

Neutral Citation Number: [2023] ECC Lei 3

IN THE CONSISTORY COURT OF THE DIOCESE OF LEICESTER

24 April 2023

ST NICHOLAS, LEICESTER

IN THE MATTER OF: Petition 2022-077800 - New Altar Frontal

1. I have previously given directions in relation to this petition which relates to the introduction of a new altar frontal.

2. On 28 January ([2023] ECC Lei 1) I concluded that three of the nine persons who had submitted objections to the petition had a “sufficient interest” to be treated as objectors for the purposes of rule 10.2 of the Faculty Jurisdiction Rules 2015. One of the persons that on that occasion I treated as an interested person was Mr Sam Margrave. I did so on the footing that in his e-mail to the Registrar objecting to the petition he had described himself as “a regular there”. I understood this to mean that Mr Margrave was a regular attender at St Nicholas’. I therefore concluded (at paragraph 11 of my decision) that:

“as a regular attender at that church whether or not he is on the electoral roll) he has a direct interest in the use of the proposed altar frontal at services and more generally”.

3. However, it soon transpired that I had misunderstood Mr Margrave’s submissions and that he was not in fact a regular attender at St Nicholas’. In point of fact he appears to have visited there only once. In a further e-mail to the Registrar dated 30 January 2023 he described the position thus:

“There is also some misunderstanding in that I am a regular to the city. I have engaged with the Church in question and Parish events/resources. But it is important to be clear I am not a regular worshipper there. Due to health I tend to engage with Churches online. For example I attended their rainbow eucharist Facebook and engaged with Courses at the Church on Youtube. I have also been to the Parish Church itself in person.”

4. The Registrar also received an e-mail dated 1 February 2023 from one of the petitioners, the Rev Karen Rooms confirming that Mr Margrave was not a ‘regular’ at St Nicholas’ and that to the best of her belief his connection with the church was that he had attended a single online service.
5. As my understanding that Mr Margrave was a regular attender at St Nicholas’ was germane to my original decision to treat him as having “sufficient interest”, I considered that it was necessary to consider this question afresh. Accordingly, in a second decision dated 3 February ([2023] ECC Lei 2) I indicated that I would treat the e-mail from the Rev Rooms as a request under r.18.3 for a variation of an order that had been made without a hearing and without giving the parties an opportunity to make written representations.
6. I gave Mr Margrave an opportunity to file further information as to why he should be treated as having sufficient interest in the petition and I have also permitted the petitioners to file submissions from counsel (Justin Gau) in response.
7. In seeking to explain why he considers that he should be treated as having sufficient interest in the petition Mr Margrave has (with my permission) also provided further detail of his grounds of objection to the petition, and confirmed that if I am satisfied that he has sufficient interest, he wishes to

become a party opponent and requests that the petition proceeds to a full oral hearing. The key passage of his submissions in support of his arguments on standing is as follows:

“(1) I live in Nuneaton the neighbouring diocese. Nuneaton borders with Leicester Diocese and I am less than 9 minutes from the boundary of the two dioceses. Leicester and Coventry Diocese have historically worked across diocesan boundaries and have close ties. I have also been present in person at the Parish Church and participated in an online service. I used to work and study in the Diocese of Leicester. I am also a member of General Synod with significant interest and work in raising issues around Pride and the Pride flag in the Church and community, including the Pride Progress flag, the response of the Church and the place of the Rainbow agenda in churches. These matters are important for the whole Church, and I have spent a number of years raising these matters and have enough expertise and experience to show I have sufficient interest.

(2) As explained by the DAC “this consultation comes as the result of a complaint from outside the diocese which has brought the necessity of a more formal process”. As evidenced, I am a party to that complaint and this process is a continuation of my formal complaint. Along with a Member of the House of Lords, I have had communication with the Bishop of Leicester over the matter and I was the one who instigated the request for a faculty to be made.”

Mr Margrave also records that he has been involved in debates on these issues “across the nation” and that he has a particular interest and also knowledge relating to the meaning of the Pride Progress flag.

8. In response to this, the petitioners’ counsel makes the following points:

“[7.] The only test of ‘sufficient interest’ applied by the Deputy Chancellor (correctly in our submission) was whether Mr Margrave was a ‘regular attender’ at St Nicholas’. Mr Margrave admits that he is not. The two statements in bold above state that he has been to the Church on one occasion only. He has never entered the Church or attended in person to worship. He has watched one service online. It is important to note that he no longer claims he ‘engaged with Courses at the Church on Youtube’. There are no such ‘courses’. It is submitted that simply watching short lectures on YouTube cannot amount to having ‘sufficient interest’ in a petition.

[8.] It is further submitted that the only time he has attended the parish church in person must be the time when he posed for a photograph for the benefit of the Daily Telegraph (Exhibit 1). His statement is deliberately opaque about ‘being present in person’ at the Church to try to engineer a claim of ‘sufficient interest’.”

