



Faculty application – Churchyard memorial – Grade I listed, medieval village church – Petition for both a Star of David and a Cross to be inscribed on an upright headstone to commemorate the petitioner's late husband, who had been brought up in the Jewish faith but had accepted Christianity – The Rector, the PCC, and the Archdeacon all support the application – The DAC recommend the application for approval by the court – Whether a Star of David should be permitted on a churchyard memorial – Faculty granted

Petition No: 11051

**IN THE CONSISTORY COURT OF
THE DIOCESE OF OXFORD**

Date: Sunday, 17 November 2024

Before:

THE WORSHIPFUL DAVID HODGE KC, CHANCELLOR

In the matter of:

St Mary the Virgin, Weston Turville

THE PETITION OF:

Mrs Deborah Clark

This is an unopposed petition, determined on the papers and without a hearing.

There were no objections to the petition

The following authorities are referred to in the judgment:

Re All Saints and St Andrew's, Honington with Sapiston [2017] ECC SEI 3, (2018) Ecc LJ 112, [2017] PTSR 664

Re Blagdon Cemetery [2002] Fam 299

Re St Giles, Exhall [2021] EACC 1, (2022) 24 Ecc LJ 116, [2021] PTSR 1622

JUDGMENT

Introduction

1. This faculty petition raises the question whether images of both a Star of David and the Cross should be permitted on a gravestone in a churchyard within the Diocese of Oxford. The request is made by the deceased's widow, who wishes to commemorate both her late husband's Jewish heritage and his Christian faith. However, the former Chancellor of the Diocese of Norwich has recently ruled against permitting the Star of David to be placed as a symbol on a memorial stone in a churchyard in that diocese. Historically, the doctrine of precedent that applies in the secular courts of this country played no part in the decision-making process of the church courts. In relatively recent times, however, the Court of Arches (which is the appeal court for the southern Province of Canterbury) has repudiated the notion that "*precedent should play no part in the decision making process in the consistory court*". Rather, that court has affirmed that "*precedent has practical application at the present day because of the desirability of securing equality of treatment, so far as circumstances permit it, as between petitioners*": see *Re Blagdon Cemetery* [2002] Fam 299 at para 36 (v), in a case concerning a faculty for an exhumation. As Professor Mark Hill KC states, at para 1.32 of the 4th edn of *Ecclesiastical Law* (2018):

The decision of a consistory court of one diocese does not bind that of another, but it is afforded considerable weight and often approved and followed unless there is good reason otherwise.

So I have not only to decide whether I should permit a Star of David to appear on this particular gravestone, but also whether I should thereby refuse to follow the precedent set by the learned Chancellor of another diocese in the same Province of the Church of England, and so open up a potential division between the practices applied in two dioceses in this country.

Background

2. By a petition dated 21 May 2024, Mrs Deborah Clark asks for a faculty authorising the installation of a memorial commemorating her late husband, Mr Joe Clark (**Joe**), in the new part of the churchyard of the Grade I listed, medieval church of St Mary the Virgin in the village of Weston Turville, to the south-east of Aylesbury, in the Archdeaconry of Buckingham. Mr Clark died on 18 July 2023. The proposed memorial will be an upright headstone made of honed light grey granite. Both the memorial, and the inscription, are considered appropriate for the churchyard. However, Joe was of Jewish heritage; and his widow would like a Star of David inscribed on the top left of the gravestone and a cross on the top right. In her petition, Mrs Clark explains that "*whilst Joe accepted Christianity, he was brought up with the Jewish Faith and so I want to represent both Faiths on the headstone*". The grave is a reserved, double depth burial plot; and when her time comes, Mrs Clark would wish to be buried in the same grave as her late husband, with both faiths being honoured. With the benefit of hindsight, given the different faith backgrounds of husband and wife, it is a pity that this potential issue was not identified, and addressed, at the time the grave space was originally reserved by them.

3. There are no similar memorials with other faith symbols in the vicinity of this grave. The Rector, who conducted Joe's burial, has no personal objections to this proposal; and he fully supports the application. The Parochial Church Council (the **PCC**) have discussed the proposal, have agreed that it is suitable for this churchyard, and have given it their approval. According to a section of the petition signed by the Rector, the size of the two religious motifs "*appropriately brings the two religions together, ... and it is indeed in the Spirit of true Christianity and inclusivity*". No objections have been received in response to the display of the public notice of this faculty petition.

4. The initial response of the Diocesan Advisory Committee (the **DAC**) to this petition was that, with the exception of the use of the Star of David, the proposed memorial meets the current churchyard regulations and is unobjectionable; but they expressed concern as to whether they were appropriately placed to pass comment on the matter. When I first looked at the petition, I too was concerned that the petition really raised an issue of doctrine concerning the extent to which religious symbols, other than the Christian Cross, should be permitted within a churchyard. I therefore approached the Archdeacon of Buckingham (during the present sad vacancy in the Area See of Buckingham) for his thoughts, particularly on whether the Diocese of Oxford should permit the Star of David, or whether there might be some other religious symbol, common to both the Christian and the Jewish Faiths, that might be permissible as an indication of Joe's religious heritage. I had in mind the symbol of the menorah, referenced in both chapter 4 of the Old Testament Book of Zechariah and chapter 1 of the New Testament Book of Revelation. However, in doing so, I made it clear to the DAC that the Archdeacon would be focussing only upon the doctrinal and theological issues. I would still welcome a Notification of Advice from the DAC on the appropriateness of this memorial in the context of this particular churchyard. On 30 September 2024, the DAC issued their formal Notification of Advice. They recommended the introduction of the proposed memorial for approval by the court. They advised that it was not likely to affect the character of the church as a building of special architectural or historic interest.

