and all those who die in the parish have a right to be interred in the churchyard. Neither the incumbent nor the Parochial Church Council are entitled to refuse the interment of persons falling in any one of those categories. It is not lawful to purport to restrict the right of burial to those who have been on the electoral roll for a particular period of time. These rights are long-established. For the historical position see *Ayliffe's Parergon juris canonici anglicani* 132 "every Christian that dies in the communion of the Church has a right of being buried in the churchyard"; *Phillimore's Ecclesiastical Law* 2nd Ed 653 "an information was grantable against a parson for opposing the burial of a parishioner in the churchyard" (citing *R v Taylor* Serj. Hill's MSS); and *Maidman v Malpas* (1794) 1 Hag Con 206 at 208 (per Sir William Scott) ". All parishioners have a right to be buried in the church-yard without leave of the incumbent". The modern position is summarised at *Hill Ecclesiastical Law* 5.51 explaining that the right is the corollary of the minister's duty under Canon B38 para 2 and that the extension of the right of interment to those whose names were on the electoral roll at the date of death was effected by Section 6 (1) of the Church of England (Miscellaneous Provisions) Measure 1976. Section 3 of the Church of England (Miscellaneous Provisions) Measure 1992 provides that a person who has the right of burial in a churchyard shall have the right of burial of his or her cremated remains therein. The rights of parishioners, those on the electoral roll, and those who die in the parish cannot be subordinated to the wishes of long-standing worshippers. A resident of a parish who has never entered the parish church in his or her life is entitled to be buried in the churchyard of that parish even if such burial has the effect that there is no space for the subsequent burial of a regular worshipper.

18) I remind myself that this churchyard is closed and so the general legal rights do not apply. Nonetheless the extent of the rights of burial in an open churchyard and the inability of incumbents or church councils to limit those rights are relevant when considering the approach to the rights given by the 1956 faculty. In particular the approach in respect of open churchyards is an indication that it is not open to the Church Council or incumbent to impose restrictions over and

above those set out in the faculty. Moreover, the policy appears to overlook the fact that a person who is not resident in a parish but who seeks to be on the electoral roll has to declare that he or she has “habitually attended public worship in the parish during a period of six months prior to enrolment” (Church Representation Rules 1 (2) (b) and (c)). It follows that for non-parishioners admission to the electoral roll is limited to those who have already participated in the worship of the church and have done so habitually for a period of time. Moreover, the Church Representation Rules do not distinguish between those on the electoral roll giving different rights to those who have been on the roll for a period of time from those who have just joined. Indeed, such a division would be questionable theologically and might be thought to amount to an attempt to create different grades of church member. At the very least these matters mean that the policy of the Church Council can carry little weight to the extent that it purports to impose such restrictions.

The Law governing the Erection of Memorials.

- 19) Even where there is a right to interment in a churchyard there is no right to interment in a particular place in that churchyard nor is there is any right to a memorial unless either a faculty has been granted or the incumbent gives permission for a memorial in circumstances where the Churchyard Regulations have authorised the incumbent to give such permission. Such permission or a faculty is needed for a memorial. See *Maidman v Malpas* (1794) 1 Hag Con 206 at 208 and *Re Woldingham Churchyard* [1957] 1 WLR 811.
- 20) A faculty can be granted authorising a memorial even if the installation of the memorial is opposed by the incumbent and the Parochial Church Council. See *Rugg v Kingsmill* (1868) 8 Moo PCNS 79 at 88; *Re Little Gaddesden Churchyard* [1933] P 150; and *Re St Mary's Andover* (1974) 2 CCCC 13.
- 21) It follows that in this case I have power to grant a faculty authorising the proposed memorial at the point of the interment of Mrs. Taylor's remains in a new plot notwithstanding the opposition of the incumbent and the PCC and notwithstanding the policy adopted in 2007.

- 22) What account is to be taken of that policy and of the stance of the Parochial Church Council? The consistory courts have long accepted that considerable weight is to be given to the views of incumbents and of local church councils. This is because of the responsibilities given to incumbents and because of the standing of church councils as the elected representatives of the parishioners. Moreover, they are well-placed to make assessments as to the appropriateness of particular proposals and their suitability or otherwise in particular local circumstances. Although weight is to be given to those views they are not conclusive. See *Groves & Wright v the Rector, Parishioners, and Inhabitants of Hornsey* (1794) 1 Hag Con 188.
- 23) In my judgment the weight to be attached to the views of the incumbent and the Parochial Church Council is enhanced when the question to be decided relates to the management and operation of a churchyard. Careful judgement is often required in assessing what is appropriate in a particular churchyard. There can be a need to balance differing and sometimes competing considerations. For example, a balance may need to be drawn between the comfort derived by those who are able to reserve a gravespace and the need to ensure that such reservations do not prejudice the rights of the parishioners as a body to be interred in churchyard of the parish church. Judgement is often required in assessing the style of memorial appropriate in a particular setting and in achieving the proper balance between a desire to commemorate the departed with individual memorials and the need to prevent a churchyard becoming crowded with an excess of memorials. These and other issues arising from the operation of churchyards are matters where there is no single and universal correct answer. Different solutions will be appropriate in different churchyards. These are matters where pastoral considerations and the circumstances of the particular churchyard will carry especial weight. The incumbent and the Parochial Church Council are likely to be particularly well placed and qualified to carry out the assessment of such pastoral considerations and local circumstances.
- 24) I have previously explained the approach which I believe it is appropriate for the consistory court to take in cases where a Parochial Church Council has adopted a policy in respect of whether to support or oppose the reservation of

