

Neutral Citation Number: [2021] ECC Dur 2

**In the Consistory Court of the Diocese of Durham
Re the Churchyard of Haughton-le-Skerne St Andrew
And Re the Petition of Carole Martin and
And Re a Memorial to Owen Wason (No. 2)**

Judgment

Background

1. By a petition dated 22nd August 2017 Mrs Carole Martin sought a faculty for a proposed memorial for her son Owen Wason, a former Royal Marine Commando, whose ashes are interred in the Churchyard of Haughton-le-Skerne St Andrew. The area in question was set aside for the interment of ashes by a faculty granted in 2010 to the then incumbent and churchwardens; the 2010 faculty imposes certain conditions in respect of the design and size of memorials. The proposed memorial for Owen Wason was for a headstone, measuring 20” wide by 12” high and 2” deep, on a base plinth, with a horizontal stone ledger measuring 3 feet by 2 feet. The proposed memorial complied with neither the conditions of the 2010 faculty nor with the diocesan Churchyard Rules.
2. I declined to grant a faculty to Mrs Martin for the proposed memorial for the reasons set out in my first judgment in this matter, [2018] ECC Dur 2. I indicated, however, that I would be prepared to consider granting a faculty for a memorial that was in accordance with suggestions made by a DAC sub-committee, even though a memorial based on those suggested revisions would still have been outside the terms of the 2010 Faculty and the Churchyard Rules. I therefore give Mrs Martin permission to apply to amend her petition and refer the matter back to the court.
3. Matters moved on, and after further consultation with the DAC sub-committee Mrs Martin amended her petition to seek approval of a memorial in accordance with a revised design dated 31st July 2019. The revised design was for a headstone, only, on a base plinth, with no horizontal stone ledger. By a faculty dated 15th October 2019 I gave permission for a memorial in accordance with the revised design, and later that month the memorial was installed.
4. A year later, in the early part of October 2020, a horizontal stone ledger measuring 24” by 26” appeared adjacent to the headstone. The ledger had an enamelled photo of Owen Wason in combat gear, and an inscription:

*“Your life was a blessing,
your memory a treasure.*

*You're loved beyond words,
and missed beyond measure."*

5. The incumbent, the Reverend Mark East, wrote to Mrs Martin and her husband Paul on 13th October 2020. With his letter he enclosed a photograph of the additional memorial. The pertinent part of his letter reads:

"I am writing to you because I have noticed recently that a stone tablet has been added to Owen's plot in the churchyard (see attached image). Neither I nor the Haughton Parish Office can find any correspondence about this addition. I'm not sure if you have spoken to anyone else about this, but if so, I need to know who you spoke to and what authorisation was given for it to be installed. As the Incumbent of Haughton Parish I have the responsibility, along with the Diocese when needed, to authorise any items prior to them being placed in the churchyard alongside the Diocesan regulations for churchyards. Hence this letter to ascertain why I/we don't seem to have received any such request. Because your initial application was the subject of a judgement by the Chancellor, it will need to be referred to him for any decision and therefore a response from you should be received within the next 14 days."

6. He did not receive a reply, so he sent Mrs Martin an email on 9th November, attaching a copy of his earlier letter:

"I am aware that this time of year is very poignant for you both with the recent anniversary of Owen's death and also Remembrance Sunday, and all the memories that will be in the forefront of your minds. So for needing to contact you at this time I apologise."

However, I wrote to you on October 13th 2020 (see attached letter) requesting information about the additional monument/plaque that has been installed on Owen's plot. I've not had any response from you, so I'm just following this up via email to make sure you have received the letter and would request a response from you as soon as possible."

7. Again, he received no reply. He wrote a further letter dated 19th November, sent by tracked delivery, which was received and signed for on 20th November; a copy of this letter was also emailed to Mrs Martin:

"I wrote to you on 13th October 2020 and followed this up with an email on 9th November 2020 to both you and Paul, containing a copy of the letter regarding the additional memorial that has been placed on Owen's burial of ashes plot. There has been no response from you over this matter and so unless I have a response in the

next 7 days from the date of this letter, I will need to notify the Diocesan Chancellor concerning the situation and seek his direction under the Faculty Jurisdiction Rules 2015.”

8. Once again, he received no reply, so he duly brought the matter to the attention of the court via the Diocesan Registrar. The incumbent is concerned that the additional memorial in the form of the ledger is not permitted by the faculty granted to Mrs Martin in October 2019, nor does it comply with the 2010 faculty governing the area of cremated remains or with the diocesan Churchyard Rules. He points out that the enamelled photo of Owen Wason affixed to the ledger is causing problems because other families are complaining that they were refused similar such images previously. The incumbent consulted the PCC, and the PCC is opposed to the ledger remaining in the churchyard.

The Law

9. A grave or a place where ashes are interred is not owned by either the deceased or by the relatives of the deceased. There is no right to erect a monument over a grave or a place of interment without the permission of the diocesan chancellor, although this permission is usually given through an authority delegated to the incumbent. Any memorial introduced into a churchyard that has not been duly authorised is a trespass. The incumbent is under a responsibility to prevent breaches of the law. Any memorial introduced without permission, even though it is a trespass, cannot be removed without a faculty permitting its removal. These basic principles were helpfully set out by Chancellor Bursell in the case of *St Mary the Virgin, Burghfield* [2012] P.T.S.R. 593.

Decision

10. In my first judgment in this matter, [2018] ECC Dur 2, I drew attention at paragraph 25 to Chancellor Bursell’s statement in *Re The Churchyard of Quarrington Hill* [2016] ECC Dur 1 that: *“The consistory court, being a Church court, has always been concerned to act pro salute animae – that is, with regard to the pastoral effect that any of its decisions may have – but that concern embraces a concern not only for the individual petitioner but also for all those who may be affected by its decisions.”*
11. To tolerate memorials that do not comply with the Churchyard Rules and have not been authorised by faculty is unfair on others who have accepted those rules, acted lawfully, and moderated their hopes or expectations accordingly. Those who comply with the law justifiably feel aggrieved when others, who do not comply, are rewarded when church authorities turn a blind eye. Furthermore, as Chancellor Bursell pointed out at paragraph 29 in *Re The Churchyard of Quarrington Hill*, when breaches of the rules have been allowed to occur, there is a risk that others may feel entitled to follow suit with an incremental detrimental effect on the whole character of the churchyard.

12. The additional memorial ledger to Owen Wason introduced in October 2020 is unauthorised. It is a trespass. Mrs Martin has not responded to attempts to contact her, so there is no certainty that it was she who introduced it into the churchyard; however, it seems unlikely to have been anyone else. I grant a faculty for its removal, in the following terms:
- a. If Mrs Martin introduced the additional ledger then she has permission to remove it by 1st March 2021.
 - b. In default of removal, the incumbent and churchwardens are directed to remove the additional ledger by 31st March 2021. They must thereafter notify Mrs Martin by recorded delivery via the diocesan registry where the additional ledger is being stored and when it may be retrieved by her. If it is not so retrieved within 2 months of such notification it will be deemed to have been abandoned and may thereafter be disposed of as the incumbent and churchwardens see fit.
13. Any person affected by this order may apply to the court in writing by 8th February 2021 in respect of its implementation.
14. Furthermore, I give Mrs Martin permission to apply to set aside or vary the order. Any such application by her must be made in writing by 8th February 2021 and must set out her reasons for applying.

Adrian Iles, Chancellor

13th January 2021