

Neutral Citation Number [2023] ECC Liv 5

IN THE CONSISTORY COURT OF THE DIOCESE OF LIVERPOOL

ST CHADS, KIRKBY

IN THE MATTER OF A MEMORIAL TO ADAM SHIERS (DECEASED)

JUDGMENT

Introduction

1. The court is concerned with an application for a retrospective faculty grant in relation to a grave memorial in St Chad's churchyard, Kirkby, Merseyside. The application is necessary because the memorial was installed not only without the permission of the Incumbent, the Rev Jeremy Fagan who is Team Rector, but also because as presently designed it falls outside the regulations for churchyards in the diocese of Liverpool.

2. When this matter was first brought to my attention several weeks ago, I was provided with some correspondence, including e-mail communications between the stonemason and the Incumbent, a brief application for a churchyard memorial (not the faculty petition) and some photographs. I gave directions for a full petition, the advice of the Diocesan Advisory Committee, and an opportunity for the parties to provide full representations and to indicate whether they were content for me to deal with this tragic and somewhat troublesome case without a hearing. I also visited the memorial in the churchyard in order to understand the setting, and in particular the nature of other memorials which had been recently erected.

3. None of the parties, that is the vicar, the family of the deceased Adam Shiers, or the stonemasons have chosen to become parties opponent, and accordingly I deal with this matter on the basis of the written representations which have been provided.

4. I am acutely aware of the sensitivity of this case, including the emotional strain which the process of securing an appropriate memorial for Adam is likely to be causing his family, and matters will not have been helped by some of the exchanges and blame casting involving the stonemason and the Incumbent as to how this situation was allowed to arise in the first place. I am also conscious that the legal jargonese and lack of transparency which was identified in the consistory court process by the recent report commissioned for the diocese of Coventry from Dr

Bratton, following the **St Giles (Exhall)**¹ case creates an additional burden for families in applications of this nature. I will endeavour to make this judgment as accessible as possible and in plain language, but inevitably when dealing with complex regulations and church law concepts which have not always been universally applied across the country, the process and outcome will remain frustrating, especially for Adam's family. I propose to provide some guidance for this diocese to prevent such an unhappy situation arising in the future in due course.

Background

5. Adam Shiers was the 25 year old son of Ritchie and Pauline Shiers. Along with his friend Liam Ward he was tragically killed in a car accident on the M57 motorway on 3rd February of this year (2023). There was an understandable outpouring of grief not only for the family, but also for the wider community on Merseyside with social media commemoration acknowledging the loss of a wonderful young man in the prime of his life. He had been a keen football fan, and a follower of Liverpool FC. At the next Liverpool and Everton home matches in the aftermath of Adam's death, there were spontaneous rounds of applause at 25 minutes to show appreciation for his life and to acknowledge his untimely death.

6. Adam's parents had a remote connection with St Chad's Church in Kirkby. Pauline's parents were buried in the churchyard and it would appear that family funerals, weddings and baptisms had taken place at the church. The Rev Jeremy Fagan provided considerable pastoral and emotional support for the family in the early days, particularly because they were hoping that Adam could be buried in the family grave.

7. St Chad's is a grade 2* listed church, constructed in about 1869 to a Paley and Austen design with both Norman and Gothic themes, and largely built in sandstone. It stands in a proud and dominant position near the centre of Kirkby, but on a site where there had been a church building for many centuries, and long before the new town ever came into existence. Thus in some sections of the graveyard there are gravestones which are almost 400 years old. Inevitably there was very little remaining grave space, with most of the graveyard closed to further burials, although in the newer of three separate burial areas, which was furthest away from the church building and opened in 1942 before being closed in 2000, the grandparents grave was situated. This had a simple memorial to Hilda, Stan and Patricia Kelly (Patricia being an aunt/ sister of Pauline).

8. Fortunately, it was established that there was sufficient space within the grave for Adam's interment, and his funeral took place on 10th March conducted by the Rev Fagan. Although this was an existing grave, it was still necessary for a six month period before any further memorial stone could be installed. The current memorial with the Kelly details did not contain enough space for the epitaphs which the family wanted to have inscribed on the headstone. Pauline and Richie

¹ St Giles : Exhall [2020] ECC Cov 1

Shiers decided to approach a local stonemason, Harrisons, to commission the memorial, which was to include a ledger² as well as a headstone.

9. Following Adam's burial, and prior to the installation of the memorial, the Shiers family attended the graveyard on a number of occasions, not simply to visit Adam's grave, as yet unadorned with the memorial, but to carry out significant repair and maintenance works to the surrounding area of the graveyard, which was in a somewhat neglected condition. This appears to have included reinstating paths, and improving the landscaped area, as well as attending to other graves which had been poorly maintained. Their understandable desire was to ensure that Adam's resting place would be in an environment where the grave was easily accessible, and the graveyard was visually pleasing and in a good condition. I have seen the results of their work, and there is no doubt that a lot of effort was expended in achieving this aim.

