

Neutral Citation Number: [2023] ECC S&N 1

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWELL AND NOTTINGHAM

Before the Chancellor

IN THE MATTER OF ELSTON WAR MEMORIALS

and

IN THE MATTER OF ELSTON PARISH COUNCIL'S PETITION

JUDGMENT

Introduction

1. At Elston, the memorials to the dead of the world wars are tablets fixed to the east wall of the porch of the parish church of All Saints. The First World War memorial is a white stone tablet in a carved alabaster surround. There are seven names. The Second World War memorial is a complementary but somewhat simpler tablet. There are five names. The earlier tablet was 'erected by the Elston people'; the owner of Elston Hall and Patron of the living, Charles Waring Darwin (1851-1928) supplemented the money raised by subscription. The Second World War memorial includes the names of his son, who succeeded him, and his grandson. There are photographs of the tablets at the end of this judgment.
2. It is now asserted that three of the twelve names are wrong, and the Parish Council ("PC"), not the Parochial Church Council ("PCC")) petitions for a Faculty to undertake alterations to the tablets.

Procedural history

3. Dr Richard Brooks and Mr Mike Turney, two members of the parish, undertook research into Elston's fallen of the First World War, and made a presentation to the local historical society in 2014. The results of their research are incorporated in an extensive series of folders kept in the church and available to anybody who visits the church.
4. One outcome of the research was the discovery that there were in the records different names for those men recorded on the monument as Herbert Toulson and Joseph W Wade. There was no suggestion at that time that any alteration be made to the memorials. At some stage it also became apparent that the name of Vivian Castle was also spelled differently in some records. It is essentially Mr David Sankey, who lives in the village, who has consistently maintained the view that new research has produced names which are 'right' and demonstrates that the memorials are 'wrong' and that they should be changed.

5. There have been differences of opinion in the village about whether the monuments should be subject to physical change, or supplement. The PCC took the view that the monuments should stay as they are, but after some doubt put forward, by Petition, a proposal to add a third tablet giving the alternative names and some other information. The wording of that tablet caused me some concern, which I expressed to the PCC and invited further comment. The PC decided, again after some doubt, to seek a Faculty for physical alterations on the memorial tablets. In a small place the differences were likely to cause difficulties for some individuals. They did so in particular for the Priest-in-Charge, the Revd Liz Murray, who at one stage chaired both the PC and the PCC. She has since resigned from the PC. The DAC discussed the matter at length and in the end raised no objection to the additional tablet as proposed by the PCC. By Notification of Advice dated 14 September 2020, however, it declined to recommend the PC's proposal. The PCC after further consideration withdrew its Petition, leaving the PC's Petition the only one for determination. It opposes the PC's Petition, but has not become a formal Party Opponent. A considerable number of individual parishioners also oppose the PC's Petition. Only one indicated that he would become a formal Party Opponent, but he has since died.
6. Given the state of opinion in the parish I took the view that the proposals needed a hearing, but the opportunities for a hearing were suspended during the pandemic. The hearing took place in the Parish Hall on 29 July 2022. I am very grateful to those who made the arrangements and made the Registrar and me welcome on that date. At the hearing the PC as Petitioner was represented by Mr Daryl Flinders, the Clerk to the Council, who made his submissions, both in writing and orally, with moderation and great clarity. There was oral evidence from Mr Peter Clarke, the Chair of the PC, his predecessor Mr Bertie Pinchera, Mr Peter Towlson, whose father was a cousin of the person commemorated as Herbert Toulson, Mr Richard Rimmington, whose grandmother was the same person's sister, and from Mr Sankey. There has been subsequent correspondence from Mr Sankey, as set out below.
7. It is right at this point to note that although, as I have indicated, Mr Sankey has taken a considerable part in pressing this issue for action, he is not the Petitioner. It may be doubtful whether he could have been the Petitioner, given the restriction in s 60 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 to persons 'appearing to the court to have a sufficient interest in the matter'. Be that as it may, the PC is the Petitioner. It has, by resolution, decided to pursue these proceedings seeking permission to alter the tablets; it alone is responsible for the way in which the case is presented and for the costs of the proceedings. Its representative is Mr Flinders. Mr Sankey has no part other than as a witness of fact, and does not have a role in conducting the proceedings. That is the case regardless of his own position vis-à-vis the PC, of which he became a member in March 2022, after almost all the events in these proceedings except the hearing itself. Further, whatever may be the exact origin of the various documents and written submissions supplied to the Court, those addressed to the court fall to be regarded as made by the PC as Petitioner.

