Neutral Citation Number: [2018] ECC Dur 2

IN THE CONSISTORY COURT OF THE DIOCESE OF DURHAM
RE THE CHURCHYARD OF HAUGHTON-LE-SKERNE ST ANDREW
AND RE THE PETITION OF CAROLE MARTIN

JUDGMENT

1. These proceedings concern a petition presented by Mrs Carole Martin, the mother of the late Owen Wason. She seeks a faculty for a memorial to her son in the churchyard of Haughton-le-Skerne St Andrew, where his cremated remains are interred. The churchyard was closed in 1988.

2. Owen was a Royal Marine Commando for over seven years. His military service included two gruelling tours of Afghanistan during the height of the conflict. Whilst serving with the Royal Marines he developed Post Traumatic Stress Disorder, and he left the Royal Marines in 2013. On the 24th October 2016 he died in tragic circumstances, in the words of Mrs Martin *"finally consumed by his ongoing struggles"*. He was just 26 years of age.

3. On 14th August 2017 Mrs Martin applied to the incumbent of St Andrew's, the Rev'd Mark East, for permission to introduce a memorial to her son into the churchyard. The design was for a headstone, measuring 20" wide by 12" high and 2" deep, on a base plinth, with a horizontal stone ledger measuring 3 feet by 2 feet upon which would be inscribed a poem known as "The Final Inspection".

4. The proposed inscription on the front of the headstone was to be:

Owen Wason
27th February 1990 –24th October 2016
A beautiful Son, Grandson, Brother
Nephew, Father and Friend
...you meant so much, to so many.

5. Underneath the inscription was to be the badge of 45 Commando Royal Marines, and the words *"never above you, never below you, always beside you"*.

6. On the back of the headstone a further inscription was proposed:

Your life was a blessing,
your memory a treasure.
You are loved beyond words
and missed beyond measure.

7. Mrs Martin had had earlier discussions with the incumbent and PCC over setting aside a separate area for the cremated remains of armed forces personnel, in recognition of their service to the country. The PCC had not supported her suggestion, so Owen's remains were interred in an existing area for cremated remains. That area had already been established by the grant of a faculty dated 30 September 2010 permitting the PCC to re-open for the interment of cremated remains two sections of the churchyard running along the south wall, and along each side of the north/south path. The 2010 Faculty imposes conditions for such interments:

    a. There are to be no kerb stones or chippings;
    b. An interment is to be marked only by a ledger or vase block;
    c. Any ledger or vase block is to be of either natural indigenous stone, or slate or hardwood, and stone was not to be mirror polished and must be grey in colour;
    d. Inscriptions can be inscribed or in relief and could be painted either a shade darker or lighter than the stone or slate, but cannot be leaded or gilded and plastic lettering could not be used;
    e. All wreaths, bouquets and flowers are to be removed when withered or dead.

8. These faculty conditions supplement the diocese's Churchyard Rules, which were updated in October 2012. Rule iv) provides that any burial without a headstone may have a horizontal stone ledger 9 inches (or 225mm) square, set flush with the turf.

9. Rule vi) provides:

    "Where a part of the churchyard has been set aside for the burial of cremated remains:-
    (a) no monument or receptacle for flowers may be introduced into that area except in accordance with the terms of the Faculty setting the area apart; and
    (b) the erection of a memorial following the interment of cremated remains may only be within that area."

10. Rule xi) of the Churchyard Rules includes the provision that *"Inscriptions must be simple and reverent and any literary quotation must be appropriate to its use within the context of a Christian burial ground."*

11. When the incumbent received Mrs Martin's application, he realised that it fell outside the provisions of both the 2010 faculty and the Churchyard Rules and so he could not authorise it. Mrs Martin therefore presented her petition to the court, which is dated 22 August 2017. In the narrative to the petition she writes:

    "We would like to be able to show our ongoing love, respect and gratitude for Owen with an appropriate memorial in the form of a head stone that is more fitting with the sacrifice he gave for his country and feels like it is more in line with the obligations of

the nation as set out in the Armed Forces Covenant. We would very much like to do this at St Andrew's Haughton-le-Skerne."

