

**Faculty Reference 030/24**

**In the matter of a memorial to Lila Marsland in the churchyard of St Mary, Newton with Flowery Field.**

**Judgment**

**Introduction**

1. Lila Marsland was born on the 14<sup>th</sup> January 2018 and died, aged nearly 6, on the 28<sup>th</sup> December 2023.
2. The Vicar of St Mary, the Revd Sheila O’Flaherty, conducted Lila’s funeral on the 26<sup>th</sup> January 2024 and the child’s remains were interred in what her parents described as a ‘lovely plot’ in the large churchyard of the Grade II listed church.
3. The funeral directors and memorial masons involved with the family were Gaulters Memorials of Cheadle.
4. Lila was a delightful, vivacious, engaging child whose loss has devastated her parents, sister, wider family and very many in the local school and community who knew her.
5. As part of my consideration of the present application I have read many moving tributes to her character and personality.
6. Regrettably, a most unfortunate, and to my mind largely avoidable, series of what appear to have been misunderstandings or miscommunications unfolded thereafter in relation to her parents’ chosen memorial for Lila, which have resulted in considerable additional distress to them and a good deal of local anger, expressed in response to public notice of the petition, voiced against ‘the church’ for what some variously suggested was a ‘brutal’, ‘ridiculous’, ‘unkind’, ‘cruel’, ‘abhorrent’, ‘morally indefensible’ and ‘disrespectful’ process.
7. Not all public comment submitted was well informed or justified.
8. Grief may well be profound, but it can never equate to the grant of a free rein on what may be introduced into a consecrated churchyard, or be an automatic justification for acceding to the wishes of sincere and grieving parents, without wider consideration.
9. The undoubted failures here are a case study in some of the practical and pastoral challenges, particularly for parochial clergy, faced with the acute sense of loss and grief experienced whenever a child is lost and his or her parents are mired in pain and raw distress at a time when practical arrangements must, of necessity, be discussed and made.
10. Trenchant criticism of ‘the system’, even where ill-informed, made for painful reading and, sadly, this unhappy chapter has done little to enhance positive public perception of the church in the wider community.
11. Fortunately, differences have now been resolved and I intend to grant a faculty, which is unopposed, for the memorial sought.

12. My hope is that may bring some measure of closure, at least upon this aspect, for Lila's deeply upset parents.
13. The necessity of forensic investigation of where 'fault' lies in what has unfolded has greatly reduced, indeed beyond narrating my (possibly incomplete) understanding of the background, I do not now attempt it.
14. Full investigation would very likely involve statements from directly involved parties and greater exploration of documents and e mails. I do not doubt there would be conflicts of recollection, understanding and interpretation, some probably incapable of resolution absent oral evidence.
15. That exercise simply could not, in my judgment, be justified given the present position. I have no doubt whatever it would serve little utility. More importantly, it would needlessly compound Lila's parents' distress to no practical advantage.

### **The Petition**

16. The petition, dated the 2<sup>nd</sup> May 2024, made by Lila's parents, Rachael Mincherton and Darren Marsland, and countersigned by Sarah Fitchett of Gaulters Memorials, sought permission for a (pre-made) steel-grey, granite, memorial in the shape of triple hearts, duly inscribed. The petition described the maximum height of the memorial as 90cm and its maximum width as the same. In fact, it appears the memorial may be 914.4mm wide and either the same height or (and it is not entirely clear to me which) 1016mm high.
17. In a moving letter of the 2<sup>nd</sup> May 2024, written to me, Lila's parents set out their reason for choosing the churchyard: it was near home and would enable frequent visiting.
18. They chose the headstone in question in February 2024, 'with the stone mason', desiring a memorial which 'symbolised our daughter and that was just slightly different to the normal headstone'.
19. They considered the headstone 'symbolises love as it is three simple love hearts'. They explained they had opted for a 'plain colour' and had not pursued photographs on the headstone, 'which we originally wanted'.
20. The letter indicated their understanding that 'the stone mason had multiple emails with the priest about the headstone and it was presumed it was OK to go ahead'.
21. Significant sums of money, said not to be capable of refund, were duly paid.
22. They said: '...we were unaware of the rules and the regulations that came with it. If we had been made aware of these we would not have picked this graveyard'.
23. The parents' distress has been further compounded, I have no doubt, by the fact that Lila's postmortem results and inquest, anticipated for June/July 2024, have now been delayed to November, due, it seems to the unavailability of an appropriate paediatric pathologist.
24. Photographs of Lila's grave made clear that, at various stages, informal kerbs, toys, stones, plants, a photograph and other tributes have been placed on the grave. A nearby 'corner' of the churchyard, adjoining a fence, had also been demarcated with stones and decorated with some flowers and other objects.
25. These additions, made no doubt with the very best of intentions, were unauthorised and thus illegal. To the credit of the petitioners, I gather many, if not all, of these items have now been removed. That was plainly the correct thing to do.

