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CONSISTORY COURT CASES 2006

<u>DATE</u>	<u>PLACE</u>	<u>DIOCESE</u>	<u>CHANCELLOR</u>
9 January	Arthur Mallinder, deceased	Sheffield	McClean

Cremated remains of Arthur Mallinder buried in Aston Cemetery. His widow wishes his remains moved to Killamarsh Cemetery and buried in his parents' grave where she wishes also for her own remains to be interred. Mr Mallinder's son intimates that this is the "family grave". Alsager and Blagdon cases cited but no basis for making an exception found. Faculty denied

16 January	St Mary, Slaugham (No 2)	Chichester	Hill
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Reordering of interior of Grade I listed church including new screens, raised stone floor, stone floor to choir, carpet, new heating electrics and lighting, and removal of existing pews. Supported by DAC, English Heritage, Council, CCC. Society for Protection of Ancient Buildings sent written objection regarding need for a single unified floor level which would cause loss of existing Victorian floor and thought the screen heavy and inelegant. Although raised floor is not being done because of requirements of the DDA 1995, Dudley Wood (6 June 2005) cited. Consideration of creating a breathable floor construction. Raised floor will offer flexibility in use of the church. One other objection from parishioner regarding insufficient seating in the event of major festivals and large weddings. Chancellor will direct that pews be retained for possible use in the future. Faculty granted.

23 January	Welford Road Cemetery Leicester	Leicester	Behrens
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Application for confirmatory faculty. In 2002/03 memorials were made safe by attaching them to metal stakes inserted in the ground. Progress was slow and expensive so in 2003/04 the Council made every effort to contact families of the unsafe memorials and the cemetery was closed to visitors except by appointment. Confirmatory faculty granted in respect of past works but without the knowledge of widespread discontent. Over 100 of the 10,000 graves in question belong to descendants of Polish families who deny that they were consulted. They state also that memorials were damaged in their laying down. A petition was obtained and complaints made to local MP's. Chancellor satisfied that Council failed to

contact any of the Polish community. Chancellor refuses confirmatory faculty and orders the Council to reinstate and re-stabilise all the gravestones which have been laid down thus far. On condition that the Council complies, faculty granted for the future to allow Council to secure and make safe memorials and to notify owners to make memorials permanently safe or they be laid down.

31 January In re St Nicholas Churchyard, Oxford Bursell
 Remenham

Petitioner wishes to erect a slate memorial to her late son, with an oval ceramic plaque mounted on it and a black and white photograph of her son scanned into it. The grave is fairly close to that of the petitioner's husband who has a similar memorial, permission for which was given by the then incumbent. The PCC and Council approve this one memorial but request that approval be refused for any further such memorials. Petitioner believes a precedent has been set with regard to her family. Chancellor disagrees reminding that her husband's memorial was erected illegally. Permission given for the slate memorial but not the added ceramic plaque.

1 February Re: Arthur George Oakes Birmingham Cardinal
 deceased

Exhumation from St Laurence Northfield for reinterment in St Peter's Church, Droitwich Spa, due to failing health of the deceased's wife who has moved to be nearer her family. No sufficient reason shown to justify faculty but petitioner may make further written representations within 28 days of this judgment

2 February St Andrew's Church, Bath & Wells Briden
 Banwell (No 2)

Sequel to judgment of Dec 5th 2000. Installation of a platform to accommodate a nave altar and sanctuary. Experimental re-ordering by way of a temporary platform and nave altar. Concerns about safety from a parishioner who fell from the platform which was then removed. Size of proposed platform means it would separate an historic set of mediaeval pews and also impinges on the configuration of the arcade piers and base of pulpit. One party to the proceedings and 19 letters of objection although clearly a lot of support for project. St Helen's Bishopsgate questions. Necessity established for a nave altar as an aid to worship but design overly large and would have an adverse effect on the historic character of the church. Petition adjourned so that further proposals can be made

11 April St Oswald, Hotham York Coningsby

Installation of a chiming clock on the south face of the tower. Three objections concerned with the noise level when the bell chimes so a proposal made to set chime between 9.a.m. and 5 p.m. weekday only. One objection on aesthetic grounds but Chancellor determines that the clock face is not out of keeping with the appearance of the tower. Faculty granted.