Jurisdiction

8. At an early stage a question of jurisdiction was raised. It was submitted that this Court has no jurisdiction over the War Memorial and that the issue of whether it should be altered was solely a matter for the Petitioner, the Parish Council. There were two arguments raised in support of that proposition. One was that the memorial belongs to the community, not the

church. There is no merit in that argument. The monument is in the church porch, attached to the church building. It falls within the Faculty Jurisdiction. The jurisdiction is most recently set out 'for the avoidance of doubt' in s 56 of the 2018 Measure, and any doubt about whether the jurisdiction applies to monuments is removed by s 66 of the same Measure. The fact that some War Memorials are not in churches or churchyards, and so do not fall within the Faculty Jurisdiction, is not to the point. Those who erected the memorial at Elston chose the position for it that they did, no doubt intentionally making it a part of their village church for all time.

9. The second argument is based on the War Memorials (Local Authorities Powers) Act 1923 as amended by the Local Government Act 1948. As currently in force, s 1 reads as follows:

“A local authority may incur reasonable expenditure in the maintenance, repair and protection of any war memorial within their district whether vested in them or not.”

The final phrase was added by s 133 of the Local Government (Powers) Act 1948. Subsection (2) of that Act widens the effect of the 1923 Act in the following terms:

“The matters on which expenditure may be incurred under the said section one shall include the alteration of any memorial to which that section applies so as to make it serve as a memorial in connection with any war subsequent to that in connection with which it was erected and the correction of any error or omission in the inscription on any such memorial.”

10. These provisions do not, however, permit a local authority to undertake the work in question, in the absence of a right or permission to do so. A moment's reflection on the meaning of s 1 before and after its amendment shows that that must be so. Before amendment, s 1 applied only to memorials 'vested in' the authority concerned. But the authority would not need permission to work on a monument vested in it. After amendment, it is inconceivable that the Act granted permission for a local authority to undertake work on a monument that it did not own, which might be wholly privately owned. What the Act does, both before and after amendment, is not to permit the work, but (as indeed it says) to permit the expenditure of funds. A local authority is wholly a creature of statute and cannot collect or expend money save as permitted by or under a statute. Without a provision such as that in s 1, a local authority could not lawfully use its funds even to clean a monument, even if it owned the monument. These statutory provisions are financial: they are neutral on the subject of whether the work may be undertaken. They say simply that if the work is undertaken, local authority funds may be used for it.
11. It was suggested that the 2007 guidance from the then Department of Constitutional Affairs 'War Memorials in England and Wales: Guidance for Custodians' indicates on page 7 that local authorities simply have the power to make alterations. That statement, however, has to be read in the context of the guidance as a whole, which on page 5 sets out the requirement for a Faculty where the monument is in a church, and on page 6 deals with the 1923 Act under the heading 'Funding'.
12. These statutory provisions do not, therefore, affect the need to obtain a Faculty for work on a monument in a church. It is fair to say that the PC appears to have recognised this in some of its written submissions, but the question was raised again in various forms at the hearing, and so I have had to deal with it.

The issues

13. In my judgment, there are three principal issues to determine. The first is whether it is established that the entries on the memorials are errors, in the sense that they incorrectly record those memorialised. If so, the second question is whether the entries should be amended by altering the monument, or left as they are. The third question, if there is to be correction, is the method by which that should be undertaken. It is not easy, and perhaps not desirable to separate those questions rigorously.

The names of the individuals commemorated

14. In order to answer the first question, it is necessary to look at the evidence about each of the individuals.
15. The person commemorated on the memorial as Herbert Toulson was born on 25 February 1892, the son of John and Heather Towlson. There is no given name on his birth certificate. It is not right to say, as the Petitioner does, that 'his birth registration record shows that he was christened Towlson': no record of his christening or any other naming has been produced. No other details of his life appear to be available save the following. (1) His service record, his medal, and his memorial at Arras, spell his name as 'Towlson' (they do not add anything to each other, because they will all have been based on the same information). (2) A newspaper report of the Rural Tribunal considering reserved occupations, which heard a claim by his employer that he should not be called up, calls him 'Herbert Toulson'. (The Petitioner calls that 'an unrelated family elsewhere', but that seems unlikely.)
16. Mr Peter Towlson's evidence was that so far as he knew no member of the family ever used the spelling 'Toulson'. No signature by Herbert has been discovered, so it cannot be known for certain how he spelled his name or whether he used one spelling consistently. Dr Brooks' view is that he may have used a different spelling traditional in the area. I can make no comment on that. The position is that the contemporary evidence shows both spellings.
17. The person commemorated on the memorial as Joseph W Wade was born on 7 July 1892, the son of John and Mary Wade. His birth certificate, recording that the birth was not registered until 7 September, gives his name as Joseph Valentine Wade, and his entry in the 1911 census is the same, though his date of birth is there given as 1893. His Army Record, however, calls him Joseph Wade, as does the inscription in his memory at Thiepval. It is simply incorrect to state, as the PC's submission to this Court does state at page 13, that 'Joseph Valentine Wade is so named ... on his army record, and on the Thiepval monument', and it is notable that in the appended documents the PC has chosen to include the birth certificate and the census record, but not the army material. Again, as in the case of the person discussed above, the documentary evidence does not support the submission. This is not an appropriate way to present facts to a Court.
18. The person commemorated on the memorial as Vivian Castle was born on 3 October 1922, the daughter of George and Ethel Castle. According to her birth certificate, she was going to be called Vivien Maud Castle, but on 19 November she was baptised Vivian Maud. She was killed in an air raid on the factory in Newark where she worked, and is buried in Elston churchyard. The handwriting in the church burial record is not clear enough for it to be possible to say with certainty how her first name is spelled there, but the 'Maud' is again present. In the online Civil Registration Death Index she appears as Vivian M Castle. On the memorial over her grave she is called Vivien Castle. I have not seen any evidence of what

