

IN THE CONSISTORY COURT OF THE DIOCESE OF HEREFORD

IN THE MATTER OF THE BELLS OF THE CHURCH OF SAINT MICHAEL, MICHAELCHURCH ESCLEY

AND IN THE MATTER OF A CONFIRMATORY AMENDMENT TO FACULTY 2013/136

AND IN THE MATTER OF AN APPLICATION FOR COSTS

Before: THE DEPUTY CHANCELLOR

JUDGMENT

INTRODUCTION

1. I have been asked by the Registrar to determine issues of costs arising from the Petition for a Confirmatory amendment to the existing Faculty in order to authorise the installation of a new treble bell, augmenting the ring at S Michael, Michaelchurch Escley, to six. I do so with some hesitation, for two principal reasons. The first is that the matter is not yet concluded: although there remains every hope that the amendment will be granted, the conditions for its grant have not yet been met. The second is that a formal determination, setting out reasons and evidence, makes explicit what might otherwise have been the subject of informal and private arrangements. In the present case this judgment may cause some difficulty in the parish, and in particular to one individual, who is advanced in years and, I am told, not well.
2. So far as concerns my first reservation, the position is that whatever the outcome and however soon it takes place, the history will not change; and it may be that a measured recital of the story so far will assist the parish to get things in order now. The second matter is of more concern. The Church, particularly in rural areas, depends heavily on the enterprise, enthusiasm, expertise and simple hard work of a small, sometimes a tiny, number of devoted followers. Nothing ought to be done that would discourage suitable people from coming forward and taking roles in the support and management of small parishes. It very often happens that a church building is kept open outside service-time only because there is one individual who is prepared to commit to it; and other tasks, practical and clerical, cannot be done unless those who volunteer for them can be confident of being free from needless bureaucratic criticism. The Church as a whole, and in this Diocese the Bishop and the clergy, are immensely grateful for all the assistance they get.
3. On the other hand, neither the Church nor the law can be seen to condone actions that will not bear examination. It is impermissible for a layperson to take or to be given control of a church's affairs, and the parochial and diocesan structures are designed to make it impossible. Everybody who works within a church community, or who cares for a church building and its contents, is operating under the constraints of a trust, not merely in a religious and moral sense, but also in a manner defined by law. The smaller the numbers

and (as a result) the less the supervision, the more important it may be for those who have de facto control to be able to show that they are beyond reproach.

4. I have to apply those principles. It goes without saying that it is only in a very unusual case that they need to have attention drawn to them. The difficulties which this judgment sets out are not difficulties that church workers as a whole are likely to come across; and the particular point of difficulty which appears from the evidence set out here is not a matter that ought to cause any concern to any of the army of volunteers to which I refer in paragraph 2 above.
5. Although the basic facts of the present matter are open to public examination and it is far too late to require confidentiality, even if such an order were appropriate, it is unnecessary and would be insensitive to record here or to repeat constantly the name of the person with whose doings I am most concerned. I shall refer to him, not entirely accurately, as 'the Churchwarden'. In what follows, unqualified references to a single Churchwarden are always references to the same individual. At the relevant times he appears also to have been the church Treasurer, and PCC meetings were often, perhaps always, held at his house.

THE BACKGROUND

6. Michaelchurch Escley is a large but scattered and quite isolated parish in the foothills of the Black Mountains. St Michael's church is a grade II* listed building, dating in large parts probably from about 1500. The tower was rebuilt in 1897. The bells, a complete ring of five cast by Abraham Rudhall II of Gloucester in 1732, with a tenor of about 6½ cwt, were hung in a new frame in the new tower and joined by a small bell to act as a sanctus. When examined in 2003, the fittings appeared to have had no serious attention since the rebuilding of the tower. The tenor had acquired a serious crack as a result of the differential expansion of the cast-in crown staple and there was every reason to suppose that the other bells would in due course suffer the same damage. The tenor could not safely be rung. Only two of the other bells had ropes, and there had been no ringing on the bells since about 2003.
7. The impetus for bringing the bells back to ringing condition appears to have originated with the Churchwarden and it is clear that it has been his enthusiasm and work that have kept the project going. He seems to have made it his own, undertaking all the necessary correspondence, seeking grants, contacting possible contractors, getting estimates, and so on. The parish deserves his thanks for the successful completion of the restoration of the five bells. That is so despite the fact that, as will be clear from what follows, he subsequently went far beyond any authority that he might have had and thus causes the parish considerable legal difficulties and potential expense.

