

Re St Peter and St Paul, Peasmarsh

Judgment

1. This is a most unusual application which has been the subject of unfortunate delay in the registry for which all concerned deserve an apology. Information has been brought to the attention of the court concerning a memorial of unknown provenance which has been introduced into the churchyard of St Peter and St Paul, Peasmarsh. Consideration needs to be given as to what, if any, order the court should make pursuant to the provisions of the Faculty Jurisdiction (Injunctions and Restoration Orders) Rules 1992.

**Background**

2. Margaret O'Donoghue died on 13 February 2005 and was buried in Peasmarsh churchyard on 24 February 2005. In or about April 2008 a memorial was erected over her grave. Neither her widower nor her sons have any knowledge of who placed it there. It comprises a crudely fabricated concrete cross on a square slab also of concrete. A rectangular plaque is fixed to the cross on which is the legend:

In Loving Memory  
of  
Margaret O'Donogue [*sic*]  
1946-2005

It is of note that Mrs O'Donoghue's surname is misspelt. There was also a concrete block containing a flower vase at the foot of the grave. The appearance of this memorial caused considerable upset to Mr O'Donoghue, and the fact that it remains there some three years later is, I imagine, a continuing source of consternation and distress.

**Evidence**

3. For convenience, I list below the matters to which the court has had regard, taking them in broadly chronological order:

10 July 2008	Letter from Archdeacon of Lewes and Hastings
4 November 2008	Email from the Archdeacon
22 January 2009	Witness statement of Sean O'Donoghue, son of the late Margaret O'Donoghue
10 February 2009	Witness statement of Michael John O'Donoghue, widower of the late Margaret O'Donoghue
13 February 2009	Witness statement of James O'Donoghue, son of the late Margaret O'Donoghue
1 April 2009	Witness statement of the incumbent, the Reverend Christopher Hopkins
26 August 2009	Letter from the incumbent

22 February 2011 Further letter from the incumbent stating to the best of his recollection the chronology and content of the various notices placed on or near the grave

Various bundles of photographs have been annexed to these statements showing the grave in question and the memorial in particular.

#### **Subsequent events**

4. The incumbent, quite properly, took advice as to the legal position and was informed that even though the memorial had been introduced into the churchyard without permission, it could not be removed without the authority of a faculty. As is well known, an incumbent enjoys a delegated authority to permit the introduction of memorials which comply with categories prescribed in the Churchyard Regulations. Proposals falling outside the Regulations necessitate an application to the Consistory Court for a faculty. Neither procedure was used in this instance.
5. The incumbent placed a notice on the church notice board and in the church magazine. He produced a laminated weatherproof version which he tied to the memorial. Each notice requested the person responsible for the introduction of the memorial or anyone who had information about it to contact the incumbent. Although, for reasons which have been explained in his letter of 22 February 2011, copies of the notices from the parish magazine and those placed at the grave are no longer available, I am satisfied that the incumbent took all proper steps to seek to establish the legal owner of the unlawful memorial and to seek its voluntary removal. Whilst deliberately low-key, the notices were clear and unambiguous. However, this process of notification produced absolutely no response and hence the papers were referred to the Consistory Court, albeit after a considerable delay which is regrettable.

#### **The law**

6. Rule 9 of the Faculty Jurisdiction (Injunction and Restoration Orders) Rules 1992 provides as follows:
  - ‘Where no application has been made under rule 4(1) but it appears to the chancellor as the result of information brought to his attention ... that there are grounds on which he might make a restoration order he shall not make such an order of his own motion by way of an order in Form No 6 ... without first considering the desirability of
    - (a) directing that a special citation be served on any person against whom such a restoration order might be made requiring the attendance of such person before the court at such time and place as is specified in the citation, and
    - (b) giving that person an opportunity to be heard as to whether or not a restoration order should be made.’

I have given some consideration to this matter, although it is self-evident that where the identity of the wrongdoer is unknown any form of citation is impossible and futile. I am satisfied from the content of the recent letter to which I have already made reference, that the incumbent has done all in his power to make contact with whosoever introduced the memorial. As a matter of law, that unknown individual is the legal owner of the memorial: see generally Faculty Jurisdiction Measure 1964, section 3. In the light of the fact that the identity of the wrongdoer is unknown, I do

not consider that this is a case where a formal application needs to be made for a faculty supported by affidavit and adjudicated upon at a hearing. The justice of the situation and the need for proportionality permits this Court to act upon the documentation which has been placed before it, including signed witness statements and related correspondence.

### **Adjudication**

7. On the basis of the information which has been presented to the court I am satisfied that all reasonable efforts have been made to identify the person or persons responsible for the introduction of this memorial and that these have been wholly unsuccessful. I am further satisfied that its introduction was unlawful in that it was done without lawful authority and, perhaps of greater concern, that it was done without the knowledge or consent of the widower and sons of the deceased. That being the case, the proper course is for this court to make a restoration order pursuant to the power contained in section 13(5) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991.
8. I therefore authorize Mr Michael O'Donoghue, whether by himself or other persons as he may authorize, to take such steps as may be approved by the incumbent to remove the memorial, its base and the slab with flower vase from the grave and to place the same in some safe and discreet place within the churchyard as directed by the incumbent where it is to be stored for six months. If on the effluxion of that period no person has laid claim to the memorial, it may be disposed of at the direction of the incumbent in such seemly manner as he deems fit. In the event that any person or persons lay claim to the memorial, they are to be prevented from having any further dealings with it save by order of this Court, and the court is to be informed immediately of the identity and contact details of such person.
9. I formally reserve the question of costs. I do not propose that any liability falls on the incumbent or Mr O'Donoghue, but will revisit the matter in the event that the identity of the person introducing the memorial is established at some future date. The order shall be in the terms set out in the Annexe to this judgment. Since the identity of the wrongdoer is currently unknown, it would be inappropriate to include a penal notice at this stage, although this may be revisited if the identity becomes known and a further unlawful act is threatened.

**Annexe**

In the Consistory Court  
Diocese of Chichester

CH182/10

In the Matter of St Peter and St Paul, Peasmarsh (Churchyard)

And in the Matter of the Faculty Jurisdiction (Injunction and Restoration Orders) Rules 1992

**Restoration Order  
Made By the Court of its Own Motion**

WHEREAS information was brought to the attention of the Court from which it appeared that an unlawful act in relation to the churchyard had been committed, namely the introduction at the grave of the late Margaret O'Donoghue (without a faculty, the licence of the incumbent or other lawful authority) of a concrete memorial, base and concrete slab with flower vase

AND WHEREAS the identity of the person responsible is currently unknown and the Court is satisfied that special citation is undesirable under Rule 9

AND WHEREAS the court is satisfied that all reasonable steps have been taken by the incumbent to identify the person responsible and bring the matter to his or her attention

IT IS ORDERED that Mr Michael O'Donoghue, whether by himself or by such other person or persons as he may authorize, be at liberty to take such steps as may be approved by the incumbent to remove the said memorial, its base and the slab with flower vase from the grave and to place the same in some safe and discreet place within the churchyard as directed by the incumbent where it is to be stored for six months

If on the effluxion of that period no person has laid claim to the memorial, it may be disposed of at the direction of the incumbent in such seemly manner as he deems fit

In the event that any person or persons lay claim to the memorial, they are to be prevented from having any further dealings with it save by order of this Court, and the court is to be informed immediately of the identity and contact details of such person

Liberty to any interested party to apply to the Court for further directions

Dated this Twenty-Fifth day of February 2011

By order of The Worshipful Mark Hill QC  
Chancellor and Official Principal