gravespaces. That approach is based on the difficulties and complexities involved in the operation and management of churchyards and on the advantages which an incumbent and church council have in assessing local needs in relation to the churchyard. It is also based on the need to act fairly in respect of those who have subordinated their own wishes to the collective wisdom of the elected council and who have complied with the policy.

25) I set out that approach in *Blithfield, St Leonard* (Lichfield 2014) saying at [15] and [16]:

15. ... I turn to consider the weight to be given to a Parochial Church Council policy of resisting reservations. I have already explained that there is scope for a legitimate difference of opinion as to the appropriateness or otherwise of allowing reservations. A policy of opposing the reservation of gravespaces is not inherently unreasonable. As Coates Dep Ch indicated any given Parochial Church Council is likely to have a better understanding of local needs and wishes than the Court will have. It follows that where such a policy has been adopted by a Parochial Church Council the Court should take account of it and give it considerable weight in the exercise of the Court's discretion.

16. Such a policy cannot be conclusive and cannot remove the Court's discretion. Moreover, if the policy were shown to have been the result of an illegitimate hostility to a particular person or to have been based on a misunderstanding of the appropriate provisions then it would have no weight. Even a legitimate policy cannot be conclusive because there will always be the possibility of particular (and potentially unforeseen) circumstances which justify an exception. However, in my judgment it will only be where there are exceptional circumstances that the Court will be justified in departing from the policy adopted by a Parochial Church Council. Anyone seeking to reserve a gravespace in the face of such a policy will need to show that their case is markedly out of the ordinary. The need for exceptional circumstances flows not just from the respect which the Court should give to the views of the Parochial Church Council but is also a matter of fairness. Where such a policy has been adopted by a Parochial Church Council there are likely to have been a number of people who have accepted that a gravespace cannot be reserved even though their preference would have been for a reservation. Fairness to those who have subordinated their own preferences to the decision of the elected Council requires that the Court should only allow reservations in exceptional cases. Failure to do so would run the risk of those who are forceful and articulate being able to circumvent rules which others have followed. ..."

26) I applied that approach in *Walsall Wood, St John* (Lichfield 2015). Turner Ch confirmed his general agreement with this approach in *Grappenhill St Wilfrid* (Chester 2015). In *Allithwaite St Mary* [2016] Ecc Car 1 Tattersall Ch adopted the

approach that where there was a parochial policy opposing reservation of gravespaces the court would require exceptional circumstances before a faculty for such reservation would be granted. In *Standish St Wilfrid* [2017] Ecc Bla 2 Bullimore Ch accepted the appropriateness of such an approach in general terms although finding in that case that there was in fact no parochial policy in relation to the reservation of gravespaces.

27) In this court I have already applied that approach to a case where there was a parochial policy in relation to memorials albeit setting out the position in fairly short terms. Thus in *Stratford upon Avon, Holy Trinity* (2015) I said at [9]:

“Where a Parochial Church Council acting together with an incumbent has adopted a particular policy as to what is to be done in a churchyard then very considerable weight should be given to that policy. Unless that policy is unreasonable or in some way wrong in principle then exceptional circumstances will be needed to justify departure from the policy. This is particularly so where the policy has been applied consistently for a number of years. Moreover, in deciding whether the policy is unreasonable the Court will attach weight to the position of incumbents with their knowledge of and responsibilities for the church and to the position of the Parochial Church Council with its local knowledge and its status as the elected body with democratic validity. Nonetheless no parish policy can remove the Court’s discretion and there will be exceptional circumstances which justify a departure from even the most reasonable of policies.”

28) I have reflected further and have concluded that in general terms the approach taken to parochial policies in respect of the reservation of gravespaces is also applicable to such policies as to whether memorials should be permitted in a particular churchyard. The considerations which justify taking that approach in relation to policies in the former category apply with equal force to those in the latter. Accordingly, where a Parochial Church Council has after proper consideration adopted a reasonable policy opposing the introduction of further memorials very considerable weight is to be given to such a policy such that although the court retains a discretion a petitioner seeking a memorial inconsistent with such a policy will need to show that his or her case is exceptional in some way.