THE WORKS, PHASE 1: RESTORATION OF THE RUDHALL FIVE

8. The Petition for work to restore the existing five bells (including repair of the cracked tenor by welding) and to rehang the small sanctus bell is dated 12 November 2013 and is signed by the Vicar and both churchwardens. It was supported by a DAC certificate and by a certified extract from the PCC minutes indicating that at a meeting on 12 November 2013 (sic: the very day of the Petition) the Churchwarden had reported that the cost of restoring the bells would be about £30,000. He asked for a vote allowing him to proceed. There had been lengthy discussion, following which the following motion was unanimously agreed: 'That [the Churchwarden] be asked to submit completed forms requesting that a Faculty be

granted so that works of restoration to the bells and relevant woodwork could be undertaken'. That certificate, dated 15 November 2013, is signed by the Secretary to the PCC.

9. The papers also included a detailed survey from Matthew Higby & Co Ltd, the bellfounder and bellhanger, recommending (in summary) the repair of the cracked tenor, the removal of the remaining cast-in crown staples, the replacement of the fittings and the rehanging of the sanctus bell. The report notes that the two trebles of the five sound rather sharp and that they could be tuned. There is also a draft specification for the work to be done, including retuning as an optional extra (at a cost of £2526.00 plus VAT).
10. When the papers came before me as petition 2013/136 I noted that retuning had not formed part of the summary recommendation, and was not specified in the Petition, the Public Notice or the DAC certificate, although it was mentioned by the bellfounder and the cost is set out as a possible part of the cost of the work in the Petition. I raised questions about the desirability of tuning, given that the present sound of the bells was a preserved eighteenth-century sound, reflecting tuning choices made at the time. There was a response from the DAC indicating lack of concern, but I decided that tuning was not merited.
11. Because I was not refusing anything for which a Faculty had actually been sought, no formal written judgement was needed, and I did not give one. I did, however, send a note giving my reasons for not granting permission for the bells to be tuned. That note was subsequently published (I do not know by whom)¹. It attracted publicity in the national press and even in the academic world², and was the subject of discussion on the bell historians Yahoo group. There was, however, no objection to it from the parish; and indeed the Churchwarden wrote to the Diocesan Registry on 29 June 2014 with thanks for the 'comprehensive comments', and indicating that the PCC accepted the judgment and would now 'press ahead with the project, excluding any retuning'.
12. The Faculty for the restoration of the five bells and the sanctus, in accordance with the Petition, was issued on 25 July 2014. One difficulty of which the Registry was made aware arose during the work: the repair of the tenor changed its tuning, which had to be restored. Permission for that was sought, and given promptly. The certificate of completion of the work was received at the Registry on 11 April 2018. It records, in standard form, that the work authorised by the Faculty had been completed. Although there are manuscript amendments to the form, no further work is mentioned. The form is signed by the Churchwarden. It purports also to be signed by the other churchwarden but that signature appears to be in the Churchwarden's handwriting and is quite different from her signature as it appears on the Petition and on another document to which I make reference below.
13. No question now arises about the work for which a Faculty was granted. I have set out its history in order to provide context, and to show that right up to April 2018 the parish, operating chiefly or wholly through the Churchwarden, had made no mention of installing a new treble to augment the ring to six; and had not submitted any Petition for, or enquiry about, such work. The history shows that the parish knew about the Faculty process, and knew also that an amendment to an existing Faculty could be speedily obtained.

¹ For completeness, the note is attached as an annex to this judgment.

² Z Hasan, 19 *Art Antiquity & L.* 301 (2014).