9. In the light of the clarification that has been provided to me by Mr Margrave regarding his connection with St Nicholas, it is clear that he has no meaningful connection with that church. He has actually never attended a service there (although it is common ground that he has attended a single online service streamed from the church), and no longer seeks to suggest that he has “engaged” with courses at the church online. His statement that he has “been present in person” is very vague and in my view merely underlines the wholly tenuous connection that he has with that church. I do not consider that the matters relied upon by Mr Margrave provide him with sufficient interest in the petition to enable him to become an objector thereto and had I been aware of the true nature of Mr Margrave’s connection with St Nicholas’ at time of my original decision I would not have treated him as such. The fact that he is lay member of the General Synod for another diocese does not in my view provide any relevant connection either.
10. That is, however, not an end to the matter, as Mr Margrave also appears to be arguing that his status as a campaigner against Pride and the use of the Pride and Progress Pride flag is such as to give him sufficient interest in the petition.
11. In my original decision in this matter, I took the relevant law on the question of standing from the judgment of the Supreme Court in *Walton v Scottish Ministers* [2012] UKSC 44. At para 92 of the judgment in that case Lord Reed stated:

“... a distinction must be drawn between the mere busybody and the person affected by or having a reasonable concern in the matter to which the application relates. The

words 'directly affected', upon which the Extra Division focused, were intended to enable the court to draw that distinction. A busybody is someone who interferes in something with which he has no legitimate concern. The circumstances which justify the conclusion that a person is affected by the matter to which an application relates, or has a reasonable concern in it, or is on the other hand interfering in a matter with which he has no legitimate concern, will plainly differ from one case to another, depending upon the particular context and the grounds of the application. As Lord Hope made plain in the final sentence, there are circumstances in which a personal interest need not be shown."

At paragraph 94, he continued:

"In many contexts it will be necessary for a person to demonstrate some particular interest in order to demonstrate that he is not a mere busybody. Not every member of the public can complain of every potential breach of duty by a public body. But there may also be cases in which any individual, simply as a citizen, will have sufficient interest to bring a public authority's violation of the law to the attention of the court, without having to demonstrate any greater impact upon himself than upon other members of the public. The rule of law would not be maintained if, because everyone was equally affected by an unlawful act, no one was able to bring proceedings to challenge it."

12. Having regard to these principles, I concluded in my original decision on standing that I would treat two further individuals who did not have a direct connection with St Nicholas' as having sufficient interest in the petition. These were Rev Brett Murphy, a parish priest within the Leicester Diocese, and Rev Dr Ian Paul a member of the General Synod and of the Archbishop's Council of the Church of England. I took the view that their objections to the petition raised points of liturgy and doctrine beyond those put forward by Mr Margrave, and that there was a general public interest in these matters being considered by me. The petitioners have not sought to challenge my decision in relation to Rev Murphy and Rev Paul. Although Rev Paul has filed further, more detailed, grounds of his objection, both he and Rev Murphy have confirmed that they do not wish to formally become parties opponent and merely request that I should consider their written objections.

13. In their written submissions the petitioners have referred me to the decision of the Administrative Court (Macur LJ, Chamberlain J) in the case of *R (McCourt) v Parole Board for England and Wales* [2020] EWHC 2320 (Admin). At paragraph 50 the Court stated (in relation to the argument that a campaigner who was also the mother of a victim of a murderer applying for parole had sufficient interest to bring an application for judicial review):

“We would also reject the suggestion that Mrs McCourt’s work campaigning for “Helen’s Law” assists in establishing a “sufficient interest”. In our view, her interest is established by the effect of the decision on her and her family, and by a consideration of what the rule of law requires in this context, not by her campaigning activities and certainly not (as was at one stage suggested) by the public and Parliamentary support which those activities have attracted. Successful campaigners do not, by virtue of their success as campaigners, acquire standing to challenge public decisions with which they disagree; conversely, popularity or a high profile in the media or in Parliament is not, and must not be allowed to become, a precondition of access to the court.”

14. I entirely agree. I consider the fact that a person is a campaigner on an issue does not, of itself, give that person “sufficient interest” for the purpose becoming an objector to a petition. Views, however strongly or sincerely held, are not by themselves sufficient to give a person standing under the Faculty Jurisdiction Rules. In my judgment a putative objector who does not fall within the categories of “interested person” set out at sub-paragraphs (a) to (g) of r.10.1(1) will usually have to demonstrate a direct connection with the subject matter of the petition, although (as recognised by the Supreme Court in *Walton*) there may be circumstances when a wider public interest means that it is appropriate to grant a person standing notwithstanding the lack of a direct connection.
15. As I have already explained I do not consider that Mr Margrave has any direct connection with St Nicholas’ such as to give him standing in this case. Nor do

I consider that there is any wider public interest in Mr Margrave being treated as an interested person to pursue his objections. His arguments are not always easy to follow. However, it seems to me that for the most part the arguments raised by Mr Margrave are broadly the same as those raised in the objections of Rev Murphy and Rev Paul. Even if there is a difference in emphasis in the way in which they each make their arguments, there is no public interest in me permitting Mr Margrave to be joined as an additional objector to supplement similar points that have been raised by others.

