

Neutral Citation: [2016] ECC Dur 1

IN THE CONSISTORY COURT OF THE DIOCESE OF DURHAM

RE THE CHURCHYARD OF QUARRINGTON HILL

RE THE PETITION OF CHRISTINE DALBY

JUDGMENT

The Facts

1. On the 2nd February 2010 the Petitioner's only son, Shaun Dalby (then aged 28), was killed by a car deliberately driven in his pursuit along a footpath. According to the Northern Echo the driver of the car was originally charged with murder but her plea to manslaughter was accepted. She was sentenced to five year's imprisonment and banned from driving for a period of ten years. The petitioner described the sentence as "a joke". She went on to describe her son as "a typical lad _ cheeky and jokey.... When I was ill he looked after me and did my housework and made sure I ate". He was an avid supporter of Sunderland Association Football Club.
2. This tragedy was made even worse because the death occurred the day after the funeral of the petitioner's mother. Unsurprisingly, the petitioner is still devastated by her son's death and wants what she feels is a fitting memorial for her son. He is buried in Quarrington Hill churchyard.

3. The church of St Paul, Quarrington Hill, was closed on the 26th June 1991 and the building was demolished some two years later. However, its churchyard remains and is still open for burials. It is situated approximately four miles south-east of the city of Durham on the East Durham escarpment with panoramic views westward towards the Pennine hills. In the summer the relatively large churchyard offers a significant vantage point from which to view much of Durham county and beyond. In spite of there no longer being any church and there being some inevitable long grass, overall the churchyard is well kept, especially in the areas where burials are still taking place. No doubt on a clear spring or summer day the churchyard is a delightful location but on the two occasions I visited the deceased's grave the churchyard was uninviting and bitterly cold.

4. On the 15th January 2014 the diocesan registry received a telephone call from Murray Memorials enquiring about a memorial with kerbs in relation to the deceased. They were informed that a petition for a faculty would be required as the proposed memorial fell outside the Churchyard Rules. Then on the 25th February 2014 the petitioner wrote to the parish priest, the Reverend Father John Livesley, SSC. The letter was headed "Faculty for my Son's Grave" and said:

"I would like to put on the grave a headstone and kerb stone for my only son who was killed. I am unable to comprehend what has happened and all I know is I need to visit his grave as it is the only place I feel connected.

I have seen in the Churchyard many similar memorials to the one I would like but understand I need permission to go ahead? The drawing gives an idea of the memorial. I enclose some photographs of memorials in the Churchyard at Quarrington Hill.

It has devastated our family the horrible way we lost him and as he was my only son I want to treasure all we have left. To visit him and know he has a worthy memorial will help our family.

Thank you for your understanding.”

This letter was accompanied by three photographs and a sketch of a memorial together with kerbstones. The proposed inscription read:

Treasured Memories Of
Shaun Dalby
A dearly loved Son, Brother,
Uncle, Nephew and Cousin
and Friend to Many
Tragically taken from us
2nd February 2010 Aged 28 Years

Forever In Our Hearts

On the kerbstone at the foot of the grave it was proposed to add:

Gone But Not Forgotten

There was no suggestion of any picture or other addition to the memorial.

5. Father Livesley replied on the 11th March 2014 on behalf of the Parochial Church Council (“PCC”). Having expressed his deep sadness for what had occurred he continued:

“I hope that Mr Bennett has explained to you already that it is the Chancellor of the Diocese of Durham who has ultimate authority over what memorials are placed in churchyards. The Chancellor

issues a series of regulations, and then allows parish priests like myself to authorise memorials only if they conform to these regulations. If a proposed memorial does not conform to these regulations then parish priests have to pass the case on to the Diocese for them to make a decision. In making the decision, the Diocese does seek the opinion of the PCC of the parish concerned. I was very glad that you felt able to modify your first proposal so that would meet all the regulations, (and so could be authorised by me immediately), if it had no kerbstones attached. However, the current diocesan regulations explicitly forbid kerbstones on new graves. I understand that there has been some confusion because some graves in Quarrington Hill churchyard have kerbstones, but these are nearly all old graves. The picture you have sent us of a more recent grave with kerbstones is unfortunately a case where a family have added kerbstones without asking any permission, a situation where the Chancellor could decide to remove the kerbs at any time if he wished, which would obviously cause great distress to those involved.