5. In due course I received a response from the Archdeacon of Buckingham. He acknowledged that his own view on the matter is somewhat coloured by his experience as the vicar of a church in Liverpool where, week by week, he had celebrated the Eucharist near a Star of David, which was the central motif in a stained glass window installed when the church was built in 1825. The Archdeacon explained that this church is not unique, and that the Star of David can be found in stained glass windows in a good number of churches and chapels of that era. Locally, the Selbie Memorial Congregational Church at Whaddon, near Milton Keynes, affords a prominent example. The Archdeacon concludes:

Given that our recent forebears found no contradiction between the Star of David symbol and Christianity, I am more than happy on doctrinal grounds to support applications for the Star of David to be added to memorials in Buckinghamshire. I am doubly happy to support this, given the pastoral need for those in 'mixed marriages' to be buried together.

6. I also thought it sensible to consult the Archdeacon of Oxford, in his role as the chair of the Oxford Diocesan Committee for Interfaith Relations. His view is that there may be grounds for allowing a Star of David on a memorial in Christian churchyards, for the following reasons:

(1) **Precedence:** Some war graves within Christian churchyards may include the Star of David, although this may be seen as a very specific reason.

(2) **Pastoral considerations:** If a husband and wife wish to be buried in the same grave, and come from a marriage that covers two religions, it might be seen as appropriate to allow a Star of David on a memorial.

(3) **Christian heritage:** If a Star of David and a Cross are both on a memorial (as in this case), then a Christian might see this as reflecting a natural religious synergy. This would not be perceived in such light by sections of the Jewish community. Given this likely difference of opinion, the court might want to consider the weight of pastoral consideration in relation to external religious views.

7. In response to any possible concern that the display of the Star of David might be seen by some as a political statement of support for the State of Israel, the Archdeacon of Oxford commented that he would hope that the presence of a Star of David on a memorial stone would be seen more in terms of personal identity rather than any political affiliation. The Archdeacon of Oxford later provided me with an image of a Star of David super-imposed upon a Cross which he had noticed above the altar of a church within a converted barn (not apparently subject to the faculty jurisdiction) situated in the Dorchester area of the Diocese of Oxford.

Churchyard Regulations

8. The current (2016) Churchyard Regulations for the Diocese of Oxford permit a black, white or uncoloured etching or carving provided it *“is reverent and not indicative of beliefs contrary to the doctrine of the Church of England”*: see regulation 33 a. Regulation 38 provides that *“a monument or ledger stone may include an inscription provided it is simple, reverent and not contrary to the doctrine of the Church of England”*. There is no express reference to the Star of David. However, the Churchyard Regulations are merely facilitative, delegating authority to the incumbent minister to authorise the introduction into a churchyard of certain permitted monuments or ledger stones. They do not operate to prevent any monument or ledger stone being introduced under the authority of a faculty or other order issued by the Consistory Court.

9. The recent Report of a Working Party of the Ecclesiastical Judges Association (‘the **EJA**’) into Churchyard Memorial Regulations (published in October 2024) contains no reference to the Star of David. Nor would this particular religious image or symbol appear to be expressly addressed in any of the currently applicable sets of diocesan churchyard regulations: see the comparative table in Appendix A. The recommended template model set of regulations proposed by the EJA permits any motif, emblem or other image forming part of the design of the memorial which is *“relevant to the life of the person commemorated”* and *“is not inconsistent with Christian doctrine”*: see regulation 1.24 (a) and (f).

10. Essentially, it would seem to me that whether or not an image of the Star of David should be permitted on a churchyard memorial should depend upon whether or not it is consistent with Christian doctrine. It is therefore necessary to consider the two authorities in which this issue has fallen for decision. By co-incidence, both are decisions of Chancellor Etherington KC, albeit acting as the chancellor of different dioceses. I should also make brief reference to observations of the Court of Arches in a third case, in the different context of an appeal in which they reversed the decision of a diocesan chancellor who had refused to permit a

memorial commemorating the petitioner's mother in the form of a Celtic cross containing an emblem of the Gaelic Athletic Association with an inscription written in the Irish Gaelic language unless it also included an English translation of the words in Gaelic.