10. However, in this period, there appears to have been a breakdown in communication. The correct approach would have been for the stonemason on behalf of the family to complete a churchyard memorial application form, setting out the precise shape, size and material of the proposed memorial stone together with any particular features, and the nature of the inscription, size and style of the lettering. It would then be up to the Incumbent, (as described in the form, in this case the Rev Jeremy Fagan), to decide whether or not the proposed memorial came within the churchyard regulations for the diocese, which enabled him to permit its installation without the need for a faculty. This is the delegated process which is allowed for in the regulations.³ There is also the payment of a fee required.⁴

11. After Pauline and Richie had approached Harrisons there was no further communication with the Rev Fagan prior to the installation of the memorial stone. No fee was paid to the church, he did not receive an application, nor was he made aware of the intended memorial. On 26th September, Harrisons arranged for the erection of the new memorial stone complete with the ledger and plinth at the site of the grave. This came as a complete surprise to the Incumbent, who coincidentally was conducting a funeral on the same day and had noted the works van of the stonemasons blocking the church gates; this prompted a polite request for its removal. The Rev Fagan was clearly preoccupied with the funeral he was officiating, and did not inspect the new memorial until later in the day. He had immediate concerns, not least because the absence of any permission rendered its installation unlawful (in breach of the regulations) but also because of its size, shape and inscription.

² A ledger is a horizontal slab which covers the grave and which is an adjunct to the headstone, to allow further inscriptions. I note that whoever filled in the churchyard application form (possibly the stonemason) stated that it was not a ledger but an "internal slab with kerbs" to allow for easy long term maintenance. This may be a distinction without a difference.

³ See paragraph 2 of current regulations.

⁴ I understand that the stonemason did charge a fee to the family in the overall invoice of £158, to cover the cost of "church paperwork".

12. The Incumbent consulted the Archdeacon for advice, and both the family and the stonemason were invited to complete a churchyard memorial application form. The matter was then referred to me.

13. Regrettably this is not the complete picture, but before identifying other matters which have been salient to my considerations, I should deal with the memorial stone itself. There are photographs in the appendix to this judgment, and I set out below the full inscription/epitaph. The headstone itself has a brief identification of those interred within the grave, with their date of passing, but between the heading Kelly/Shiers, a photograph of Adam has been affixed. This can be seen in the photographs.

14. Engraved on the horizontal ledger is the following inscription:

Our Special Son Adam

If Love Could Have Saved You, You Would Have Lived Forever

Sleep Peacefully Son You'll Never Walk Alone

A Last Goodbye You Didn't Say

But The memories You Left Us Will Always Stay

Thanks Adam

Lots Of Love, Your Broken Hearted Mum, Dad And Your Lola

We Miss You Brother

We Think About You Always We Think About You Still

You Have Never Been Forgotten And You Never Will

We Hold You Close Within Our Hearts

And There You Will Remain

To Walk And Guide Us Through Our Lives

Until We Meet Again

Lots Of Love, Your Broken Hearted Brothers And Sisters In Law

Xxx

We Miss You Uncle Adam

You Was

SIMPLY THE BEST!

xxx

My Love For Ever And Always

If I Had One Hundred Lives To Live

I Would Want To Live Every One Of Them With You

Isn't It Cruel That The Only Life I Get I Have To Live Without You

Forever In My Heart, Your Loving Girlfriend Katie

xxx

You'll Never Walk Alone

15. In addition to the main inscriptions, at the head of the ledger as it abuts the headstone is a plinth for vases/flowers which is fixed to the ledger. This has the Liverpool Football Club crest and an additional inscription:

Always In Our Thoughts

Forever In Our Hearts

16. The characteristic emblem of the Liver Bird (without the full crest, but signifying Liverpool Football Club allegiance) also appears at the foot of the ledger together with the words “You’ll Never Walk Alone”, the name of the famous song/anthem always associated with the club.

17. Finally below these words, there appears in block capitals “FOREVER 25”

Events after installation of the memorial

18. Following the reference by the Rev Fagan to the Archdeacon and ultimately to the registry in early October, in the expectation of advice, and the completion of the churchyard memorial application form, the prospect that an unlawfully installed memorial might have to be removed from the churchyard generated a lot of local social media attention, and in the “New Kirkby Reporter” open group on Facebook there was a flurry of posts. I have not been supplied with the full extract of the entries, although they are in the public domain and searchable, it would seem that most of the comments were generated by a post on the part of Pauline Shiers on 5th October to the effect that she had been told by “*St Chad's to take down the family gravestone?*”. As is always the case in public debates of this nature when individuals can express their views mostly with impunity, there is a lot of misinformation and misunderstanding which is unfortunate, but I have noted that

the stonemason joined the discussion, and provided his own take on what had happened.⁵ In his post, he stated that the *“late submission of the paperwork was an administrative error on our part”*. He went on to attribute much of the fault for the situation which developed at the door of the church, and in particular the Rev Fagan, for not overlooking the memorial. As far as the involvement of his own company was concerned, he said this in his post:

“With regards to the memorial, the workmanship isn’t and cannot be questioned. “There isn’t another company in Liverpool who would have supplied and installed a memorial more perfectly. I want it to be noted in public that it is my opinion that the church should never have gone direct to the family and cause upset. They should have come exclusively to us to find a solution. I also want it known that we are doing everything possible to resolve the matter but it's been over a week and we still haven’t been told what the problem is?”

19. In the directions which I provided in late October I did afford the stonemason an opportunity to make any further representations, or to provide a full explanation of his position and understanding, but he chose not to, relying on the email communication which he had had with the registry. I shall refer to this later. However, Mr Harrison did email the Rev Fagan on 6th October having spoken to Pauline Shiers, and I propose to set out several extracts from that email as indicative of his understanding (or misunderstanding), and his attitude generally which has been less than helpful or constructive.

