

**Neutral Citation Number: [2024] ECC Wor 6**

**Private Petition Number 23/72**

**Directions of the Chancellor of the Diocese of Worcester**

**Petition For Erection of a memorial in a churchyard**

**Re: St John, Dudley Wood  
Memorial to ABC**

### **Background**

1. On 7 July 2022 Mrs C died suddenly and unexpectedly aged 71 and was buried in the churchyard of St John's Church, Dudley Wood. Her widower Mr C wished to place a memorial on her grave.
2. On 12 October 2022 he applied to the minister of the parish to erect a memorial stone. He subsequently provided a signed document dated 12 April 2023 from the Stonemason Jones Memorials in support of his application. In this document the stonemason confirmed that they:
  - Had read the current edition of "Churchyard Memorials: Guide for Funeral Directors and Stonemasons, and
  - Believed the proposed memorial complies with the relevant guidelinesAnd giving an undertaking that they
  - Will not erect the proposed memorial until consent is granted;
3. This document was signed by Julie Standing, described as a 'Stonemasonry Administrator'.
4. On 27 November 2023 the Rev'd Richard Hackett declined permission to erect the monument, because it did not comply with the relevant guidelines and recommended that a faculty be applied for. He indicated that he would support such a faculty application.
5. The reason for the refusal of permission was that the proposal included a picture of the deceased within the design of the stone, which does not comply with the Diocesan Churchyard Regulations.
6. However, the reason (I assume) for the initial indication of support from the minister in the event that a faculty application was made, was because the churchyard already had two other memorials with pictures on. I am not told

whether these were permitted following a faculty application, or whether they were also erected unlawfully, but no remedial action taken.

7. However, without making any application for a faculty in this case the proposed memorial was erected.
8. This matter comes before me by way of an application for a retrospective faculty, with the support of the Rev'd Richard Hackett. Mr Hackett had made some enquiries as to why the monument was erected unlawfully and set out the following:
  - Delays in the minister undertaking the paperwork
  - The stonemason 'did not realise it had not been approved'
  - The stonemason was not fully aware of the restrictions in churchyards because they had not been updated in 10 years and council cemeteries do not have the same restrictions
  - The customer (by which I assume Mr C is meant) didn't realise they were signing a compliance section and had not seen the Churchyard Rules and the section on photo plaques.
9. I am told improvements have been implemented in these areas, although no details are provided as to what improvements.
10. Mr C and the stonemason have also put forward, via the minister, that 'the memorial booklet states that photo-plaques are 'unsuitable' as they may fade. However, it is suggested that this does not apply as:
  - The memorial has 'modern materials' and is 'UV protected' and 'fade resistant'; and
  - The stone will be redesigned when Mr C passes on, including the removal of the photograph.
11. Pastorally, the minister wishes to retain the existing memorial as 'removing it would be [for Mr C] like losing his wife all over again' as he 'has become accustomed to the way it looks' and 'the photo is a source of comfort to him'. I have since been told that Mr C's mental health is suffering from the continued uncertainty over this memorial.
12. Finally, the PCC are taking steps to regain control of their churchyard and implement proper procedures including removing items that should not be present.
13. The DAC have been consulted and the DAC secretary indicated support for the petition, despite its breach of the regulations, due to the presence of other photos on nearby memorials.
14. Notice of the petition has been duly given, and no objections have been received.

15. This matter was placed before me on 11<sup>th</sup> March 2024. On 13<sup>th</sup> March I requested further information:

- First, whether Mr C was content for the matter to be resolved on the papers, or whether he wished to have a full consistory court hearing; and
- Second, if he was prepared to share this information, Mr C' age and state of health; and
- An explanation from the stonemasons for their unlawful behaviour.

16. I received the requested information on 16<sup>th</sup> April 2024. Mr C is 71, a smoker and in reasonable health, with some age-related health conditions. Kate Davis, Partner and Manager of Jones Memorials sent an undated letter stating the following:

- Apologising for the distress and extra work caused;
- They submitted 'the permit application' on 12 April 2023. They did not hear anything from Mr Hackett and 'presumed that all was ok with the permit'.
- They accept that they should not have taken this for granted and have changed their working practices so that they will no longer begin work until they have received 'a permit'.
- They did not know that the photo plaque was not allowed until they received the refusal of Mr Hackett on 24<sup>th</sup> May 2023.
- They felt if the refusal was received in a 'timely manner' it would have been easier to explain to Mr C that the photo plaque was not allowed.
- They have offered a replacement memorial without a photo plaque free of charge (with Mr C retaining the original memorial).
- They did not realise photo plaques were not allowed, as they have fitted others 'in several other churchyards within the Worcester Diocese, all with verified approved permits'.
- They complain that the wording 'a coloured plaque or framed photograph affixed to the face of the stone would not be suitable' is 'too ambiguous to be taken as a rule or note.'
- They confirm they have learned from this situation and subsequently installed two further memorials in St John's graveyard, having explained to the mourners in those cases that they could not have photo plaques.
- They denied 'pushing Mr C' into choosing a photo plaque – and stated that they sent the original draft to him without one, but that he insisted on it being included.
- They say they have good working relationships with their local churches and have 'always tried to be amenable and forthcoming with any of our permit applications.'