Re All Saints and St Andrew's, Honington with Sapiston [2017] ECC SEI 3, (2018) Ecc LJ 112, [2017] PTSR 664

11. In this unopposed petition, in the Consistory Court of the Diocese of St Edmundsbury and Ipswich, the Commonwealth War Graves Commission ("the **CWG**") wished to replace a memorial to a pilot officer from the local airfield who, with his fellow crewmen, had been killed in the service of this country in the first few days of the Second World War. The crew had all been buried together in the churchyard. The CWG's reason for applying to replace the memorial was that the original displayed an inscribed cross, whereas it had recently been discovered that the deceased was of Jewish descent. The Chancellor decided that it would not normally be appropriate to permit a memorial bearing a Star of David, or any other religious symbol inconsistent with the doctrines of the Church of England, to be introduced into a churchyard. However, he determined that in that case there were exceptional circumstances which justified permitting a Star of David to be inscribed on the proposed replacement memorial.

12. The Chancellor began his judgment as follows:

1. In this judgment I have affirmed that those burying the remains of a deceased person in an Anglican churchyard within the jurisdiction of this court are subject to that jurisdiction in respect of monuments (by which is meant memorials, headstones, ledger stones and the like) that may be erected and what may be inscribed upon them irrespective of the religious belief, if any, of the deceased or the person responsible for the deceased's burial. I have also affirmed that nothing may be placed upon a monument that is profane, offensive or inconsistent with the beliefs of the Church of England as enshrined in its doctrines. I have concluded that a religious symbol primarily indicative of a faith other than Christianity or of beliefs inconsistent with those of the Church of England as enshrined in its doctrines may not ordinarily be placed upon a monument and never without a faculty. Therefore, the image of the Star of David, which is primarily indicative of the Jewish faith, particularly when placed upon the monument of a deceased person, is not ordinarily permissible as a symbol to be placed on a monument in an Anglican churchyard under the jurisdiction of this court and never without a faculty. However, and probably very rarely, there may be truly exceptional circumstances that justify a departure from the principle ordinarily applicable. In this case, the facts surrounding the burial of a young south African airman of Jewish descent in the opening days of the Second World War provide that true exception.

13. At paragraphs 2 to 15, the Chancellor set out the background to the petition in that case. He then moved on to consider the objective, and the practice, of the regulation of churchyards and cemeteries. At paragraph 18, he inferred "*readily from the rules generally, and the fact that the churchyard is under the jurisdiction of the Consistory Court, that monuments associated with the practice of religions other than Christianity or inconsistent with the beliefs of the Church of England enshrined in its doctrines would not ordinarily be permitted*". At paragraph 22, the Chancellor observed that

... the question of what monuments are appropriate involve both aesthetic and theological considerations. There is no compulsion, forcing someone to be buried in an Anglican

churchyard or in consecrated ground, at least in peace time and in normal circumstances. The bereaved must understand that those responsible for burying someone are accepting that the consistory court regulates the type of monument (headstone or other marker) that may be erected, what inscription may be placed on it, where it may be placed and how it is designed.

14. At paragraph 26, the Chancellor explained that he had had no difficulty in confirming his preliminary view that the existing monument could be replaced with one that did not include an engraving of a cross. The issue that had exercised his mind was whether it was permissible and appropriate for the monument to have an image on it of the Star of David. He proceeded to consider that specific issue at paragraphs 27 and following. At paragraph 34, the Chancellor summarised the effect of the advice he had received from his DAC: *“that the inscription of the Star of David on a memorial is not inconsistent with the doctrines of the Church of England to the extent that it should result in the Star of David not being placed upon a monument within this court’s jurisdiction”*. The reasons for this advice, as recorded at paragraph 30, were as follows:

... both the Christian faith and the Jewish faith are monotheistic, placing their faith and hope in the same Godhead; the faith of Judaism is encapsulated in the Old Testament: an integral part of the accepted biblical canon of the Christian Faith; the Christian faith is the direct inheritor of much of the messianic theology to be found in the Old Testament; the two faiths have a shared origin and the imagery of the Star of David is to be found in many, if not most, churches as a decorative motif used in stained glass, wood carving and textiles, making it hard to argue, in the DAC’s view, that it would be inappropriate for a monument in a churchyard.

15. Despite all this, the Chancellor concluded that, in principle, it should not ordinarily be permissible to place the image of the Star of David on a monument in an Anglican churchyard. His reasons are set out at paragraphs 35 to 38 of the judgment, which merit reproduction in full:

35. My judgment is that because a symbol, in conjunction with other symbols, is appropriate inside a church, it does not necessarily follow that it is either appropriate or permissible on its own on a monument in a churchyard. Looking around the various images of different designs and colours appropriately found within a church, it does not follow that all of them would be suitable for inscribing upon a monument.

36. I must also make an assessment of how the placing of an image of the Star of David would likely be understood by those seeing it and what the dominant purpose is, or is likely to be, in placing it there. The inscription of the Star of David on a monument would in my judgment likely be taken to show that the deceased was of the Jewish faith and that, at the least, this would be one important purpose of placing it there. It is of course undeniable that Judaism and Christianity are very closely linked in the ways set out in the advice of the DAC but the beliefs and doctrines of Judaism and the beliefs and doctrines of Christianity in general and the Church of England in particular are not the same. Christianity and Judaism are two separate and distinct faiths, whatever their origins, and understood to be so by most Jews and most Christians alike.

