

**IN THE CONSISTORY COURT
OF THE DIOCESE OF SODOR AND MAN

RE THE PARISH OF LONAN AND LAXEY**

RE KATHERINE FRANCES FRANKLAND-DAVIES DECEASED

**JUDGMENT
delivered on 22 May 2017**

Introduction

1. Katherine Frances Frankland-Davies [‘the Deceased’] died on 7 May 2014 and on 13 May 2014 was interred in grave [B45] in the Churchyard of New Lonan in the Parish of Lonan and Laxey.
2. By his Petition dated 14 December 2015 Andrew Frankland-Davies [‘the Petitioner’], the Deceased’s widower, seeks a confirmatory faculty for the erection of a memorial on the Deceased’s grave. A confirmatory faculty is needed because the memorial was erected without a faculty first being obtained. Additionally the Petitioner wishes to erect a stainless steel plaque measuring 600 mm by 75 mm across the bottom of the headstone stating:

HERE LIES
KATHERINE FRANKLAND-DAVIES (CROWE)
25/04/1975 - 07/05/2014

BELOVED OF HER FAMILY AND THE WHOLE ISLE OF MAN. SINGER/SONGWRITER, AUTHOR, MUM AND INSPIRATION TO US ALL

3. The memorial is constructed of oak and is in the shape of a large treble clef. It is 1270 mm high, 610 mm wide and 230 mm thick. In his Petition the Petitioner explains that the memorial is made of wood depicting a treble clef as the Deceased was a singer / song writer and carved into the wood are depictions of characters from a book the Deceased wrote for her children which was published shortly before her death. The inscription ‘This too shall pass’ which is taken from the engraving on the wedding rings that the Deceased and the Petitioner had.

4. The memorial is situated immediately behind the grave of Dominic James Black-Kay [‘Dominic’] who died on 26 April 2009 at the age of 7 years. Given that it is a memorial to a child, such memorial on his grave is unsurprisingly of a much smaller size although it is in keeping with others immediately adjacent thereto and generally in the churchyard.

5. On 1 February 2012 my predecessor as Vicar General, Mrs Clare Faulds issued Delegated Authority to Incumbents in Parish Burial Grounds. Such permitted incumbents to authorise the erection of a headstone complying with the following specification:

(a) Size

	<i>Maximum</i>	<i>Minimum</i>
Height	1200 mm	750 mm
Width	900 mm	500 mm
Thickness	150 mm	65 mm [or 50 mm if slate only is used]

(b) Material

Natural stone must be used and must be similar in texture and colour to that used in local buildings or be in keeping with other lawfully erected memorials in the burial ground or the particular area of the burial ground.

The following are not permitted:

- (i) highly polished or reflective finishes;
- (ii) synthetic stone;
- (iii) plastic.

(c) Design and style

A headstone must be simple in shape and may have a straight or curved top, but may not be in eccentric form (e.g. heart, teddy bear, book).

6. It may thus be noted that the memorial:

- [a] is outside such permitted dimensions in that its height is fractionally too high by 70 mm [about 2.7 inches] and is significantly too thick by 80 mm [about 3.14 inches];
- [b] is not made of natural stone but made of oak; and
- [c] is in an eccentric shape, namely in the shape of a large treble clef.

7. At its meeting on 7 September 2016 the Diocesan Advisory Committee recommended that a confirmatory faculty be granted for both the oak wooden memorial and stainless steel plaque on condition that any planting in front of the memorial was removed.

Objections

8. In response to a Public Notice of the Petitioner's application for a faculty, Simon and Deborah Black-Kay, Dominic's parents, and Charlotte Lee, Dominic's sister, have written letters objecting to the same.

9. In their letter dated 7 November 2016 Mr and Mrs Black-Kay describe the memorial as oversized and far too large, a foot taller than the maximum laid down in the Diocesan Churchyard Regulations, out of keeping with the majority of the memorial stones in the churchyard and made from timber rather than masonry. The memorial is already showing signs of deterioration with cracks in it which will only worsen in time. They complain that it overshadows their son's grave. They urge me not to grant a retrospective faculty but to order that it is removed and replaced with a monument which complies with the Churchyard Regulations and is in keeping with other existing memorials. Although they do not currently reside in the Isle of Man because of Mr Black-Kay's employment, they maintain a home in Laxey and Dominic's sister and grandparents continue to reside in the Island and visit their son's grave.

10. In her letter dated 31 October 2016 Miss Charlotte Lee describes that she visits her brother's grave regularly and that the wooden cross which had previously constituted Dominic's memorial had only recently been replaced by the current headstone. Her parents had taken great care to ensure that such memorial complied with the requirements of the Churchyard Regulations and that it fitted in well with the other adjacent memorials. She complained that the Deceased's wooden memorial overshadowed Dominic's memorial because of its height and size and its condition, was already deteriorating and that the wood had become dirty and discoloured which was unpleasant to see behind Dominic's memorial when visiting.