“You seem absolutely determined to get this memorial removed from the cemetery. You know as well as I do that you have a degree of discretion that would allow you to see sense and overlook this issue upon receipt of drawing and payment, albeit retrospectively. But for reasons unknown you have gone out of your way to seek the assistance of those above you.”

20. His belief that the Rev Fagan was opposed to the memorial is repeated further on:

“We told you yesterday that we have the drawings and the payment to bring to you. You told Colette, in our office, that it was pointless because the matter was now out of your hands. I'm writing this email to make it known to the family that we are trying to resolve this matter. I'll also be letting the family know how unwilling you seem to be to find a solution other than having the memorial removed.”

21. At the foot of his email he sets out his understanding of the situation in somewhat trenchant terms:

In a letter I've prepared for you, you'll read how I think the Church is so out of touch with modern society and how you still appear to operate like it's 1923, not 2023. Maybe you and Rev. Hugh can talk about that? I am not the problem here, the CofE is the problem. You want to dictate to people what they can and can't have, but as I say above, the rules haven't changed in what must be a hundred years! The church needs to appreciate that technology and society have advanced and people want to express their love differently. The biggest problem is that people aren't aware of the rules until their loved ones are buried and it is too late. If I had £100 for every one of my clients who regretted using a church ground for burial for this reason I could take a really nice holiday for a month (there have been dozens)

The way I see this is that there are three issues:

⁵ He is “Mark Louis” in the thread

1 . The memorial was not applied for on time and payment of £158 was not made on time. We're doing everything to put this right. We are only human and we do upwards of 700 memorials a year. It would be naive to expect everything to run perfectly. But if you really want a reference regarding our company, maybe seek one from KMBC rather than Hugh. We do maybe two jobs per year in Hugh's cemetery, we do hundreds in the cemeteries of KMBC. I think you'll find that KMBC's reference would differ greatly to that of Hugh.

2. The memorial style is not appropriate for the church Ok, but there is an identical memorial in the cemetery already, so I will advise the family to hold firm and once the other memorial is removed then the Shiers family will have no choice but to remove theirs also.

3. The slab/kerbs at the front of the stone are not permitted. Once again the precedent has been set by others in the cemetery. You cannot be selective about who you enforce the rules on. My advice to the family will be the same; hold tight and wait for others to be forced to remove theirs. I know the church allows 4ft high and 3ft wide. We've adhered to that comfortably. Our memorial has been installed to the highest standard possible with a great deal of care and attention. It is anchored to the ground to prevent it being a hazard (unlike most of the other memorials in that cemetery).

I'll conclude with this, not that it will make any difference to someone as determined to cause upset as you are; If you'd have used your energy to draw support from local companies to improve the look and safety of the cemetery there, we'd have been the first to offer our services AGAIN! See, we are not bad people, contrary to the conclusion you have drawn."

22. It is most unfortunate that the stonemason, whose company's precipitous actions have been substantially, if not wholly responsible for the situation which now exists, namely an unauthorised memorial, has been seeking to transfer blame and responsibility to the Incumbent and the church generally, and it is apparent from the letter provided on 9th October 2023 and addressed to myself c/o the Bishop of Liverpool's Registry, that far from opposing the memorial, or requiring its removal, he is supportive, although he retains a degree of criticism for the stonemason. It is clear that the pastoral care for the Shiers family in the predicament which they now face, that is the potential removal of the memorial, was uppermost in his consideration, but perhaps he has not helped smooth the waters with the somewhat pejorative use of language in the penultimate paragraph of his letter. I set out the key paragraphs in that letter:

"Adam's family have done a huge amount of voluntary work that has completely transformed what was previously an untidy and inaccessible section of the churchyard. This has included clearing rubbish, encouraging wildlife and birds, clearing weeds and fallen leaves, etc. We are hugely grateful for this work, and we know just how much the churchyard means to them. They have been unselfish and generous with their time, including helping other families care for their graves, and we can't thank them enough for this.

At this stage, if the correct process had been followed from the start, I do not know what would have been the outcome. It is possible that the family would have wanted to apply for a faculty for a memorial that is more substantial than the regulations give me the power to permit, so that they were able to have the epitaph that they want.

However, it is clear that, having done everything completely correctly, and thinking that all the permissions were in place, the family had found a strong sense of comfort that Adam was finally 'at peace' with the installation of the memorial they had planned and chosen. That this sense of completeness has now been ripped away from them because of the actions of the stonemason has been devastating for Adam's parents, partner, brothers and the whole wider family.

The actions of the stonemason have put them in an impossible position, and so for the sake of the family, I support this application for a faculty".⁶

⁶ My emphasis

23. Richard and Pauline Shiers have also written to me, (although they have not provided any separate statement). In their handwritten letter they explain their involvement with St Chad's over very many years, and the work which they had undertaken to restore the churchyard to ensure that their son's grave, and any memorial installed would be easily accessible. They had been completely unaware of the error of the stonemason and explained how heartbroken and traumatised they have been over their son's death, such heartbreak having been compounded by the situation in which they now find themselves.

