



Faculty – Grade II listed medieval village church – Removal of a commemorative plaque from the internal windowsill of a prominent, four-light tracery window in the south wall of the nave – Plaque recording that the window had been restored in memory of a local farmer who had died, in his late 80s, in the middle of the first decade of the current millennium, having lived and farmed in the parish all his life, and having served as churchwarden for over 60 years – Deceased had been put on probation for three years in the mid-1950s after pleading ‘Guilty’ to four charges of indecently assaulting boys below the age of 12 – DAC recommending proposal for approval – No objections to petition – Faculty granted with reservations*

Application Ref: 2023-085495

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: Sunday, 8 October 2023

Before:

THE WORSHIPFUL CHANCELLOR HODGE KC

**In the matter of: The Removal of a Commemorative Plaque for
Safeguarding Reasons**

THE PETITION OF:

The Churchwarden (during an ‘interregnum’)

This is an unopposed faculty petition determined on the papers and without a hearing.

No objections were received.

The following cases are referred to in the Judgment:

Re St Alkmund, Duffield [2013] Fam 158

Re St John the Baptist, Penshurst (2015) 17 Ecc LJ 393

Re St Nicholas, Kingsey [2023] ECC Oxf 5

Re St Peter, Shipton Bellinger [2016] Fam 193

JUDGMENT

Introduction

1. In order to protect the right to respect for the private and family life of anyone who may be affected by this judgment, I am handing it down in anonymised form so that the names of those who feature in it, the name and location of the parish, and any details which might lead to them being identified, are omitted.

2. This is an unopposed online faculty petition, presented by the churchwarden on 31 July 2023, during a vacancy in the incumbency, to remove a commemorative plaque that was installed, without a faculty, on the middle of the interior windowsill below a prominent, four-light tracery window in the south wall of the nave of this Grade II* listed medieval village church in the Archdeaconry of Dorchester. The plaque records that the window was restored in memory of a local farmer who died, in his late 80s, in the middle of the first decade of the current millennium, having lived and farmed in the parish all his life, and having served as churchwarden for over 60 years.

Background

3. In March 2023 the Archdeacon of Dorchester, in the Diocese of Oxford, wrote to the Parochial Church Council (**the PCC**) alerting them to the fact that it had been brought to his attention, and to the attention of the safeguarding team at the Diocese, that one of the church windows was dedicated to a late former churchwarden who had been convicted of sexual abuse in the 1950s (as previously reported in a local daily newspaper). The Archdeacon had recently chaired a safeguarding ‘Professionals Meeting’ which had included the local bishop and the parish safeguarding officer, and one of the actions from that meeting was for the Archdeacon to write to the PCC to ask them to consider applying for a faculty to remove the plaque of dedication to the late former churchwarden. The Archdeacon strongly recommended the PCC to approach any local family first before applying for a faculty, which would be required even if a faculty had not been applied for to install the plaque in the first instance.

4. On 6 April the petitioner responded to the Archdeacon’s letter on behalf of the PCC. The petitioner recorded that the PCC had met to discuss the Archdeacon’s letter, and they were

unanimous in their agreement that the right thing to do would be to remove the plaque as soon as was practically possible. The letter stated that the deceased former churchwarden's family had paid for the repair of the window when he died, and they had asked if they could put a plaque underneath to commemorate his years of service as a churchwarden. They had been told quite categorically that a fixed plaque was not possible as a faculty would be needed; and it had been suggested to them that they have some sort of commemorative plaque which could be put on a moveable stand. Without the agreement or knowledge of either the PCC or the then incumbent, the present slate plaque had been cemented on to the windowsill and presented as a fait accompli. The PCC queried the need for a faculty to remove the plaque since it had been put up without one, and could be easily removed, and the windowsill made good.