she called herself, or how she signed; and although I have seen references to newspaper reports of the raid, they appear not to add anything useful to the question of the spelling of her name. There was a committee in the parish to discuss the names to be put on the Second World War memorial, and Mr George Castle attended one of its meetings. He must have been either the father of the deceased, or her brother, who died only in 2002. The PCC has provided extensive evidence of contact with the Castle family and its support for the church over many years. It is clear that the family are aware of the different spellings. It is said by family members that Vivian's father had poor literacy and might have spelled her name in 'many different ways' throughout his lifetime. The deceased's niece is certainly called Vivien, but that is little help in the absence of any evidence that the spelling was chosen as replicating the only spelling of her aunt's name, rather than of one of the spellings used for her aunt's name.

19. My conclusions on the evidence are as follows.
20. First, although because of the report of the Tribunal proceedings the matter is not wholly free from doubt, it is in my judgment probable that 'Toulson' on the memorial is a mistake for 'Towlson'. As he was an (apparently unwilling) conscript, his army papers would be in his perceived official name rather than an assumed or variant name that a volunteer might have given to a recruiting officer, so the army records do not necessarily add anything to the record of his birth. It cannot be ruled out that the deceased had during his life made a deliberate choice to spell his name differently. On the other hand, no other members of the family spell their name with a 'u'. How the entry on the memorial came to be in the form it is made must on the present state of the evidence be a matter wholly of conjecture.
21. Secondly, it seems clear that Joseph Wade did not use his middle name in his army service, and may not have used it at all. Dr Brooks suggests that the 'W' is a mistranscription, but there is no material before me to support that: 'W' cannot realistically be a mistranscription of 'Valentine', and there is nothing showing use of a name in the form 'Joseph V Wade'. The mistake would therefore have had to be at the point of commissioning the memorial, that is, the memorial did not carry out the client's instructions. If that had been the case, it is in my view highly likely that there would have been efforts to correct it at the time. It is perhaps more likely that the 'W' represents some sort of nickname that the deceased was known to have adopted, and was a deliberate choice by those who commissioned the memorial, but there is no evidence either way.
22. Thirdly, it looks as though Miss Castle's name was spelled by her relatives, particularly her father, in different ways. I cannot see that there is any proper basis in the evidence for choosing one rather than the other. As it happens, the spelling with the 'a' accords with both the record of her baptism, and the registration of her death. There is no proper basis for saying that the use of that spelling on the memorial is an error or that it does not give her 'correct' name. What is clear, however, is that she had a middle name, Maud, a part of her name omitted from both the war memorial and the memorial over her grave. It very much looks as though the omission must have been a deliberate choice by her surviving family in both cases: the Second World War plaque includes full names where space allows, and there would have been ample room for the 'Maud'.
23. In summary, therefore, as a matter of record, the inscription for Herbert Toulson or Towlson is probably, but not certainly, wrong in the spelling of his surname; the inscription for Joseph W Wade is certainly wrong in giving him W as a middle initial, and the inscription for Miss

Castle is certainly wrong in the omission of her second name, and certainly not wrong in the spelling of her first name. As a matter of analysis of whether the memorial says what it was intended to say, there is reason to suppose that there may have been a mistake in relation to the first entry, there is no evidence either way on the second, and there is no reason or evidence to suggest any error in relation to the third.

Should alterations be made?

24. There are two aspects to the question whether any amendments should be made. The first is the identification of any family members or others who want (or wanted) the memorial to be changed, and their reasons; together with the views of any other individuals. The second is the question whether mistakes (or perceived mistakes) on a monument ought to be changed as a matter of principle, regardless of any particular wishes.