12 April St Giles, Lincoln Lincoln Collier

Sale of the Vincenzo Damini oil study painting of the Ascension, formerly of St Peter-at-Arches (demolished) then located at St Giles upon its opening, but presently on display in Lincoln Cathedral Library. In 1996 a faculty was granted to deposit the painting on temporary extended loan in Lincoln Cathedral Library for better protection, security and accessibility for the public because the church could no longer afford to display the painting as the enhanced security needed is beyond the church's budget. DAC opposes the sale saying it is the only record of the earlier church and the historical connection to Lincoln and that church. As it has been displayed elsewhere for many years, that link is no longer obvious and St Giles is in great financial need. Faculty granted.

13 April St John the Baptist,
Stainton by Langworth Lincoln Collier

Sale of four items of silverware, deemed redundant, the money to be used to pay for works to the tower. DAC opposes the sale on the grounds that the items are of considerable local historical interest and that the church was in good order and well cared for, repairs being not particularly urgent. Chancellor accepts that the silver's redundancy and the financial needs of the church are good reasons for the sale. Faculty granted.

15 April St Mary the Virgin, Beighton Sheffield McClean

Major changes to this grade II listed building. Need for the installation of a toilet led to looking at ways to equip the church for the next century. This included new underfloor heating, replacement of pews with chairs for flexibility, levelling the floor to make disabled access easier, alterations to porch floor for ramped access, removal of organ to create more space for kitchen and toilet, relocation of font and replacement of some doors among other works. Proposals supported by DAC and other bodies with some provisos. However, a petition with 170 names (though not signatures) dated in 2004 opposing the major works was received but was deemed inadmissible (re Emmanuel Church, Bentley Nov 2005) Faculty granted

1 May St Simon & St Jude, Bramdean Winchester Clark

Reordering to include removal of pine pew (which has faulty legs), reredos panel (which partly obscures the window), prayer desk and carpet in the chancel (which covers the black and white tiles) and plastering of the east wall. The PCC had previously discussed the reordering and agreed to go ahead with the support of the DAC. There were three objections from parishioners. Faculty granted.

9 May St Nicholas, Arundel (No 3) Chichester Hill

Removal of central portion of a mezzanine structure in the west end of the church, alteration to the wings of same structure, provision of a disabled toilet and enlargement of kitchen facilities. Chancellor convinced that a case for necessity has been proved and that works would enhance the character of the building. Faculty granted

23 June Re: Leonard Walsh, deceased Carlisle Tattersall

In 1995 Leonard Walsh was cremated and his remains buried in Plot 51 where his parents had both been laid to rest. When Leonard Walsh's brother died in 2004 he was unable to be buried in the same plot due to ground conditions and so was buried some distance away in plot 45. The applicant (a cousin of Leonard Walsh) wishes his cousin Leonard's remains to be exhumed and re-interred in plot 45 where his brother now lies as it was always the intention that the brothers should lie together. Faculty granted.

1 July Holy Trinity, Dalton Burial Sheffield McLean
Ground

The burial ground of Dalton (not the churchyard) is bordered on most sides by houses, its entrance being a small gate between two of those houses. Many of the older graves have kerbstones but very few of the newer ones closer to the entrance do. When Mr Walsh was buried here in 1974, the family erected a headstone and installed a surround made of concrete edging usually found in gardens, all done in the presence of the then incumbent. In 2005 the churchwardens and PCC were awarded a grant for work in the cemetery to include grass cutting and removing all unauthorised monuments. A notice was erected to this effect, but the PCC did not seek a faculty to remove memorials, although they did try to contact next of kin. In August 2005 the family sought permission to erect a proper set of kerbstones but for reasons that remain a mystery, the papers only reached the registry in January 2006. Furthermore the Chancellor did not receive all the relevant papers until June 2006. Although it would be desirable that there should be no kerbstones round modern graves, there are kerbstones around two adjacent graves to that of Mr Walsh, evidently having been accepted at time of burial, accordingly faculty granted.