As the current position of the diocese regarding kerbstones is clear, the PCC felt unanimously at our meeting that, with regret, we are unable to recommend your proposal to the Chancellor. The PCC is also of the opinion that kerbstones make upkeep of the graveyard much more difficult, and that they can constitute a trip hazard. It is also worth knowing that the ground at Quarrington Hill is liable to mining subsidence and so kerbstones are liable to sink, twist and break over the years, as you will see on the photos of old graves you have submitted.

I appreciate the disappointment you will feel at not receiving the PCC's support. You are of course entitled anyway to seek

permission from the diocese by asking the Chancellor for a faculty: we will abide by that decision. However, it is only fair of me to let you know that staff at the diocesan registry have told me that they have never known a faculty being given for a monument with kerbstones in recent years, for all the reasons outlined above. I hope that you might feel able to modify your proposal by removing the kerbstones, so that I can authorise the memorial without reference to the diocese. Please do not hesitate to get in touch with me if you have any further questions or concerns.”

6. The petitioner did not issue a petition for a faculty but instead on the 15th January 2014 she made an application to Father Livesley, as the priest-in-charge, to introduce a memorial into Quarrington Hill churchyard. This described the proposed memorial as being of grey, part polished granite and being 34 inches in height, 36 inches in width and 4 inches in thickness. The proposed inscription was precisely the same. The size of the lettering was expressed to be one and a half and one inch in size. The space to describe “the colour of the lettering” was left blank. There was no proposal for kerbstones and the final words were therefore to be on the front of the memorial’s base. In the space for a sketch of the memorial reference was made to an attached drawing. This drawing confirmed the proposed wording but, again, made no suggestion of any other addition. The Application Form reads in part on its first page:

“Our churchyards are one of the most valuable parts of our heritage and therefore one of our greatest responsibilities. We must not spoil them with memorials that are unsuitable or which do not fit in with their surroundings. Every care must be taken in respect of any application in relation to them.... No work may be put in hand until authorisation has been duly given. If there any deviations in

the work from that which has been authorised, the clergyman who authorised the application must inform the Archdeacon and the memorial may have to be removed.”

On the third page the Application Form states:

“1. I have read the current edition of the Churchyard Rules issued by the Chancellor of the Diocese.

2. a) I claim that under the terms of such Rules there is power under the delegated authority of the Chancellor to permit the introduction of the monument/the addition or amendment of the inscription described herein.

b) I accept that under the terms of such Rules there is no power under the delegated authority of the Chancellor to permit the introduction into the said churchyard of the monument/the addition or amendment of the inscription described herein. This application is therefore submitted for the approval by the Incumbent and the Parochial Church Council and for onwards transmission to the Diocesan Registrar.

(Please delete whichever alternatives do not apply)

3. I apply for permission accordingly.

4. I undertake that, if permission is granted, the monument will be erected in exact conformity with its description in the application.

5. I further undertake to indemnify the incumbent or Archdeacon against any costs or expenses to which he may be put in respect of any deviation from the undertaking numbered 4 above.

6. I do not object to the Stonemason’s name being incised upon the memorial (provided that such incision meets the requirements of the Churchyard Rules).”

However, the petitioner did not delete any of the alternatives and only signed the application after the third of the above numbered paragraphs (which was at the bottom of the third page of the application). The monumental mason also signed that they (Murray Memorials) undertook to observe and be bound by the above.

7. The Application Form (which was in duplicate) continued:

“The person granting this permission will indicate by his signature below that he authorises the introduction into the Churchyard of the monument/the addition to, or the amendment of, the inscription described herein and, having signed the forms will return one copy to the applicant and retain the other himself.”

This was signed on the 26th March 2014 by Father Livesley but, again, without any relevant deletion.