The wishes of family members of the dead

25. Looking first at the submissions made about the individuals commemorated, Mr Peter Towlson was traced by Mr Sankey as a relative of Herbert. He gave evidence before me. He told me that he lived in Risley (which is about 30 miles from Elston). He had not been aware of the memorial or of the spelling of the family name on it until Mr Sankey told him about it, and had not previously visited it. He said that Herbert's sister Flossie (who lived with her mother and sisters in or near Elston) 'never really got over' her brother's death. He himself had visited another sister, Rose, in the early 1960s. He told me that now the spelling had been pointed out to him, he wanted it changed. He had been prepared to accept the proposal of an addendum tablet, and was grateful to the PCC for their proposal. Now that the latter had been withdrawn, he thought the monument should be corrected. He said that his family agreed with him, 'some passionately'.
26. Mr Rimmington, also traced by Mr Sankey, also gave evidence before me. He lives in Doncaster, about 45 miles away. He had not seen the memorial before the day of the hearing. He knew that Herbert had died 'on the Somme'. He told me he thought his relative should have the same name on the memorial as he had had while he was alive, and that was Towlson, like all the rest of the family.
27. There is no evidence of any specific wish to alter the memorial inscription of Joseph Wade.
28. In relation to Miss Castle, although there are relatives, some of whom have lived in the village quite recently and some of whom have been in touch with the church authorities even more recently, none of them was called by the PC as a witness to support a change. The PC's submission to the Court states at page 13 that 'Vivien Baldwin [the deceased's niece] has also asked that the name be changed on the war memorial'. The context for this is given in statements by the Rev'd Liz Murray, who notified Mrs Baldwin that the PCC were not supportive of altering the memorial, but inviting her to say whether she wanted an alteration or amendment. According to Ms Murray,
- "Mrs Baldwin replied verbally through a church warden (whom she has known all her life) in that she was 'fed up' of being asked about this and if it were to cost any money then did not want it altering [sic]. Mrs Baldwin has also said that she had felt pressurised by a petitioner advocating the change."
29. The other communications with the family set out by Ms Murray show that there has been no impetus for change from them. Miss Castle's brother lived in the parish until 2002 and

did not seek any change; Mr Paul Brant, her sister's son, said that his mother was aware of the two different spellings and did not wish anything to be altered, and that was his own position too.

30. This is a convenient place to refer to a curious feature of the evidence given by Mr Sankey. During his oral evidence he referred to Mr Peter Towlson's having said that his own family members had objected to the spelling of Herbert's name 'at the time'. I pointed out that Mr Towlson had said nothing of the sort in his evidence. Mr Sankey said that he was confident that there had been an email to that effect. After the hearing Mr Sankey sent, directly to the Registrar, not by way of the Petitioner, part of an email correspondence on the issue. In response to an email from Mr Sankey saying that 'We don't require consent from the WMT [War Memorials Trust] and if we can get proof from the family that the name is wrong then we have a watertight case', Mr Towlson wrote as follows:

"Thanks for the update Dave. The 1891 and 1901 census which would have been made out by a family member showed Towlson spelt with the W not the U so i don't accept the 'differentiation in literacy' argument [which was part of the War Memorials Trust's response to Mr Sankey's enquiry]. I'm sure it was a mistake that the family, who by that time were all women (mother and four daughters) were told couldn't be altered."

31. It seems to me that the essential part of that is simply Mr Towlson's speculation about the family having asked for, and refused, correction: the use of the phrase 'I'm sure' suggests as much. There is no other reference to this in Mr Towlson's evidence, and no apparent way in which he could have known what family members did at the time; and what would have (if true) have been a very important part of the PC's case supporting the Petition was not adduced in the oral evidence. However, Mr Sankey's statement about this in his written statement to the Court is as follows:

"We have such evidence that it clearly wasn't acceptable to the relatives at the time. We now know from a descendant of Herbert Towlson that Herbert's widow and sisters made an appeal for the memorial to be corrected but were told that it couldn't be altered."

32. Thus Mr Sankey turns Mr Towlson's speculation into 'an appeal' that 'we know' about, made by several members of the family (different from those in Mr Towlson's email), showing that the memorial 'clearly wasn't acceptable to the relatives at the time'. Nothing of the sort is shown. All that is shown is the way in which Mr Sankey treats evidence. It is in line with what I have noted above in connexion with submissions made in the name of the Petitioner about the documentary evidence, although it is more marked than the Petitioner's comment in response to Dr Brooks' letter, which states that there is 'at least anecdotal' evidence of this complaint. I have no idea what the phrase 'at least anecdotal' means, but it clearly lacks the certainty expressed by Mr Sankey. What is a great deal more troubling is that in its response to a letter of objection from Wendy Hewitt, the PC quotes Mr Towlson's email with an unacknowledged omission of the words 'I'm sure it was a mistake that', thus turning the speculation into a statement of fact that had not been made. I do not accept that there was any contemporary complaint about the spelling 'Toulson'.