The churchyard regulations and guidance

24. Every Church of England diocese has its own churchyard regulations, in most instances with accompanying guidance. A recent review of the regulations across the country in different dioceses has demonstrated that whilst there are regional variations, for the most part their substance is the same, and their purpose is to demonstrate what is and is not allowed in church graveyards (or churchyards as they are normally known). The responsibility for churchyards, which contain consecrated burial grounds, is that of the diocesan Chancellor who exercises the legal control on behalf of the Bishop. However, in almost all cases, the Chancellor has delegated the day-to-day responsibility and control over the church graveyards to the minister in charge of the church, or to the Area Dean if there is no such minister. If a churchyard is still open for burials, or there are spaces in existing graves, it will be the minister whom the bereaved family must approach in the first instance, through the undertaker and later the stonemason. In the vast majority of cases there will be no involvement of the Chancellor or the formal faculty process when there is a request to install a memorial, usually a headstone, because the minister will be able to decide by reference to the regulations, whether the memorial complies, or is appropriate. A fee is normally paid to the church, with an appropriate application form and the process is undertaken by the stonemason who is expected to be familiar with what is and is not permitted under the regulations. That is what should have happened in the present instance.

25. If sufficient detail is provided, the minister can usually grant permission in "compliant" cases. If the minister is concerned over any aspect of the proposed memorial, perhaps because of the nature of the inscription, or because the material to be used, and size and dimensions are outside that which is permitted, he or she will invite the person applying (the bereaved family) to seek a faculty, and it will be a matter for the Chancellor to consider whether or not permission should be granted for a memorial in a churchyard which falls outside the regulations.

26. The Diocese of Liverpool regulations currently in use were drafted by my predecessor as Chancellor, Sir Mark Hedley, in 2014. Both the regulations and the guidance are to be found on the diocesan website, and are easily accessible, and it is expected that most ministers and clergy responsible for churchyards, and stonemasons who are advising families on compliance issues will have access to them. It would be helpful if I identified some sections of both the guidance and the regulations themselves might be relevant to the present situation.

27. First of all the guidance. It is made clear that it is primarily intended for clergy and church wardens. In the opening section the scope of the Minister's responsibility is stated:

"The Minister may not approve a memorial that does not comply with the Regulations. If the Minister is not willing to approve the application, an application may be made for a faculty."

28. In other words, and this is highly germane to the present situation, if a grave memorial is non-compliant, the Minister has no discretion to circumvent it, contrary to the belief of the stonemason in this case, and must direct the bereaved family to the faculty process or to ask for permission whether the application was made prospectively or retrospectively.

29. The remaining paragraphs are not numbered, but on the second page reference is made to the inscriptions which are likely to be permitted on memorial stones.

"As regards inscriptions and epitaphs, a pastoral approach is preferred but families of the deceased should be reminded that over long inscriptions leave no space for future inscriptions. Whilst the inscription should relate to the deceased, the inscription may include references to the deceased as being a father or mother etc of named persons. A reasonable balance should be maintained."

30. Turning to the regulations themselves, I identify some key paragraphs which may be pertinent. First in relation to the process:

4. No memorial (including any type of gravestone and vase) shall be erected or placed in the churchyard until the approval of the minister has been obtained in writing. Applications for approval should give a full description of the proposed memorial including the shape, design, measurements, inscription and type of finish of stone proposed to be used. The application must be submitted not less than 28 days prior to the proposed date of erection. The minister must be given in writing at least 14 days' notice of the day and time when the memorial is to be installed.

31. Relevant to the existence of other memorials that are similar is paragraph 6:

6. Even if in a churchyard there is an existing memorial which does not comply with these Regulations, this does **not**⁷ mean that a similar memorial may be approved by the minister without faculty or indicate that a faculty will be granted.

32. In terms of the dimensions of the headstone and ledger, reference should be made to section 9 and its subparagraphs. First, in respect of the vertical memorial (headstone):

⁷ My emphasis

9.1 A simple vertical memorial not exceeding 1200 MM (4 feet) high, measured from the surface of the ground, 900 MM (3 feet) wide and 150 MM (6 inches) thick with a plinth supporting the memorial not exceeding 300 MM (12 inches) from front to back and projecting not more than 50 MM (2 inches) beyond the back and not more than 75 MM (3 inches) beyond the sides of the memorial. The memorial and plinth will normally be placed on a concrete foundation base – the top surface of this foundation base must be set below ground level. The concrete foundation base should be placed on virgin ground – undisturbed by the digging out of the grave – but this may be practicable only when a new row is started (otherwise the memorials will be out of line). The plinth may incorporate a vase or other flower container sunk into its forward projection; this is much preferable to loose containers.

9.2 A simple vertical memorial not exceeding 1200 MM (4 feet) high, measured from the surface of the ground, 900 MM (3 feet) wide and 150 MM (6 inches) set directly into the ground without a plinth provided that the method of securing the memorial is in accordance with the NAMM code and the British Standard.

33. In respect of the horizontal memorial (the ledger):

9.4 A horizontal ledger memorial either flush with the surrounding ground so as not to impede a mower or raised not more than 225 MM (9 inches) above the base which must not project more than 75 MM (3 inches) all round and which itself must be flush with the surrounding ground, not exceeding 6 feet (1800 MM) in length and 3 feet (900 MM) in width.