37. I find that the use of the image of the Star of David inside Church of England churches as described by the DAC is, and is understood to be, for an entirely different purpose than that of its being engraved on an individual’s monument.

38. *Although the DAC's advice was helpful and informative, I depart from it on one aspect, namely whether the appropriate conclusion to be drawn from the facts correctly drawn to my attention is that the Star of David would generally be a permissible and appropriate symbol to be inscribed upon a monument in a churchyard under the jurisdiction of this court. For the reasons I have given, I have concluded that it would not and that therefore I would not ordinarily permit it.*

16. However, that was not the end the matter. The Chancellor turned to the specific facts of that case to decide whether, notwithstanding the general principle he had identified, the image requested would be justified, exceptionally, by the particular facts of the case. At paragraphs 40 to 48, he explained why, having given the matter very anxious and careful consideration, he had concluded that an exception *should* be made, in the specific circumstances of that case, to the general principle about images on monuments, and specifically religious symbols, in Anglican churchyards within that diocese. Essentially, if anyone were to ask why one monument in this particular churchyard bears the Star of David, they could be told how this pilot officer was one of the first Jewish airman in the RAF, and maybe *the* first, to die in the Second World War, and how he had come to be buried there. The listener would doubtless readily understand why this exception had been made:

The function of the doctrine of exceptionality is to provide for circumstances which cannot sensibly be envisaged by any rule or regulation, however carefully drafted. In my view, that is the reality of the case here.

17. At paragraph 50, Chancellor Etherington QC concluded his judgment thus:

50. *I stress that, save in exceptional circumstances of the sort demonstrated in this case, an image of the Star of David would not ordinarily be permitted to be placed on a monument in a churchyard or cemetery within the jurisdiction of the court for the reasons given in this judgment. It is also my judgment that, whilst not expressly prohibited by the Rules at present, the placing of a symbol primarily associated with any another faith [sic] than Christianity, as expressed in the beliefs of the Church of England and enshrined in its doctrines, on any monument in consecrated ground within the jurisdiction of this court is ordinarily impermissible. In any future application of a similar kind, a faculty would be required for this to happen and, as the court would primarily be looking at whether the particular facts and circumstances of the application demonstrated that it should be placed in the category exceptionally justifying a departure from the general principle, all the material capable of bearing on that matter should be placed before the court with the documents accompanying the petition.*

Re St Mary, Shotesham [2024] ECC Nor 4

18. The second relevant authority is the decision of Chancellor Etherington KC sitting in the Consistory Court of the Diocese of Norwich in *Re St Mary, Shotesham* [2024] ECC Nor 4. In that case the petitioner wished to introduce a memorial to her late husband into the churchyard of St Mary's, Shotesham. The petitioner's husband had been brought up in a Jewish family and the design of the stone included a Star of David symbol. Chancellor Etherington KC had to consider whether such a symbol was appropriate in a Christian churchyard. He decided that

religious symbols other than the Christian cross should not ordinarily be allowed in a churchyard, and he therefore refused to grant a faculty permitting the Star of David symbol.

19. The Chancellor began his judgment by recalling that this was an issue he had previously encountered when he was Chancellor of the Diocese of St Edmundsbury and Ipswich in the case of *Re All Saints and St Andrew's, Honington with Sapiston* (cited above). He explained (at paragraph 3) that that case had required him to consider both some fundamental principles of law and the specific (and on any view highly exceptional) factual circumstances, including the fact that the pilot officer in that case had died in the service of this country to which he had come three years earlier; he had had no chance of expressing any view as to where he should be buried; and he had had no expectation that his plane would fail in the air over Ipswich. A Cross had been placed on his memorial in error, for understandable reasons, none of which had been the fault of the deceased or his family. Clearly, the application for the removal of the Cross could not possibly be denied. The question of whether it could be replaced by the Star of David was a more difficult question, but one which the Chancellor had resolved in the petitioner's favour.

20. The Chancellor outlined the issue at paragraphs 4 to 9 of his judgment, as follows:

4. The underlying issue, not always appreciated by PCCs, is that any faculty decision sets a precedent. Ecclesiastical judges cannot make different decisions on identical or similar facts as a matter of whim. A future petitioner is entitled to say: 'you granted x's petition, why is mine any different? If the Star of David is permissible, why is a symbol associated with my life or (non-Christian) religion not permissible?'

5. The first question to determine, therefore, is whether, ordinarily, a symbol of a religious faith, other than Christianity, may be placed on a memorial stone in a churchyard or area of a cemetery under the jurisdiction of this court. The Churchyard Regulations for the Diocese of Norwich state at regulation 10.4: 'inscriptions and pictures on memorials should be simple, dignified and reverent and should have a clear Christian or traditional funerary symbolism or reflect the life and work of the deceased...' Religious symbols placed on memorials will normally be taken to be a representation of the deceased's faith.

6. Burial in a churchyard is the entitlement of any parishioner provided the churchyard is open. There is no requirement for a parishioner to belong to any, or any particular, faith. This may stem from earlier times when there was a strong presumption that all parishioners were Christians and faced likely penalties and persecution if they were not. It may also be because of the problem of making difficult enquiries at a very sensitive time and because those seeking burial in a churchyard, as opposed to unconsecrated ground in a secular cemetery, know that the churchyard is obviously part of a Christian church.