8. Father Livesley should have noticed the omission on the form of any description of the letter colouring to be used and of the lack of deletion but, bearing in mind the busy life of a parish priest, I am not surprised that he did not do so or, indeed, note that the petitioner’s signature was not in the requisite place. I will return to the position as it applies to the petitioner in due course.

9. It seems that the memorial may have been erected sometime between the 7th May and the 9th June 2014 during which period Father Livesley happened either to be on holiday or off sick. In addition, it is not entirely clear precisely what the state of the memorial was when first erected save that the inscription was in gold; the stone itself is so dark that, at least to a person who is not a monumental mason, it appears to be black rather than grey. Nonetheless, as a letter from the petitioner for the

attention of the diocesan registrar and received at the diocesan registry on the 1st February 2016 acknowledges (see later), there were later additions to the stone. These were a photograph of the deceased in the top left of the memorial; a crest of Sunderland AFC in the top centre; and a depiction of a Sunderland AFC scarf in red and white around the exposed edges of the memorial (but not on its base). It is clear that the memorial was originally designed for the imposition of the coloured scarf, as the red and white rectangles depicting the scarf can clearly be felt incised into the stone itself. When the memorial was seen by the Archdeacon of Durham on the 30th June 2014 the photograph of the deceased was not integral to the stone but had been stuck on while the Sunderland AFC crest seemed to be kept on by black masking tape. When I visited the churchyard both the photograph and crest were firmly stuck on but in a rather unworkmanlike manner. In her letter received on the 1st February 2016 the petitioner writes:

“I received your letter of which states that you would like me to explain why, when and by whom the photograph, crest and Sunderland colours were added to my son’s memorial. I am very sorry but I do not have these details available to me anymore. I had the work completed on my son’s headstone for which the plans were submitted, then further to this I decided that I would do as my son had wished. I was not in a financial position to have the work done initially due to being disabled and having very limited funds. I gained details of a local company who would carry out the work on my behalf by searching on the internet. Since receiving your letter I have looked again in my house for their details, and searched the internet in the hope that I could find the information you have requested but unfortunately I cannot.

The reason I did this was to follow out my son's last wishes. We had a chat of what he wanted when he died following the recent death of my mother. He said he wanted a photograph, and stated which one precisely; he also said that he wanted the Sunderland crest and the Sunderland scarf colours. He wanted these as he had been a Sunderland supporter all his life.

At the time I did this I was not aware of the graveyard rules. I just thought that as many other graves and headstones were decorated in a similar way that it would be acceptable and therefore would be allowed. I thought this to be the case until I was contacted by the diocese who informed me otherwise."

10. It is, of course, not true that the petitioner was unaware of "the graveyard rules". She had clearly been told about them by Father Livesley in his letter dated the 11th March 2014. In addition, even if (in spite of what she signed on the Application Form) she had not actually read the Rules, they are specifically referred to three times immediately above her signature. Indeed, she signed that she applied "for permission to be granted accordingly". It is also clear that the three additions are nowhere mentioned on that Application Form. On a balance of probabilities I find that the petitioner knew both that there are Churchyard Rules and that the memorial (at least as finally completed) did not comply with the permission that she had been granted. In these circumstances there must be a suspicion that the petitioner deliberately failed to sign the Application Form in the requisite place, namely, on page 4 after the six numbered paragraphs set out above; however, I find it unnecessary to make any finding on this question.

11. I also find that the whole memorial became a trespass, and had no permission to remain where it is, once those items not mentioned in the Application Form were introduced. It therefore constituted, and continues to constitute, a trespass especially as in law no-one has the right to erect a gravestone or memorial without permission granted by or on behalf of the Chancellor of the diocese: see, *Maidman v Malpas* (1774) 1 Hag. Con. 125 at 208; *Re St Paul, Hanging Heaton* [1968] 1 WLR 1210 at 1211; *Re Woldingham Churchyard* [1957] 1 WLR 811 AT 812; see, too, *In the matter of St Aiden's Thockrington Churchyard* [2016] ECC New 1.