8 July Christ Church, Malden and Southwark George
Coombe

Re-ordering to include among other things, removal of pews, choir stalls, pulpit, lectern, font, pipe organ etc and provision of new digital organ, new audio visual system and modification of existing electrical and heating systems to create a more flexible church. Objection by a former churchwarden who raises a number of matters, and two parishioners. Concerns over the re-lighting proposals, the font cover, positioning of audio visual control panel, number of reading desks and the music cupboard have all been addressed. Outstanding issues include purchasing new chairs from a catalogue rather than craftsman-designed chairs, the removal of glazed screen and health and safety considerations relating to this last and use of space created by removal of organ. Chancellor is satisfied that petitioners have struck an appropriate balance and that the re-ordered church will be apt for the 21st century.

13 July Re: St James the Great, Leicester Behrens
Birstall

Private petition by Mrs Harvey to bury ashes of her father in Birstall Churchyard, the spot to be marked with an individual marker. Although the churchyard has been closed since 1974, there have been a number of interments of ashes marked by memorials. In 2003 faculty was granted to establish a Garden of Remembrance and a Book of Remembrance in line with diocesan policy as set out by Bishop's Regulations 6 & 7 which state that there should be no individual grave space, no individual casket nor a memorial to mark the place of burial. Chancellor advised Mrs Harvey that she could proceed with a faculty petition and if the DAC, PCC, the Bishop and the Archdeacons do not oppose then a faculty will be granted. All did oppose although Mrs Harvey had many letters of support from the congregation who remember her father's active role in the community. Despite this support, the evidence and the law point clearly to refusing this petition. Petition dismissed.

31 July Re: St Leonard, Seaford Chichester Hill

Reordering of the interior of Grade I listed church including replacing floors, removal of the font, new entrance doors, replacement of some pews and installation of a re-locatable altar and font. Consultation with CCC, DAC, Victorian Society and English Heritage. Four letters of objection mainly concerning replacement of pews with free-standing chairs. Chancellor accepts that the petitioners have proved a necessity for the proposed works. Faculty granted with some conditions.

31 July St Mark, Worsley Churchyard Manchester Tattersall

A widow, shortly after burial of her husband in a family grave, discovered that throughout the marriage he had been having an affair with another woman and had considered leaving her. Had she known these facts at the time of his death she would not have considered burying him in the family grave where her parents and grandparents lie and where she and her brother will ultimately lie. Her wish is that he be exhumed, cremated and reinterred in Heaton Cemetery Bolton. All her children agree to exhumation although one son objects to cremation. However, Canon Ainsworth objected referring to the theological presumption against exhumation. Alsager and Blagdon Cemetery cited. Chancellor satisfied that the facts of this case are exceptional. Faculty granted.

25 August St Paul, Drighlington Wakefield Collier

Removal of a variety of items including kerbs, chippings, gravel and memorials, that have been placed in the churchyard contrary to the Diocesan Churchyard Regulations 1994. Such works took place during a 6 month period in which the incumbent was away on sick leave. Once one or two families had erected memorials with kerbs and gravel, others followed suit and it was not long before other bereaved families complained that there seemed to be one rule for one family and one rule for another. The priest in charge published a notice asking that all items that did not comply with the regulations should be removed. While many complied others did not and the chippings continued to be laid. While there has been no formal opposition, two families have sent letters of objection and a petition signed by over 1100 people. From other similar cases a number of principles have been recognised – 1) churchyard is created for the community both past and present 2) incumbent & PCC are responsible for preserving and maintaining churchyard 3) parishioners have a right of burial but plot remains ownership of incumbent 4) permission is required to erect any monument. Permission falls to the Chancellor who can delegate to an incumbent within guidelines 5) any memorial erected belongs to the person who erected it during their lifetime and thereafter to the heir at law of the person in whose memory it was erected 6) recently there has been a distinct turning away from permitting kerbs unless there are exceptional circumstances. Chancellor is fully persuaded that the petitioners need to remove chippings and kerbstones in order to manage the churchyard properly, therefore faculty issued to remove kerbs, chippings and gravel but not memorials on this occasion.