33. I summarise the position relating to wishes from the family members of those commemorated as follows. In the case of the person commemorated as Herbert Toulson, there is no evidence of any concern by the family until Mr Sankey traced family members in an effort to get support

for a case he evidently wished to make. As a result of those enquiries, some family members now think that there ought to be changes to the memorial, although none of them showed any interest in the matter previously, none of them had previously visited the memorial, and one at least, though concerned that others should get the facts right, is himself unaware of the basic facts of his relative's war service and death (Herbert did not die 'on the Somme'). In the case of Joseph Wade there is, as I have said, no evidence of any concern from any family member at any time; and in the case of Miss Castle the view of family members living and dead is against change, with the sole exception of Mrs Baldwin, who regarded herself as having been under pressure from 'a petitioner'.

Other individual views

34. So far as concerns people who are not family members of those commemorated, there have been letters from six members of the parish supporting the PC's Petition. There have been letters from eighteen members of the parish, from the PCC and from the Patron of the Living, Mr Christopher Darwin, objecting to the Petition. Amongst the latter are a letter stating that 'twenty-five villagers have written to the Elston Parish Council requesting that we should leave the memorials unchanged', and a long letter from Dr Andrew Brooks, one of the original researchers. His co-researcher, Mike Turney, wrote a shorter letter of objection. Both supporters and objectors include individuals who have also had their say as members of the PC or the PCC.
35. There can be no doubt that there has been a certain amount of canvassing in the collection of views for and against. Mr Sankey points out that a number of letters opposing the Petition have come from one small road in which one of the more vocal opponents lives, which, I agree, seems to show efforts to gather support. Ms Murray sets out what she believes to be the lengths to which Mr Sankey has gone to find family members prepared to support his views; some credence is given to that by an email from the proposed contractor to Mr Sankey, beginning 'Glad to hear you have had some fortune in your hunt for a living descendant'. There is nothing wrong with canvassing, provided that no attempt is made to apply improper pressure, or to misrepresent what people think. I very much regret that, as is apparent, the disagreement in the parish about the issue of the war memorials has caused a measure of ill-feeling on both sides.
36. At the hearing I asked the Registrar to read out the letters from individuals opposing the Petition. There is a good reason for that. By rule 10.5(2) I am required to take account of any letters of objection, and any comments on them received from the petitioner, in reaching a decision on the petition. As the objectors were not taking part in the proceedings, the reading of their letters is an efficient way of bringing their concerns to the attention of the Court and to allow the Petitioner to make any further comments on them. The comments made by the Petitioner in writing I have as part of the Petitioner's bundle, and I state here, for the avoidance of doubt, that I have taken account of them too.
37. Some concern was expressed that I did not have the letters of support read out, and that I failed to see that all the objectors' points had been 'answered' by the Petitioner. The reason for the first is that the Petitioner is a party, and it is for the Petitioner to draw my attention to material supporting the Petition. The PC did that by incorporating those letters in its bundle, which I have read, and by its liberty to refer to them, or to call the writers as witnesses, in the course of presenting its case. The reason for the second is that the answers do no more

than restate the Petitioner's case; I did not detect any relevant additional point made in the responses that is not already before me.

38. Much of the bulk of both objections and responses relates to the process of bringing the matter to the Court, and the history of discussions of the issue in the village. That is not a matter on which I have to make any decision. A further large part of the responses consists of recitation of the Petitioner's views of the 1923 and 1948 Acts, which I have dealt with above. There are issues about the ownership of the memorial, which are not relevant save through the medium of s 66 of the 2018 Measure, which enables a Faculty for work on a monuments to be granted in the absence of the consent of the owner only in limited circumstances; and there are issues about the process by which correction might be undertaken, which I consider later in this judgment. There are also restatements of the Petitioner's view that the memorials have been proved to have 'errors' and there is a duty to have them corrected. I do not criticise the Petitioner for making the full set of responses it did; but the responses are of little assistance to me over and above the material and arguments before me by other means.

39. In fact, the letters of objection are also of little assistance. Most of them are expressly written to support the introduction of an amendment tablet, as earlier proposed by the PCC, rather than alteration of the memorial as proposed by the PC. That choice is not now available, and the letters therefore have to be read subject to the consideration that it is not clear what the writers' views would have been in the absence of the PCC proposal. All that the correspondence tells me unambiguously is that there is considerable feeling in the parish against the proposal, and perhaps more generally against the PC: but I knew that anyway, and the individual points made by the letters of objection are, where relevant, before me by other means.

A general rule?

40. The Petitioner's position is clearly that if an error is identified it ought to be corrected, and that for these purposes there is an error if the name on the memorial is not the name of the deceased as found in official sources such as the Civil Registers. It does not seem to me that either part of that proposition is correct.