12. On the 10th June 2014, and therefore within days of the memorial being placed in the churchyard, William (Billy) Jones emailed Father Livesley describing his shock when visiting his mother's grave and discovering "a very unsightly headstone It is polished black and displays football 'colours'." He continued:

"I felt very insulted as our family were not permitted to have the headstone of choice of our late mother. We had a very limited choice and had to settle for an inferior stone."

It seems that Mr Jones' father also telephoned Father Livesley. Father Livesley went to the churchyard to investigate and then emailed the son on the 11th June 2014 in which he said:

"Having seen the stone in question, I can entirely understand your distress and anger, which I share as the whole point of the regulations produced by the diocese is to be fair to everyone. So I'm grateful to you and your father for bringing this matter to my attention."

Mr William Jones followed up his initial contact with Father Livesley with an email dated the 20th November 2014.

13. In the light of what had occurred and at my request the Archdeacon of Durham wrote to Murray Memorials on the 18th June 2014 instructing them to remove the memorial. However, he never received any reply and the memorial remained in place. The Archdeacon therefore wrote and spoke to the petitioner on the telephone followed by a meeting on 25th January 2015. He found her not to be in good health and that she did not wish to lose anything already on the memorial because of her son's passionate support of Sunderland AFC. She also spoke of wishing to "complete" the grave with flower holders in the shape of footballs at the foot of the grave and red and white gravel in stripes within the grave area. However, the Archdeacon warned her that such additions would also be against the Rules and might make the complaints increase. She said that she would do without the stones if only she could have the headstone left as it is. The memorial mason, who was apparently expected, never appeared. The Archdeacon again wrote to the petitioner suggesting another meeting in March 2015 but the petitioner telephoned saying she would prefer to discuss the matter on the phone. The Archdeacon told her that, if she wished to retain the present memorial, she would need to make an application to do so and that she would be given help with the paper work if she needed it. She responded that she would "fight it all the way, including the press".

14. As a result, on the 1st May 2015 the relevant paperwork was sent by the diocesan registry to the petitioner to complete and, because of the tragic pastoral situation, it was agreed by the diocesan registry and the diocese that the fees otherwise payable would be waived. As was required by the Faculty Jurisdiction Rules 2013 the PCC considered

the matter and passed a unanimous resolution on the 8th May 2015 that

—
“it was unable to support the retrospective faculty for the memorial on the grave of Shaun Dalby in its current form as it clearly contravenes the Diocesan churchyard rules.”

The PCC, of course, are elected to represent all the parishioners.

15. Again as was required by the Faculty Jurisdiction Rules 2013 the Diocesan Advisory Committee also considered the matter. Its advice is shown on Form 2 and states:

“The committee does not object to the works or proposals being approved by the court [subject to the following provisos]:

The red and white re-painted edge to be repainted black.”

The advice is dated the 14th May 2015 and was re-issued on the 2nd November 2015 due to an error on the original form. At the same time the DAC passed a resolution which stated *inter alia*:

“The DAC left consideration of the exceedingly sensitive pastoral situation to the Chancellor, and focused its attention on the practicalities of the situation. The churchyard was generally tidy and the majority of memorials there were compliant with the churchyard rules. Of course some had drifted from the rules but none to the extent of this recent memorial. After examining the photographs it was agreed that it was the red and white edging to the stone which was the most striking and discordant aspect. It was understood that the stone had been indented and painted.

Repainting the stone edge black, which was its natural colour, would bring the memorial to closer conformity to the rules.”

(The leaving of consideration of the pastoral consideration to me as Diocesan Chancellor is eminently sensible, as not all the facts can be,

or were, before the DAC. The “court” referred to in Form 2 is, of course, the Consistory Court.) On the 1st September 2015 the DAC confirmed that it did not wish to alter its advice.

16. A petition was finally received from the petitioner in mid-July 2015 although it is dated the 1st July 2015. At this time that the petitioner wrote to the diocesan registry in an undated letter but received on the 10th July 2015. This stated:

“My son was taken from me and I wanted for my son a memorial to remember. To remember who he is and we added plaques, a photograph and coloured the sides to do this.