THE WORKS, PHASE 2: AUGMENTATION TO SIX

14. The position in the parish was, however, somewhat different. Following the discovery of the need to restore the tuning of the tenor, the bell adviser to the DAC emailed the Registry as follows: 'You may recall that the [Deputy Chancellor] decided that if just the original bells were put back in the tower they should not be tuned, but the parish decided that it wanted an additional treble as a war memorial bell, which changed the conditions of the Faculty'. Subsequent correspondence confirmed that this email, dated 15 September 2017, was the first mention to the Registry of this additional bell. The reply from the secretary of the DAC, however, simply states that 'circumstances have changed', apparently not recognising that if they had changed, they had done so without any apparent lawful authority. Further enquiries revealed that a new bell had been cast at the direction of the parish and awaited installation. The parish were promptly informed by the DAC secretary that a new bell could not be added until Faculty permission had been granted.
15. Quite apart from the fact that the parish had apparently decided to augment their ring of bells without regard to the Faculty jurisdiction, inspection of the details now provided raised other concerns. In particular, it was clear that the new bell, by an Italian foundry, was of a wholly alien appearance, covered with ornament some of which (as it subsequently transpired) was intended to be, and was, coloured. (Bells cast on the continent of Europe have traditionally been ornamented, sometimes heavily; English bells are nearly always plain in appearance and the Rudhall bells at Michaelchurch Escley are no exception.) Secondly, I was concerned about tuning, and the way in which the new bell would meld with the existing eighteenth-century sound. I had information from Matthew Higby and the DAC bells advisor, but sought advice also from the Church Buildings Council.
16. So far as concerns formalities, my initial view was that a new Faculty would be needed for the augmentation, but was persuaded that the matter could be dealt with by amendment of the existing Faculty, provided that a proper application was made, supported by a PCC decision, and subject to Public Notice. This was of course on the understanding that work at the church had not yet begun, and that the process of amendment would allow proper authority for whatever it was decided should happen there. The Public Notice was duly prepared and, according to the certificate, displayed from 2 February to 4 March 2018. The CBC responded that it could not give proper advice until the parish had made out a case for the augmentation.
17. The next news was found in the 27 April 2018 issue of The Ringing World. There was a report on the restoration of the bells of Michaelchurch Escley, their augmentation to six, and ringing on the six bells on 27 March. It thus became clear that the Parish authorities, clearly aware that there was no authority to do so, had, without further contact with the Diocese, employed the bellfounder to instal the new bell with its frame and fittings, and were using, indeed flaunting it; and Matthew Higby advertised the work on his YouTube channel. What is also thereby apparent is that the certificate of completion of the work that had been authorised was signed by the Churchwarden (and perhaps authorised by the other churchwarden) at a time when they knew that as well as the authorised work there had been substantial unauthorised work, which he or they chose not to mention.

INVESTIGATION AND SUBSEQUENT PROCESS

18. I sought explanations. They have, over a period of time, been provided by the Churchwarden, by Matthew Higby, and by the Vicar, the Revd Nicholas Lowton, who has not featured extensively above but who must be included in the phrase 'the Parish authorities' in the previous paragraph. Although the Churchwarden has been invited to make representations (in particular bearing in mind the risk that he might be made the subject of an order as to costs) he has not made any response to my specific concerns.
19. As I have indicated above, I required any application for an amendment to the Faculty to be supported by a PCC resolution. The application was made by the Churchwarden. He sent with it what purports to be a certified copy of a minute of a meeting of the PCC on 12 November 2013. According to this, the Churchwarden had reported that the cost of restoring the bells and frames and cast a new bell would be about £30,000. He asked for a vote allowing him 'to proceed with the restoration of our five current bells and the casting of a new 6th bell as a WW1 memorial Bell'. There had been lengthy discussion, following which the following motion was unanimously agreed: 'That [the Churchwarden] be allowed to proceed with the restoration of the current bells and the casting of a new WW1 Memorial Bell'. The certificate, dated 15 November 2013, is signed by the 'Acting Secretary to the PCC', whose signature cannot readily be deciphered but it is certainly not that of the Secretary who signed the document described at paragraph 8 above.
20. The Vicar has sent an original document entitled 'Statement of Need'. It is the only expression there has ever been of the parish's view of any need to augment the bells. It is dated 'August 2018' and is signed by the Vicar, the other churchwarden and the Churchwarden (in that order), still the same people that signed the Petition in 2013. That document makes it clear that although the possibility of a sixth bell had been referred to by one of the bellfounders who surveyed the tower in 2013, there was no parochial intention to instal such a bell until 4 March 2014. On that date 'I' suggested to a PCC meeting that there should be a further bell, designated as a war memorial, and that it should be funded by individual donations, rather than by grants; and 'the PCC accepted this proposal and authorised me to pursue it'. It is not clear from that document whose proposal this was, but I have also a copy of the Minutes of that meeting, which was in fact the Parish AGM (which is not a meeting of the PCC). There was a discussion of the restoration plans, and there was a unanimous resolution to approach the Lottery Fund for a grant. The Minute continues as follows: 'Discussion followed on ways of financing a 6th bell to commemorate WW1 armed-forces losses. The meeting agreed that [the Churchwarden] should continue searching for grants for restoration of the existing 5 bells and then pursue the purchase of a 6th bell via pledged giving'.
21. The only other material before me relevant to the sixth bell and dating from before the order to cast it is correspondence between the Churchwarden and the CBC relating to grants. On 16 April 2014 the Churchwarden told the CBC that 'we have now broadened the project to include a sixth bell We hope to pay for this ... by means of individual donations However, the priority is the restoration of our five current bells, and only if we raise the funds for that will we try for the extra bell'. On arrival of grant money in May 2016, another member of the PCC wrote to the CBC, copying the Churchwarden, giving news of the project, including this: 'We are also arranging for Matthew [Higby] to make a sixth bell for us This bell will be financed solely from private donations and will also form part of the peal.'