17. Mr C has subsequently, via Mr Hackett, insisted that it was the stonemason's offer to have the photo and that he thought it was not allowed but upon enquiry they [the stonemasons] have contested this.'

## The law

18. No works of any nature, including the erection of a memorial, may lawfully take place within a churchyard unless (1) a faculty order giving permission for such works is made; (2) they appear on List A or List B in Schedule 1 of the Faculty Jurisdiction Rules; or (3) In respect of memorials to be placed on graves only, permission has been granted by the minister – which permission may only be given where the monuments comes within exemptions set out in the Churchyard Regulations set out by the Chancellor of the Diocese. If the desired memorial is not within the Churchyard regulations, an application for a faculty must be made, which if granted would nevertheless permit its use despite being outside the terms of the regulations.
19. The Churchyard Regulations currently in force in this Diocese were made by my predecessor, Chancellor Charles Mynors in 2004, with the accompanying booklet Churchyard Memorials: a Guide for the Bereaved also issued in 2004 and revised in 2013. As they have been in force since 2004 there is no reason why any reputable stonemason should be unaware of their existence. I reject the argument of the Jones Memorials as communicated via Mr Hackett that these regulations continuing unchanged for 10[+] years is a reason for not knowing about them. They may change in the future, but unless and until they do, they remain in force as currently formulated. This reason was wisely not repeated in Ms Davies letter.
20. I also reject the suggestion that the wording of the existing Diocesan Regulations is unclear. The Churchyard Memorials Booklet states as follows:

“A portrait of the deceased may be appropriate but only if it is in a form (such as a computer-generated engraving onto the stone, based on a photograph or line drawing) that will not fade or become unsightly. Any engravings should generally left uncoloured. A coloured plaque or a framed photograph affixed to the face of the stone would not be suitable.”
21. This is clear that a photo plaque is not suitable. The stonemason may wish to argue that modern methods of photographic reproduction may not fade or become unsightly (although I have seen no evidence to confirm that this is the case) and therefore disagree with the reasoning of the rules. The firm may then wish to lobby for a change in the rules, providing evidence to show why they should be changed. However, it cannot be said that the words ‘A coloured plaque or a framed photograph affixed to the face of the stone would not be suitable’ are ambiguous. The wording is entirely clear that it is not suitable. The narrative also gives a clear warning to the bereaved later in the text, saying ‘do not actually commission any work until you have the Vicar’s formal approval – as you would be placed in a very difficult position if approval was not given for a memorial that had already been completed.’ This warning was precisely to avoid the situation that has arisen in this case.

22. However, the narrative is not the rules. The rules themselves are an annex to the booklet which set out the limited circumstances in which a minister may approve a memorial without a faculty. This sets limits on the material, dimensions and inscriptions that may be permitted without faculty. There is no mention of photos. Therefore, there is no basis for a minister to approve a design with photos and a faculty must be obtained.
23. I am unable to resolve the evidential dispute between Mr C and Ms Davies as to whether the photo plaque was suggested by Mr C himself or Jones Memorials. I would need to hear both witnesses in person to assess their credibility and have decided that to be disproportionate as I can determine this case without resolving this matter. This is because it is the stonemason who erects the memorial and if he or she does so without either a faculty or minister's permission they are acting unlawfully and will have to take the consequences of such actions, even if they are acting under pressure from a customer. It is their professional responsibility to ensure they are acting lawfully at all times so as not to cause the pastoral distress that has evidently take place in this case.
24. I reject the suggestion that the Rev'd Richard Hackett is in any way to blame for the situation that has arisen. It is entirely understandable that correspondence received over the Easter period takes longer to be turned round than at other times of year. Stonemasons working regularly with ministers should be aware that Easter is usually the busiest time of year for parish clergy and that very many then take a holiday shortly after Easter. Even if they were not familiar with that practice, and were concerned about the delay in response, the appropriate reaction is to chase for a decision, not to act without the necessary permission in place.
25. I note however, the presence of other photo plaques within St John's Churchyard and the suggestion by Ms Davies that there are others elsewhere in the Diocese installed by Jones Memorials with appropriate permissions. I direct that Jones Memorials provide a list to the Registry of all such memorials erected by them together with copies, where available, of the permissions given. It may be that faculties have been granted by my predecessors as Chancellor – or it may be that ministers have given permission where they should not have done so, in which case further training may be required. I also direct the minister of St John's to confirm to the Registry (if known) whether the other photo plaques in St John's were installed with a faculty or with the permission of the minister at the relevant time.
26. The issue of consistency is important. Particularly as I am told by Jones Memorials that they have told other people wishing to erect monuments in St John's Churchyard that photo plaques 'would not be permitted'. This again suggests a failure to understand faculty jurisdiction. Whilst photo plaques are not capable of being permitted by a minister, they may be permitted by faculty where appropriate in the circumstances. However, a formal application to the Chancellor is required to seek this permission, which would enable consideration of the location and

