

In the Consistory Court of the Diocese of Chichester
In the matter of St Margaret's Rottingdean

Nos 1198 & 1199

(1) Reverend Dr Anthony Moore
(2) Parochial Church Council of St Margaret's Rottingdean

Petitioners

and

Archdeacon of Brighton and Lewes

Additional Party

Judgment and Directions

1. The Petitioners seek urgent relief from the Court in respect of two headstones in the churchyard of St Margaret's Rottingdean. An emergency faculty was authorised last Thursday, 11 June 2020 at 17.52 hrs, and a further emergency faculty was permitted this afternoon at 12.25 hrs, on each occasion within minutes of the application being made to the Registry.
2. These are the Court's brief reasons. Due to the sensitive nature of the proceedings, this judgment is not to be made public until the work authorised under the second faculty has been implemented.
3. The headstones in question were erected on two adjacent graves. The first is of the music hall entertainer, G H Elliott who died on 10 November 1962; the second is of Alice Banford (1884-1962). Her husband's burial in the same grave is also recorded on the headstone. The headstones are controversial because of their inscriptions. Mr Elliott was a popular entertainer and his inscription includes the stage name by which he was widely known. Miss Banford was also a stage performer. Some of the language used, whilst it may have been unobjectionable at the time, is now deeply offensive. Mr Elliott is identified as 'The Chocolate Coloured C**n' and Ms Banford is described as a 'C**n Dancer'.
4. I understand that there has been considerable unease within the parish for some time but, for whatever reason, no application for a faculty has previously been made to the Court. Matters came to a head over the weekend of 6/7 June 2020 when public protests animated by the Black Lives Matter campaign led to the toppling of the statue of slave-trader Edward Colston, and its deposit in the harbour in Bristol.
5. Mindful that these two headstones might be damaged, destroyed or removed, the parish took steps to obscure the inscriptions with black dustbin bags. An application was then made to the Registry by email last Thursday, as the behest of the Archdeacon, the DAC secretary and the PCC, for permission to erect wooden protection around the two headstones. There was concern that they might be damaged over the intervening weekend. In authorising an emergency faculty for the wooden protection, I indicated that I would be

receptive to a further application for the immediate removal of both headstones to a place of safety pending a decision as to their long-term future.

6. This morning by email such an application was made by Dr Moore, the incumbent, and the Parochial Church Council (PCC). I authorised the removal of both headstones and directed that they be safely and securely stored in a location to be approved by the Archdeacon. That location is not to be made known publicly.
7. It might be helpful if I provide some explanatory context. The public generally regard the Church of England as a single entity. It is not. As Lord Hope of Craighead stated in the House of Lords' decision of *Wallbank v PCC of Aston Cantlow* [2003] UKHL 37: 'The Church of England as a whole has no legal status or personality': para 612.
8. Churchyards are in the legal ownership of the incumbent or parish priest; although the responsibility for their maintenance rests with the PCC. Headstones, however, are not treated as part of the churchyard, but legally belong to the heir-at-law (living descendent) of the deceased person commemorated. An incumbent cannot remove a headstone or make an alteration to one, nor can he or she be directed to do so by the Archdeacon, the Bishop or any diocesan authority.
9. Works in a churchyard, including the removal or alteration of a headstone, can only be carried out with the permission of a faculty, which is granted by the Chancellor, being the judge of the Consistory Court, wholly independent of the Diocese. A faculty can be sought by parochial clergy, by churchwardens, by PCCs, by archdeacons and by individual parishioners.
10. The emergency faculty which I authorised this afternoon is a temporary expedient. It was sought by the incumbent and PCC in order to keep the headstones safe during the current climate while a decision about their future is made. I considered it just to direct their removal to save the headstones from harm and to avoid any threat to public order or public safety in the churchyard. I have had particular regard to third-party rights, namely the living relatives of Mr Elliott, Miss Banford and Mr Banford, who are the legal owners of the respective headstones. The temporary removal of the headstones does not pre-judge the question of what is to become of them in the future. The Court may direct:
 - i. that they be reinstated, either unaltered or with some of the inscription obscured or re-cut; or
 - ii. that substitute headstones be installed in their place with different inscriptions; or
 - iii. that some other resolution be imposed.Any works which are authorised will have to be paid for by someone. The Court is likely to be assisted by the expert opinion of a stonemason or professional letter-cutter to indicate the practical options which might be available. The Petitioners are to come forward with a detailed proposal as soon as possible, and in any event within six months.
11. It is imperative that the legal owners of the two headstones are traced so that they can be made parties to these proceedings and their views taken into account. It is also appropriate that the Archdeacon be made a party to these proceedings.

12. In order that this matter can be resolved as swiftly and sensitively as possible, I direct as follows:

- (1) That the headstones erected in respect of (i) GH Elliot and (ii) Alice Banford (together with her husband Henry Banford) be removed from the churchyard of St Margaret, Rottingdean and stored in an undisclosed location approved by the Archdeacon of Brighton and Lewes where they are to be kept safe and secure until further order of this Court;
- (2) That the headstones are to remain subject to the jurisdiction of the Consistory Court of the Diocese of Chichester;
- (3) That the Archdeacon of Brighton and Lewes be made an additional party to these proceedings;
- (4) That the Petitioners use their best endeavours to establish the heir-at-law of, respectively, GH Elliot, Alice Banford and Henry Banford in order that they can be served with these proceedings, made additional parties, and fully participate in the resolution of the matter;
- (5) That on or before 15 December 2020 the Petitioners are to lodge at the Registry a petition seeking a confirmatory faculty for the matters authorised herein together with detailed proposals concerning the future of the two headstones;
- (6) Upon the lodging of the petition, the Court will make further directions for the determination of the matter including, but not limited to, public notice, DAC consultation, special citation and the service of lay and/or expert evidence.
- (7) Liberty to the parties to apply to the Court for further directions.

The Worshipful Mark Hill QC
Chancellor of the Diocese of Chichester

15 June 2020