There is no church at the site and there is *no tradition* at all in the burial ground. There are colours, there are plaques and pictures and there is every type of stone you can think of. There are books, there are hearts. Pictures of wagons, birds and even pictures of cats.

Nothing at all traditional. It is a burial place.

So why can't I have the same to remember my son? Why would you let all those other people have what they want and not me?

My stone does not encroach on any other grave. I wanted a surround around his grave, a real surround to match my stone but you wouldn't let me. Yet there are all types of surrounds in the burial ground. Why have the Parish council allowed all this? Why are they discriminating against me?”

17. After receipt of the petition a public notice was displayed on behalf of the petitioner dated the 7th August 2015 and a certificate of publication was signed by Father Livesley as parish priest on the 8th September 2015.

18.No doubt prompted by the public notice Mr William Jones wrote to the diocesan registry on the 17th August 2015. His letter stated:

“We obeyed these rules and promised these rules would continue for all future headstones and surrounds erected disobeying these rules greatly, put forward by the Church, this is a sin against God. A lot of people are disgusted about this. People are waiting to erect headstones they do not fully understand, and things have happened in this Churchyard what should not have happened. It is about time respect was shown for this Churchyard by God’s workers. I have worked as a volunteer for many years on this Churchyard. Only age will beat me. Respect and doing right will keep me going.”

On the 30th August 2015 Mr Jones again wrote to the diocesan registry stating that his letter _

“... was directed at churchyard rules and laws brought back into force when we applied to erect my late wife’s headstone (no surround) so these laws and rules shall continue to all headstones and surrounds after Jean Jones’s headstone was erected ? some people are waiting to erect headstones. If you want my comments on this Churchyard, it is disgraceful, sinful, unsafe and gives no respect to the good people at rest there. I look after War Graves and work with volunteers to try and keep Churchyard respectable....”

19. William Alexander Jones also wrote to the diocesan registry on the 19th August 2015 in which he pointed out that the Dalby memorial was

—
“... erected with blatant disregard for regulations. This memorial is not the only one erected in breach of the rules, other stones and a rash of ugly surrounds have also appeared since my mother’s stone

was put in place and this has caused much distress to my family and myself.

Therefore, I protest very strongly against this memorial and others being left in place and wish to make it very clear that if they are allowed to stay then my family will be left with no other choice but to replace our mother's memorial with our first choice of stone and seek all costs from the church. I will not hesitate to contact the press and make this matter public."

20. I have set out these letters at some length as they demonstrate the depth of feeling that can be generated, and has been generated, in relation to the Dalby memorial but also to other memorials in this churchyard.

21. On my direction letters were sent to the father and son, Messrs Jones, on the 23rd September 2015 pursuant to rule 9.3 of the Faculty Jurisdiction Rules 2013 asking them if they wished to become formal objectors ("party opponents") to the petition _ a course which might incur them in the payment of some costs _ or to leave their letters to be taken into account when reaching my decision. This led to an ambiguous telephone call on the 25th September 2015 to the diocesan registry from the father who then followed it up with a further letter on the 30th September 2015. It said:

"I believe you are switching your mistake to me. We have suffered enough stress and sadness. My late wife died of Cancer. We have obeyed your rules and laws. If further headstones went up breaking your rules and laws after my late wife's headstone we should therefore gain a choice and the Church should pay for a new headstone."

Neither the father nor the son completed the requisite Form 5 asking to become formal objectors but by reason of rule 9.5(2) I must take their letters into account in reaching my decision and this I do. Even if that were not so, their complaints reflect precisely the responses one would expect from the relatives of other person's buried in the churchyard whose wishes have been constrained by the Churchyard Rules. In this regard I also draw attention to what is said on the first page of the Application Form set out earlier.

22. On my direction on the 3rd November 2015 all the written complaints set out above were sent to the petitioner so that she might respond to them; she was also asked whether she agreed to this matter being dealt with on written representations. After some further prompting the petitioner agreed in an undated pro forma (sent to her by the diocesan registry) to the matter being dealt with on written representations. On the 16th December 2015 I therefore directed that the matter should be determined on consideration of written representations and for the petitioner to submit in writing by the 31st January 2016 any further written representations that she might wish to make. On the 21st December 2015 following a further direction from myself she was invited to explain why, when, and by whom the photograph, crest and Sunderland colours were added to her son's memorial.