7. The right to burial for a parishioner should not be confused with a supposed right that those burying a loved one have an untrammelled right to any sort of memorial or stone or inscription on it. That supposed right does not exist.

8. Symbols, other than the Christian cross are therefore generally inappropriate: either they will be a reflection of a religious faith other than Christianity or a secular or political symbol that would not be suitable on a memorial stone. There is, of course, no requirement for any symbol on a stone and not all Christians elect to have a Cross.

9. *There is no question other than that the Jewish religion and the Christian religion are intimately connected, but they are not the same religion and they have conflicting beliefs. The fact that the Star of David features sometimes in churches and cathedrals, often in stained glass, is testament to that shared history and part of the telling of that story. A religious symbol on a tombstone is understood to be there to declare the deceased's faith. Symbols for other purposes, religious or secular, are not ordinarily permitted on memorials.*

21. At paragraphs 10 to 14, the Chancellor set out the background to the faculty application he had before him. He included reference to the links the deceased had retained to his Jewish identity and the fact that, despite these, he had come to the conclusion that he wished to have a Christian funeral service, and had expressed views about how he wished it to be conducted. It was in this parish church, and it fully celebrated his life and background. The Chancellor appreciated the significance that his family had given to the Star of David, and he had read what was said by the family about this. The Chancellor understood the history of the symbol, and he also comprehended the inter-faith emphasis that formed part of the funeral. The Chancellor set out his conclusions, and his decision, at paragraphs 15 to 21 of his judgment., which merit reproduction in full:

15. *Unfortunately, this does not mean that those of other faiths or whose ancestry or culture involves other faiths are able to display these as symbols in a Christian churchyard. Whilst those of any faith may be buried there, provided they lived in the parish at the time of their death or have obtained the permission of the incumbent/PCC or the court, the only symbol that may be displayed in a churchyard (save in the most exceptional of circumstances) is the Christian Cross. It is always open to people to be buried in secular churchyards or those that are dedicated to another particular faith. Very occasionally, a section of an existing churchyard is designated for Jewish burials because of the unavailability of any Jewish cemetery. This is not the case here.*

16. *Judaism, Christianity and Islam (in chronological order) are all monotheistic religions worshipping the one God. Their specific beliefs, however, are different. I can well imagine that a Christian Cross on a headstone in a Jewish cemetery or Jewish section of a cemetery might well be viewed as improper, whatever its motivation.*

17. *There is also a complication here in that I read the Petitioner to be saying that the family do not want the Star of David as an expression of Raz's Jewish faith, which would make one wonder why he was being buried in an Anglican churchyard, but rather of his Jewish descent of which he was understandably proud. I suspect that his spiritual journey took him in a number of directions and it seems to me that he preferred the things that binds those of different religions and denominations rather than those that separate them.*

18. *I do not know whether Raz specifically wanted the Star of David on his memorial stone or whether it was a subsequent wish of the family, but I am afraid that I do not judge the facts here constitute an exceptional reason for departing from the normal rules, unlike, for instance, Pilot Officer Rosofsky whose particular circumstances did.*

19. *Whilst the wishes of families and loved-ones are always taken into account when considering a memorial stone, there are regulations and they have to be applied fairly. If symbols other than the Christian Cross were allowed in one case (unless wholly exceptional)*

then they would have to be allowed in every case that was of a similar nature. Symbols, other than the Cross, are requested on occasions. Requests over the years have ranged from those relating to people's descent or backgrounds, through all kinds of passions and interests (genuinely held and often an identifying feature of the deceased) but with very few exceptions (War Graves and the like) they are not permitted. Religious symbols, other than the Christian Cross, are not ordinarily permitted, particularly where they will be taken to be declaring the deceased's non-Christian faith whatever the family's actual motivation for wanting them and even where the deceased's actual faith was not the one apparently designated by the symbol.

20. *The rest of the memorial is permissible and I will permit the bramble given the deceased's love of the natural world. A quotation from the Old Testament would also be acceptable - e.g. 'May his soul be bound up in the bond of eternal life – from Samuel 25:29. That is just an example.*

21. *I regret that in this judgment I have to rule against the Star of David being permitted to be placed as a symbol on the memorial stone as requested by the Petitioner. I appreciate that this will not be welcome news for the Petitioner or the family and I hope that some way can be found, such as an appropriate verse from the Old Testament, to convey the deceased's Jewish descent and identity. I did ask through the Registry whether the Petitioner might prefer to have my successor as Chancellor (who is shortly to take office) to judge this petition but she preferred not to wait.*

Re St Giles, Exhall [2021] EACC 1, (2022) 24 Ecc LJ 116, [2021] PTSR 1622

22. In Re St Giles, Exhall [2021] EACC 1, (2022) 24 Ecc LJ 116, [2021] PTSR 1622, the Court of Arches allowed an appeal from a decision of Chancellor Eyre QC, sitting in the Consistory Court of the Diocese of Coventry. The Chancellor had refused to permit a memorial for the petitioner's mother in the form of a Celtic cross containing an emblem of the Gaelic Athletic Association, and a phrase in Irish Gaelic words meaning 'In our hearts forever', without the addition of an English translation of that Gaelic phrase. The Court of Arches began its judgment (at paragraph 1.1) by proclaiming the church of Jesus Christ as

... arguably the most international, multi-ethnic, multi-cultural, multi-lingual body on the planet. That is one of its glories and strengths. Reflecting that noble reality in all its facets should be a universal ambition in all the church's work and ministry, however challenging it may be upon occasion to implement it practically, even in respect of memorialisation of the dead and pastoral support to the bereaved.

