Neutral Citation Number: [2026] ECC Chr 1

In the Consistory Court of the Diocese of Chester

Woodchurch, Holy Cross

And in the matter of a petition of Heather Christine Cross, Robert Charles Hague and Richard Lawrence Hague for a memorial to Rosemary Lily Hague

Judgment

The petition and background

1. Rosemary Lily Hague (Mrs Hague) died on 25 May 2026. In accordance with her wishes, Mrs Hague's ashes were interred in the grave where her late husband, Douglas George Hague, was buried some 14 years ago now. That grave included kerbstones and was covered with stone chippings, all chosen by Mrs Hague, but these were removed to enable the interment of her remains. The current incumbent, Rev Sr Janet Arnold advised the petitioners that she could not authorise the reinstatement of the kerbs because they had originally been installed without lawful authority, namely the benefit of a faculty from this Court. She was correct in saying a faculty would be required to reinstate the kerbs, and the same applies to the chippings.

2. The petitioners had been unaware of this, as had Mrs Hague. Indeed, it appears that a previous incumbent had purported to grant permission for the kerbs, though they had no authority to do so, as kerbs did not comply with regulations then in force. The petitioners therefore find themselves in an unfortunate situation, which was not of their making. This has added to the distress and upset caused by the loss of their mother.

3. By a petition dated 8 April 2026, the petitioners, Mrs Hague's children, Heather Christine Cross, Robert Charles Hague and Richard Lawrence Hague sought a faculty for the following:

    - Kerb stones to be reinstated as previously installed 13 years ago, following removal for further burial in same plot;
    - All polished Paradiso
    - Grave to be covered in chippings

4. There were no objections in response to the public notice, and the matter was considered at the PCC meeting on 20 May 2026. Two of the petitioners are members, but they left the meeting whilst this agenda item was discussed. The following resolution was passed unanimously:

On this one occasion the PCC allow the replacement of kerbstones around the grave of Doug and Rosemarie Hague as applied for in the faculty made by the Hague children, for their parents' grave.

5. At its meeting on the 19 June 2026, the Diocesan Advisory Committee (DAC), which is charged with providing me with independent and experienced advice on petitions, resolved to recommend the grant of a faculty. Nevertheless, I am mindful of what the current incumbent, Rev Sr Janet Arnold, said in an email to the Registry on 11 June 2026:

Please note that as a PCC we absolutely do not want to retain kerbstones in the graveyard, however, this was agreed as a one-off, as, it had been passed by a previous Rector…and the Hague family have been very involved at Holy Cross with Doug Hague being Church warden for many years, and 2 of the petitioners are current PCC members.'

6. In these circumstances, I consider it appropriate to issue a judgment so that, whilst each case must be considered on its own merits, a fair and consistent approach can be applied to future cases.

The law

7. Judgments of other Chancellors are only persuasive rather than binding. However, there is one from my predecessor in this Court, HH Judge David Turner KC, concerning a proposal for a memorial with kerbstones in the very same churchyard, namely his judgment in, *Woodchurch, Holy Cross* [2020] ECC Chr 2. That coincidence adds to the persuasive force of that judgment, and I would wish to identify good reasons for adopting a different approach.[1] In any event, it provides a very helpful and logical starting point for consideration of this petition. By way of background, Turner KC Ch explained:

> *46. Regulations, which exist in one form or another in every diocese, exist to promote good order and consistency of approach and expectation in consecrated churchyards. They emerge following wide consultation and reflect, sometimes, bitter experience of past difficulty and misunderstanding which needs to be avoided.*
>
> *47. There is no right to erect any memorial except with the permission of a faculty. However, the Chancellor delegates his power to permit an*

[1] As Mark Hill KC (Chancellor of the Dioceses of Chichester, Leeds, and Europe) writes in N Doe & S Coleman, *The Legal History of the Church of England* (Hart, 2024), 222, "The decision of a consistory court of one diocese does not bind the that of another, but the majority of chancellors seek to ensure that generally accepted practices and norms are followed unless there is good reason to do otherwise."

incumbent (the Rector) to approve any memorial, provided it is erected in compliance with the regulations.