5. On 6 June 2023 the petitioner wrote to the Diocesan Advisory Committee (**the DAC**) attaching photographs of the plaque, both close up and in context in the church, in order to provide a better understanding of the application. These images have been uploaded to the supporting documents section of the online faculty system (**the OFS**) where I have accessed and viewed them. The letter makes the point that *"this has been a very sensitive issue to deal with"*. The deceased's family have been informed of the request to apply for a faculty to remove the plaque. Both of his two children had said that they were unaware of the safeguarding situation with their father, and they were quite understandably very upset. The daughter did not want the plaque back and she had said to just get rid of it. As yet, the PCC did not know the son's feelings on what he wanted to happen.

6. On 24 July 2023 the DAC issued a Notification of Advice recommending the proposal for approval by the court, and correctly advising that it was not likely to affect the character of the church as a building of special architectural or historic interest.

7. When the petition was duly presented on 31 July, it recorded that the request for a faculty had come from the Diocese.

8. The usual public notices were duly displayed during the period between 1 and 31 August 2023 (inclusive), and no objections have been received to the petition.

9. I am satisfied that the deceased's children, as the owners of the plaque, have been consulted and they have not withheld their consent to the faculty, so the formal requirements of s. 66 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 (**the EJCCM**) are satisfied.

10. I note from the parish's web-site that the PCC have agreed a safeguarding policy for this church.

11. I also remind myself that the Guidance on Contested Heritage issued by the Church Buildings Council and the Cathedrals Fabric Commission for England in 2011 emphasises that it is of particular importance to the Church that its buildings should be welcoming to all, and that any symbols of injustice and sources of pain that they may contain are acknowledged and addressed.

12. Upon receiving the petition, I asked the Archdeacon for a copy of the newspaper report that had alerted the safeguarding team at the Diocese to the deceased's conviction for sexual abuse. This was promptly supplied to me. It dates from the mid-1950s, when the deceased was in his mid-thirties; and the headline records that a local farmer is *"to have treatment"*. Suitably anonymised, and with appropriate redactions, the report reads as follows:

AB, aged 36, said to be in partnership with his brother in running a farm at X, was put on probation for three years after pleading 'guilty' to four charges of indecently assaulting boys aged between and 12, on dates between January and August this year. He was ordered to pay £50 towards the cost of the prosecution. A fifth charge, of a similar nature, was withdrawn by the prosecution after AB had denied it. A condition of the probation order was that AB should undergo psychiatric treatment. The chairman said that the court was taking a risk in adopting this course. He added "Having regard to the assistance we have had from the doctor and probation officer, and being fully confident that your wife will be co-operative in the retrieving of your position and character, we will take that risk." The risk was that AB's impulses might break out again before the ameliorating influences could do their work. The court would also rely on the co-operation of the villagers in seeing that their boys did not go to the "dangerous area".

Appalling crime.

The chairman said "There are those who take the view that offences of this kind should be visited with the severest punishment known to the law. Others take the view that the subject cannot help himself and is deserving only of pity. In my opinion, both views are wrong. The truth lies somewhere in between. The difficulty this court has is in deciding what is the best thing to do for the public, and in particular, small boys." He told AB, "This is an appalling crime you have committed against the public and these small boys." CD said small boys in the village had been in the habit of going to the farm, which was fairly centrally situated, to give help. It was on such visits that the four incidents alleged took place. It appeared that AB had taken advantage of his position as a farmer. As a result, an impossible situation arose in that small community.

Highly thought of.

AB had made a statement at X police station, in which he had admitted interfering with the boys, but denied other matters. Detective-Sergeant EF said that AB was born in X and attended the village school until 10 when he went to school at Y. Because of his bad sight he left after only two terms. Then he went on to his father's farm until he and his brother took it over. Answering Mr GH (defending), Det.-Sgt. EF said AB was highly thought of in the village and was known as a hard-working man. He spent all his time on the farm. All the offences had been committed there. Addressing the court, I am going to submit that this is a most extraordinary case. He had with him a petition, signed substantially by the whole village. Only two people had refused to sign it. He could not put it forward as having much effect on justice, but it did show the regard in which AB was held in the village. AB was born blind in one eye, and with a serious defect in the other. He was taken away from school at an early age, with his education incomplete. GH continued, "He lived in a home where matters of sex were never discussed. He has never done military service. He hardly ever reads the papers. He has given his life to the useful occupation of farming, and in that has shown considerable efficiency and intelligence. But in matters of sex, he was totally in quite a childlike state. He married an attractive young lady in April this year. She would say that after their marriage he had not the faintest idea of what sex was all about. I submit that the truth is that he has committed these offences out of plain, sheer and quite extraordinary ignorance."