41. For the first, that if an error is detected it ought to be corrected, I know of no other possible source than that on which the Petitioner relies, the DCA Guidance to which I have referred at paragraph 11 above. For example, in responses to letters of objection, it says 'Council believes it has a duty to correct known errors on war memorials as advised by Government'; 'Council ... is encouraged in the view expressed by Government that errors on war memorials should be corrected'; 'the Government's recommendations as set out on page 7 of their Guidance to Custodians, which stresses that where errors are detected they should be corrected'; 'it was Government advice for custodians and owners of war memorials to correct any errors and not to leave the memorials as they were'; 'the Government Guidance to the Custodians of War Memorials strongly advises that errors should be corrected'. The alleged Government advice is opposed, in the PC's view, to that of the War Memorials Trust.

42. It is difficult to see how anybody who has read the Guidance could make those statements about it. The relevant passage on page 7 of the Guidance is as follows:

"War memorials are an important historical record and, as such, their inscriptions should be accurate. When errors are known to have occurred, custodians may choose to

implement measures to rectify this. ... Under the War Memorials (Local Authorities Powers) Act 1923 local authorities also have the power, though not a duty, to correct errors in a war memorial's inscription" (The final sentence needs to be read subject to what I have said at paragraphs [9] – [12] above, but it can be taken at face value for present purposes.)

43. The words are 'may choose to' and 'a power, though not a duty'. There is no perceptible 'strong advice' or even 'advice' that errors 'should be' corrected; there is not even a view that errors should be corrected. The view expressed is that inscriptions 'should be accurate' but there is no general obligation imposed on anybody to do anything about an inscription that is not accurate, nor any general rule that correction should be undertaken. It is perhaps also worth pointing out that insofar as the Guidance is a guide to the responsibilities of 'custodians', as the passage quoted certainly in part is, the term 'custodian' is defined for the purpose of the Guidance as 'the individual organisation that maintains a war memorial'. I know of no basis for saying that the PC is in this sense the custodian of the Elston memorials, or that the Guidance is directed to it. The only relevant part for these purposes is the passage about local authorities, which expressly negates a duty to correct.
44. Further, so far from being opposed to the position of the War Memorials Trust, the Guidance specifically recommends it as a body to give advice. The War Memorials Trust, a widely respected charity supported by Historic England and others, provided advice to the PC as follows:

"War Memorials Trust would express caution about changing names. The decisions about names added to war memorials were made at the time of erecting a memorial by communities and changing or altering these needs to be approached with extreme caution. If communities chose to leave memorials with the names and believed errors where [sic] not amended at the time then it suggests they were comfortable with the accuracy of the details. Names may not be what we believe them to be today because of less certainty on spelling, names used on the war memorial being names people were known by as opposed to their given name, people signing up under different names or choices made by families or communities. Retrospectively changing them to suit what we think they should be can be changing history and as such is something to undertake with caution. If there are errors these should be seen as part of the memorial and its history; providing updated information could be done on associated [sic] information boards, plaques or books. This will provide the community today with wider background without changing the choices made at the time a memorial was erected. It also ensures that any changes made or suggested can be changed if later research brings up alternative information."

45. That advice appears to me to be entirely sound. In my judgment there is no general rule or presumption that if an error is discovered on a memorial it ought to be corrected by changing the memorial.
46. Then there is the question, what is an 'error'? I am unaware of any rule that a person or community erecting a memorial (whether or not a war memorial) is obliged to refer to individuals by their full legal names only. It is true that there is a practice, perhaps amounting to a rule, that a name on a memorial marking an actual resting-place of human remains, should include the legal or 'official' name of the deceased whose remains are to be found so marked. But I cannot see any good reason for saying that people who erect a memorial, not

associated with a grave, to somebody they love or respect, should not describe the deceased in any way they choose. There is a well-known example of this principle in action in Parliament Square, where the statue raised in memory of Sir Winston Spencer Churchill is inscribed simply 'CHURCHILL'. Where the memorial is a communal one, and particularly if it is part of a group of memorials of a similar nature, it is obviously desirable to avoid ambiguity, but I cannot see that that of itself requires use of the legal name of the persons commemorated. After all there may be a number of people in a community with the full name 'John Smith', only one of whom is known as 'Bozzy Smith'. Why should those who loved him, and knew him as 'Bozzy', and want to erect a memorial to him, be required to write only 'John Smith' on the memorial?