4 September Holy Cross, Newcastle Newcastle McClean

Installation of a set of fourteen Stations of the Cross made of limewood to be placed on the walls of the side aisles to be paid for by an anonymous donor. PCC divided but mainly in favour, one objection from the parish on the grounds that they would conflict with the simple interior style of the church. There are, however, other decorative features within the church including a font cover, organ case and large crucifix. Also some concern that such adornments could become objects of something akin to worship. Stations of the Cross are not illegal but may be

prohibited if there is a danger that they might become objects of "superstitious reverence". However the Chancellor did not find such objections persuasive and faculty was granted.

25 September St Andrew's Church, Mells Bath & Wells Briden

The Horner Chapel in St Andrew's Church is the home of bronze statue representing a mounted cavalry officer standing on a 6 foot plinth of Portland stone designed by Lutyens. It is to commemorate the death in the First World War of Edward Horner, only son of Sir John and Lady Frances Horner. The petitioners (priest in charge and two churchwardens) wish to re-locate the statue to the north-west aisle in order for the Horner Chapel to be used for quiet prayer and reflection. The church is visited by many tourists and the need for such a quiet place is great. Consultation with English Heritage, Victorian Society, PCC, CCC, DAC and descendants brought forth no objections. However, objections from the Lutyens Trust and the 20th Century Society. Bishopsgate questions were considered and Faculty granted.

26 September Re: Leslie John Norton Birmingham Cardinal

Exhumation of ashes from burial place in consecrated part of Robin Hood Cemetery for scattering on Garden of Rest in same cemetery. Widow wishes them scattered with her late husband's parents ashes and in time with her own. With age she is unable to maintain the part of the garden where the ashes are buried at present. In re Christ Church Alsager and In re Blagdon Cemetery quoted. Petitioner not shown sufficient reason to justify exhumation. Faculty denied.

October St Peter and St Paul Chelmsford Pulman
Chingford

Application to install mobile phone base station in upper part of the tower and replacement of slate louvres with glass reinforced plastic. Objections were received on the grounds of safety hazard caused by radiation but only one became a Party Opponent. An expert in the field concluded that there is no credible evidence suggesting a link between antennae and damage to human tissue (Stewart Report) and 4 parishioners were invited to give evidence but none could produce any evidence. However, the petitioners could not guarantee that the antennae would only be used to transmit material consistent with the Christian use of the church. It was likely, then that the Church would become an unwilling facilitator for the transmission of pornography. Petition dismissed.

4 October St James, Handsworth Birmingham Cardinal

Exhumation of ashes of petitioner's father for reburial with petitioner's mother's ashes, now interred in West Bromwich Crematorium. George Philip's ashes were originally interred in the Garden of Remembrance of St James which has lately become an area abused by the public who regularly drink and smoke there and also use it as a place for dumping rubbish. The police are unable to stop such behaviour. Chancellor found grounds for exception to the general rule that it is inappropriate to exhume ashes and granted the faculty.

7 October St Mary, Worsbrough Sheffield McClean

Introduction of a plaque dedicated to the late secretary of the Diocesan Readers' Association for 34 years service. His wife, then newly widowed, asked that a plaque be dedicated to his memory and the council agreed. It is more usual that a period of 5 years elapse after someone's death and that the application be initiated by the incumbent or churchwarden after careful thought and consultation. However, the widow took charge of the whole matter, giving little time for consideration and ultimately giving offence when suggested that an existing plaque to the late organist and choirmaster be moved to a lower position and the new one placed above it. Petition dismissed without prejudice to a new petition in perhaps three years time.