### **Lila's burial**

26. A further complicating dimension arose from the positioning of Lila's coffin in the grave.

27. The universal practice in this large churchyard had apparently been for the deceased's head (and, consequently, any memorial) to rest at the west end of the grave. In this case that may have had the consequence, as I understand it, that the memorial would have faced a fence and (on one view) been somewhat close to it. The grave was to be the first in a newly created row and, as I understand it, the Vicar had in mind that normal practice would be followed.
28. There is no dispute in fact, and the funeral director has confirmed, that Lila's coffin was intentionally interred with her head closest to the fence. That would result in any memorial facing 'in' to the churchyard.
29. Though present at the funeral, the Vicar's focus was understandably elsewhere. Intervention at the time simply did not arise.
30. There appears to be a remaining question (which it is now not necessary to resolve) as to whether or not the funeral director acted unilaterally, or pursuant to some agreement with the family, to bring about arrangements differing from what was agreed or expected. Had that occurred, the Vicar considered it would have been poor practice and unprofessional. I make no specific finding.

### **The Churchyard Regulations**

31. It is not always understood that ecclesiastical law requires the permission of the consistory court to introduce or retain any item in a church or churchyard. Parishioners may have a right of burial, but there is no right to have a monument erected. The right of burial, where it exists, has never given rise to ownership of the burial plot. It follows that there can never be a situation of *carte blanche* where the family of a deceased person has the sole right to decide what is, and what is not, appropriate by way of memorial.
32. Rather different considerations apply in consecrated churchyards to those relevant to civic or local authority cemeteries. The court has always had an important responsibility to ensure what is placed in churchyards is both fitting and appropriate. Churchyard Regulations are important in fulfilling such responsibility.
33. All dioceses have such regulations and have had since at least the mid-1950s. There are variations in content from area to area. It is worth observing that considerable work has been done recently by an Ecclesiastical Judges' Association working group to assist Chancellors in the revision of their regulations and in the hope of achieving a greater measure of clarity and consistency nationally.
34. In principle, the introduction of any item into a consecrated Church of England churchyard requires a faculty but it is conventional that the Chancellor delegates authority to an incumbent or priest in charge to approve memorials, provided they comply with published regulations, even though the latter have no formal legislative status.
35. It always remains open to a minister, in any situation of doubt or ambiguity (and indeed arguably in any event, for proper reasons) to decline to exercise delegated authority and to refer a matter to the Chancellor for further guidance or determination.
36. If a memorial does not wholly conform to the specifications set out in the applicable regulations, the minister will lack any delegated authority to permit that memorial, and it will be necessary to apply to the chancellor for a faculty. If a minister purports to permit the introduction of a memorial which does not comply with regulations, the permission will be a nullity.
37. In the diocese of Chester the Churchyard Regulations 2007 remain applicable for the time being.

38. For present purposes, four paragraphs are relevant.
39. Paragraph 5 states that ‘applicants are advised not to accept any estimate or otherwise enter into a contract with a funeral director or stonemason until...written approval has been obtained’; Paragraph 6 provides ‘the fact that there is a similar memorial – which does not comply with these regulations – in a churchyard does not mean that the new memorial may be approved by the minister without a faculty or indicate that a faculty will be granted’; Paragraph 9 (i) prescribes that dimensions of a ‘simple vertical memorial’ should not exceed 1200mm in height or 900mm in width or 300mm in thickness; Paragraph 10 states ‘memorials should be simple and be consistent with nearby memorials and the setting of the churchyard.....memorials in the shape of a heart are generally not permitted’.
40. A number of dioceses nationally expressly prohibit heart (and certain other) shaped memorials; in the case of Chester the prohibition is clearly more qualified.
41. I have been referred to photographs of other instances of such memorials in the diocese (though not, I believe, in the present churchyard) where such memorials have been placed. No doubt a significant number exist.
42. The genesis of this particular caution is not entirely clear, though it may be referable to earlier expressions of view in the Churchyards Handbook (see, for example, the 4<sup>th</sup> edition): ‘Shapes that may be common in municipal cemeteries, such as a heart or open book, have been discouraged by Church authorities as alien to the churchyard setting and as liable to be trivialised by repetition’.
43. It may be open to debate whether such a view would generally be sustained today. Suffice to say (as is so often the case with such decisions) the setting, context and nature of the churchyard may be highly significant.
44. Since the decision of the Arches Court of Canterbury in **St Giles, Exhall** [2021] EACC1 (an appellate court of which I was a part) it has been clear that that court favoured a ‘merits-based’ approach to approving departures from churchyard regulations, rather than a starting point presuming against allowing memorials outside the parameters of regulations (see the discussion at paragraph 11 of the judgment).