47. This is of importance because it means that discovering that a person's legal name was not the same as the name on the memorial does not necessarily mean that there is an 'error' on the memorial. The inscription on the memorial may well be in the form it is because those who erected the memorial chose it that way. In such circumstances, the alteration of the memorial to show the legal name is not correcting an error: it is substituting a current view of what a memorial should be for the views and wishes of those who chose to erect the memorial to their dead.
48. This is, I think, why the advice in the Guidance is phrased in the way it is. The wording, 'where errors are known to have occurred' is different from 'where errors are found'. The past tense in the Guidance draws attention to the fact that the commissioning and erection of the monument was an event in the past, and that the focus is not on facts that may be discovered now, but on whether there was an error in making the monument at the time. An error by the mason in carving from his copy would be an error that has occurred; a change of a name in the light of modern research would not so easily fall under that description.
49. No decided authorities on the questions I have to determine in these proceedings were cited to me, I am not aware of any relevant authorities, and the Ecclesiastical Law Association's Judgments database does not show any, with one exception. Since the hearing in this case, the Deputy Chancellor of the Diocese of Worcester has published his decision in St Mary de Wyche, Wychbold [2022] ECC Wor 6. In that case the deceased was recorded on the war memorial as 'Patrick Collins'. Research by a relative established that his legal name was Kenneth Lawrence Collins, but he was known as 'Pat'. It appeared that those erecting the memorial had assumed he was called Patrick. The Petition, which was unopposed save for advice from the War Memorials Trust similar in terms to that given in the present case, was to replace the inscription with 'Kenneth L. (Pat) Collins'. The Deputy Chancellor said at [10] that 'the pre-eminent function of a war memorial is to record and honour those whose names appear thereon'. As the evidence showed that the deceased was Kenneth Lawrence Collins, 'this is a substantial error on the face of the memorial and accordingly ... there are good prima facie reasons to approve its correction' [13]. He cited no authority for what appears to be an application of a legal rule, but he evidently took the view that in the circumstances the change should be made unless there were conservation reasons against it, which he decided there were not. He refused to allow the insertion of '(Pat)' for reasons largely of consistency which he set out at [18].
50. Each case has to be decided on its own facts and merits and I do not want to be understood as implying that the Deputy Chancellor's decision was wrong. I do, however, have the disadvantage of differing from him in relation to some of the principles he seems to have

applied in making his decision. As the Petition was widely supported, he no doubt did not have to give the underlying principles the attention that I have had to give them. As will be clear from what I have said above, I do not accept either that a divergence from the legal name of the deceased is necessarily an error, or that an established error gives rise to a presumption of correction. The 'pre-eminent function' of the memorial is to my mind satisfied if there is no ambiguity or uncertainty about the identity of those commemorated. I have not seen the evidence in the Wychbold case, but to an outside reader it would seem highly unlikely that those commissioning the memorial would not have known of the deceased's legal name, which would have formed part of the papers notifying his death, the starting-point of their deliberations. If there was a deliberate choice to call him 'Patrick' on the memorial, the result of the change will have been to override (and because of the rejection of '(Pat)' entirely erase) the intentions in this respect of those who chose to make the memorial. This is not correcting an error: it is supplying different information; and the process runs the risk of turning a memorial into a record. The record of the life, service and death of the deceased is to be found elsewhere.

51. In my judgment the answer to the second question that I posed in paragraph [13] is that whether the monument should be the subject of alteration depends on the precise circumstances and facts of the case. There is no presumption that a divergence from a person's legal name is an 'error', and there is no presumption that an 'error' should be corrected. The question whether in the present case there should be alterations to the memorials can therefore be answered only when all relevant factors, including the answer to the third question, have been considered.

The process of alteration

52. The third question relates to the process by which the proposed alterations to the memorial would be undertaken. The Petitioner has supplied parts of a correspondence with its proposed contractor, Mark Gill. His most recent email to Mr Sankey reads, in part, as follows:

"I have looked at the plaque in more detail and ascertained that the letters are hand cut on a piece of white marble. The tablet bearing the name of Vivien Castle has incised machine cut letters. We would need to fill 4 of the letters (W, O, U and A), colour matching as near as possible. This would then need to be flatted back so we can set out and re-cut the correct letters in their place. We would then re-paint the letters in matching black enamel.

53. I must assume that this proposal is put forward as the best that could be done. It causes me considerable concern. First, it is a matter of common experience of those who take any interest in stone memorials that alterations, when present, are very commonly visible. However carefully the insert may be colour-matched when the alteration is made (and it is to be noted that the contractor does not say that the colour can be exactly matched), in time the colour may change differently from the stone surrounding it; and the join itself also becomes prominent.
54. Secondly, the alterations proposed in 'TOULSON' will not fit, unless different lettering is used for the alteration. The lettering on the tablet uses a wide 'W'; the space taken by 'OW' can be seen in the first name, where the width needed by the 'W' is ameliorated by its overhanging the following 'A', which would not be possible where the following letter is 'L'; and the tablet

consistently does not permit the cross-stroke of 'T' to overhang a following 'O'. If 'OW' replaced 'OU', it would be very cramped in comparison with the rest of the lettering on the tablet and would always stand out by its style as well as any physical signs of the alteration.