23. The petitioner replied to this invitation in a long letter received at the diocesan registry on the 1st February, 2016. I have already set out a large part of this letter. It continued:

“I would never have thought anyone would complain about my son's headstone as I was just doing what other people had already

done, by putting pictures of their loved ones on the graves, and other things which their loved ones had loved in life.

I feel I have been singled out, the letters in which two people were complaining about graves; they mention my son's headstone one and others far more. Not only do they complain about a few graves, they also complain about the state of the graveyard itself. I feel that if I have to rectify and adhere to the rules regarding my son's headstone then others should have to also.

The feeling I find when talking to people about my son's headstone is that the graveyard looks better for the colours and that it creates a better environment for those visiting the grave. I certainly find that it helps when I go to visit my son's grave, the bright colours help lift my feelings as I know he would have been very happy with how his headstone had turned out. If the headstone was to be adjusted in any way I feel that going to my son's grave would be a far less happy occasion, as I would not be able to remember how he died and that people complained to have the headstone changed. I feel this would cause me a lot of emotional distress, if I am being honest with you I don't think that I have even begun to grieve properly yet. I can't even mention his name without the floodgates opening."

The petitioner then goes on to set out her poor state of health having had a couple of strokes and also to state that the whole situation is causing her sleepless nights, agitation, nervousness and increased blood pressure levels. This has caused frequent visits to her doctor. She then continues:

"Since this has been brought to my attention I have asked everyone I know, people they know and so on as well as people that do not know any of us, if they have or see any problems with the headstone and I have had nothing but positive feedback. I have also

spoke to Father John Livesley following a carol service for my granddaughter's School, and himself said that he had no problem with the headstone."

As to this I would only comment at this stage that I cannot know to what extent, if at all, the other side of the matter was explained to those the petitioner spoke to nor to what extent they may have been influenced by an understandable wish not to upset her. As to Father Livesley, I have already quoted his email to Mr Jones dated the 11th June 2114 in which he said:

"I can entirely understand your distress and anger, which I share as the whole point of the regulations produced by the diocese is to be fair to everyone."

In addition, as he is a member of the PCC which voted unanimously, he is (at least now) of the opinion that the memorial should be removed. Whatever his personal view may, may not be, he clearly understands and supports the need for abiding by the churchyard rules.

The Law

24. It is quite clear that the petitioner applied in her Application Form for one memorial but, quite deliberately and with full knowledge that rules applied in relation to memorials in the churchyard, introduced a very different one. I have already pointed out that, once this memorial was introduced other than in accordance with the authorisation given, it became a trespass; it is also clear from the wording of the Application Form that the memorial was then liable to be removed. In these circumstances, if the petitioner wished to retain the memorial in its present form, she would need to petition for a faculty and to explain her actions. This she has now done. As in any such case the burden of persuading the court lies on the petitioner.

25. The explanation given by the petitioner is, in effect, a cry from the heart based on her son's apparent wishes and the tragic circumstances of his death; this is coupled with a comparison with other memorials in the churchyard which do not conform to the Churchyard Rules. I will now deal with these matters.

26. I am not at all surprised that the petitioner is still having enormous difficulty in coming to terms with her grief. Every grief is unique and individual and I have no doubt that in this instance it is exacerbated by her son's early demise and the form in which it took. However, this should not be seen as in any way downplaying the grief of others whose loved ones are buried in Quarrington Hill churchyard. The petitioner's grief is brought into particular focus as it is her son's memorial that is in issue here; nevertheless, the memorials of all the other people buried in the churchyard are equally reminders of other people's deep grief. Indeed, this is demonstrated in the letters sent to the diocesan registry from the the Jones' family. 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] 1 WLR 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 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.”

(See, too, *Holy Trinity, Eccleshall* (2014, Lichfield Diocese) and *Re St Mary, Prestwich* [2016] ECC Man 1 in both of which this quotation was cited with approval.)