22. The remaining material dates from the period after 15 September 2017, when the augmentation plan was first revealed to the Diocesan authorities. As indicated above, work to instal the bell proceeded despite the fact that the parish had been clearly informed that a Faculty would be necessary. Following my decision about the appropriate way forward, and the Parish's initial failure to provide to the CBC the material that body needed in order to give its view (see paragraph 16 above) there was a delay before the CBC was able to report. By letter of 23 July, the CBC advised that the work done was of high quality; that although the bell was ornamented, that was 'fitting for its memorial purpose', and its visual profile, including the placing of the moulding wires, was similar in appearance to the existing five; and that its tuning was a little sharp in order to match the slightly stretched tuning of the eighteenth-century bells.
23. That letter was sufficient to remove my doubts about the bell itself. In the meantime, however, it had been installed; and that raised the much more serious further questions about the responsibility for undertaking the work without a Faculty. It is fair to comment at this point that if the parish had waited for the Faculty authority before allowing the installation of the bell, there would have been no difficulty.
24. On 15 August I sent out a 'Note and Directions'. It drew attention to the unlawful acts by the bellfounder in installing the bell and by the parish in allowing it. It pointed out the possible consequences, including the possibility of a restoration order, and the possibility that the bellfounder would not be allowed to undertake further work in the Diocese. It directed service by special citation on the bellfounder, and responses from him and the petitioners within three weeks. By the same date all were to indicate whether they were content for outstanding matters to be determined without a hearing.
25. Fully aware of the difficulties, the parish arranged for the Bishop of Hereford to dedicate the installation, including the unlawful work, on 23 September. The parish had thus set up a situation in which the Vicar and churchwardens might be seriously, and publicly, embarrassed. The Bishop made it clear that if the Faculty was not in place at the time of the dedication service he would not dedicate the new bell, but would have to explain to the congregation the reasons why. Not surprisingly, he did not want to take that course of action unless it was necessary.
26. Given the timetable set by the Directions of 15 August I was able to consider the substantive position in time for the dedication service. As indicated above, I was satisfied that in principle the amendment should be granted; but for reasons more fully set out below, I was not satisfied that the project of installation of a sixth bell had ever been properly endorsed by the PCC. I therefore indicated my decision to allow the amendment as sought subject to a clear condition that such endorsement be exhibited. I directed the Vicar to inspect the Minutes of meetings of the PCC to see if any resolution for the augmentation could be found. If it could, he was to send a certified copy to the registrar. If not, the PCC would need to decide whether to authorise retrospectively the work itself and any payments made purportedly on behalf of the parish for the unauthorised work. I emphasised that I did not imply that the parish was under any obligation to pass a resolution to either effect. I left open the question of costs, and invited submissions.
27. The Vicar appears to have taken no action to regularise the position in time for the dedication, but, no doubt assuming that the matter would soon be sorted out, the Bishop dedicated the entire installation on 23 September. The Vicar's letter, dated 6 November, is

directed almost entirely to the question of costs and asserts that undertaking the work without a Faculty was 'accidental'. It contains no clear reference to any PCC Minute. Pressed by the Registrar, the Vicar replied again with a copy of the Minutes of the Parish AGM on 4 March 2014, which could not contain any PCC resolution, and do not contain any resolution to instal a sixth bell. Pressed again after an interval, the Vicar replied on 7 June 2019 that 'it is entirely possible that there was not actually a specific resolution made and recorded for the installation of the new bell ... because the committee of well-meaning volunteers [this appears to be a reference to the PCC, chaired by the Vicar as part of his duties as incumbent³] did not realise that such a resolution needed to be recorded'. The Vicar adds that there was never any dissent about the project expressed by the PCC. The letter goes on to indicate that the Vicar had not begun the task that he was directed to undertake some ten months previously, and (despite those Directions) did not propose to act on them until he received some sort of further confirmation of them from the Registrar.