55. For these reasons, it seems to me that there is no basis for thinking that the proposed alterations can be made in a satisfactory way. I note further that the method proposed by the contractor, involving re-cutting, is in flat contradiction with an assertion made by Mr Sankey in correspondence with the War Memorials Trust, in which he said that

“the method proposed by the monumental mason does not involve re-engraving nor does it risk damage to the memorial. They propose to fill the erroneous letters with a cement that matches the background and then paint the corrected parts of the names over it”.

56. I do not know whether this is the result of a different proposal for the work (and if so whether that proposal was sought by the PC or by Mr Sankey) or whether the information given by Mr Sankey to the Trust was just wrong: but, in any event, this factor can give no confidence that there is a clear viable plan for the process of physical interference with the memorial.

57. There is a further problem, which makes matters worse. As I have observed, there is no doubt that Miss Castle's legal name included 'Maud'. If it is right that the names on the First World War memorial should be changed to reflect the legal names of those commemorated, the same must apply to the Second World War memorial. Consistently with the other names on that memorial, 'Maud' should appear in full: there is plenty of room for it and there could be no reason for leaving it out. But the Petitioner (although obviously aware of the facts) does not propose its insertion, and it is clear that to substitute VIVIEN MAUD CASTLE for the existing VIVIAN CASTLE would require the wholesale alteration of the entire line, on which there is no advice.

Decision.

58. I have concluded that the name inscribed as Herbert Toulson is probably (but not certainly) wrong. The name recorded as Joseph W Wade does not accord with either the Civil Registers or with the different name in his army service records, but there is no evidence whether the 'W' was a mistake or a choice. There is no basis for considering that the name inscribed as Vivian Castle was other than the choice or direction of her relatives, both in the spelling of her first name and in the omission of her second, and there is no good reason for thinking that the spelling chosen was wrong.

59. There is no general principle that names on a war memorial should exactly match the legal names of the deceased, nor is there a presumption that any errors should be corrected. There is no evidence that those who knew and loved the dead showed any dissatisfaction with the memorials as erected. The proposal for correcting the errors said to have been discovered is incomplete, inconsistent and unsatisfactory.

60. A War Memorial is not a record of the service and deaths of those commemorated. It is an act of memorial made by those who knew the dead. It is the record of the community's remembrance and elevation of their relations, friends and colleagues. Nothing we can say or think, in many cases more than a hundred years later, should be allowed to displace that.

For us, the war, and the sacrifices made in it, are history. For the community at the time the war was their own experience, and the deaths were their own losses. The precise way in which they chose to mark those losses is entitled to the greatest respect and weight, and it is difficult to see why our generation, whose interests are different, has a duty or even a right to make alterations to it.

61. The inscriptions on the Elston memorials are not ambiguous and there is no suggestion that anybody has been misled or confused by them. The full details of those commemorated are available in folders in the church. There is no need to make the suggested alterations, no widespread or well-supported desire to do so, and no known way in which they could be made satisfactorily. The Petitioner has fallen well short of making out its case for the monuments to be altered in the manner sought. I refuse to grant the Faculty.

The Worshipful C M G Ockelton MA BD
Chancellor

6 January 2023

GIVING GLORY TO GOD
FOR THE MEMORY OF
THOSE ELSTON MEN WHO
LAID DOWN THEIR LIVES
FOR THEIR COUNTRY
IN THE GREAT WAR
1914 - 1919

THIS TABLET IS ERECTED
BY THE ELSTON PEOPLE

SERGEANT	ARTHUR SPOWAGE	D.C.M GRENADIER GUARDS
CORPORAL	FREDERICK HICKMAN	M.M. CANADIAN CAVALRY
PRIVATE	LESLIE H. MARTIN	SOUTH WALES BORDERERS
.	JOSEPH W. WADE	SHERWOOD FORESTERS
.	EDWARD GODSON	SOUTH STAFFORDS
.	HERBERT TOULSON	SHERWOOD FORESTERS
.	ARTHUR PACEY	KINGS ROYAL RIFLES

FAITHFUL UNTO DEATH

1939 - 1945

HUBERT NORMAN BLATHERWICK
LINCOLNSHIRE REGIMENT
CHARLES JOHN WHARTON DARWIN
ROYAL AIR FORCE
CHRISTOPHER W. WHARTON DARWIN
ROYAL AIR FORCE
WILLIAM MIDDLETON TANSLEY
ROYAL AIR FORCE
VIVIAN CASTLE
CIVILIAN