34. Paragraph 11 deals with epitaphs and inscriptions

11. EPITAPHS AND INSCRIPTIONS – 11.1 inscriptions must be simple and reverent and must receive the prior written approval of the minister. The minister may impose limitations on wording for uniformity e.g. to record only name and date of death and may require stones to be provided and engraved by a nominated stonemason. Where other means of recording interment of cremated human remains are permitted, this will normally be of uniform character, and the minister may require additions to be done by a nominated stonemason. 11.2 Additions may be made to inscriptions at a later date, following subsequent interments in the same grave or for other good reason. Any such addition or alteration to an inscription must be separately approved by the minister in writing. Similarly a replacement memorial will need written approval and the approval of all the relevant family members must be supplied.

35. Paragraph 13 deals with the material to be used in memorial stones.

13.2 Natural unpolished stone will be insisted on in contexts such as ancient churchyards or areas immediately surrounding traditional church buildings or other areas of graveyards possessing a predominantly traditional setting. The minister should indicate areas to which this applies in a specific churchyard.

13.3 In areas of churchyards of more recent date, imported and highly finished stones may be commonly found and in such cases materials such as black, grey, blue and red granites (polished or unpolished) may be permitted at the discretion of the Minister. White marble is not permitted save for infant burials. When ministers are in any doubt they should require the applicant to apply for a faculty.

36. The use of photographs is covered by paragraph 14:

14. PHOTOGRAPHS Etc - the minister does not have authority to approve the use of a photograph or an inscribed portrait or other representation of the deceased as part of a memorial or the fixing of porcelain or plastic portraits to memorial. Save in the most exceptional circumstances a faculty is unlikely to be granted.

37. Although touching on maintenance following installation, paragraph 15 deals with enclosure of the grave memorial and its position in relation to the surrounding ground:

15. TREATMENT OF GRAVE SPACES AND MAINTENANCE – 15.1 Kerbs, railings, posts or chains or similar items to enclose a grave are not permitted.

38. Finally paragraph 18 explains the process that is involved if the memorial falls outside the regulations.

18. MEMORIALS FOR WHICH A FACULTY MUST BE OBTAINED – 18.1 Applications for memorials whose design or dimensions fall outside the conditions outlined above, shall be made by means of an application for a faculty, initially to the Secretary of the Diocesan Advisory Committee, St James' House, 20 St James Road, Liverpool, L1 7BY. Once the Committee has made its recommendation, the petition form is issued which, when completed, is sent to the Diocesan Registrar at The Bishop of Liverpool's Registry, 1 The Sanctuary, Westminster, London, SW1P 3JT. A fee is payable on the making of such an application which will be notified at the time

Does this memorial conform to the regulations?

39. This is the first question which must be asked, because if it was not compliant, then as I have indicated the Minister would have had no power or authority to approve it. In fact if he had been presented with an application before installation for this design, it seems to me inevitable that he would have directed the bereaved family down the route of applying for faculty, as the memorial was outside his permission remit.

40. I can deal with the question of compliance fairly briefly. In terms of measurements, not only do I have the benefit in the churchyard memorial application form with the measurements, but also there was an opportunity to carry out an on-site check of these measurements when I visited the churchyard. Mr Harrison is quite correct when he says that the dimensions are within the height and width for both the headstone and the ledger. In fact, the highest point is the centre of the two shallow curved or arched headings to the headstone, which measures 4 feet, whilst the other dimensions are at maximum permitted, being 3 feet for the width of the headstone, and the ledger, and 6 feet for the length of the ledger. I need say no more about that aspect.

41. Whilst ledgers clearly are permitted, the regulation specifies that they must be flush with the surrounding ground or be raised no more than 9 inches from the base, that is the concrete plinth on which they sit. Clearly the purpose of the regulation is to ensure that they do not become hazardous for persons visiting the grave, or moving around the graveyard, (creating a trip) and to allow for the mowing of any grass which is established between gravestones. Although Mr Harrison refers to the use of kerbs⁸, there are no obvious kerbs around the ledger, although there is a curious feature where artificial grass has been placed on both sides of the grave sloping down and away from the ledger, making it difficult to determine whether or not the base and the ledger exceed the maximum permitted measurements. I suspect that this has been part of the general reordering and tidying of the churchyard undertaken by the Shiers family, because otherwise there is little turf between the gravestones, but it has the effect of extending the permitted grave area. As far as the height of the ledger is concerned, it was clear on visual inspection that the concrete plinth was not flush, although overall it is unlikely that the ledger itself was more than 9 inches above the surrounding ground, after allowing for the plinth.

42. Technically, therefore, this amounts to non-conformity with the regulations, but not to any great extent.

43. In respect of the material used, namely black/grey polished granite, again this is likely to lie outside of the regulations and could not have been permitted by the incumbent, had there been an application made to him. However, it must be acknowledged that there are several other memorial gravestones in which the same or very similar material has been used, and therefore there is little or no impact from this memorial. Of course, as the regulations make clear, the fact that other gravestones have been installed with the same characteristics, does not give rise to a precedent which can be followed for later memorials. Every prospective memorial stone must be assessed on its own merits.

44. The most obvious aspect of non-conformity is the use of a photograph on the gravestone. It is only in exceptional circumstances that such a photograph is permitted, and a faculty is always required. I will deal with this in more detail later on, because there are a number of other considerations to take on board. For now it is sufficient for me to observe that if this had been included in an application prior to the memorial stone being in place, it would not have been granted.