28. The position is therefore that the amendment has not yet been authorised. There is no basis for thinking that the PCC has ever authorised the augmentation, and the Vicar's position might lead one to doubt whether he thinks that the PCC would now retrospectively authorise what has been done unlawfully in the name of the parish: one would have supposed that if such a resolution could readily have been secured, by now it would have been.
29. I hope that even at this late stage the Vicar will without further delay comply with the Directions of the Court in order to take the next step in regularising the unlawful work done in his name in a church for which he is responsible. If the truth of the matter is that the PCC will not endorse the work, that will no doubt have further consequences, but I do not need to consider them speculatively now.

RESPONSIBILITY AND COSTS

30. I now turn to consider the specific question of costs, which is closely related to questions of responsibility for the irregularities that have occurred and continue. I referred above to the service of directions³ on the bellfounder. He made a full response. Neither the Vicar nor the Churchwarden have sought to challenge anything he says in it. I accept the statements of fact that he makes. The important ones for present purposes are as follows. (i) The first costing for a sixth bell that was possibly acceptable financially was made no earlier than February 2014. (ii) The parish placed an order on 30 November 2016 for the restoration work and the augmentation to six, with a deposit payment of one third of the entire cost. (iii) The bellfounder's normal practice is to require a copy of the Faculty. On this occasion he was assured that Faculty was in place, but it was not shown to him. He himself was recovering from major surgery at the time. (iv) The bell was cast in Italy to precise specifications supplied by him, and arrived at the foundry in August 2017. (v) In mid-November 2017 he was informed by the DAC secretary that there was no Faculty for the sixth bell, whereupon he told the parish that his firm would not be able to proceed until the Faculty was amended to include it. (vi) The Churchwarden emailed him on 4 February 2018 setting out the direction for a Public Notice for the amendment and continuing 'To me that is a bureaucratic green light and in anticipation of a Faculty next month I feel we can press on. ... Can we aim to install later this month or early next – certainly for Easter 1 April.' (vii)

³ Church Representation Rules App II para 1(a)

On 6 February the Churchwarden emailed saying 'Have just agreed with [the DAC Secretary] that we should press on once the 28 day period is up – 2 March. So would the week starting 5 or 12 be any good to you – in time for Easter?' (vii) Under pressure from the parish the bellfounder agreed to begin work on 12 March. In fact the work was delayed for a couple of weeks by bad weather. (viii) The bellfounder was, according to his email of 25 June 2018, 'under the impression that full permission was in place prior to the installation' and has offered a full apology for failures by him.

