

CONSISTORY AND COMMISSARY COURT JUDGMENTS
2010

<u>Date</u>	<u>Place</u>	<u>Diocese</u>	<u>Chancellor</u>
12 January	St Andrew, Sutton	Ely	Gage

Petitioner wishes to erect a memorial to her late parents and sister in the churchyard extension of her parish church. Memorials to be of black granite, heart-shaped with roses and with kerbs and flower holders, none of which conforms to the churchyard regulations. Petitioner states that her mother particularly wanted kerbstones and that it would not constitute a tripping hazard as it was not near a path. It was recorded that there were many graves in the extension which contravene the regulations and no reasons given as to why this should be. Chancellor is willing to allow the heart-shaped memorial in black granite with gold lettering and motifs as requested, but does not allow the kerbstones and chippings therein.

19 January	Derek Worby deceased	Bradford	Walford
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Exhumation of Petitioner's husband for re-internment. Mr Worby died in 2002 and his cremated remains interred in Scholemoor Cemetery. In 2008 Mr and Mrs Worby's two sons were killed in a road accident and Mrs Worby wished for their remains to be interred with her husband's but there is a limit of two sets of remains per plot. Therefore she wishes to have her sons' and her husband's remains interred in Idle Upper Chapel Cemetery where there is not such limit. Chancellor satisfied that there are special factors in this case. Faculty granted.

16 February	St Bartholomew, Horley	Southwark	Petchey
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A petition by the daughter to exhume the cremated remains of her father for re-interment in the grave of her late mother. Both are in the same churchyard, her father in the garden of remembrance and her mother who died only 13 months later of cancer, in a grave some 90 yards away. Had the family and indeed the mother, known that she would die so soon, they would have retained his ashes for burial together and this is now their sincere wish. They are supported by the minister, the Church and the funeral directors. Cases of Blagdon Cemetery and Christ Church, Alsager considered. Although both are buried within the same churchyard, this may, in the circumstances, be particularly upsetting for the family and the re-interment of the father would free up a space in the Garden of Remembrance. Chancellor concludes that there are exceptional circumstances and faculty is granted.

15 March Re: Doreen Oxley, deceased Bradford Walford

A petition by the daughter to exhume the cremated remains of her mother from the churchyard of St Wilfrid's for re- interment in the cemetery at Otley. The Petitioner's father has converted to Catholicism and wishes to be buried in Otley cemetery with the remains of his deceased wife. Chancellor can identify no exceptional circumstances. Petition denied.

16 March St Mary & St Hugh, Harlow Chelmsford Pulman

Re-ordering the inside of the parish church which has wide support from the parish and DAC but objections to part of it from the Victorian Society regarding removal of the font, its cover and bracket, removal of pews whose installation was part of an 1872/3 re-ordering by Henry Woodyer, an important church architect, still highly regarded, giving the church its distinct Victorian character, and installation of a new oak floor which would require the removal of a Victorian tile floor and cast iron grille. The VS also claim that the Statement of Significance is wholly inadequate in not dealing with Woodyer's work and therefore material to the issues at stake. Subsequently, a second Statement of Significance was provided. A recent faculty granted the building of a parish centre attached to the church where a range of activities are carried out. The PCC wishes to create a "café church" for informal talks and meetings but this is impossible where there are pews. The font and cover is at the south door and is a fine example of Woodyer's work and should remain. Petitioners have proved a necessity for removal of pews and permission is therefore granted. The tiles are neither unusual nor particularly good and the grille is a health and safety hazard, therefore permission to cover with a wooden floor is granted.

6 April St John's Church, Walsall Wood Lichfield Coates

When Mrs Best's husband died and was buried in Walsall Wood, she applied for and received leave for a Faculty reserving the grave space next to her husband so that they may eventually lie side by side again.