#### **The disputed issues which arose**

45. The Vicar appears to have had concern from an early stage on essentially three fronts.
46. First, she had, as I understand it, concern about the shape of the proposed memorial. She consulted the Registry, an entirely appropriate step to take, and received advice that the heart shaped memorial was very likely non-compliant and may require faculty.
47. Second, there appears to have been concern at an early stage about the overall dimensions of what was proposed. The Vicar feared height and, principally, width were outwith the generality of memorials in the churchyard. She considered 60cm width to be ‘uniform across all graves’ and feared the establishment of a precedent ‘if the Chancellor makes an exception for Lila’.
48. In correspondence with the Registrar, the Vicar later spoke of her not having agreed to a ‘double grave width’ though, it was said, ‘the funeral director and parents were very insistent even saying it’s only a few centimetres more’.
49. Third, there was the issue to which I have referred of the orientation of Lila’s coffin and the implications of that for subsequent positioning of any memorial.
50. It appears now to be agreed by all that the proposed memorial is within the size limits prescribed by regulation. There remains, however, disagreement about what precisely had been agreed, and when, which, regrettably, it is not practicable for me to resolve.

51. It is not the case that a minister necessarily deserves criticism for declining to exercise delegated authority, where his or her view is that there are reasons which may require further consideration by the Chancellor. The mere fact a memorial may be within prescribed maximum size is not necessarily the end of the matter. Wider considerations may legitimately arise.

### **The Parochial Church Council (PCC)**

52. The Vicar reported to the Registry the apparently evolving views of the PCC. It appears there was majority support for 'the design of the headstone' and 'the dimensions of the plinth and plate in accordance with the Chester Diocesan Regulations'. There was, however, a view that any headstone 'should be situated at the head of the grave'. There was also a communication that the 'PCC will support the application only if the width doesn't exceed 60cm'.
53. The PCC hoped the removal of other items deposited, particularly beyond the confines of Lila's grave would be resolved.
54. My understanding is that the size and intended positioning of the memorial, as sought by the petitioners, is now agreed by the PCC.

### **The Diocesan Advisory Committee (DAC)**

55. The committee, at its meeting of the 24<sup>th</sup> May 2024, resolved to recommend the design of the memorial, but not its size. It is accepted the DAC had very likely proceeded then upon the mistaken assumption the proposed size exceeded the diocesan regulations. Further discussion since between the DAC Chair, Secretary and the Archdeacon has clarified that recommendation would almost definitely have been forthcoming had the committee been apprised of the true dimensions.
56. I have not thought it necessary, in those circumstances, further to delay this matter in any way by referring the matter back to the committee for formal advice. I am confident I am in a position to make a proper decision.

### **The Archdeacon**

57. The Archdeacon of Macclesfield wrote to the Registrar on the 8<sup>th</sup> May 2024 in support of the petition. The petitioners had raised directly with her the distress they were being caused as decision on the memorial was awaited.
58. The archdeacon said: 'It is unclear whether a mistake has been made at parish level but it is clear that the family believed they had permission to go ahead. This was also the understanding of the funeral director who employed the memorial mason. I appreciate that this stone is non-compliant and in normal circumstances permission would be refused. However, I would like to support the granting of faculty for pastoral and compassionate reasons given the age of the child involved'
59. She requested the Registrar make me aware of the letter, as has been done.

### **Public Notice**

60. Public notice of the petition was displayed between the 12<sup>th</sup> May and the 9<sup>th</sup> June 2024.
61. No objections were received. On the contrary, there was the response I have mentioned from some 46 correspondents, all speaking strongly in support of the petition and some highly critical, even angry, that Lila's parents were having to participate in any legal process at all relating to the memorial.