45. I turn now to the inscriptions/epitaphs, and again will be addressing them in more detail below. The requirement is that they are “*simple and reverent*”. The regulation itself does not explain what that means, but it does not require any great degree of analysis to come to a conclusion that the inscriptions on this memorial are anything but simple, but instead occupy probably more than 75% of the available space for inscription, notwithstanding that there are four bodies interred within the grave. The Incumbent would not have the authority to approve these inscriptions, and I have little doubt that if they had been referred to me, as Chancellor, by faculty application, I

⁸ or whoever completed the churchyard Memorial application form

would have required considerable curtailment, ie reducing them in size, style and expression. There is no doubt that whilst each of the separate dedications from family members is intended to be a heartfelt tribute, and they probably provide a great source of comfort to the family when they visit the grave, it is highly unusual for permission to be given for overly lengthy non-scriptural verse, and there is an expectation of brevity, recognising the relationship between the deceased and close family members, but not allowing the memorial to become a noticeboard, so to speak, or similar to a Facebook page where sentimentality is indulged. I am conscious that this will sound harsh and unfeeling to the bereaved family, but it must be remembered that churchyards are intended to provide memorials which will stand for decades, or even centuries, and within consecrated ground an epitaph is an acknowledgement of hope or a recognition of victory over death, with the process of burial very much associated with “resting”, and epitaphs which record the hurt and desolation of the bereaved (which is entirely understandable) would rarely be considered appropriate.

46. There are several other aspects of the inscriptions which I would have been unwilling to permit, had there been an opportunity to give this family guidance and direction on a suitable inscription. This includes the football emblems, the excessive capitalisation in the rhymes, and some of the stand-alone phrases, such as “*you’ll never walk alone*” and “*you was simply the best*”. Chancellors who deal with requests for inscriptions (prior to their engraving) usually arrive at some sort of an accommodation where sensitively drawn up tributes and acknowledgements of relationships can be expressed in terms that are “*simple and reverent*”.

47. It is unfortunate, of course, that the stonemason does not appear to have had an appreciation of the kind of inscription or epitaph which would be acceptable in consecrated burial grounds (churchyards or the consecrated sections in cemeteries). There are many examples of memorials in unconsecrated ground where tributes can be more expressive and sentimental.

What should be the approach of the consistory court when dealing with a non-conforming memorial?

48. There have been a number of reported decisions by fellow chancellors in other dioceses dealing with the legal approach which a Chancellor should take when there is a faculty application for a churchyard memorial that does not comply with the diocesan regulations. I do not believe that it would be helpful for those dealing with the consequences of this judgment, or for the family to be taken through a detailed discussion of legal principles, or an in depth analysis of case law which has defined the way chancellors should approach their decisions. There are many dozens of cases, some of which address retrospective faculty grants. Simply by way of example, in **St Leonard Birdingbury [2018] ECC Cov 1**, Eyre Ch was asked to approve an unusually shaped memorial stone retrospectively, and carried out a thorough analysis of almost 30 other cases which demonstrated a variety of approach amongst different chancellors, some of whom required a higher standard of proof on the part of the person applying to show a degree of exceptionality, or a substantial reason for departing from the regulations (which was his preferred approach) and some of whom applied a more practical broader brush, with the starting point that there was no presumption against non-conforming memorials. A consideration of these different authorities is

neither necessary nor proportionate, but to make clear how I have approached the issue, I have drawn on the guidance provided by the Court of Arches (the appeal court for consistory courts) in the **St Giles (Exhall)** case referred to above.⁹

11.5 Hill Ch also discussed the approach to determining faculty petitions for departures from the categories of memorial permitted by Churchyard Regulations. He noted differing approaches in the judgments of the consistory courts of a number of dioceses, with some treating their regulations as requiring exceptional circumstances to be demonstrated by a petitioner seeking to introduce a memorial which went outside the scope of delegation authorised by the relevant regulations. He favoured the approach of McGregor Ch in *Re St John's Churchyard, Whitchurch Hill* (Oxford Consistory Court, 31 May 2014) para 16, as follows: "As is the case with any petition, the burden of proof lies on the petitioner to show why a faculty should be granted to authorise the particular proposal set out in the petition." Hill Ch continued, at paragraph 7, saying: "The terms and content of the Churchyard Regulations will, of course, be a relevant factor – often highly relevant and doubtless on occasion determinative. But they will be one of the constellation of infinitely variable factors which the court must consider on a case-by-case basis."

11.6 A similar approach was taken by Bullimore Ch in *St Mary the Virgin Eccleston* who approached the suitability of the memorial "on its own merits, the only constraint being the inability of the court to permit something which is contrary to, or indicative of any departure from, the doctrine of the Church of England in any essential matter". In *St Mary, Kingswinford Mynors* Ch said at paragraph 47, that mere non-compliance with standards can "never be of itself the only basis on which to oppose a faculty petition ... It is thus necessary to consider whether the particular memorial in question is inherently desirable, or at any rate not undesirable, whether or not it complies with the standards."

11.7 A rather different approach has been taken in other cases (see e.g. *Re St Paul, Rusthall* [2016] ECC Roc 2 and *Re St Mary, Prestwich* [2016] ECC Man 1) where it has been said that there needed to be a "powerful reason" for approving departures from the Churchyard Regulations.