Mrs Hastelow's son was unlawfully killed while in Spain and, by order of a Spanish court, was buried in a cemetery there. It took a long time for Mrs Hastelow to achieve her wish of bringing her son home for burial but she was successful and he was buried in Walsall Wood, unfortunately in the grave space reserved by Mrs Best. The mistake occurred because the vicar failed to mark the site as reserved and so the grave digger simply dug a spot next to the last dug grave. Mrs Best declined to accept any plot other than that by the side of her husband and Mrs Hastelow did not want her son's body exhumed for a second time. Whilst weighing up the legal position on exhumation, whether the faculty already granted to Mrs Best should be overruled, and the distress a second exhumation would cause Mrs Hastelow, it was concluded that there should be an exception to the general rule that burial should be regarded as a final resting place and Mrs Hastelow's son should be exhumed and re-interred. Any costs incurred must be met by the vicar who unreservedly accepted that the responsibility lies entirely with him.

14 April St Bartholomew, Cresswell Newcastle Hodson

The family of the deceased sought permission for a memorial to be placed over his interred ashes, the proposed dimensions being 24"x18"x4" made of black granite. There was no mention of an open book design, therefore permission was granted and the memorial installed. When questioned about the open book design, the stonemasons was unaware it would be a problem and therefore did not mention it. Also, the memorial installed was actually 24"x24"x4" which exceeded the permissible size, therefore a retrospective faculty is denied.

20 April St Nicholas, Warwick Coventry Eyre

Replacement of existing organ with a combination or hybrid organ at a cost of just over £76,000. It was agreed that the church needed a new organ but preference by CBC and DAC was that it should be another pipe organ for its quality and durability. They believe that a redundant pipe organ could be obtained and installed at a similar cost to the combination organ. The use of a combination organ is relatively new in this country, therefore its durability, musical quality and cost effectiveness has yet to be established. Petitioners argue that a combination organ has the benefits of a pipe organ at an affordable cost. A detailed report was produced setting out a number of potential options and their costings, putting a top of the range pipe organ in excess of £250,000 which could not be justified in the light of other calls on the parish's resources. Arguments for and against are finely balanced but Chancellor grants faculty on condition that 12 months after installation of a combination organ, an independent expert should report on its performance, and should consider the musical qualities together with the need for repairs and cost of such repairs. Such report shall be sent to the DAC and the CBC.

27 April St Dunstan's, Cheam Southwark Petchey

Proposal to build a new church hall to accommodate catering facilities, toilets, and numerous clubs for both adults and children. It is to be built on unconsecrated ground on the site of an old shed-like building and has already secured planning permission. However, part of the western wall of the new building would intrude into the churchyard, the construction of a new pathway through the churchyard to the new hall would require two gravestones to be moved and part of the churchyard would need to be fenced off for a works site during the construction. However, there were no formal objections to the scheme and faculty was granted.

27 April All Saints, Upper Norwood Southwark Petchey

Two petitions for the substantial re-ordering of this Grade II church to open up the space, provide flexibility and to provide hall facilities which would increase the usability of the area for worship. There would be room for informal gatherings of children and for church school services and also facilitate community use of the building for concerts. Objections received by the Georgian Society and the Victorian Society who could not see that the need outweighed the harm that they saw as arising, which led to a modification of the

scheme in order to address some of the concerns raised. Chancellor is satisfied that the Petitioners have proved a need for the proposed works and faculty is granted with conditions.

30 April Putney Vale Cemetery Southwark Petchey

The deceased, who was of Italian descent, was buried in consecrated ground at Putney Vale Cemetery, arrangements having been made by the deceased's daughter on behalf of his wife. When she chose the plot she was not informed whether it was consecrated or not, nor that there was the option of interment in the mausoleum. When this became known, the deceased's wife petitioned for exhumation and interment in the mausoleum but it then emerged that what she really wanted was for the remains to be exhumed, cremated and for her to keep them at home with the view to having them, along with her own, finally interred in a mausoleum in Italy. Roman Catholic law does not recognize that consecration has any significance and that the Roman Catholic authorities have no objection to exhumation in the circumstances that arise. In his interim judgment in March 2010 Chancellor would be prepared to grant a faculty but was unhappy with the arrangements to keep the ashes at home. It was argued that this arrangement was quite normal in Italy. There were, therefore two options – interment in the mausoleum in Putney or the remains to be taken to Italy immediately after exhumation and cremation. The deceased's widow opted for the first. Faculty granted for exhumation, cremation and re-interment in Putney Vale Cemetery in unconsecrated ground.

