

**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 and
And Re a Memorial to Owen Wason (No. 3)**

Judgment

Background

1. A horizontal memorial ledger was recently introduced to the churchyard of Haughton-le-Skerne St Andrew without permission. The ledger is on the plot where the ashes of Owen Wason, a former Royal Marine Commando, are interred. Fixed to the ledger is an enamelled photo of Owen Wason in combat gear with an inscription.
2. The area in question is set aside for the interment of ashes by a faculty granted in 2010, which imposes certain conditions in respect of the design and size of memorials. By a faculty dated 15th October 2019 I had given permission to Mrs Carol Martin, Owen Wason's mother, to install a memorial in accordance with a design which fell outside the conditions of the 2010 faculty, but which was consistent with my first judgment in this matter, [2018] ECC Dur 2. That first judgment had rejected a petition by her to install both a memorial and a horizontal ledger for the reasons given in the judgment, but had set out the parameters of what would be acceptable. In October 2019 a memorial without a horizontal ledger was duly installed in compliance with the 2019 faculty. However, a year later, in October 2020, a horizontal memorial ledger was unlawfully added. The incumbent wrote to Mrs Martin several times about the ledger, but she declined to respond. The PCC was opposed to the additional ledger, and the matter was referred back to the court.
3. In my second judgment, [2021] ECC Dur 2, I noted that Mrs Martin had not responded to the attempts to contact her, and that there was therefore no certainty that it was she who had introduced the additional unlawful ledger into the churchyard; however, it seemed unlikely to have been anyone else. On 13 January 2021 I granted a faculty for its removal, in the following terms:
 - a. If Mrs Martin had introduced the additional ledger then she had permission to remove it by 1st March 2021.
 - b. In default of removal, the incumbent and churchwardens were directed to remove the additional ledger by 31st March 2021. They were to notify Mrs Martin by recorded delivery via the diocesan registry where the additional ledger was being stored and when it could be retrieved by her. If it was not so retrieved within 2 months it would

be deemed to have been abandoned and could thereafter be disposed of as the incumbent and churchwardens saw fit.

4. I directed that any person affected by the order could apply to the court in writing by 8th February 2021 in respect of its implementation, and I gave Mrs Martin permission to apply to set aside or vary the order – any such application by her had to be made by 8th February 2021 and had to set out her reasons for applying. Mrs Martin then sought an extension of time to make an application so that she could seek legal advice; I gave her until 1 March 2021.
5. In a letter of 1 March 2021 Mrs Martin wrote to the diocesan registry applying to set aside the order for the removal of the horizontal ledger “*on the basis that we are being discriminated against*”. She further wrote:

Our son’s memorial has been singled out for this course of action as there are and has been, for some amount of time, a number of other memorials within St. Andrew’s churchyard that do not comply with the “rules” that have been applied to our situation, including some that share the same garden of remembrance as Owen’s. Many of these other memorials are larger than Owen’s in coverage and include a range of “personalised” items such as photographs, words etc.

As your reasons for granting the order for removal of part of our son’s memorial are based on the fact that we have embellished his plot, much like many others have, feels like we are being discriminated against as there is no such course of action planned for aforementioned memorials. Furthermore, you make specific reference to the photograph that makes up part of our Son’s memorial however this has been included as part of his memorial since the day he was laid to rest therefore to refer to this now, as further reasoning for your course of action, again, seems like your justification for your actions are of a personal matter.

6. It is clear from Mrs Martin’s letter that she was indeed responsible for introducing the unlawful horizontal ledger. Having received her letter I visited the churchyard, accompanied by the diocesan registrar. I was able to see for myself if Mrs Martin’s criticisms of the PCC were justified. They are not. The memorial to her son has not been “singled out”. His plot is the only one in the area covered by the 2010 faculty that has both a memorial stone and a fixed horizontal stone ledger.
7. For pastoral reasons the PCC has tolerated moveable items being placed by memorials in this area of the churchyard. The PCC has shown, in particular, a compassionate flexibility towards Mrs Martin and the memorial to her son with regard to moveable items that she has placed there, including the enamelled photo of her son which previously had been placed loosely at the site. Now the photo is bonded to the unlawful horizontal ledger, and

is permanent. Other families have asked the incumbent for permission to fix photographic images to memorials and have correctly been told they cannot do so without applying for a faculty.

8. In both my previous judgments in this matter, I drew attention to Chancellor Bursell's wise observation in *Re The Churchyard of Quarrington Hill* [2018] ECC Dur 2 that: "*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*", and when breaches of the rules are allowed to occur, there is a risk that others may follow suit with an incremental detrimental effect on the whole character of the churchyard. The PCC is justified in opposing the introduction of the horizontal stone ledger. If it is allowed to remain, others may well seek to have both horizontal ledgers and memorials installed on the small plots where ashes are interred – they will either apply for permission and feel aggrieved when permission is denied, or they will be tempted to commit a trespass as Mrs Martin did in introducing and fixing a ledger without permission. I reject Mrs Martin's application to set aside my order of 13 January 2021.
9. Now that time has lapsed since the order of 13 January 2021, I will amend it to give Mrs Martin further time to remove the horizontal ledger, which is to be by 30 April 2021. In default of her removing it, the incumbent and churchwardens are directed to remove it by 31 May 2021 and to notify Mrs Martin by recorded delivery via the diocesan registry where the additional ledger is being stored and when it may be retrieved by her. If it is not so retrieved by 31 July it will be deemed to have been abandoned and may thereafter be disposed of as the incumbent and churchwardens see fit.

Adrian Iles, Chancellor

30 March 2021