48. The Chancellor retains power to approve, by faculty, any memorial which falls outside the regulations.

8. Among other things, The Chester Diocesan Churchyard Regulations 2007 (the 2007 Regulations) provide that:

15.1 Kerbs, railings, posts or chains and similar items to enclose a grave are NOT permitted

15.2 The use of chippings or similar materials to cover a grave is NOT permitted

9. In other words, such things cannot be permitted by the incumbent, though the Chancellor may permit them on a faculty petition. Whilst it is those 2007 Regulations which apply in relation to this petition, new rules have been made which will come into effect on 1 January 2027. They are set out in The Diocese of Chester Additional Matters Order No 1 of 2026 Churchyard Memorial Regulations (the 2026 Regulations). That Order has been made as part of an initiative to promote greater consistency in England and ensure a more legally robust basis for delegation to incumbents. However, on the issue raised by this petition, the 2026 Regulations are consistent with the 2007 Regulations. They state that a memorial may be approved without a faculty provided, among other things:

1.8 The memorial does not include attached plaques, or kerbs, railings, chippings, or other objects.

The petitioners' proposal to reinstate the kerbs and chippings is contrary to the 2007 Regulations and that would not change under the 2026 Regulations.

10. In *Woodchurch, Holy Cross* [2020] ECC Chr 2, the petitioners sought a faculty for the installation of a new kerbed black-granite memorial with a "pathway to heaven" and written objections were made by the Rector, PCC members and others. Although many kerbed memorials existed, Turner KC Ch found that most were unauthorised, and the incumbents had no legal power to approve non-compliant designs.

11. In determining whether to permit a non-conforming memorial, Turner KC Ch applied the principle that petitioners must show "good reason" for departure from the regulations. He referred to the approaches in *All Saints, Bransgore with Thorney Hill* [2017] Ecc Win 3 (Ormondroyd Ch), and to *St Mary, Kingswinford* [2001] 1 WLR 927. In the latter case, Mynors Ch indicated that a faculty might be granted for a non-standard memorial where one or more of four circumstances applied, namely (i) the memorial would be a specially designed, fine work of art; (ii) the memorial would be of a type suitable in some churchyards but not others; (iii) many similar examples exist, making

refusal "unconscionable"; and (iv) where compelling personal or other circumstances justify approval.

12. Turner KC Ch considered that only category (iii) from Mynors Ch's judgment was relevant, and also cited Eyre QC Ch's observation in *Eccleshall, Holy Trinity* [2013] that refusal may be unjust only where kerbed memorials are genuinely prevalent. However, he found no evidence of prevalence and held that the parish reasonably wished to restore order, uphold regulations and address maintenance difficulties, as kerbed memorials "invariably make maintenance a more complicated" exercise. The petitioners had therefore failed to demonstrate good reason, and the faculty was refused.

Discussion

13. Given the persuasive force of the previous judgment in this very court, concerning the same churchyard, it is important to consider what if any difference there is in the current circumstances. I am grateful to the Rev Sr Janet Arnold for answering some detailed written questions from me. By way of summary, those replies indicate:

- The churchyard contains approximately 2,300 graves and at least 80 ashes-only plots. A recent count of the newer section (c.400 graves) identified approximately 74 kerbed graves, with significantly more kerbed memorials present in the older sections. A complete count of all kerbs has not been undertaken.
- Only one kerbed memorial is known to benefit from a faculty: the Lucy Kelly memorial (March 2007). The reasons for the approval of this faculty are not understood, and no clear explanation is available from parish records or institutional memory.
- Excluding the current one, three faculty applications for kerbs have been made in recent years:
    - Lucy Kelly (referred to above) – approved for reasons unknown;
    - Derek Jackson (2016) – refused and alternative solution agreed; and
    - Maureen Britton (2020) – refused following objections from the incumbent and PCC at the time. (This is the subject of the judgment in *Woodchurch, Holy Cross* [2020] ECC Chr 2.
- No recent kerbs have lawful authority, except on the grave of Lucy Kelly and older kerbs likely date from a period when kerbstones were permitted. No previous incumbent is known to have authorised kerbs, save in the case of the grave now under consideration, described as an anomaly, perhaps linked to long-standing pastoral involvement.
- Unauthorised kerbs are sometimes installed without permission, and whilst copies of the Regulations are frequently posted, they are repeatedly removed. However, families are routinely informed in writing that kerbs are not permitted.
- The parish seeks removal of unauthorised kerbs whenever contact with a family arises, particularly prior to any burial or interment. Families

are required to remove kerbs before a date for burial or interment is set.