Severely punished

GH said doctors believed that, with proper treatment, AB could be cured of certain tendencies. After being told of the seriousness of his actions, he was deeply concerned. The shock and the publicity given to the case would help him to resist temptation in future. He has been severely punished and will go on being punished. In that small world, everybody has read about the case. His wife, I am glad to say, is standing by him loyally whatever happens”, said GH. Dr IJ, a psychiatrist, said that an interview with AB convinced her that his intelligence was above the average, in spite of the double disability of poor sight and halted education. “His offences appear to be symptoms of general sexual maladjustment about which he is very concerned. His behaviour is not typical of the true homosexual” she said.

“With psychiatric help I am convinced that he could control this impulse. He was ignorant of the damage he might be doing to the boys”, she said.

Dr KL said he had known AB since 1937. His parents were the sort of people likely to be reticent on sex matters. “I do not think he had an appreciation of the serious nature of these offences. I am convinced that he did not understand the consequences to himself, the criminal nature or the consequences to the boys. He is very abnormally ignorant of these matters”, he said.

Throughout the case, Mrs AB sat in the court, in the public gallery. GH said that despite the distress the case had caused her, she was prepared to give evidence on her husband’s behalf. The chairman, however, said that it was not necessary to call her.

Analysis and conclusions

13. As this is an unopposed faculty petition, I am satisfied that it is expedient in the interests of justice, and in furtherance of the overriding objective of the Faculty Jurisdiction Rules, for me to determine this petition without a hearing, and on the basis of the written and illustrative material that has been uploaded to the OFS and is before the court. In light of the relief sought on this petition, I do not consider that it would be of any assistance for me to view the interior of the church.

14. Since this church is a Grade II* listed building, this faculty application falls to be determined by reference to the series of questions identified by the Court of Arches in the leading case of *Re St Alkmund, Duffield* [2013] Fam 158 at paragraph 87 (as affirmed and clarified by that Court’s later decisions in the cases of *Re St John the Baptist, Penshurst* (2015) 17 Ecc LJ 393 at paragraph 22 and *Re St Peter, Shipton Bellinger* [2016] Fam 193 at paragraph 39). These questions are:

- (1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
- (2) If not, have the petitioners shown a sufficiently good reason for change to overcome the ordinary presumption that, in the absence of good reason, change should not be permitted?
- (3) If there would be harm to the significance of the church as a building of special architectural or historic interest, how serious would that harm be?

(4) How clear and convincing is the justification for carrying out the proposals?

(5) In the light of the strong presumption against any proposals which will adversely affect the special character of a listed building, will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm?

15. On the undisputed evidence, and consistently with the advice from the DAC, I am satisfied that this proposal will cause no harm to the significance of this church as a Grade II* listed building of special architectural and historical interest. I can therefore confine myself to considering the second of the *Duffield* questions: Have the parish shown a sufficiently good reason for the removal of this commemorative plaque to overcome the ordinary presumption, in faculty applications, that change should only be permitted for some good reason. There is no need for me to consider the remaining *Duffield* tests.

16. This commemorative plaque was introduced into the church without a faculty. Its installation was therefore unlawful under ecclesiastical law. However, having been introduced into the church, albeit unlawfully, it is now subject to the faculty jurisdiction; and a faculty is required for its removal. Had the unlawful nature of the plaque's introduction to the church come to light within six years of its installation, the court might have made a restoration order requiring the removal of the plaque under s. 72 of the EJCMM; but such a course is now time-barred by s. 72 (5). Although the six year limitation period is suspended where any fact relevant to the bringing of proceedings for a restoration order has been deliberately concealed from the Archdeacon, here there is no evidence of any deliberate concealment: the plaque was there in plain view to anyone visiting the church.