16. However, there is one substantive argument that is made by Mr Margrave alone. Namely that the introduction of the Progress Pride flag (or for that matter any other flag) into a church is forbidden by a warrant dated 9 February 1938 from the Earl Marshal which directs that the flag to be flown upon any church within the Provinces of Canterbury and York is to be “[t]he Cross of St George and in the first quarter the escutcheon of the Arms of the See in which the church is ecclesiastically situated”. In my judgment this argument is wholly without merit. The Earl Marshal’s warrant is plainly directed at the question of flying a flag from the roof or tower of a church. It has no bearing on the introduction of flags or banners within the church and cannot limit the jurisdiction of the Consistory Court in that regard. In any event, the petition I am concerned with here relates to the introduction of an altar frontal (albeit largely adopting the design of commonly used flag). I consider an objection on this ground to be unarguable and there can be no public interest in Mr Margrave being treated as an interested person to enable him to pursue it.

17. Nor do I consider the fact that Mr Margrave (unlike Rev Murphy and Rev Paul) seeks to be joined as a formal party opponent and requests an oral hearing to mean that there would be public interest in Mr Margrave being treated as an interested person for the purposes of the petition. Even though Rev Murphy and Rev Paul have decided not to become formal parties opponent I am nonetheless required under r.10.5(2) to take their objections into account when reaching my decision on the petition and I will do so. The public interest in ensuring that these issues are considered by the Court will therefore be met by this procedure. In my judgment there is no additional public interest in my also permitting Mr Margrave to run similar points (either in writing or at an oral hearing).
18. In their submissions, the petitioners have also pointed to the behaviour of Mr Margrave and the language that he has used in his campaigns in relation to the LGBTQIA+ community. They have provided copies of posts made by Mr Margrave on Twitter and have also provided me with a copy of a letter dated 2 February 2023 (extracted from a publicly available website) sent to Mr Margrave by the Archbishops of Canterbury and York rebuking him for language that he had used on Twitter which had caused other members of the church to feel “intimidated, bullied and distressed”.
19. Although I have read that letter, I have not taken it into account in reaching my conclusions on standing. First, I do not have any detail or context as to what it is said that Mr Margrave has done. Secondly, and crucially, I do not

consider that the manner in which a putative objector conducts themselves in another context should carry weight in determining whether they have sufficient interest to object to a petition under the faculty jurisdiction. If they have sufficient interest (either because they fall within the categories set out in r.10.1(a) to (g) or they have a direct connection with the subject matter of the petition or there is otherwise a public interest in granting them standing) then they should be treated as an interested person. The court has ample powers under the faculty jurisdiction rules to ensure that an objector conducts their objection to the petition in a proper manner. Mr Margrave's alleged behaviour would not have prevented me from granting him standing if I had been otherwise satisfied that he had a sufficient interest in this petition.

20. Finally, I should mention that Mr Margrave in his objection has sought various additional items of relief from the court including:
- (1) The provision of special notice to Historic England, other amenity societies and the local planning authority under r.9.3;
 - (2) The sanctioning of the PCC for using the altar frontal before applying for a faculty;
 - (3) The restoration of the original altar frontal;
 - (4) Directions under r.9.2 for the publication of the petition in a newspaper and on the internet; and
 - (5) A request that I inspect the church.

Given my conclusions as to Mr Margrave's standing, these matters do not strictly arise. However, for completeness I should record that I have considered whether there is any need to give notice to Historic England or

any other amenity society or the local planning authority. Given the subject matter of the petition, r.9.3 does not apply and I do not consider that there is any need to give notice to such bodies. Nor, given the general public notice that has already been given and the press attention that this case has attracted is there any need for any further advertisement whether in the press or elsewhere. I do not have any power to “sanction” the PCC in the manner proposed by Mr Margrave, nor do I consider it proportionate to carry out an inspection of the church. However, I would remind the PCC that the new altar frontal should not be used (either at a service or at other times) pending the determination of this petition.

21. In the circumstances and for the reasons set out above, I will set aside my original order which treated Mr Margrave as a person with sufficient interest in the petition.

22. The petition will now proceed subject to objections that I have admitted from Rev Murphy and Rev Paul. I will give the petitioners until 4pm on 16 May 2023 to file any reply that they wish to those objections. Thereafter, I will consider what, if any, further directions are needed.

David Rees KC

Acting Chancellor Diocese of Leicester

24 April 2023