23. At paragraph 8.7 of their judgment, the Court endorsed, as an accurate statement of the purpose of a monument over a grave, the following short extract from the *Churchyards Handbook*, published by the Church of England: "To honour the dead, to comfort the living and to inform posterity." The Court commended this summary to chancellors, and to all others involved in the consideration of memorials within the faculty jurisdiction. The Court returned to the theme of the threefold purpose of a grave memorial at paragraph 10.7 of their judgment, observing as follows:

When a headstone is erected in a Church of England graveyard, these purposes are being carried out in a location to which members of the public have access. The public will

comprise all comers, including faithful regular and occasional worshippers at the church, other families whose relatives are buried in the graveyard and other visitors. The last category might comprise a great many people in an historic city, or hardly any in a remote rural location, and may also fluctuate over time as the importance and shape of places wax and wane with development, depopulation and other long term social changes. The three purposes remain over time but may, themselves, vary in intensity; thus, comforting the living will perhaps be dominant in the minds of a bereaved family when the headstone is erected but informing posterity may become more important once the immediate generation of bereaved has, itself, passed and future generations may be inspired more by respectful curiosity to find some expression of the lives of their own and other peoples' ancestors. The first purpose infuses the other two and must be considered in the Christian context of the setting of a Church of England graveyard. Christians honour the dead because of our belief in the unique importance of every living and departed soul to God who created men and women in his own image and redeemed them in the person of the incarnate Son of Man, Jesus Christ. Therefore the public context is Christian, even if, for some families seeking faculties (not the family in this case) they do not approach the matter from a Christian perspective. The territory is sensitive and clergy and chancellors have the difficult task of reconciling legal principle with personal wishes in a public context which is distinctively Christian. In particular, decision makers need to have an eye to the longer view and the public realm in ways which may be less apparent to a family caught up in their bereavement.

24. Against this legal background, I now move to my analysis and conclusion.

Analysis and conclusion

25. As I understand them, the thrust of Chancellor Etherington KC's two decisions is that the placing, on any monument in consecrated ground within the jurisdiction of the consistory court, of any symbol primarily associated with any other faith than Christianity, as expressed in the beliefs of the Church of England, and enshrined in its doctrines, is ordinarily impermissible, although, exceptionally, particular facts and circumstances may justify a departure from this general principle: see *Honington* at paragraph 50. This is encapsulated in the summary at paragraph 1 of the Chancellor's judgment in that case (previously cited):

I have concluded that a religious symbol primarily indicative of a faith other than Christianity or of beliefs inconsistent with those of the Church of England as enshrined in its doctrines may not ordinarily be placed upon a monument and never without a faculty. Therefore, the image of the Star of David, which is primarily indicative of the Jewish faith, particularly when placed upon the monument of a deceased person, is not ordinarily permissible as a symbol to be placed on a monument in an Anglican churchyard under the jurisdiction of this court and never without a faculty. However, and probably very rarely, there may be truly exceptional circumstances that justify a departure from the principle ordinarily applicable.

26. I confess that I find it difficult to accept this conclusion, at least in relation to the symbol of the Star of David. I have no difficulty in accepting the proposition that any symbol, religious or otherwise, that is indicative of beliefs **inconsistent** with those of the Church of England, as enshrined in its doctrines, should not ordinarily be permitted to be placed upon any memorial within a Church of England (or **Anglican**) churchyard. Indeed, I would question whether this

should ever be permitted, even under the authority of a faculty. However, I have difficulty in accepting that there should be any blanket prohibition on the display of the Star of David on memorials in Anglican churchyards (save in the most exceptional of cases). My approach reflects the views of the DAC who advised the Chancellor in the *Honington* case; and it accords with the advice I have received from the two Archdeacons whom I consulted during my consideration of this petition. Whilst the beliefs and doctrines of Judaism, and those of Christianity in general, and the Church of England in particular, are not the same, both religions share a common, Monotheistic history and tradition; and they are very closely linked, in the ways set out in the advice of the DAC (which is reproduced at paragraph 14 above). During His all too brief life here on Earth, Jesus was repeatedly recognised, and celebrated, as the Son of David; and He is introduced as such in the very first verse of the very first chapter of the first of the Gospels of the New Testament (*St Matthew* chapter 1, verse 1). Whilst the Star of David is clearly associated closely with the Jewish faith, it is also shared as a symbol by the Anglican church, as evidenced by its display within certain Anglican church buildings. Were the Star of David inconsistent with Anglican doctrine, it would have no place in any Anglican church building; and it should not be permitted, even as an exception to any general prohibition, on any memorial in an Anglican churchyard.