9 October St Mary the Virgin, Willingdon Chichester Hill

Reordering of Grade I listed church comprising replacement of some pews with chairs in the Ratton Chapel, relocation of lectern, introduction of a nave altar, construction of a step & handrail, removal of a muniments chest and space for a book stall. Proposals supported by the PCC and English Heritage. Five letters of objection and 17 names on a petition mostly against the work in the Ratton Chapel. Bishopsgate questions considered. Faculty granted subject to conditions.

13 October Welford Road Cemetery Court of Arches Cameron,
Turner, Hill

Appeal from a decision of 23 January 2006 concerning confirmatory faculty. Grounds of appeal related firstly to the "restoration order" made by the Chancellor. The power to make a restoration order under s 13(5) of the 1991 Measure conferred on a chancellor an enforcement power in relation to churches and churchyards and it was not applicable to the consecrated part of a local authority cemetery. Secondly, the Chancellor was in error in so far as he exercised power under s 13(5) ordering a restoration of the memorials by the council and thirdly that he was erroneous in his refusal of a confirmatory faculty in deciding that the risk of unlawful discrimination meant that the grant of any faculty had to apply to all

gravestones laid flat and not just those of the parties opponent. As far as conditions attaching to the confirmatory faculty were concerned it was essential to take account of the legal responsibilities placed on the council and the parties opponents. If the latter had kept their memorials in a safe condition then the council would not have needed to interfere with them; if the council had alerted the parties opponents earlier through their priest, then they would have been given an opportunity to put their memorials in a safe condition
Confirmatory faculty to be issued and the cost of reinstating the memorials to be shared between the Council and any opponent who applies to the Council within 3 months of this judgment.

15 October Gillian Preston, deceased Birmingham Carslake

Permission to erect a memorial was refused in August as it offended the Churchyard Regulations. Decision was sent by post to Mr and Mrs Price by their vicar. They state they never received his letter but by that token also did not receive permission for the memorial. Exceptionally, Chancellor does not require removal (especially as the Prices have agreed to have the gilding removed and replaced with black) but warns that further breaches of the Regulations will result in firmer action being taken.

17 October St Nicholas, Beverley York Collier

Petition to remove a redundant and install a new heating system requiring the removal and storage of 12 pews. Church has not been used for Sunday worship for two years since boiler was condemned. Two objections to the removal of pews being the “thin end of the wedge” in the light of further proposals for a full re-ordering of the church. Victorian Society objects to removal of a small amount of pews if it is to lead to the complete de-pewing of the church. Bishopsgate questions cited. Removal of the 12 pews would adversely affect the appearance of the church as a pewed Victorian church but necessity for the work has been proved. Removed pews to be placed in storage. Faculty granted.

27 October Peter Small, deceased Manchester Tattersall

Petition to erect a heart shaped memorial stone in grey granite fitted onto a york stone plinth on the grave of Peter Small as requested by himself before he died, having seen similar headstones in the churchyard. When their views were sought, the DAC had no objection but the PCC objected on the grounds that it did not comply with either the Deane Churchyard Regulations or the Diocesan Regulations. After the petition was displayed there was one letter of objection and three of support. The statement in support stated that the family had not been informed of the Guidelines but the Rector had a signed copy of the Regulations, returned by the family, therefore they were aware that heart shaped headstones were against the Regulations. Faculty denied.

1 November Re: Eric Pearson, deceased Birmingham Carslake

Petition to exhume deceased's ashes from their burial place in consecrated ground at Robin Hood Cemetery for scattering off Beachy Head together with those of his late wife, as requested in her will. Christ Church Alsager and Blagdon Cemetery cited. No exceptional circumstances shown. Faculty refused.