12. In answer to question 9 of the petition, asking whether the petitioner has the written consent of the PCC and incumbent, Mrs Martin replied "yes" but she failed to include a copy of the consent. I therefore issued a direction on 4th May 2018 requiring her to send to the diocesan registry a copy of that written consent. By a letter of 26th May Mrs Martin indicated that she was relying on the Faculty of 30 September 2010 as evidence that she had the written consent of the PCC and incumbent, and she enclosed a copy of that Faculty. She has misunderstood that document, because it does not give any indication of support by the PCC and incumbent for her petition. In fact, the position of the incumbent and the PCC is one whereby they neither support nor oppose the petition – they are conscious of the delicate pastoral considerations in this case and are content to leave the matter in the hands of the court.

13. The poem, "The Final Inspection", referred to in the petition for inscription on the ledger, would have been in these terms:

The Royal Marine stood and faced God
Which must always come to pass
He hoped his shoes were shining
Just as brightly as his brass.
"Step forward now, you Royal Marine,
How shall I deal with you?
Have you always turned the other cheek?
To My Church have you been true?"
The Royal Marine squared his shoulders and
Said, "No Lord, I guess I ain't
Because those of us who carry guns
Can't always be a saint.
I've had to work most Sundays
And at times my talk was tough,
And sometimes I've been violent,
Because the world is awfully rough.
But, I never took a penny
That wasn't mine to keep...
Though I worked a lot of overtime
When the bills got just too steep.
And I never passed a cry for help,
Though at times I shook with fear,
As sometimes, God forgive me,
I forgot that you were near.

I know I don't deserve a place
Among the people here,
They never wanted me around
Except to calm their fears.
If you've a place for me here, Lord,
It needn't be so grand,
I never expected or had too much,
But if you don't, I'll understand."
There was a silence all around the throne
Where the saints had often trod
As the Royal Marine waited quietly,
For the judgment of his God.
"Step forward now, you Royal Marine,
You've borne your burdens true,
Walk peacefully on Heaven's streets,
There is a space for you!"

14. Although she has not formally sought to amend the petition, in response to preliminary concerns from the DAC Mrs Martin has agreed to replace "The Final Inspection" with an alternative poem "Miss me – but Let Me Go", which reads as follows:

Now I've come to the end of the road
And the sun has set for me,
I want no tears in a gloom filled room,
Why cry my soul is now free.

Miss me a little – but not too long
And not with your head bowed low,
Remember the love that we once shared
Miss me – but let me go.

For this is a journey we all must take.
And each must go along;
It's all part of the master's plan
A step on the road to home.

When you are lonely and sad at heart
Go to the friends we know
Remember my smile and good times we had
Miss me – but let me go.

15. Mrs Martin has already given instructions to the stone mason to produce the memorial. In a letter to the diocesan registry dated 7th February 2018 Mrs Martin explained that she did this because in August 2017 she received a copy of "Form 5" stating that *"This court now grants a faculty authorising you to carry out the works or other proposals in accordance with the designs, plans or other documents accompanying the petition."* The "Form 5" to which she referred, however, was the grant of the Faculty dated 30 September 2010, not a faculty for the memorial that she wants. Mrs Martin states in her letter:

> *"As this authorisation came after we had submitted all requirements our interpretation of this letter was that our memorial had been approved, therefore we made arrangements to have our son's cremated remains interred at the beginning of October in the plot agreed with Reverent Mark East and went ahead and ordered (and paid for) the memorial stone. It was then sometime later (at the beginning of November) and after our son had been laid to rest, that we were advised that we were "confused" and still had to go through a process of application for the memorial. This came as a huge surprise and meant that we would not be able to celebrate his memorial on the important dates we had hoped for. More importantly, it also meant that we were now in the position where we had to hope our application would be approved otherwise we would find ourselves in a situation where we felt we would not be able to celebrate the life and memory of our son in a way that would be most fitting. We would also be significantly out of pocket having made payment for the memorial stone. Unfortunately, this awful predicament is now a reality."*

16. It is a most unfortunate and upsetting position for Mrs Martin that she finds herself in, having paid for the memorial which is substantially complete. However, having regard to the content of the "Form 5" Faculty it is difficult to understand how she could have so misunderstood its terms and effect. The Faculty is dated 30th September 2010, nearly 7 years before her application and petition, and is clearly addressed not to her, but to the Reverend Doctor David Bryan, the former incumbent of the parish ofHaughton-le-Skerne St Andrew, and also to the two churchwardens at that time. Furthermore, her own petition contains the following recital under the heading "Schedule of Works or Purposes": *"NOTE: The Churchyard is closed and there is a Faculty for the setting aside of an area for cremated remains already. The reason for this application is the memorial which is proposed is a variation on the memorials generally authorised by the Faculty dated 30th September 2010 a copy of which is attached to this Application"*. It should have been clear to her, therefore, that the 2010 Faculty did not give her authority to introduce the memorial to the churchyard.

