

In the Commissary Court of the Diocese of Canterbury

**In the matter of St Leonard, Hythe**  
**Application for a Restoration Order**

**Introduction**

1. By an application on Form 16 dated 27<sup>th</sup> August 2021, the applicant, Mr Christopher Cooper, applied for a restoration order to be made requiring the Archdeacon of Ashford to reinstate all the pews that had been removed from the nave at St Leonard, Hythe. The basis for the application was that the removal of those pews was not permitted by a temporary minor reordering licence (TMRO) and was otherwise unlawful.

**A summary of developments**

2. I gave directions dated 24<sup>th</sup> September 2021 which, in summary, sought clarification of the factual position from the parish, and sought Mr Cooper's explanation as to why he considered the Archdeacon of Ashford – rather than the PCC of St Leonard – to be the appropriate respondent to his application.
3. In a letter of 26<sup>th</sup> September, the PCC explained in summary that:
  - (i) The nave pews (21 large, 6 short, plus 3 book rests) had been removed in the summer of 2020 and stored – partly within the church and partly in a garage – in order to achieve greater flexibility of the space within the church during Covid-19 conditions. The pews had not been fixed, and minor repairs to the flooring had been carried out. The pews were later removed to a storage unit.
  - (ii) The Archdeacon of Ashford had not sanctioned or purported to give permission for the above.
  - (iii) When it became apparent to the PCC that these removals had been made without legal authority, they sought a TMRO, but now understood why the conditions for a TMRO could not be met in these circumstances.

- (iv) The pews would be reinstated later in October.
  - (v) The PCC did not regret its actions, but recognised that it should have applied for permission in advance.
  - (vi) The PCC considered that Mr Cooper should have approached them to seek the resolution of this matter before making his application to the Court.
4. At my request, the DAC considered the matter, and on 28<sup>th</sup> October 2021 informed the Registry and the Court inter alia that it *“accepts that the removal of the pews was not lawful and could not be retrospectively authorised by a TMRO, as Archdeacon Darren has already explained to the parish in some detail....The pews were effectively free-standing items and not morticed into timber kerbs, as is the case at numerous other churches, but it is believed that some were held in place with screws. It is not clear whether this was done simply to prevent ‘creep’ or whether they were dependent on that to mitigate any risk of their tipping over. Probably the former was the case (they are such heavy items that they ought to be held in place by their own weight), but it might be worth checking the frontals – which have a narrower base and thus a high centre of gravity – to check that they are not vulnerable in this regard. If so, it might be necessary to screw them back into place”*.
5. Following a further enquiry from the Registry, the PCC said by email of 29<sup>th</sup> November 2021 that plans were set for the reinstatement of the pews to take place on 20<sup>th</sup> December 2021, subject to any possible further disruptions due to the Covid-19 pandemic.
6. In the interim, Mr Cooper had understandably made contact with the Registry, seeking to ascertain the progress on this matter. It being apparent that informal resolution was unlikely, I gave directions as follows:

*“In the light of the Overriding Objective of dealing with matters proportionately and saving expense, the Commissary General is minded to deal with this application on the basis of the written representations you have each made to the Court rather than at a hearing. Rule 14.1(2) of the Faculty Jurisdiction Rules 2015 as amended gives you the opportunity to put forward your views on this proposed way forward before the Commissary General decides how to proceed...”*

7. In its reply of 16<sup>th</sup> December 2021, the PCC did not expressly address the point posed in my directions, but instead reiterated that the pews would be reinstated on 20<sup>th</sup> December, as previously indicated.
8. In contrast, Mr Cooper responded on 20<sup>th</sup> December 2021, explaining why he considered that an oral hearing was required. I considered his representations and the correspondence summarised above, and made the following order on 12<sup>th</sup> January 2022:

*“1. The Archdeacon of Ashford be removed as the Respondent to this Application and be substituted by (1) the Churchwardens of St Leonard Hythe and (2) the Parochial Church Council of St Leonard Hythe;*

*2. Having taken account of the representations made by the Applicant dated 20 December 2021 and by the Respondents dated 16 December 2021 and having regard to the overriding objective of dealing with cases justly, in particular in a proportionate way and saving expense, this application for a Restoration Order be determined on the consideration of the written representations of the parties instead of at a hearing;*

*3. Any Restoration Order which may be made by the Court be served by the Registrar.”*

9. On 27<sup>th</sup> December 2021, Mr Cooper emailed the Registry, suggesting (among other things) that, while the pews had been returned to the church, not all were in their original positions. Mr Cooper also expressed his frustration that the pews had not been returned in October (as previously indicated by the PCC) and at the delay in the resolution of this matter generally.

## **Determination**

10. For the purposes of Rule 16.1 of the Faculty Jurisdiction Rules 2015, I am satisfied that Mr Cooper has a sufficient interest to make and pursue this application.