4 November All Saints, Stretford Manchester Tattersall

Installation of a T-mobile antennae disguised as a telegraph pole in the churchyard of All Saints. Objection by Mr Shannon, a resident, whose property is adjacent, on the grounds that it will be visible and intrusive, will be a health hazard and that T-mobile already have a mast not 300 yards away. Thirteen other objection only one of which, Mrs Williams, along with Mr Shannon, wished to become a party to the proceedings. The applicants set out their proposals in a written statement sent to the objectors. Mrs Williams withdrew her objection and Mr Shannon neglected to reply at all. Faculty granted.

5 November Ashley Thomas Cook, deceased Birmingham Carslake

Exhumation of body from churchyard of St Patrick Earlswood for reinterment at St Molva Magheraclone in Co. Monaghan. Petition by deceased's mother who has remarried and retired to Ireland and will find it difficult to tend her son's grave. Christ Church Alsager and Blagdon Cemetery cited. No exceptional circumstances shown. Faculty refused.

11 November Kevin Jan Trimmer, deceased Newcastle McClean

Exhumation of cremated remains of deceased who died 22 years ago, for reinterment in a churchyard in Kent where the petitioner (deceased's mother) now lives. No legal basis on which to make an exception to the principle that Christian burial is final. Petition dismissed.

15 November All Saints, Beckley Chichester Hill

Mr Bell died in 1996 and was buried in Beckley Churchyard in a double depth grave the intention being that his wife would be interred with him upon her death. Their son predeceased Mrs Bell and his cremated remains were interred in the said plot. Mrs Bell has now died and in order to bury her in the double depth grave, the cremated remains of her son need to be removed. The gravedigger did in fact move the remains while digging the grave for Mrs Bell and a retrospective faculty is now sought to authorize the relocation of her son's ashes with Mrs Bell's family's consent. Exceptional circumstances have been shown and faculty is granted.

20 November St James, Birdham

Chichester

Hill

To replace an existing pipe organ with a Wyvern B235 electronic organ. Petition delayed due to the parish having entered unlawfully into a contract for the disposal of the existing organ in the absence of a faculty, supposedly on the advice of the DAC. Chancellor made clear that the DAC should not frame its advice in terms amounting to the granting of permission and equally that the parish should not interpret favourable advice as amounting to authorisation. The parish was also late in consulting the CCC on this matter who subsequently did not object. Faculty granted.

21 November St. John, Broadbridge Heath

Chichester

Hill

Removal of a crucifix from the external wall and its re-location to Horsham Museum and replacement of said crucifix with a plain cross. The DAC declined to recommend proposal, CCC supports it, two letters of objection received. The crucifix was not part of the original design of the church, the architect preferring a plain cross, the location at the museum will give greater access to view it and it may be possible for the museum to arrest further deterioration. Faculty granted

24 November St Mary the Virgin, Buckland

Oxford

Bursell

In 2001 a faculty was granted for the reservation of grave space for Lancelot Wright and his wife and also an upright headstone “in accordance with the design of Theodore Gillick” Headstone was to be of Portland limestone with an image and room below for the names and dates of the deceased.. Headstone was erected after the death of Mr Wright but the Wright’s daughter (the petitioner) was told that an additional horizontal slab would be needed to provide sufficient space for information about Mrs Wright who died in 2005. A slab has already been inscribed but photos show the inscription to be different from that which is being quoted in the petition. Treasurer of the PCC objected on the grounds that it would be out of keeping with other recent memorials, that a raised slab would hinder the maintenance of the churchyard and the original headstone should have been initially mounted on a stone base. The incumbent also expressed the view that the upright memorial is already distinctive and a horizontal slab would make the grave even more so. Chancellor agrees it would not be appropriate to permit a horizontal slab into the churchyard and suggests that an inscription could be engraved on the other side of the upright memorial. Faculty denied

5 December Holy Trinity, Idle

Bradford

Walford

Installation of telecommunication equipment and licence agreement with T-Mobile. A number of written objections on the grounds of health hazard and appearance of equipment on the church tower. Relevant scientific evidence shows there are no adverse short or long-term health effects from base stations and plans show the equipment will be practically invisible. As the Petitioners have shown in their statement of need that there is good reason to enter into the licence, faculty has been granted.