5 May All Saints, Crawley Down Chichester Hill

The incumbent and churchwarden seek a faculty to create a new area for cremated remains within the churchyard and to introduce a Book of Remembrance to be housed in a cabinet in the church. The proposed site involves some rotavating, reseeding and limited landscaping but will not impact upon that part of the churchyard where an extension of the church is contemplated. It is intended that on the new site, the cremated remains will be poured into the ground and not buried in caskets, and there will be no permanent markers permitted. It is this that has provoked an objection by one parishioner. Chancellor states that even if this were the policy of the PCC, it does not preclude a petitioner seeking his own faculty to depart from that policy. Faculty granted.

7 May Re: Mr and Mrs Matthews deceased Bradford Walford

Petition to exhume the cremated remains of her mother and brother from Hirst Wood Burial ground for re-interment in Cleckheaton New Cemetery for reasons set out in a letter from the petitioner but opposed by the Priest in charge. Having carefully considered the petitioner's letter and representations from the Priest and having not identified any exceptional circumstances, Chancellor must refuse petition.

29 June Harold Greaves, deceased Bradford Walford

The petitioner wishes to exhume the cremated remains of his father from Holy Trinity Churchyard for re-interment in a family plot in North Bierley cemetery so that he will be with the cremated remains of the petitioner's mother who died recently and wished to be buried with her husband. The petitioner also wishes to be buried, in due time, with his parents in the same plot. The leading decision in the Court of Arches in re Blagdon Cemetery sets out factors which, though not exhaustive, do provide guidance, and, there is nothing in the principles laid down which supports the petitioner in this case. Therefore, this petition must be refused.

21 July St Andrew, Sedburgh Bradford Walford

A petition to hang an ebony and ivory cross above the pulpit together with a small silver memorial plaque, donated by a parishioner in memory of another. Majority vote of PCC in favour, but one member objected on doctrinal and aesthetic grounds. Although these objections are valid, they are minority views and therefore the collective wisdom of the DAC and PCC prevails in this case. Faculty granted.

27 July Hagley Municipal Cemetery Worcester Mynors

Exhumation of Mr F from consecrated ground in Hagley Cemetery for re-interment in the Roman Catholic Cemetery, Stourbridge. Mrs F stated that where her husband's body was buried was not suitable as it was too close to the edge of a path with a 3 metre drop making it unsafe to erect a monument; that she was given no choice for the burial plot; and that she believed her husband had been buried in the opposite direction to those buried nearby. The funeral directors stated that Mrs F had been given three options for burial – the Catholic Cemetery at Norton, but Mrs F was unable to reserve an adjacent plot for herself; two adjacent plots at Stourbridge Cemetery but as she lived outside the area she would have had to pay double the fees; and Hagley Cemetery where a double plot could be reserved. The spot allocated was where it is because Mrs F specifically stated that she needed to be interred on the left hand side of her husband, looking in front of the graves. The funeral directors deny that Mrs F expressed any concern regarding the coffin being buried in the wrong direction. Chancellor does not consider any of these factors a justification for exhumation. However, in re Blagdon Cemetery, 'a mistake may also occur due to a lack of knowledge at the time of burial that it was taking place in consecrated ground' and it is on this point that he is prepared to authorize the exhumation. Faculty granted.

27 July Bromsgrove Old Cemetery Worcester Mynors

Exhumation of Mr B's ashes, by his widow, for scattering, her reason being that her husband had been paralysed and confined to a wheelchair for the last 15 years of his life and he had expressed a wish for his ashes to be scattered so that he may be free at last. Upon his death, Mrs B was so consumed by grief and loneliness that she made the

decision to have her husband's ashes buried so that she might have somewhere to visit him and feel close to him. At no time was she made aware that the ground in which her husband's ashes were buried was consecrated. In re Alsager and in re Blagdon were considered stating that the exceptions to the general rule that burial in consecrated ground is final are for medical reasons; lapse of time; mistake; local support; precedent and family grave. Mrs B considers that she made a mistake, that is, a decision that she later regretted. As well, she was not aware that the ground was consecrated and that it would be difficult to obtain consent for exhumation. Chancellor is satisfied that there are special circumstances and a faculty should be issued.