11. I am also satisfied that it is just (the wording used in Rule 16.5(1)) and otherwise in accordance with the overriding objective for a restoration order to be made in the circumstances of this case. I am further satisfied that I should make an order in the terms set out in the Form 18 order issued along with this judgment. My reasons can be stated shortly:

- (i) It is not in dispute that the PCC and churchwardens acted unlawfully. They ought to have known that what they were doing was unlawful, and they ought to have taken steps to check what they were or were not permitted to do before acting as they did.
- (ii) The pews were absent from the church without lawful authority for a fairly extensive period, from approximately the summer of 2020 to December 2021.
- (iii) The PCC and churchwardens indicated that reinstatement would take place in late October 2021, but this did not happen until late December 2021. Even taking into account the challenges of securing removal services and the difficulties caused by Covid-19 over the winter of 2021-22, it does not appear to me that there has been sufficiently expeditious action by the PCC and churchwardens to put matters right.
- (iv) In light of what Mr Cooper says in his email of 27<sup>th</sup> December 2021, I remain uncertain as to whether the pews and book rests have been restored to the positions they occupied prior to their unlawful removal. I am unable to resolve that uncertainty without causing further delay, but the uncertainty adds to the case for the making of this order. I add that even if the pews and book rests are in fact back in their original positions as at the date of this order, it is nonetheless appropriate to make this order, in the interests of certainty.
- (v) I have considered whether an undertaking within the terms of Rule 16.9 would be more appropriate than a restoration order. I am, however, in any event satisfied that the factors summarised at (i) to (iv) above are sufficient to make a restoration order the more appropriate course of action.

12. Accordingly, I make the order set out in the accompanying Form 18, the terms of which are reproduced in an annex to this judgment.
13. I also order that the PCC and churchwardens of St Leonard, Hythe, shall within 30 days of this order pay (i) Mr Cooper's costs in lodging this application (£305.40), and (ii) costs attributable to Registry and Court time in dealing with this matter. I am satisfied that it is just and equitable to make this costs order in the circumstances summarised at paragraph 11 above. I have considered the PCC's submission that this application could have been avoided if Mr Cooper had sought informal resolution first, but am satisfied that it was reasonable for Mr Cooper to make this application. Although that application should have been made against the PCC and churchwardens and not the Archdeacon, it was nonetheless reasonable for Mr Cooper to make his application in light of the removal of the pews from this church.
14. Lastly, I add the Court's acknowledgement of Mr Cooper's understandable frustration at this matter taking longer to resolve than might have been desirable. Such delay as there has been is, however, attributable in large part to uncertainty as to the correct respondent to the application and as to the factual position (in particular, when the pews would be reinstated), as well as to the impact of Covid upon judicial resources in recent months.

ROBIN HOPKINS  
Commissary General

2<sup>nd</sup> February 2022

**Annex**

Form 18  
(Rule 16.5)

Restoration order  
(section 72 Ecclesiastical Jurisdiction and Care of Churches Measure 2018)

**In the Commissary Court of the Diocese of Canterbury**

**In the matter of St Leonard Hythe**

**Applicant: Christopher Cooper**

**Respondent: (1) The Churchwardens of St Leonard Hythe and (2) the Parochial Church Council of St Leonard Hythe**

**If you the within named Churchwardens and Parochial Church Council of St Leonard Hythe do not comply with this order you may be held to be in contempt of court and imprisoned or fined, or your assets may be seized.**

The Court considered an application for a restoration order on the written representations of the parties

**The Court orders that the Churchwardens and the Parochial Church Council of St Leonard Hythe must take the following steps:**

- (1) Restore twenty one 3m pews and six 1.3m pews, in each case with accompanying cushions and kneelers, and three 3m book rests to the positions they were in prior to removal from the church of St Leonard Hythe, on or before 4 March 2022.
- (2) The respondents must provide written confirmation to the Registry that the requirements in paragraph (1) of this order have been complied with by the date therein.
- (3) Any health and safety implications of restoring the items in paragraph (1) of this order to the positions they were in prior to removal and any associated minor matters must be raised with their inspecting architect and the respondents must follow any advice given by the inspecting architect.

**It is further ordered that**

The respondents pay the application fee of £305.40 to the applicant and any Court costs as approved by the Court, to the Registrar

**If you do not understand anything in this order you should consult a solicitor.**

**Certificate of Service**

**In the matter of St Leonard Hythe**

I certify that this order was served on the following persons at the addresses, by the method and on the following dates given below:

Name: The Churchwardens and Parochial Church Council of St Leonard Hythe

Address: john@wren.cc

Method: by email

Date served: 2 February 2022

I believe that the facts stated in this certificate are true.

Signed:

Registrar

Date: 2 February 2022