27. It is very regrettable that a number of unauthorised surrounds have been introduced into the churchyard and that there are a number of memorials that are in breach of the Churchyard Rules and. Those Rules read *inter alia*:

“(viii) A monument shall not be of black, blue or red granite nor polished granite of whatever colour nor of white marble, synthetic stone or plastic.

(ix) A monument shall not include chippings (whether of stone or otherwise) or glass shades, or any kerb, railing or chain, or any picture, portrait or photograph, or any statuary, bird bath”

I have already noted the assessment of the DAC, namely, that _

“The churchyard was generally tidy and the majority of memorials there were compliant with the churchyard rules. Of course some had drifted from the rules but none to the extent of this recent memorial.”

Having myself visited the church, and although I find that the word “drifted” used by the DAC is an understatement, I agree with the assessment of the DAC that no other memorial has fallen outside the

Churchyard Rules to the extent of this particular memorial. I also agree with the DAC that the red and white edging to the stone is “the most striking and discordant aspect”. Indeed, I stress that word “discordant” as the coloured edging sets the memorial apart in a most strident manner.

28. It is clear from Father Livesley’s letter to the petitioner dated the 11th March 2014 that he is very mindful of the Churchyard Rules and endeavours properly to abide by them. It is equally clear that others have not been so diligent. Although I cannot speak as to the reasons for the lapses in this particular churchyard, in my experience they most frequently occur due to individual clergy (and sometimes churchwardens) believing either that they know best or that particular pastoral circumstances somehow outweigh the pastoral consequences of others; they pay little or no heed to the wider pastoral consequences, especially those faced by the clergy and churchwardens coming after them. The pastoral damage and hurt thereby caused is exemplified by the facts of the case presently before me. Any argument for a monument falling outside the Rules based on pastoral grounds is one solely for the Diocesan Chancellor to consider and any failure by an incumbent or priest-in-charge to abide by those Rules may result in a complaint against them under the Clergy Discipline Measure 2003.

29. It is also apparent that, once breaches of the Rules have been allowed to occur, others feel that they are entitled to follow suit with an incremental effect on the whole character of the churchyard. In this particular case it is clear from their resolution that the PCC, who represent all parishioners in the parish, wish to draw a line under any breaches of the past and in future to abide by the Churchyard Rules.

Indeed, if they were not to do so, the whole character of the churchyard is likely to change even further. This is an aspect that I take into account in deciding how I ought to exercise my discretion in this particular instance, although I also take into account the advent of unauthorised surrounds and the breaches of the Rules referred to by the petitioner.

30. In spite of what is implied in Father Livesley's letter to the petitioner dated the 11th March 2014 I cannot act in the light of a breach of the Rules unless it is brought to the court's attention. Indeed, I am at a loss to know how I would otherwise be aware of such a breach. I therefore remind Father Livesley and the churchwardens of their duty under Canon F 13, paragraph 2, to ensure that this and any other churchyard within the parish is "kept in such an orderly and decent manner as becomes consecrated ground". Embraced within this is a duty to ensure that no unauthorised memorials, kerbs, surrounds, etc. are introduced into those churchyards.

31. I would also remind the PCC that they are entitled, if they think that it is appropriate to do so, to petition for the removal of other monuments and accretion that have crept in in the past and which do not comply with the Churchyard Rules. Whether they would be successful in such a petition would, of course, depend on the evidence then placed before the court.

32. As to the Sunderland AFC crest such an addition to a memorial is only permitted if written proof is provided to the diocesan registry of the club's agreement to such a display. This is the normal procedure in relation to any such crest or military badge but no such consent was

provided on this occasion. However, I bear in mind that I have never known a request to a football club or regiment to be refused and I have no doubt it would have been forthcoming here if the Club had been asked.