31. Clearly the bellfounder is at fault for failure actually to see that a Faculty authorised the work of augmentation before he undertook it. There are, however, extenuating circumstances. There is no doubt that the Churchwarden was applying considerable pressure and indeed asserting that the Secretary of the DAC (who of course in fact has no standing in this matter) had said that work could proceed. The bellfounder's general practice is to require a copy of the Faculty and I am prepared to assume that his illness was what caused the failure to follow that practice when the order was placed. He subsequently made the position clear to the parish and had no reason to suppose that the parish authorities were not being entirely frank with him. In these circumstances I do not regard the bellfounder as other than marginally responsible for the illegality in this case. No doubt he will be all the more insistent on seeing a Faculty in future. I do not think it appropriate to make an order for costs against him.
32. In the Directions of 15 August 2018 I alluded to the possibility of the bellfounder's being unable to undertake future work in the Diocese. There is clear precedent for such an order in an appropriate case. The work done by Matthew Higby & Co Ltd in this and other Dioceses is valued. The bellfounder's failure in this case is not so severe that I ought to take any action to restrict his firm's work.
33. I remain very concerned about the actions of the Churchwarden. A review of the papers provided immediately causes questions to be raised about the document purportedly certifying a Minute of the PCC of 12 November 2013 that was submitted by the Churchwarden to the Registry in response to the request for sight of the PCC's endorsement of the augmentation project. That document is described in paragraph 19 above; the description may with advantage be compared with what was said to be a certified Minute of the same meeting, submitted with the original Petition, described in paragraph 8 above. The similarity of the wording essentially rules out any mistake as to the date. There is no explanation of how it comes to be that on 15 November 2013, the date when both documents were purportedly signed, the PCC had both a Secretary and an Acting Secretary, who were able to give such different accounts of the same resolution and both confirm that the relevant entry was in the Minutes. If the second (paragraph 19) certificate was accurate, there was no reason not to attach it to the original Petition, because (so far as it goes) it authorises that Petition, whatever else it also says. But what is apparent from the other material in the case is that there was no thought of a sixth bell until the AGM on 4 March 2014, and no decision to proceed can have been made until funds for the restoration of the five were in place, perhaps as late as 2016.
34. It appears to follow that the document described in paragraph 19 is entirely unreliable. Given the circumstances in which it was sent to the Registry I am driven to the conclusion that it was manufactured following the initiation of inquiries into the matter, in order to sustain a claim that the augmentation project had been authorised by the PCC. Whether or not the Churchwarden was directly responsible for its manufacture, he associated himself

with it and endorsed it by sending it to the Registry. It is clear that it was intended to carry weight as evidence.

35. I say no more about the feature of a further certificate that I noted at the end of paragraph 12 above, as the Churchwarden has had no opportunity to explain it, it having become apparent only on my examining the documents for the purpose of preparing this judgment.
36. The information from the bellfounder is clear that the Churchwarden told him that the DAC Secretary had told him that he could proceed to arrange for the work to take place. It is wholly incredible that the DAC Secretary said or implied that the installation could take place without a Faculty. When work began the Churchwarden certainly knew that a Faculty was required and that he did not have one. Whatever the past history might have been, the Churchwarden's allowing the installation under those circumstances was a clear and deliberate breach of his duties.
37. It is impossible to accept the claim made at various stages by both the Vicar and the Churchwarden that acting in the absence of a Faculty was in some sense condonable as a mistake. The point at which the illegality occurred was not the planning of the augmentation, or the ordering of the bell, but its installation. By the time of that event, there was no room for mistake. The position had been made clear by me, by the DAC secretary, by the Registry and by the bellfounder.
38. Although so far as I can see the actual acts to which I have referred (including the submission of the manufactured certificate, the assertion to the bellfounder, and allowing the bell to be installed) were those of the Churchwarden, the Vicar cannot escape blame. His responsibility arises not from his action but from his inaction. He should have been supervising the modalities of a major and expensive piece of work being done in his church. He is not 'a well-meaning volunteer' but a professional person with legal responsibilities. No doubt there is a lot for him to do, but at the time there can have been very few, if any, other major projects in his parishes and I know of no reason for the evident complete lack of supervision of this one.
39. The Vicar's position is aggravated by his failure to comply with the Court's Directions of 17 September 2018. If there had been prompt compliance with them, the amendments would probably have been in place at the time of the dedication of the installation. If there had been any compliance with them, the amendment would probably have been granted by now, and, if not, the reason would be apparent. The Vicar's continuing contumely merely lengthens the period of illegality, and has meant incidentally that the work of the Registry and myself has also been greatly extended.
40. I know of no reason to attribute blame to any other of the parish authorities or members of the PCC, even the other churchwarden. Given the particular point to which I refer at paragraphs 12 and 35, and the Churchwarden's apparent willingness to mislead the Registry and the bellfounder, I have no basis for supposing that she was not also misled.

DECISION

41. In my view it is appropriate to make an award of costs against the Churchwarden and the Vicar. I direct that the Churchwarden pay two-thirds, and the Vicar pay one-third, of the costs assessed by the Registrar (which may now be more than those set out in his letter of 19 October 2018). Because I consider that the defaults are wholly personal, I further direct

that the Vicar and the Churchwarden shall not take any contribution from the PCC or from any church funds. If individuals wish to contribute to their expenses they are of course at liberty to do so.