17. I have seen a photograph of the memorial, as produced by the stone mason. The memorial is different from the design submitted with the petition, albeit no formal amendment in respect of the design has been sought. On the headstone, in place of the badge of the Royal Marines and the inscription *"never above you, never below you, always beside*

you", the stone mason has inserted, at the suggestion of the DAC, a quotation from the Gospel according to St Matthew, chapter 11 verse 28: *'Jesus said "come to me, all you that are weary and carry heavy burdens, and I will give you rest"'*. It is intended to add the Royal Marines badge to the horizontal ledger, which the stone mason has already substantially finished; inscribed on the proposed ledger at the moment is the poem "Miss me – but let me go", the words *"Never above you never below you always by your side"* and also the words *"Once a Marine Always a Marine"*.

18. The DAC considered the matter in December 2017 and resolved that it did not recommend the proposed memorial. The DAC objected to it for a number of reasons. It would be almost completely covered with inscriptions (ledger, front headstone and rear headstone); its proportions and mass would be out of place with its proposed surroundings and prominent setting, namely on the west side of the north/south path, and would be "incongruous"; it would be visually inappropriate in terms of the general Churchyard Rules, but more importantly, it would not be in compliance with the conditions of the 2010 Faculty for the interment of cremated remains which stipulates that they should only be marked by a ledger or vase block. The DAC also had a minor concern as to whether there might be a copyright issue with the poem "Miss me – but let me go".

19. Mrs Martin responded to these criticisms in her letter to the registry of 7th February 2018. She wrote that the DAC's advice *"has saddened us hugely and has had a detrimental impact on our wellbeing due to the sensitivity and finality of the matter – it has not helped us grieve the loss of our son in such tragic circumstances, in fact it has gone some way to hindering this psychological process. The impact has left us rather desperate and not really knowing how to proceed..."*.

20. She suggests in her letter of 7th February that *"some of the memorials close by have similar verses that are not of a religious nature and the scale and appearance of this wording on their memorials is relative to what we propose"*. She has submitted photographs of nearby memorials which she says supports her case. In response to the objection that her son's proposed memorial does not comply with the Churchyard Rules or the 2010 Faculty she comments that *"This is a difficult point to question as it seems to be somewhat vague andwithout detail"*. With regard to the point about copyright Mrs Martin dismisses the concern by indicating that she would be happy to provide details of the author alongside the poem. I am not convinced, however, that that would deal with the point satisfactorily unless the author or copyright owner consented to the use of the poem on the memorial.

21. In light of the correspondence received from Mrs Martin, a sub-committee of the DAC visited St Andrew's churchyard to look at the existing memorials and reconsider its previous advice that it did not recommend the grant of a faculty. The sub-committee bore in mind that part of the reason for only allowing small monuments for the interment of

cremated remains was to ensure the most suitable use of a limited space and to ensure it did not become akin to a burial site. The other interments, they noted, were predominantly marked with single rectangular vase blocks, approximately 12" x 12" x 8". They considered the proposed memorial ledger of 3ft x 2ft and headstone of 20" x 12" would be substantially larger in comparison. They noted that plots appeared to be of uniform size and setting, and inscriptions appeared to be simple, whereas the proposed memorial in question was to have substantial inscriptions on both sides of headstone and across the full base ledger. The sub-committee in a written report therefore decided to confirm its previous advice that it did not recommend the proposed memorial. It did, however, indicate that if Mrs Martin were minded to amend her proposals, so that the memorial were to comprise the headstone as already prepared by the stone mason, without the horizontal ledger, but instead with a small base plinth in the same materials and finish as the headstone not extending more than 3" from the surface face or edge of the headstone on all sides without inscriptions, then the DAC would be more prepared to recommend that a faculty be granted, even though the memorial would still not comply with the terms of the 2010 Faculty or the Churchyard Rules. The report comments: *"DAC Sub-committee hoped this compromise would result in a memorial which was appropriate to the setting whilst acknowledging the exceptional circumstances of this case".*