- Many kerbed graves may have space for further burials or ashes, but no reliable figures exist.

14. David Turner KC Ch's finding that there was no prevalence of kerbed memorials in this churchyard is now some 6 years old. However, that is still likely to be true, given the evidence of the number present in the newer part of the churchyard and the fact that there are significantly more kerbed memorials in the older and much larger part of the churchyard. Accordingly, just as in *Woodchurch, Holy Cross* [2020] ECC Chr 2, the number of similar, existing examples does not, in itself, make refusal of this petition "unconscionable". I reach this conclusion notwithstanding that there are kerbed memorials in the immediate vicinity of Mr and Mrs Hague's grave.

15. Nevertheless, there are some important distinctions between the petition considered by my predecessor and the one before me now, but I would stress one preliminary point. The petitioners understandably refer to their parents' decades of dedicated service to Holy Cross. I also note the petitioners' own continuing, deep commitment, including that two of them are members of the PCC. The petitioners' and their parents' longstanding service to Holy Cross is recognised and valued, and nothing in this decision reflects any impropriety on their part. They acted entirely properly, including recusing themselves from the PCC discussion. However, memorial permissions must be applied consistently and cannot depend on personal connection to justify a "one-off" permission. All parishioners have equal rights in relation to memorials, and decisions must avoid any perception of preferential treatment.

16. The first important distinction between the circumstances surrounding this petition and that in *Woodchurch, Holy Cross* [2020] ECC Chr 2 is that this petition concerns the replacement of kerbs and chippings which had been in place for some 13 years before their removal, rather than an entirely new memorial. Before their removal, to enable the interment of Mrs Hague's ashes, the kerbs and chippings had become an established feature of the churchyard. Furthermore, had they not been removed, section 72 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 would have meant their removal could not have been required, as they had been in place for more than 6 years.

17. Secondly, even though a previous incumbent exceeded their authority in doing so, they purported to authorise a memorial with kerbs and chippings in 2012. Mrs Hague passed away believing the memorial design she had chosen for her late husband's grave, where she also wished to be buried, was properly authorised. Similarly, the petitioners did not know the kerbstones and chippings were unauthorised when they removed them, and they reasonably expected to be able to reinstate them. I note that, in granting a faculty for a non-conforming memorial in *St Mary, Kingswinford,* Mynors Ch also emphasised the petitioners' lack of fault.

Decision

18. Neither of the above two factors mean that I *must* grant a faculty in this case. However, having regard to *St Mary, Kingswinford*, taken together, they constitute compelling circumstances and I am satisfied that good reasons have been shown to justify the grant of a faculty for the reinstatement of the kerbs and chippings. That said, with a view to reducing the future maintenance burden, the conditions to which this judgment is subject, set out in the annex below, include that, before the chippings are reintroduced, an anti-weed membrane must be installed beneath them.

19. I note that the incumbent and the PCC supported this petition as a "one-off." Whilst I commend their commitment to bringing order to the churchyard, I cannot fetter the discretion of the Court to that extent. I am unable to predict the full range of considerations that might apply in any future case. Nevertheless, very particular circumstances arose in this case, which are unlikely to be repeated often, and good reasons will need to be identified to justify the grant of a faculty for any other non-conforming memorial.

Other matters

20. The petition makes clear that the kerbs are in "polished Paradiso." Whilst the use of polished stone can also be inconsistent with the 2007 Regulations (rule 13.2), I need not consider this as a separate issue. As a matter of fact, the kerbs are in polished stone. The headstone is also in polished stone, and it is obviously important that they match.

21. I considered it appropriate to set out my reasons fully in this case. However, having regard to the background to this matter, including the absence of any fault on the part of the petitioners, and indeed the late Mrs Hague; the support of the PCC; the recommendation of the DAC; and the absence of any objections; I waive my fee for this written judgment.

6 October 2026

The Worshipful Canon John Murray

Chancellor of the Diocese of Chester

ANNEX – CONDITIONS OF GRANT OF FACULTY

1. The kerb stones and chippings shall not be reinstated until the Court fees have been paid.

2. Chippings shall not be reintroduced or added without an anti-weed membrane being installed beneath them.