CONCLUSION

42. I end this judgment with sentiments similar to those with which I began it. The course of events in this case was wholly exceptional, and the responsibilities I have identified arose not from the much-valued ordinary contribution of laypeople to the work of the church, but from the exceptional factor of specific and deliberate decisions to disobey, or to permit disobedience to, provisions of the law that had been directly brought to the notice of those involved. Those defaults were then compounded by attempts to mislead the Court and failure to comply with its Directions. Those who do their best to operate only in accordance with the law of the Church (which is part of the law of the land) have nothing to fear.

Mark Ockelton MA BD

Deputy Chancellor

20 July 2020

ANNEX

Note of 30 May 2014

MICHAELCHURCH ESCLEY

RESTORATION OF THE BELLS

I considered this Petition in January and directed that a Faculty issue for the work proposed, with the exception of tuning of the bells, which although proposed by the founder had not been considered by the DAC. For some reason not entirely clear to me my decision was interpreted as a request for further information. The DAC now say that they recommend tuning 'to improve the musical relationship' of the bells as indicated by the founder, and the DBA says that he has no objection. I find it a little troubling that the DAC, having originally ignored the issue, proceeds simply on the basis that if an old thing can be 'improved' by being modernized, it should be: but as I am evidently asked to do so I have considered the matter again, in the light of the DAC's comments, the DBA's analysis, the bellfounder's report, and other material available to me.

My decision remains that the work can proceed, excluding the tuning of the bells. My reasons are as follows.

1. Tuning bells is irreversible. In the case of a complete ring by a single founder as yet untuned, the tuning destroys an artefact: that is to say the original sound of the bells. We do not have many sounds preserved from before the days of sound recordings and those that survive are a valuable part of our heritage. At Michaelchurch Escley the ring appears to be untouched, save for the loss of the canons on the third and the crack in the tenor. The former makes no

difference to the sound of the bells and the latter is to be repaired by welding, which again will not materially alter the original sound. If the bells are then restored for ringing the sound they make will be the same as when they were installed in 1732. That is something to be valued and (subject to what is said in paragraph 3 below) to be proud of.

2. Tuning is also a matter of taste and fashion. The present conventions of tuning in general depend on our views as to temperament; and the present conventions of the tuning of individual bells derive from work done in the period after about 1890. There is no 'right' or 'wrong': that is why the bellfounder's figures are merely a comparison with 'modern harmonically tuned bells', not with anything said to be 'correct'. And it is to be noted that what the bellfounder says is that the tuning is 'distinctly old style'. That is not necessarily a criticism.
3. I would certainly not rule out tuning if a case were made out, particularly if it were shown that the bells sounded so bad that the mission of the Church was affected (including if there were a disinclination for ringers to want to ring them), or a feeling that they let the church down in some way. But there is no suggestion of that here. Indeed it is not apparent whether the parish even realise that they have an early-eighteenth century sound that they propose to destroy.
4. It is of course right that of all eighteenth-century bells those of the Rudhall foundry are amongst the most frequently encountered today. But even in the 1970s it was noted that complete Rudhall peals were becoming rather rare; and the Diocese has lost one complete ARll ring since then by the recasting of the tenor at Allensmore (and tuning of the others) in 2003. The Diocesan Bells advisor has provided a helpful list, and it appears that the bells at Churchstoke, Tyberton and Winforton are comparable, though the conclusion is drawn from deduction rather than inspection. Old Radnor are much heavier, and I suspect that Chelmarsh may have had some tuning as it looks as though they went to the foundry in 1894. Winforton are now hung as a chime so their full sound cannot be heard. But the mere fact of there being other examples is not of itself a justification for retuning: it would be a matter to take into account if the case were being made on other grounds.
5. Again, the mere fact that the bells are not listed for preservation is not a reason for not preserving their sound where the work is not shown to be necessary. It is again a factor that would be taken into account if the case for change was being made. But all that is really being said is that the bellfounder can modernise the sound; although it is not said that there is anything horrible about the historic sound the bells currently have.
6. Because it is irreversible tuning of a complete old ring is a serious matter, not merely to be accepted 'on the nod' where a complete old ring is concerned. Where a good case is made there may need to be a balance struck between the asserted needs of the present and the desirability of preserving the past. But where no case is made at all, there can be no reason to destroy the heritage.

If the petitioners are not satisfied by this decision, they may apply for the matter to be decided after an oral hearing; in that case it may be appropriate to have an initial directions hearing in order to ascertain what if any evidence, whether expert or otherwise, would assist.