11.8 We consider that the right approach is the merits-based one. Clearly, any Regulations in place for the parish or diocese concerned will be part of a matrix of relevant considerations, but we do not think that consideration of a faculty petition should start with a presumption against allowing a memorial outside the parameters of the Regulations, for the reasons articulated in the first instance judgments cited in paragraphs 11.5 and 11.6 above.

49. In the circumstances I propose to follow the "merits-based" approach in my assessment of this "non-compliant" memorial stone. In other words, save in one small respect, my decision will not be made on the basis of the need for the applicants to establish exceptional circumstances.

Observations

50. As I have indicated, if the application had been made before installation, the process would have been far more straightforward. The family would have known what was and was not permitted, and compromises could have been reached with the involvement of the stonemason to arrive at an acceptable accommodation. Dealing with the matter retrospectively creates greater problems all round, with the power reserved to a Chancellor in extreme cases to make a restoration order, that is to require the removal of the offending memorial, or to direct substantial alterations to the shape, size, construction detail or inscriptions.

⁹ [2021] EACC 1

51. It is incomprehensible to me how an experienced stonemason could install a grave memorial without ensuring that the necessary permissions were in place. Whilst in the absence of any direct evidence from the stonemason properly tested in a forensic environment, I stop short of finding that it was implausible that the Shiers memorial was installed without permission through an administrative error and the most likely explanation was that the permissions were deliberately ignored in the expectation that they would be overlooked. It is quite possible that this has happened on other occasions and in other diocesan churchyards¹⁰.

52. As I have indicated, it is correct that the memorial stone, including the headstone and the ledger do not exceed the maximum permitted dimensions under the regulations. The shape itself is somewhat brash, with columns on either side of the headstone, and a curved or arched upper edge, creating the tendency to stand out and dominate the surrounding grave memorials, but this does not justify any interference or alteration. Again the simplicity could have been emphasised in early discussions before its installation. Accordingly I permit a memorial stone of this shape and size in terms of the headstone and ledger.

53. I have had some misgivings about the height of the ledger above the ground, and the concrete plinth base upon which it is placed. I have revisited the grave within the last few days to confirm the measurement, with the upper level of the ledger being slightly more than 9 inches above the ground, although it is less than 9 inches above the concrete plinth. The concrete plinth should have been level with the ground, and this would have led to the entire memorial stone sitting lower and being less prominent. Consideration was given to a ruling that the concrete plinth should be removed and lowered, as presently it is highly visible, but on reflection I believe that this would be disproportionate. Further, the purpose of levelling is to enable movement between the graves, and the establishment of turf if possible which can be mowed easily, but it is clear from the layout of this graveyard that the memorials are tightly packed. Therefore I make no requirement in relation to this aspect.

54. The affixing of a photograph of the deceased to the headstone between the names Kelly and Shiers will require exceptional circumstances to be established, according to the regulations for this diocese. There are similar restrictions on photographs in most diocesan Churchyard regulations. Although photographs are commonly used in local authority cemeteries for graves in unconsecrated ground, I am not aware of any instance where these have been permitted on faculty applications by my fellow chancellors.

I have not been shown any material which would justify making this an exceptional case. I note the comment of the stonemason, to the effect that the family should stand fast in relation to the photograph of Adam, resisting any direction that it should be removed unless and until the same applies to those other gravestones within the same churchyard where photographs have been

¹⁰ I have been Chancellor of this diocese for almost 5 years and this is the first faculty, whether retrospective or otherwise in relation to a memorial stone which I have been required to deal with. However I have noted in several churchyards that I have visited recently, where the deceased has passed away within the last five years and memorial stones have been erected, that there are a handful which would have required a faculty application. The only conclusion which can be drawn from this is that incumbents have "turned a blind eye" or chosen to permit non-complying memorials for pastoral reasons.

secured to the headstone. This is not helpful advice to the family. The presence of other photographs or any aspect of other memorials has no bearing on this particular case, even if it is obvious that permission would not have been granted had there been an appropriate application.

55. I am conscious that this may seem a harsh and insensitive decision, and that great solace is derived from the family visiting the grave and seeing a picture of Adam in the centre of the headstone. Pastoral considerations do of course carry some weight, and for a family still in grief it may be difficult to understand why they cannot be allowed to remember their son, boyfriend, uncle, brother in this way. However, as Chancellor I am required to consider not just those involved in this memorial and who are still grieving the loss of their loved one, but a far wider community including those who visit this churchyard and the graves of their loved ones, and those who may have been denied photographs and gravestones on previous occasions in years gone by. I am also required to consider aspects of heritage, the history of an ancient graveyard and of course the association of this burial ground with the church and the significance of church doctrine, including the victory over death represented in the Christian gospel.

56. Apart from the absence of any exceptional reasons advanced by the family, there are other factors which persuade me that this photograph should be removed. First, this is a shared grave space with three other family members and yet a photograph of Adam only. I have not been given details of a wider family tree, and it may well be that there are few members of the wider family who may visit the grave to pay their respects in loving memory to the grandparents on the Kelly side, or Patricia. Second, whilst doubtless the photograph has been carefully protected and encased in weatherproof material, it is highly likely that over the years it will deteriorate, with colours fading, and the image losing its definition. The grave and memorial stone, however, will stand the test of time, over decades and centuries, and be visited by future generations. Third, it would create an unwelcome precedent, notwithstanding that there is at least one other gravestone within the churchyard which contains a photograph.