30 July Holy Trinity, Eccleshall

Canterbury George
Ct of Arches Briden, Box

This is an appeal against the judgment of 5 November 2009 whereby a faculty was denied for the introduction of a raised area at east end of nave and to move two pews to allow a ramp to the raised area. Objection on procedural issues in that the Chancellor imposed an unorthodox approach upon the determination of the petition at variance with the procedure prescribed by the [2000 Rules] and substantive issue in that the decision was perverse and against the weight of the evidence before him. There was a meeting in the church for a "fact finding discussion" with petitioners and architects at which the Chancellor made his concerns known. He believed then that there should be a Consistory Court hearing and that he should recuse himself as he felt too involved. Following this, petitioners agreed to proceed to consideration of written evidence and two more site visits took place at which there was much questioning and discussion. Chancellor declined to seek advice from CBC when he might where his is minded to depart from recommendation made by DAC or one of the statutory heritage bodies. Principle grounds of challenge were the Chancellor's failure to engage with the reasons for the size and location of the platform; failure to engage with expert evidence that the proposal would not compromise architectural qualities of the church; failure to consider that the proposals were entirely reversible; failure to consider the statutory duties pursuant to the provisions of the Disability Discrimination Act; and the Chancellor's personal perception of aesthetic architectural and community interests. In re St Peter and St Paul's Chingford and St Edburga's Abberton were considered. It was concluded that the Chancellor's decision was not perverse but that he did not properly take into account the explanation given for the size of the platform or the expert evidence before him. Therefore, a faculty should be granted.

12 August In re Celia Hughes, deceased

Manchester Tattersall

Mrs Hughes died in June 2008, cremated and her remains interred with her parents in Agecroft Cemetery Swindon. One of her five children seeks a faculty to exhume her mother's remains for re-interment in the Garden of Remembrance at Norbury Parish Church. This is supported by two other children and her husband but opposed by the other two children (David and Gillian). The deceased's remains were taken by David and

states that the improved facilities would make the building more useful which would provide an opportunity to serve the wider community. Both objections related to the provision of the nave altar, the grounds being that the east end of the church will be irrevocably changed, the furnishings & fittings have memorial implications, safety, cost and a flawed consultation process. The Vicar provided a rationale for a permanent rather than reversible nave sanctuary which would offer greater visibility to the whole congregation, but stressed that it would not be irreversible in the future. He also stated that, with regards to consultation, there had been years of congregational and PCC meetings and discussions in the Parish Magazine giving every opportunity for people to have their say. Evidence was given by the architect, a retired chartered engineer and several members of the congregation both for and against the scheme. Most of the concerns were about there being no provision for parishioners to kneel for communion, the size of and cost of constructing such a large plinth, and the permanency of the scheme. In conclusion, there were no objections to the principle of a nave altar, rather to specific aspects of the proposal. There had been adequate consultation over a period of time and that, while the proposals are intended to be permanent, they would be reversible. Faculty granted.

7 September Holy Trinity

Birmingham Cardinal

Petition by the former vicar to dispose of three of the four oak choir stalls and clergy seats which were removed pursuant to a Faculty granted in 2004, and, as there was some controversy at the time, the DAC arranged a visit to view the items which now concern this petition as well as producing a full report on the condition of the items together with an assessment of the historicity of the stalls. Their recommendation is that the items be sold subject to their being used, ideally, in a church setting. There were no objections from the Victorian Society or English Heritage but several from parishioners on the grounds that the original Faculty was issued subject to the choir stalls being retained in the church. Disposal is necessary as there are no prospects of the stalls being reinstated and they cannot be stored ad infinitum, nor will their disposal affect the character of the church. Petition granted subject to conditions.

8 September Christ Church, Walshaw

Manchester Tattersall

The Applicant seeks a faculty to install on the deceased's grave, a honed black granite memorial stone with a heart shape cut from the top. Although the DAC had no objection, the PCC objected to the colour and style as they did not comply with churchyard policy. It was also concerned that the introduction of such a monument would set a precedent which would make it difficult to prevent the proliferation of monuments that are not in keeping with the church environment. Diocesan Churchyard Regulations state that the stone should be natural with no reflecting finish and in keeping with the particular type and colour of the stone of which the church is built. Applicant points out that memorials on other graves surrounding her father's are of polished black and that the memorial directly in front of her father's grave is a complete heart shape whereas she is only proposing a small heart cut out of the top. The PCC concedes that there are a number of memorials that do not comply with Churchyard Regulations, only one of black polished

stone has been erected in the last 10 years and that was authorized by faculty. Chancellor satisfied that the existence of like memorials cannot justify his authorizing the erection of this proposed memorial. Faculty denied.