11. It is appropriate to pay tribute to the wording of such letters. They acknowledge the sensitivity of the situation and are anxious neither to cause any unpleasantness or ill-feeling with the Petitioner who wife has recently died. Their complaints about the Deceased's memorial are expressed in measured tones.

12. The Registrar asked Mr and Mrs Black-Kay and Miss Lee whether they wished to become parties to the proceedings. Understandably they have declined to become parties to these proceedings but I will take their views into account in deciding this application.

13. Such letters were disclosed to the Petitioner. In his letter received on 3 February 2017 he made the following comments:

`... the monument is in no way larger than many of the existing monuments and although the material chosen has caused some concern, that is a regrettable choice that Rev Dudley and I felt would be beautiful, original and fitting for Katherine.

She was a musician and a children`s author ... and the carving was always meant to degrade and return to the earth as we all do and is natural. My hope is that the monument can be left for my and Kath`s families and friends to visit until a time when it requires replacing. I would of course then (if I am then alive and capable) seek to replace the monument with something fitting for myself and our children, with the correct permissions. ... I would imagine the wood will age beautifully for about 20 years or so. Not a long time in the scheme of things.

... The complaints are unfortunate and the images depict Kath`s monument looming over the tiny new headstone, placed a long while after Kath`s monument was placed. Probably after the first round of complaints were already dealt with. I`m sure this will seem less intrusive as the row of plots adjacent to Kath`s grave become filled and new stones join the row.

I would like to make an offer to try and appease the family of little Dominic. If you would be so kind as to pass my regards and offer to the family? I would ... ask the carver of the monument to return and carve a teddy or a toy of the families choice onto the rear of the treble clef where it protrudes. I would love for this to overlook the boys stone and his grave and hopefully help the family to also love the wood rather than it continue to upset them. I will pay for this work.

The complaints regarding its size seem unfair These aren`t even large monuments in comparison to the rest of the graveyard and as the oak ages it will become more grey and, yes it will crack but that is the nature of the material and was always my intention.`

14. Having considered such response I gave directions, firstly that the Petitioner`s suggestion of an additional carving onto the rear of the treble cleft should be put to Mr and Mrs Black-Kay and Miss Lee and secondly that the incumbent should be invited any views she may have about the application.

15. The Petitioner`s offer to carve a teddy or toy into the rear of the treble clef was put to the Mr and Mrs Black-Kay and Miss Lee. Whilst thanking the Petitioner for his kind gesture, it was not felt by them that such a carving would address their concerns.

16. The Team Vicar, Reverend Jo Dudley, responded that she had no strong view about the Petitioner`s suggestion and that if the suggestion was acceptable to Dominic`s family she would be content.

17. It follows that I must determine the Petitioner`s application.

Relevant legal principles

18. As noted by Bullimore Ch in *Freckleton, Holy Trinity* [1994] 1 WLR 1588, the right to be buried in a churchyard does not include a right for the personal representatives, the next-of-kin or anyone else to erect a memorial to the deceased and a memorial placed in a churchyard without permission granted by or on behalf the Diocesan Chancellor constitutes a trespass.

19. As to what may be permitted in a churchyard the words of Holden Ch in *Re Christ Church Harwood* [2002] 1 WLR 2055, at 2056, merit repetition. He said:

‘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 question in which the remains are placed, or on which the memorial is meant to be placed.’

Such words have been cited with approval in many cases : see for example *Holy Trinity Eccleshall* [2014 : Lichfield], *Re St Mary Prestwich* [2016] ECC Man 1 and *Re the churchyard of Quarrington Hill* [2016] ECC Dur 1.

20. Additionally 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 than the message conveyed to those who did know him or her.

Determination

21. I recently visited the New Lonan churchyard. I did so alone and was able to see and examine the memorial on the Deceased’s grave and its position in relation to the memorial on Dominic’s grave. Although I learnt nothing new from my visit it helped to put the memorial into its context in the churchyard. I am bound to say that my overall impressions were not particularly favourable. In this context I turn to consider the dimensions of the memorial, its construction, for how long it is likely to last before it requires to be replaced and its eccentric shape.

The dimensions of the memorial

22. Although the wooden memorial appeared very large in comparison with Dominic’s memorial and adjacent similarly sized smaller memorials, I bore in mind that the height of the memorial on the Deceased’s grave was only some 70 mm [about 2.7 inches] higher than that which an incumbent could have permitted pursuant to delegated authority. Moreover, although I accept that it appears ‘out of keeping with the majority of the memorial stones’ in

the immediate vicinity of that part of the churchyard, that is because such memorial stones are in fact smaller than the maximum height permitted.