62. I profoundly regret that this matter was not resolved (as the vast majority are) informally and swiftly. However, I reject the language of ‘persecution’, an ‘ungodly campaign’, process characterised as ‘disgusting’ or ‘abhorrent’ or ‘senseless’ directed (of necessity) at the Registry and (behind the Registry) the church and Vicar. In some situations of dispute the law needs to take its course in a genuine endeavour to make decisions which are fair to all.

### **Lessons to learn**

63. I venture some general observations in the hope they may be of wider assistance. My strong impression here is that there have been a number of regrettable failures of communication which have exacerbated a most sensitive situation.
64. First, clergy need to be acutely aware of the particular challenges posed when seeking to assist parents who have recently lost a child. The grief and sense of loss can often be even more acute than when an adult dies.
65. There must be prompt, sensitive and unhurried communication to the bereaved - certainly before any funeral occurs - of the most recent version of Churchyard Regulations and appropriate explanation of the consequences of a choice to bury their child in land consecrated in accordance with the rites of the Church of England.
66. Bereaved parents, even when they have acknowledged receipt in writing of the relevant regulations, often claim they were too distressed to understand their implications or that they assumed something would be acceptable because of an authorised (or unauthorised) example already in place.
67. Clarity and compassion, combined with careful recording of advice and agreement, should be the watchwords.
68. It may well be wise too, even if regulations make no formal provision, to have ‘ground rules’ for the placement (and removal) of toys, candles, lanterns etc on a child’s grave.
69. It can never simply be a question of ‘what parents want’. Loose mementoes have a tendency to become unsightly, to degrade, to blow away, and often attract complaints from those tending neighbouring graves.
70. It may be advisable to limit the number and nature of objects and the period during which they may remain. Some dioceses, for example, enable the minister to permit up to three toys or similar objects to be left on a grave for a period of 12 months from the date of burial, on condition they be removed at the end of the period.
71. Second, it cannot be restated often enough that those such as contractors, funeral directors or memorial masons, whose business includes work on church buildings or in churchyards, must be familiar with the processes and procedures of the faculty jurisdiction and have a firm grasp of the principle that unless a faculty (or other express authorisation) has been obtained, any work done will be unlawful. It has been said before that contractors should always, invariably, and without fail obtain a copy of the relevant faculty or authorisation before works commence.

### **Conclusion**

72. As I said at the outset, this application is now unopposed.
73. The Vicar has confirmed the acceptability of the size of the memorial requested by the petitioners. I do not believe it to exceed the prescribed maxima, but, if it does, it does so only minimally and I permit it.
74. I am persuaded here the basic shape of the memorial is acceptable and the pastoral and practical grounds for permitting it in my discretion are amply established.

75. As with any such decision, nothing said is to be taken as indicative of any wider approval of a particular size or style of memorial or the creation of any 'precedent' in the present churchyard, or elsewhere..
76. There is also now agreement about the location of the memorial, namely at the east and not the west end of the grave. That seems sensible in the circumstances, and I approve it.
77. I grant the faculty sought subject to the following conditions:
- (i) The memorial shall be positioned at the end of the grave where the deceased's head rests, that is closest to the fence;
  - (ii) Temporary kerbs shall be removed prior to the installation of the memorial;
  - (iii) The petitioners shall ensure that the accredited memorial mason complies with the current NAMM or British Standard concerning the erection and stability of the memorial;
  - (iv) The memorial shall be erected at a time to be agreed with, and in the presence of, one of the churchwardens;
  - (v) Items left in remembrance shall be those and only those permitted by the diocesan regulations or as otherwise agreed with the incumbent and shall, unless otherwise agreed with the incumbent, be placed on the memorial plinth only.
78. Save for (iii) above, my understanding is these conditions are now substantially agreed.
79. The costs of issue of the petition must be paid by the petitioners. It would not, in the circumstances, be right to require them to pay any further or other costs in respect of my ruling.
80. I shall grant permission to apply to any party, should any aspect require further clarification or consideration.
81. My sincere hope is that arrangements may now proceed swiftly in order that Lila's short life may be honoured by her parents' chosen memorial, and that there may be some measure of genuine comfort for them as they continue to visit her grave and recall her memory.

**15<sup>th</sup> June 2024**

**David Turner**

**His Honour David Turner KC**

**Chancellor of the Diocese of Chester**