28 September St Barnabas, Erdington

Birmingham Cardinal

Due to an act of vandalism, this Grade II listed church suffered a fire that engulfed pretty all of it resulting in asbestos being released, contaminated debris falling through burnt timber floors and water damage. This is a petition to rebuild the church, not so much as it was, but to integrate new and existing, bringing the church into the 21st century. PCC, DAC and CBC have all been consulted and approve. English Heritage agrees subject to approval of the roofing material, the flooring material and design and materials of the doors, windows and glazed panels. The Victorian Society objects to the removal of two cast iron windows designed by Rickman as their removal would damage the character and appearance of the surviving parts of his work; the design of the extension which has full length curved glass windows; and the design of the new roof which is of curved terne-coated steel. Bishopsgate questions followed. Faculty granted with strict conditions imposed.

29 September St Mary Magdalene, Reigate

Southwark Petchey

Major re-ordering of the interior of this Grade II listed church, supported by PCC. Objection to the relocation of central section of the rood screen, dating from the 15th century, to create a new chapel at east end of church, and the replacement of pews in the nave with chairs. Victorian Society and the Society for the Protection of Ancient Buildings became parties opponent. There have been two restorations in the 19th Century which included substantial restoration of the rood screen, and a major re-ordering in 1982 since when the church has been very successful with upwards of 400 in the congregation. The rood screen effectively separates the chancel and the nave resulting in significant restrictions on worship. The fixed pews are also problematic being uncomfortable and inflexible. Removal would create a larger, more open area to accommodate school groups (the church has very strong links with local schools) and other after church activities. In re St Helen Bishopsgate and In re St Mary's Banbury cited. English Heritage considers the screen to be a rare artifact in Surrey and the South East and a report concludes that it is essentially three original screens with some major renewal and repair, rather than three new screens containing some original woodwork. There is concern that the new position of the screen would obscure the attractive reredos. Chancellor concludes that the screen should not be removed as it contributes substantially to the character of the building. The pews are the work of George Gilbert Scott Junior, a fine designer and in the opinion of English Heritage, there would be harm to the significance of the church by their removal. Chancellor concludes that removal of pews is in principle, acceptable but wishes for more discussion between English Heritage, DAC, CBC and the council as to the type of chairs to be installed. Therefore an interim judgment is issued.

5 October Holy Trinity, Richmond

Southward Petchey

The Vicar and Churchwardens have petitioned for a faculty to install a memorial tablet to David Church, a member Holy Trinity, to be paid for by his widow. Faculty is not normally granted unless the memorial is artistically an adornment to the church; the memorial is in some way educative or inspirational; the person commemorated has an obvious connection with the church beyond that of one who worships there; and the application comes at least 12 months after the death of the person to be commemorated. Chancellor indicated he would grant a faculty if the memorial was an artistic adornment and if it did not include a reference to Mr. Church's grandparents. Mrs Church did not wish to submit an amended design. Faculty denied.

5 October St Mary Magdalene, Rusper

Chichester Hill

Erection of a memorial in the churchyard which does not comply with Churchyard Regulations. The DAC was concerned about the irregular nature of the cut stone and the use of Horsham stone, the lack of informative text to speak of the talents and interests of the deceased, the inclusion of a dream catcher which is not considered a Christian symbol and the inclusion of an expression which is meaningless without explanation. The family has since indicated they are prepared to forgo the inclusion of a dream catcher and agreed to modify the text in order to retain the reverence and dignity of the Christian burial ground. In the light of these concessions Chancellor is persuaded that an exception might be made for the use of a rough hewn stone. Faculty granted.