57. In the light of the comfort which is clearly derived from the photograph, I have no doubt that it will be difficult to make an adjustment when it is removed, which is my direction. However, there is no reason why there cannot be a temporary photograph provided with the replaced flowers on graveside visits, protected against the elements, and changed from time to time if they so wish. This would be perfectly acceptable, and it is not uncommon to see photographs amongst floral tributes.¹¹

58. I turn now to the inscriptions. I confess that I have not found this aspect easy to resolve. As I have stated above, the inscriptions are inappropriate in a number of respects and would certainly have not been allowed on a prospective application. They focus not on the deceased, but on the feelings of the bereaved, are overly sentimental, and in one or two respects non-scriptural. They are poetic tributes in a style more likely found in a remembrance book, on a sympathy card,

¹¹ On my most recent visit, I noticed that there was a family photograph among the many flowers, tributes and various tokens which adorned the memorial.

or in these times of social media, on a Facebook page. It is also a concern that the tribute from the girlfriend Katie will not stand the test of time. As tragic as it is for her to have lost Adam, who was clearly the love of her life, she will move on and form new relationships. There may come a time when the inscription becomes uncomfortable for her, or a future partner, focusing on her feelings at a snapshot in time, as she finds love elsewhere.

59. I have made it clear that I regard these inscriptions as neither simple nor reverent, however heartfelt and genuine they were intended to be. However I also acknowledge that this family have been through a period of great upset, and on the basis of recent communications they are still grieving and will do so for some time to come. I know from close family experience how tragic it is for a child to die before his or her parents and how intense the grief can be. The Shiers family have invested a considerable amount of time, energy and effort into making this grave memorial a fitting tribute for Adam. They were simply not made aware of what can and cannot be allowed on a memorial stone which is part of a churchyard, and where the deceased, whom they wish to remember, is buried in consecrated ground. These are compelling factors, in my judgment, and the pastoral considerations associated with supporting the family going forward carry very considerable weight. It cannot be assumed that this will always be the case if a grave memorial which does not comply with the regulations is installed, but in the circumstances of this application I have come to the conclusion that wholesale changes to the inscriptions are not justified, because of the clear and harmful impact such a direction is likely to have on the grieving family.

60. I am reinforced in coming to this conclusion by the support which the Rev Fagan is giving for this application. He is in a better position to understand the grieving process which the family have been going through and has clearly identified the pastoral benefit which will be gained from substantially retaining the grave memorial, even if it was unlawfully installed.

61. There remains, however, one particular feature of the memorial which will have to be removed. On both the vase plinth and at the base of the ledger there are football emblems which are wholly out of place on an epitaph intended to be simple and reverent. Whilst I have no doubt that Adam in his lifetime had a passion for Liverpool Football Club, gravestone memorials cannot be used for sporting or hobby emblems, particularly to demonstrate football allegiance. If this was permitted, it would set an unwelcome precedent, with the badge or crest of the deceased's football club cropping up on gravestones throughout churchyards.

62. Therefore, whilst granting a faculty for the inscriptions retrospectively, I require the removal of the LFC logo, being the crest on the vase plinth, and at the foot of the ledger. The words "*you'll never walk alone*", whilst obviously associated with the football anthem, can remain. I suspect that they provide a source of comfort for the family, and not just an expression of football allegiance.

Conclusion

63. The tragedy in this case lies not only in the loss of a dearly loved family member, but also in the fact that the grief has been compounded by the uncertainty and anxiety which has surrounded a grave memorial installed without permission, and the prospect that its removal might have been directed by me. In my judgment, the responsibility for this unhappy situation is substantially if not wholly that of the stonemason. It is not simply a case of overlooked paperwork, as he has asserted. There is an expectation that the professionals involved in installing memorials of this nature will be fully conversant with the regulations, and ensure that any memorial stone that is obviously outside the regulations has the appropriate permissions in place, which in most instances will involve a faculty grant.

64. In so far as I have retrospectively permitted this memorial, but have required alterations to involve the removal of the photograph and the LFC emblems/insignia, the responsibility falls in the first instance on the family. However, as there is cost involved, I would not expect this to be borne by the Shiers family in the circumstances. I note that at one point in the correspondence Mr Harrison had indicated that the entire memorial stone would be replaced at no cost to them, but borne by his company. Whilst this agreement/willingness to reimburse was not given as a formal undertaking, I proceed on the basis that the alterations required (which may involve the temporary removal of the ledger) will not cost the family anything. Further, insofar as I direct that the costs and fees associated with this faculty application and judgment should, as is normally the case, be borne by the petitioners (i.e. the family) it would be appropriate for them to expect full reimbursement from the stonemason.

65. In the event that this does not happen, or any issue arises in relation to the alterations I have directed and the payment of fees, the matter should be returned to me for further directions.

His Honour Judge Graham Wood KC
Chancellor of the Diocese of Liverpool

27th December 2023

Appendix of Photographs

Rear of memorial showing thickness of concrete plinth and surrounding ground



Artificial grass at side of memorial stone and general view of ledger



General view of memorial showing ledger and photograph of Adam (LFC crests at foot of ledger and on vase plinth)



Example of other memorial stone in same section of churchyard with photographs