27. Chancellor Etherington KC rightly recognised that the fact that the Star of David sometimes features in churches and cathedrals, often in stained glass, is testament to the shared history of the Jewish and Christian faiths, and is part of the telling of that story. However, he considered that the use of the image of the Star of David inside Church of England churches, as described by his DAC, is, and is understood to be, for an entirely different purpose than that of its being engraved on an individual's memorial. That is the threefold purpose of honouring the dead, comforting the living, and informing posterity (to which I have previously made reference). I have two, related, difficulties with this reasoning. The first concerns the significance of the different purposes that the image of the Star of David serves when displayed within a church building, and on a memorial above a grave. The second concerns the effect of treating the two differently.

28. As to the first, the Chancellor rightly identified the need to make an assessment of how the placing of an image of the Star of David on a memorial in an Anglican churchyard would be likely to be understood by those seeing it there, and their perception of what the dominant purpose was, or was likely to be, in placing it there. He considered that the placing of a religious symbol on a memorial would normally be taken to be a representation of the deceased's faith. So the inscription of the Star of David on a monument would, in his judgment, be likely to be taken as showing that the deceased was of the Jewish faith; and that, at the least, this was one important purpose of displaying it there. However, in my judgment, the combination, on the same memorial in an Anglican churchyard, of a Star of David and the Christian Cross would be just as likely to be taken as indicating that the deceased was of Jewish heritage but had come to, and had accepted, the Christian faith. In the case of a double grave, containing both husband and wife united in death, it would be likely to denote either a mixed faith marriage, or that one (or both) of the deceased had been of Jewish heritage but had later converted to Christianity.

29. Second, in the view of the DAC in the *Honington* case, the fact that the imagery of the Star of David can be found in many churches as a decorative motif, used in stained glass, wood carving, and textiles, makes it hard to argue that it would be inappropriate for a churchyard

memorial. The Chancellor disagreed; but he did so on the basis of the different purposes served by displaying the image within a church and on a churchyard memorial. If that distinction cannot be supported, then it becomes difficult to maintain that they should be perceived differently. In my judgment, any right-thinking person would find it difficult to justify permitting the display of the image of a Star of David within an Anglican church building whilst denying its display upon a churchyard memorial.

30. Chancellor Etherington KC rightly posed the question (at paragraph 4 of his judgment in *Shotesham*): *'If the Star of David is permissible, why is a symbol associated with my life or (non-Christian) religion not permissible?'* That question is readily answered by the fact that, unlike other religious symbols, the Star of David is a testament to the shared history of the Jewish and Christian faiths, and is part of the telling of that story.

31. Chancellor Etherington KC emphasised (at paragraph 22 of his judgment in *Honington*) that: *"There is no compulsion forcing someone to be buried in an Anglican churchyard or in consecrated ground, at least in peace time and in normal circumstances. The bereaved must understand that those responsible for burying someone are accepting that the consistory court regulates the type of monument (headstone or other marker) that may be erected, what inscription may be placed on it, where it may be placed and how it is designed."* All of that is true; but it ignores the fact that the legal right to be buried in an Anglican churchyard is applicable to a very wide category of persons, of many different faiths, and of none at all. Residents of a parish may have a strong affinity with their parish church, attending community events there, ringing the bells, singing in the choir, and supporting the upkeep of the fabric of the church, even if they are not of the Anglican (or, indeed, of any) faith. The desire of those residing in a parish to be buried in their local church can be strong, as is amply evidenced by the number of grave reservation applications I receive from those not on the electoral roll of their parish church or even occasionally worshipping there. I confess to finding it difficult to reconcile Chancellor Etherington KC's approach with the Church of England's ambition, as proclaimed by the Court of Arches in the passage from their judgment in *Exhall* (cited at paragraph 22 above), to be *"arguably the most international, multi-ethnic, multi-cultural, multi-lingual body on the planet"*. Whilst the Church of England must not compromise its adherence to, and observance of, its own doctrines, or be at risk of being seen to do so, it should nevertheless be seen to respect, welcome, and embrace those of other faiths and none.

32. It is also important to remember those of mixed faith marriages: they may understandably wish ultimately to be laid to rest together in consecrated ground in their local parish church whilst aspiring to affirm their own individual faiths. This was a concern identified by the Archdeacon of Oxford, who considered that it might be seen as appropriate to permit a Star of David on a memorial commemorating a husband and wife buried in the same grave who had observed different religious faiths. The Archdeacon went on to observe that a Christian might view both a Star of David and a Cross on the same memorial (as in this case) as reflecting a natural religious synergy. The Archdeacon did point out that this would not be perceived in the same light by sections of the Jewish community. Given this likely difference of opinion, he counselled me to consider the weight of pastoral consideration in relation to external religious views. I do not see this as a potential difficulty. Whilst I understand that the combination of a Star of David and a Christian Cross would almost certainly not be considered acceptable within the context of a Jewish cemetery (or the Jewish section of a local authority cemetery), the different context of the character and universality of an Anglican churchyard should operate to

avoid such a combination being the cause of any offence to those of the Jewish faith who may happen to pass through the churchyard and observe this on a memorial.