The Position in the current Case.

29) What is to be done in this case? The first questions which arise are whether the policy adopted in 2007 is one to which the Court should accord weight and if so

how much. In *Re West Pennard Churchyard* [1992] 1 WLR 32 Newsom Ch stated in strong terms that the policy adopted by the Parochial Church Council there could have no bearing on his approach to the case. The policy there related to the reservation of gravespaces but it was held to be irrelevant because it was based on a mistaken understanding of the law. The misunderstanding in that case was a failure to appreciate that there a number of persons who have a right to burial in a churchyard and whose rights cannot be denied by an incumbent or church council. That is not dissimilar to the position here where the members of the Parochial Church Council appear to have believed that they were entitled to impose greater restrictions on those whose cremated remains could be interred than had been imposed by the faculty.

30) The key motive for the policy which was adopted at Holy Trinity in 2007 was to restrict interment to those with a longstanding connexion with the church. That was of at best questionable legality and for the reasons set out above in my judgment it exceeded the powers of the incumbent and Church Council. This means that that aspect of the policy which sought to impose a ten year rule in respect of interments can have little if any weight with the Court.

31) I have considered whether the policy set out in paragraph 8.2.1.2 of the resolution namely the prohibition on new memorials should be seen as a separate policy which is not affected by the flaws in the policy relating to interments. This is a somewhat crowded churchyard and a policy of resisting further memorials is one which could readily be justified and seen as sensible. I have concluded that this policy is to be regarded as separate from that on interments. In those circumstances it is not to be seen as wholly irrelevant to the exercise of my discretion. The facts that such a policy was adopted by the Parochial Church Council and that it appears to have been applied in the time since its adoption are relevant considerations and to be taken into account in the assessment of what is appropriate here. Nonetheless, the weight to be attached to the policy is markedly reduced because it appears to have been a subsidiary or supplementary policy to that of restricting interments and there must be a risk that it was to some extent influenced by the same erroneous view of the law. Additionally the weight to be given to the policy is to be reduced because of the

apparent failure to progress the proposed creation of an Area for the Burial of Cremated Remains. This failure is relevant to the weight to be given to the “no memorial” policy because if such an area had been created a formal approach would have been likely to have been adopted either of having individual memorials in such an area or of having some form of collective memorialisation of those whose remains are interred in the area. The current situation is that the Church Council opposes the installation of new individual memorials but apparently has not put in hand any arrangement for the collective memorialisation of those interred.

- 32) It follows that some weight is to be given to the Church Council’s policy but that weight is reduced and this is not one of those cases where exceptional circumstances are needed to justify the Court in authorising a memorial contrary to that policy.
- 33) The balancing exercise here is not an easy one. The Church Council has adopted a policy on memorials and although affected by a mistaken understanding of the law the policy is not intrinsically unreasonable. Moreover, that policy appears to have been applied since 2007. In the circumstances of this case arrangements can be made for the interment of Mrs. Taylor’s remains. In addition it is accepted that if those remains were to be interred in the plot containing the remains of Mr. Taylor’s parents then a revised memorial reflecting the position of Mrs. Taylor could be installed.
- 34) Against that Mr. Taylor invokes the long connexion which he and his family have had with this church. He points out that there are separate memorials to other family members. Moreover, he says with a degree of force that if his wife had died aged 81 even if very shortly before the adoption of the 2007 policy there would have been a memorial at the point of her interment. Mr. Taylor contends that he and his wife are being penalised for having lived to 90.
- 35) There is considerable force in the competing contentions on both sides. The policy of opposing memorials is reasonable and understandable when seen from the viewpoint of a Church Council responsible for a churchyard with a large number of memorials. The desire on Mr. Taylor’s part for his wife’s remains to be

interred in this churchyard and for there to be a memorial at the point of interment is also reasonable and readily understandable. I have concluded that the longstanding connexion which Mr. Taylor and his family have with this church and the nature of that connexion justify the grant of a faculty. This is particularly so when the weight to be attached to the policy of the church council is weakened. Accordingly, a faculty is to issue authorising a memorial to Mrs. Taylor in the terms sought with such memorial being at the point of interment in a separate plot.

36) Although the faculty sought is to be granted in this case I note the difficulties the incumbent and Church Council face in managing this crowded churchyard. It is open to them to revisit the question of whether there should be a policy on memorials. If the policy set out in paragraph 8.2.1.2 were to be reformulated opposing individual memorials but in the light of a proper understanding of the rights as to interment and in the context of formalising the arrangements for interments in an identified Area for the Burial of Cremated Remains with provision for collective memorialisation of those whose remains are interred then such a policy would be likely in the future to carry the considerable weight appropriate to properly drawn up parochial policies.

STEPHEN EYRE
HIS HONOUR JUDGE EYRE QC
CHANCELLOR
22nd November 2017