33. The question of the deceased's portrait is more difficult. I considered a similar such plaque in the case of *Re St Mary's, Coxhoe* (1996) 15 CCC 12; 4 Ecc LJ 686. In that case, although prior permission was sought, I refused permission for its inclusion on the proposed memorial on the grounds of the lack of "suitability of the materials". I also noted that a further consideration in my refusal was the plaque's lack of harmonisation not only with the particular memorial itself but "also with other memorials in the churchyard". I appreciate that there is growing demand for such plaques and that some have appeared in Durham churchyards without proper permission having been sought or given. However, each memorial in each churchyard should, and must, be given individual consideration. In the present case I bear in mind that Quarrington Hill churchyard is not an ancient churchyard but it most certainly a country churchyard.

34. I have also considered the petitioner's condemnation of the churchyard as having "no tradition". In this regard, however, I should point out that traditions can, and do, change and what is "traditional" in one churchyard may be inappropriate in another. Nonetheless, in the light of the petitioner's condemnation I made a second visit to the churchyard to ensure that my memory was correct. In fact, apart from her son's memorial, there is only one plaque on a memorial in the whole churchyard. That is a photographic plaque on a memorial erected in 1974 and the plaque is now so faded that its depiction of the

deceased is all but none existent. Indeed, the present state of the plaque detracts greatly from the look of the memorial as a whole. It was with such a fear in mind that I refused the petition for a memorial with a similar photographic plaque in the case of *Re St Mary's, Coxhoe* (above). Memorials in churchyards are not only for the comfort of relatives but also to commemorate the deceased for future generations. Relatives have their own memories and photographs but future generations do not. It is therefore important that any representation of the deceased remains identifiable as such for future generations. It is equally important that the plaque does not disintegrate or fade so as to detract from the memorial itself or its immediate surroundings.

35. It is true that there are other memorials with coloured panels, some of which are of less artistic merits than others, but these are integral to the memorials themselves. In this regard I remind Father Livesley, as priest-in-charge, that in the future he should refer any such panels for my determination (whether or not by faculty).

36. For all these reasons I have most reluctantly come to the conclusion that the Shaun Dalby's memorial cannot remain as it is. Indeed, the fact of the petitioner's flagrant disregard of the Churchyard Rules and the resulting trespass would in itself be sufficient grounds for my ordering its removal forthwith. However, bearing in mind the whole pastoral situation, I am prepared in the exercise of my discretion to grant permission for the memorial to remain on the following strict conditions:

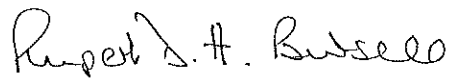
- (a) the red and white "scarf" must be removed from its edge, whether entirely or by the use of sufficient black paint for it to

be permanently obliterated. This must be done by the 1st June 2016;

- (b) bearing in mind the deceased's passionate support for Sunderland AFC the club's crest may remain, as long as written permission for its display is obtained from the club and deposited in the diocesan registry by the 1st June 2016;
- (c) the deceased's portrait plaque is removed by the 1st June 2016. However, because of the special pastoral considerations in this case, I am prepared to consider the addition of a small, uncoloured portrait of the deceased incised into the stone whether by sand blasting or otherwise: see, again, *Re St Mary's, Coxhoe* (above). This is on the further condition that the proposed portrait, its size and the manner of its creation is first approved by me in writing. Such an application must be received at the diocesan registry by the 1st June 2016 in which case I will give further directions as to timings;
- (d) if any of the said works cannot be carried out while the memorial is *in situ* the petitioner, her servants or agents may remove the memorial without further order from the court whether permanently or so that the works can be completed;
- (e) if any of these conditions are not fulfilled I direct the Archdeacon of Durham to have the whole memorial removed whether by himself, his servants or agents. If the memorial is so removed, the petitioner must be notified by recorded delivery via the diocesan registry both where the memorial is stored and when it may be retrieved on behalf of the petitioner. If it is not so retrieved within three months of such notification, it will be deemed to have been abandoned and may thereafter be

destroyed. The cost of such removal and/or destruction must be paid by the petitioner.

37. I retain to myself all future decisions in relation to this memorial. I also give permission to the petitioner, the Archdeacon or the incumbent to apply to the court for any further directions as to how the above conditions are to be implemented if any such directions are required.



RUPERT BURSELL
Chancellor of the Diocese of Durham

11th April 2016