22. Mrs Martin has reflected upon the outcome of the sub-committee's deliberations and decided to persevere with her petition. She has submitted written observations in a letter dated 26th May 2018 in response to the DAC sub-committee's report. In her letter she again refers to the 2010 Faculty as the cause of her mistaken understanding that she already had authority to introduce the memorial. She argues that the memorial with the horizontal ledger would not exceed the size of the plot, and therefore she disagrees with the sub-committee's view that a smaller monument would ensure a more suitable use of limited space. She considers she has made enough concessions by agreeing to replace "The Final Inspection" with an alternative poem "Miss me – but let me go", and by including the verse from St Matthew's Gospel.

23. With Mrs Martin's consent I am determining these proceedings on the basis of written representations pursuant to rule 14.1 of the Faculty Jurisdiction Rules 2015.

The relevant legal principles

24. The right of burial or interment in a churchyard does not include a right for a memorial to the deceased to be erected. Permission must be obtained beforehand, either from the incumbent in reliance upon the Churchyard Rules (and additionally in this case the 2010 Faculty) or by way of faculty granted by the Consistory Court. As in any case, the burden of persuading the court is on the petitioner.

25. The approach the court takes was explained by Chancellor Bursell in *Re The Churchyard of Quarrington Hill* [2016] ECC Dur 1:

> *"The consistory court, being a Church court, has always been concerned to act* pro salute animae *– that is, with regard to the pastoral effect that any of its decisions may have – but that concern embraces a concern not only for the individual petitioner but also for all those who may be affected by its decisions. In this context it is worth quoting the words of Chancellor Holden in Re Christ Church, Harwood [2002] IWLR 2055 at 2056:*
>
> > *"The overall beauty and tranquillity of a churchyard is only as good as its component parts allow it to be. The rights and interests of private individuals, of the worshipping congregation, of all parishioners, of the local community, and of the Church and society at large all have to be considered in permitting a memorial, which is likely to last for ever, to be placed in a churchyard. There cannot be a carte blanche situation where a family of the deceased has the sole right to decide what is, and what is not, appropriate by way of memorial, not least because ... the family do not own the land in which the remains are placed, or on which the memorial is meant to be placed."*

Decision

26. I bear in mind the particular circumstances of this case, relating to a young man who, having served in the Royal Marines and engaged in active service in Afghanistan, came to suffer from Post Traumatic Stress Disorder which ultimately led to his tragic premature death. I also bear in mind the sincere wish of his mother to provide a memorial that she regards as truly fitting in all the circumstances. I must also have regard to the overall effect upon the churchyard that the proposed memorial would have, and bear in mind the interests of others who have abided by the Churchyard Rules and the terms of the 2010 Faculty in accepting more modest memorials for those whom they have loved and lost.

27. I agree with the assessment of the DAC that the proportions and mass of the proposed memorial would be out of place with its proposed surroundings and prominent setting. Furthermore, it would be almost completely covered with inscriptions, contrary to rule xi) of the Churchyard Rules which requires inscriptions to be simple and reverent, and for any literary quotation to be appropriate within the context of a Christian burial ground. I do not accept Mrs Martin's submission that the scale and appearance of inscriptions on other memorials for cremated remains is relative to what she proposes – other memorials in the area are much smaller, and the inscriptions on them are nowhere near as extensive.

28. Furthermore, as Chancellor Tattersall pointed out in *Re The Parish of St James Uldale* [2017] ECC Car 1: *"... it should be remembered that the wording on a memorial will be read not just by those who knew the deceased but also by those who did not and in many*

ways the message conveyed to those who did not know the deceased is more important that the message conveyed to those who did know him or her." The inclusion of the poem "Miss me – but let me go" would not inform the reader about the life of Owen Wason.

29. I cannot therefore grant a faculty for the memorial as presently proposed. However, in recognition of the particular circumstances of the case, I would be prepared to consider granting a faculty for a memorial were it to be in accordance with the suggestions made by the DAC sub-committee in its report following the site visit on 20th March of this year, even though the memorial would still be outside the terms of the 2010 Faculty and the Churchyard Rules. I therefore give Mrs Martin permission to apply within 56 days to amend her petition and refer the matter back to the court. Such a timescale will enable her to consult the DAC further, should she wish to do so.

Adrian Iles — 20th June 2018
Chancellor of the Diocese of Durham