8 October St George Woodsetts

Sheffield McClean

Removal of a memorial plaque placed over the buried cremated remains of Mr G, supported by the PCC but strongly resisted by Mrs G and family. Mrs G chose a black granite memorial in a desk top design (i.e. sloping) from the catalogue shown to her by the funeral directors. The funeral directors made application to the church for permission and this was denied as the only stone to be used in the churchyard was York stone. It is with regret that since 1995 this parish had not observed the churchyard rules in both allowing memorial plaques for cremated remains and the use of black granite for headstones. Mrs G was advised by the bishop to contact the Chancellor direct for permission for her chosen plaque and intimated that the answer would be favourable given that black granite had been used extensively in the churchyard. The Chancellor advised Mrs G that it was for the area dean to make the decision but if black plaques were already common she could approve Mrs G's application and she consequently did so. However, the PCC appealed to the Chancellor to have permission revoked on the grounds of the previous incumbent's ruling that York stone alone should be used and that the design of the plaque in a desktop form was not in common use in the churchyard. Diocesan rules in this churchyard have been ignored for a number of years but with this petition being presented, must now be followed. However, this will take time and there must be some flexibility while a new policy is developed. In this case, the petition is denied.

right is not interfered with. Petitioner questioned whether the objectors were entitled to object as they were not resident at the house but resident in the Isle of Man; they were not on the electoral roll for the parish; and the freehold owner of the house was a Manx registered company. Chancellor agrees that they are not. Objectors believe they have a private right of way which matured from a quasi-easement to a legal easement upon the sale of the house. Chancellor is satisfied that an incumbent cannot grant a right of way without obtaining a faculty and as it is not suggested that right of way was authorized by a statute, Measure or faculty, then the objectors have no right of way. For these reasons a faculty shall be granted.

6 November Community of the Resurrection
Church

Wakefield Downes

The Petitioners wished to remove two tombs which were sited either side of the High Altar to allow the church to accommodate more worshippers. They either contain the cremated remains of the Bishops who founded the Order or they covered the area of floor in which the ashes were interred. The Respondent objected to their removal quoting Lord Coke who described the importance of monuments to significant personages and the powerful justification to remove them. The Court agreed and faculty was denied. The Petitioners also requested under-floor heating, light and sound systems, leveling of the floors and removal of York stone flooring. The Victorian Society and the Twentieth Century Society were opposed to the scheme while the Church Buildings Council and English Heritage accepted the proposals after negotiating some changes. The Respondent considered heating and lighting a minor consideration for those called to a monastic life and was therefore unnecessary which in turn negated the need to remove the stone flooring. The expert evidence of the architects and engineers persuaded the Court that under-floor heating was the best type for the conditions in the church. Petitioners wished the floor throughout the church be leveled to allow disabled brothers to take part in processions and other services with their more able brothers and to comply with the Disability Discrimination Act. Plans revealed that the different levels of the floor was more to do with rising ground than a particular design of the architect. Choir stalls were uncomfortable and inappropriate for present use while Respondent declared that the brothers should be able to rise above such discomfort. Court accepted that the pastoral reasons for the changes were overwhelming and faculty was granted.

10 December St Nicholas, Tillingham

Chelmsford Pulman

Installation of a kitchen and toilet in the base of the tower, replacement of pews with a mixture of movable benches and chairs, and provision of a gallery room above the aforementioned kitchen in this 12th Century church. Petitioners wish for the church to be used to provide varied modern forms of worship, meetings and fellowship to include talks, informal chats, men's and women's breakfasts, Harvest Supper etc. and the present pews are a hindrance to this form of work. These pews are of varnished pine, not the original ones, but Victorian. One objector has run a spirited campaign to garner support to oppose the removal of the pews but few active church members agreed with her. She argued that if a kitchen and toilet ceiling is in place, the bells can no longer be lowered,

but the floor could be opened up and the bells lowered into the kitchen, should the need arise. Petition allowed but no work to begin until detailed plans are submitted.

21 December St Mary the Virgin, Battle

Chichester Hill

Construction of a new extension on the north side of the building to form a meeting room, disabled access, accessible toilets and kitchen, together with a ramp between the north aisle and the Lady Chapel. After notice in the local newspaper, there were objections by letter from several parishioners concerning the funding, the extent of the works and lack of consultation. Petitioners have articulated the need to provide appropriate and flexible facilities for the mission and witness of the church community and the Chancellor is satisfied that a faculty should be granted, particularly as there has been a distinct lack of professional objection from highly qualified organizations such as the DAC, CBC, AMS and Victorian Society.