23. However the criticisms of the memorial made by Dominic's family do not simply relate to the height. Although no criticism can, or is, made about the width of the memorial, I am however concerned that the memorial is significantly much deeper than permitted by the delegated authority in that whereas the maximum permitted depth is 150 mm [about 6 inches] this memorial is some 80 mm [just over 3 inches] deeper. In such circumstances I accept the criticisms made by Dominic's family that the memorial which the Petitioner has erected as being 'oversized and far too large'. In my judgment it does over-dominate the churchyard in a way which is undesirable.

The construction of the memorial

24. The oak of which the memorial is constructed has a substantial number of vertical cracks in it. Such cracks are not only evident on the top of the memorial but travel through to the bottom of the memorial and in particular through the carved inscriptions and depictions. The wood does not seem to have been protected in any way from natural deterioration and, from what the Petitioner himself has said, it is clear that the intention is that the wood should decay. Although the memorial can only been in situ for not much more than two years it seems to be showing significant sign of deterioration and my personal assessment is that it is not attractive. Although the Petitioner says 'I would imagine the wood will age beautifully for about 20 years or so' I cannot accept that such will be the case. In my judgment it would be far more preferable if the memorial was constructed in a more durable material such as natural stone.

How long the memorial is likely to last

25. It seems clear from the Petitioner's letter set out above that he contemplates that in due course this memorial will require to be replaced 'with something fitting for myself and our children'. I fear that this memorial will require to be replaced in a relatively short period of time. I do not think that it is appropriate for a memorial to be erected on the basis that it will have a relatively short life and then should be replaced by another memorial.

Other matters

26. I note that the memorial is of an eccentric shape, namely in the shape of a large treble clef. Whilst I do not say that another memorial constructed in different materials in the shape of a large treble clef could *never* be permitted because if such a situation were to arise I would have to determine the application for a faculty on the particular facts of that case, I am satisfied that this eccentric shape carved out of a piece of wood is not appropriate. If it assists the Petitioner I would be content to approve an engraving on a memorial of natural stone of an appropriately sized treble clef to reflect the Deceased's musical interests.

27. Finally I consider the carvings of the inscription 'This too will pass' and the depictions of characters from the book written by the Deceased. Although these carvings have a meaning

well understood by the Deceased's family, I have to say that their significance would not be understood by anyone else.

28. In my judgment the matters set out above, in terms of the depth of the memorial and its impact on other adjacent memorials, its already deteriorating condition and its durability, the likelihood that it will require to be replaced in the future, its eccentric shape and the carvings on the memorial all create a substantial departure from the Churchyard Regulations. In such circumstances I am satisfied that on the facts of this case the memorial is inappropriate in all of such respects and that I should not grant a confirmatory faculty to allow it to remain in the churchyard.

29. I have considered the wording of the plaque. Although in the light of my judgment consideration of such wording is academic, I can confirm that such wording would be appropriate on a more conventional memorial.

30. I note when I visited the Deceased grave that there was a collection of plant pots and other ephemera. These are not permitted and should be removed forthwith.

Conclusion

31. For the above reasons I dismiss the Petitioner's application for a faculty.

32. Given that the memorial has already been erected I thus order that the memorial is removed from the churchyard within 28 days of the date of this judgment.

33. If it is not so removed from the churchyard within 28 days of the date of this judgment it shall be removed by the Archdeacon or any person acting with his authority and the Petitioner must bear all costs of such removal. The Archdeacon shall notify the Petitioner by letter sent by first class post that the memorial is being so removed and shall give him 7 days notice of such removal.

34. If, pursuant to the above, the memorial is removed by the Archdeacon or any person acting with his authority it shall be stored at a location specified by the Archdeacon [and the Archdeacon shall give the Petitioner notice of such location in writing] for a period of 56 days from the date of its removal. During this period the Petitioner may collect the memorial or arrange for its collection.

35. After the expiration of such period of 56 days the memorial shall be disposed of as the Archdeacon sees fit, if it has not been collected by the Petitioner or on his behalf.

36. In accordance with the practice of this court the Petitioner must pay the costs of the determination of his Petition.

37. For the avoidance of any doubt this judgment does not prevent the approval by the Team Rector or Team Vicar under my delegated authority or, if necessary, the granting of a faculty for the erection on the Deceased's grave of a memorial which complies with the

Churchyard Regulations but I very much hope that, in the light of this judgment, the Petitioner will wish to erect a memorial on the Deceased's grave which is similar to existing nearby memorials and which bears the inscription he seeks as set out in paragraph 2.



GEOFFREY TATTERSALL QC

Vicar General of the Diocese of Sodor and Man