existing monuments, and for relevant evidence to be supplied, for example as to any modern materials that will not fade, so that a properly reasoned decision may be made.

27. I note that Jones Memorials say they value their relationship with the churches and that they wish to put matters right – and have suggested supplying an alternative memorial free of cost to Mr C. As set out below, no alternative will be required. However, the other cost, that would normally fall to Mr C because of their actions, is the costs of obtaining this remedial faculty. I deal with this below.

## **Decision**

28. St John's Churchyard has two existing photo plaque memorials which I assume to be lawful, one unlawful one that is seeking to be regularised, and other people being told they are not allowed to have such a memorial. This leaves the minister and PCC to pick up the pastoral pieces where consistency is lacking. I understand the minister and PCC are doing their best to deal with this.

29. The desirability of consistency, together with the pastoral concerns of the minister in this case, have informed my decision in this matter. Having considered the matter, I take the view that the suggestion of Mr C himself, that the photo plaque will be maintained by him until his death and then removed so that his own details may be added to the memorial stone is the best way forward in the circumstances. I will therefore grant a time-limited faculty with conditions of maintenance and removal upon the first to occur of one year after Mr C himself passing away or 18 years from the date of this faculty. The period of 18 years is the average actuarial life expectancy of a 71 year old man plus 3 years. Thereafter it must be removed, and an application made to the minister at the time, or this court if something outside of the Diocesan Regulations at the relevant time is sought, for permission to replace it with an amended stone or other replacement. I grant liberty to Mr C (or a close relative or personal representative of his) to apply to extend the faculty after 15 years have passed, if it appears that Mr C may live longer than provided for.

30. This enables the current memorial to remain whilst it is emotionally significant for Mr C, but does not permit it to become a precedent for other similar memorials as it is temporary.

## **Costs**

31. It would normally be the case that the petitioner pays the costs of a confirmatory faculty. Here the stonemason has paid the fee to issue this application. However, the total costs of this application include additional court costs of writing this judgement and the Registry costs in relation to processing the petition including dealing with the issue of directions without a hearing .

32. However, here the unlawful act for which a retrospective faculty is sought was undertaken by a professional stonemasonry firm working within the Diocese of Worcester, who ought to be aware of the rules of the faculty jurisdiction in general, and of the Diocese of Worcester Churchyard Regulations in particular. The unlawful monument was, according to Ms Davies, erected due to ignorance of these regulations, which is unacceptable for a professional memorial mason regularly supplying memorials into churchyards.
33. Therefore, this is a case where it is appropriate to issue a special citation under paragraph 19.4 of the Faculty Jurisdiction Rules and I accordingly direct that such a citation is issued. This must state that the owner or owners of Jones Memorials are being added as parties to the proceedings in order that the court may consider making an order for costs against that person or persons. The grounds on which Jones Memorials are alleged to be responsible or partly responsible for the act or default in question are that:
- They erected a monument in the churchyard of St John's Church, Dudley Wood, without a faculty and without the permission of the minister;
34. The costs of my judgment in these proceedings is £556, being 4 hours at the rate of £139 per hour specified in the Ecclesiastical Judges, Legal Officers and Others (Fees) Order of 2022. The Registry's fees are £113 + VAT being 1 hour at the rate of £113 per hour for the giving of directions without a hearing. This totals £135.60.
35. If the owners of Jones Memorials wish to contest a costs order in the above amount being made against them, they must confirm in writing to the Registry within 21 days of the receipt of the special citation whereupon I will fix a time, date and location for them to attend court to address this issue. If they do not do so, a costs order in respect of this application shall be made that they pay the sum of £691.60 (inclusive of VAT).

**THE WORSHIPFUL JACQUELINE HUMPHREYS  
CHANCELLOR OF WORCESTER**

**20 JUNE 2024**