17. Under the Rehabilitation of Offenders Act 1974, some old convictions and cautions are deemed spent after a period of time, which varies according to the nature of the offence and the sentence of the court. A sentence of three years' probation from the mid-1950s would normally have become spent many decades ago. However, for the purposes of work with children or vulnerable adults, the effect of the Exemptions Order 1975 (as amended) is that no offence is considered spent. As explained at paragraphs 8.2 and 8.3 of the document from the Archbishop's Council entitled *Protecting All God's Children*, 4th edn (2010), it is rightly the policy of the Church of England that anyone who puts themselves forward for roles in the Church which involve, or could involve, working with children or vulnerable adults, and who has received a positive, blemished, or unclear DBS check, should undergo a risk assessment from a suitably qualified person, the nature of which should be proportionate to the matters disclosed. The Confidential Declaration form to be completed by all those wishing to work with children or vulnerable people expressly requires all spent convictions to be disclosed. An accompanying note expressly states: *Declare all convictions, cautions, warnings or reprimands however old or whether you are at present under investigation by the police. ... Posts where the person is working or coming into regular contact with children or vulnerable adults are exempt from the 'Rehabilitation Act 1974'*. Since, according to the plaque, the deceased had served as churchwarden for 63 years, his initial appointment as churchwarden would presumably have pre-dated the need for any DBS (or CRB) checks, or any safeguarding assessment. It is not clear when he ceased to serve as a churchwarden, but this must have been before the middle of the first decade of the present millennium, when he passed on.

18. Having now read the contemporary newspaper report of the hearing, presumably at Quarter sessions, almost 70 years ago, I confess to a feeling of some disquiet at the basis for this faculty petition. By pleading guilty to all four charges against him, the deceased acknowledged his guilt. Even at the time of his conviction (on his own pleas of guilty) the deceased continued to be held in high regard by his village community. He presumably served out his sentence of three years' probation satisfactorily; and there is no evidence that he ever again fell foul of the law, or engaged in any further incidents of sexual abuse or misconduct. From the chronology, the deceased must already have been a churchwarden at the time of his conviction and sentence; and he continued to serve as a churchwarden for many decades thereafter. Many, many times, in this church, the deceased must have been invited to repent of his sins; to have responded by saying the general confession; and to have heard the priest pronounce absolution from his sins. From the attitude of his fellow parishioners, there is every reason to think that, like Zacchaeus (Luke 19, 1-10), the deceased felt, and showed, true repentance, change of heart, and change of behaviour. *"For the son of Man is come to seek and to save that which was lost."* Whilst the Church rightly takes sin seriously - and sexual offences against young children are amongst the most heinous of sins - no-one is beyond redemption; and the exercise of just mercy is the metewand, or yardstick, by which we ourselves will all one day be judged.

19. Since, having met to discuss the Archdeacon's letter, the PCC were unanimous in their agreement that the right thing to do would be to remove the plaque as soon as was practically possible, I am satisfied that I will therefore grant a faculty for the removal of the plaque as sought. However, as I emphasised at paragraph 30 of my judgment in *Re St Nicholas, Kingsey* [2023] ECC Oxf 5 – albeit in the very different context of the grant of a faculty for the felling and removal of a healthy mature lime tree which was contributing to subsidence damage to a neighbouring residential property - a faculty is precisely that: it is permissive, and it does not have to be implemented; and certainly not at once. It will be for the PCC to decide whether, and when, to implement the faculty, within the time constraints imposed by the court. The PCC should feel free, no doubt in consultation with the Archdeacon, to decide, in the light of the observations in this judgment, whether or not they should implement this faculty. For this purpose, I will allow 12 months for the removal of the plaque. If it is removed, I impose the condition that it is to be offered to the deceased's children before it is disposed of by the parish.

20. In the usual way I charge no fee for this written judgment. The petitioner must pay the costs of this petition, which I hope will be reimbursed by the Diocese, at whose request this petition was brought.

David R. Hodge

The Worshipful Chancellor Hodge KC

The Eighteenth Sunday after Trinity

8 October 2023