33. So, for all these reasons, I would respectfully disagree with Chancellor Etherington KC's conclusion that the placing of a Star of David on any memorial within an Anglican churchyard is ordinarily impermissible, at least so long this religious symbol is to be displayed together with the sign of the Cross. Rather, I would hold that the display of such combined images may be permitted by faculty provided a good and sufficient reason is shown. The fact that this is a joint burial plot for a couple of mixed Jewish and Christian faith would likely constitute such a good and sufficient reason. Likewise, the fact that the deceased is of Jewish heritage, but has adopted the Christian faith, should also be considered as a good and sufficient reason. However, I must go on to consider whether it is open to me to give effect to this conclusion when I determine this present petition in light of the previous decisions of Chancellor Etherington KC, albeit in different dioceses of the southern Province.

34. Factors pointing against any rejection of Chancellor Etherington KC's reasoning and conclusion are as follows:

(1) The conclusion that it is ordinarily impermissible to place a Star of David on any memorial within an Anglican churchyard has been expressed in two relatively recent judgments of consistory courts in two dioceses of the southern Province of the Church of England (albeit produced by the same Chancellor). The second of these judgments was handed down within the last six months (on 16 June 2024).

(2) Both judgments are consistent, fully reasoned, clearly articulated, and well-expressed.

(3) They were delivered by an experienced and learned diocesan chancellor, highly respected for his good, spiritual common sense.

(4) The conclusion formed part of the clear ratio of the second of these two judgments, even if not the first (where the Chancellor found that the exceptional circumstances of that particular case justified an exception to the general principle he had identified).

(5) Judicial comity, consistency of judicial decision-making, and the desirability of securing equality of treatment as between different petitioners in similar cases, all have an important role to play in the determination of cases in the consistory court. The unsuccessful petitioner who was refused a Star of David in the *Shotesham* case may well entertain a legitimate sense of grievance should I allow the petition in the present case, on materially similar facts. Potential petitioners seeking similar memorials in other dioceses may feel uncertainty about initiating faculty proceeding because of a perceived inability to predict the outcome of their applications.

35. I have given anxious, and prayerful, consideration to these factors. However, albeit with some hesitation, I have concluded that I should give effect to the view that I have clearly formed that the consistory court should ordinarily grant a faculty permitting a Star of David to be placed on a memorial in an Anglican churchyard, provided a good and sufficient reason for this is shown, at least where this is to be displayed together with the sign of the Cross. My reasons are as follows:

(1) This issue essentially raises a matter of doctrine, rather than law. That is why I have consulted two of the four Archdeacons within the Diocese of Oxford. The Archdeacon of Buckingham (within whose Archdeaconry this churchyard lies) is *“more than happy on doctrinal grounds to support applications for the Star of David to be added to memorials in Buckinghamshire. I am doubly happy to support this, given the pastoral need for those in ‘mixed marriages’ to be buried together.”* The Archdeacon of Oxford, who is the chair of the Oxford Diocesan Committee for Interfaith Relations, has explained why there may be grounds for allowing a Star of David on a memorial in Christian churchyards. Their views are consistent with the advice that was given to Chancellor Etherington KC by the DAC in the *Honington* case. The view of the Rector of this church is that the two religious motifs *“are in the Spirit of true Christianity and inclusivity”*.

(2) I have set out my own reasons for disagreeing with the considered and reasoned views of Chancellor Etherington KC. In my judgment, they together constitute a good reason for refusing to follow his decision.

(3) Having formed my own judgment in the matter, I consider that it would be wrong for me to decline to apply this in my determination of Mrs Clark’s petition. It would not be right for me to dismiss her petition on the basis of a judgment, however eminent and learned, of a Chancellor in another diocese, leaving her to invoke my own reasoning in support of a possible appeal, whether to the Court of Arches or (because, to an extent, the appeal relates to a matter involving doctrine) to the Court of Ecclesiastical Causes Reserved.

36. I make it clear that my decision is confined to the facts of this particular faculty application: a request by a Christian widow for a Star of David and the symbol of the Cross to be placed on a memorial commemorating her late husband, who was of Jewish heritage, to be erected above a grave in which she too will, in due time, be laid to rest. I say nothing about the propriety of placing the symbol of any other religion on a memorial in an Anglican churchyard. I would also agree that a Star of David should only be permitted with the authority of a faculty since good and sufficient reason for its display on a memorial within an Anglican churchyard must always be shown. Indeed, the different reasoning and conclusions expressed in this judgment and the two judgments of Chancellor Etherington KC make it all the more necessary for any applicant for such a symbol to proceed by way of petition for a faculty.

37. For these reasons, I grant the petition applied for by Mrs Clark in the terms requested; and I order that a faculty to that effect shall pass the seal. I will allow six months for the memorial to be installed above the grave. The costs of the petition will be met by the petitioner.

David R. Hodge

The Worshipful Chancellor Hodge KC

The Second Sunday Before Advent (Safeguarding Sunday)

17 November 2024