

economic conditions' and expressed significant concern about the ability of the parish to raise the substantial sums of money required to finance the project in the current economic crisis. The chancellor indicated a willingness to grant a faculty for a major re-ordering but was not prepared to adjudicate upon the specific elements of the proposals until funding was in place. He directed that he be informed in writing of the progress of fundraising efforts every six months and that the petitioners should indicate how they intended to proceed with the petition by no later than the end of 2010. [RA]

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Re Hutton Churchyard

Court of Arches: Cameron, Dean; Walker and Rodgers Chs,
November 2008
Closed churchyards – 'topple-testing' – memorials

In breach of a faculty granted in the Bath and Wells Consistory Court permitting the hand-testing of monuments, the local authority used a digital force meter to test monuments in a closed churchyard. This resulted in more than one third of the tested monuments being laid flat. The parish council complained of this breach, seeking an order that the local authority reinstate a sufficient number of those monuments with no known owners to restore the original historic appearance of the churchyard. The chancellor was required to determine:

- i. Whether to grant a confirmatory faculty in relation to the works done in the churchyard; and
- ii. Whether to grant a new faculty authorising the future use of a digital force meter in the testing of monuments.

The chancellor held that the local authority had the legal power to reinstate and make safe monuments of particular historic or aesthetic importance as part of its general obligation under section 215 of the Local Government Act 1972 to keep the churchyard in decent order. He refused to order reinstatement to the extent sought by the parish council. Instead, he made a confirmatory faculty in respect of the works done and imposed a condition that the local authority lodge a plan at the registry for the following three-year period, setting out its proposed actions in relation to monuments laid down or damaged and with no known owner. The local authority appealed, challenging both the standing of the parish council to intervene in the proceedings and the substantive order made by the chancellor.

The Court of Arches found that the parish council, as ‘the democratically elected “voice” of the local parish community’ had sufficient interest in the faculty proceedings to intervene. In considering the extent of the local authority’s duty under section 215 of the 1972 Act to keep the churchyard ‘in decent order’, the court observed that that duty required the local authority to ensure the safety of monuments, such obligation going further than simply laying unsafe monuments flat. Once monuments had been laid flat, regular inspections were still required to ensure that the flat stones did not themselves become a hazard. Consideration still needed to be given to the best way to deal with those monuments over time. The court held that the primary consideration for the local authority in discharging their duty was the safety of visitors and employees. Although the local authority might consider the appearance of the churchyard in discharging its duty, it was not obliged to reinstate memorials neglected by their owners simply because of the appearance of the churchyard. It would be wholly wrong to impose upon the local authority the liabilities of the owners of the monuments. In so far as the chancellor appeared to indicate the possibility that monuments of particular historic and aesthetic significance might be treated differently, such that the local authority might be required to reinstate them, he was wrong, although it was clearly within the local authority’s power to permit such reinstatement should others seek to undertake it.

The court considered that, in future, where a local authority sought a faculty in relation to the testing and laying flat of monuments in a closed churchyard on safety grounds, the following should happen:

- i. A condition should be attached requiring an initial survey to identify unsafe memorials of particular significance (for example, by the commemoration of persons of national or local significance or by their design by renowned artists);
- ii. An order should be given for special citation to be given to any known relatives of such persons and/or a direction made for appropriate publicity about the state of the memorial and the risk that it would be laid flat;
- iii. Pending the outcome of these efforts, the local authority should be permitted to take temporary measures to indicate to the public the unsafe state of the monument;
- iv. In the absence of any response under ii. above, then the local authority should be permitted, if it so desired, to lay the monument flat or to reposition it within the churchyard;
- v. A faculty should generally be limited to monuments within a particular churchyard.

The court also held that the chancellor’s attachment of a condition requiring the local authority to provide a three-year plan setting out its proposals for the

monuments that had been laid flat was a reasonable and proportionate method of ensuring that the local authority discharged its continuing obligation in respect of those monuments. The appeal was allowed only to the limited extent set out above. [RA]

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Archdeacon of Northampton v Davies

Disciplinary Tribunal, Diocese of Peterborough, November 2008

Inappropriate sexual behaviour – drunkenness – prohibition

The complainant complained that the respondent, the Reverend Teresa Davies, had acted in a manner unbecoming a clerk in holy orders. The first allegation centred on the respondent's alleged sexual activities, including 'the casual exchange of sexual partners' and her and her husband's advertising on 'swingers' websites. The second allegation was that the respondent was under the influence of alcohol at four separate church services. The complaint was upheld and the respondent, who had already resigned her preferment, was prohibited from the exercise of the functions of her orders for twelve years and placed on the Archbishops' List maintained under section 38 of the Clergy Discipline Measure 2003. [WA]

A transcript of the tribunal's determination may be found at <http://www.ecclaw.co.uk/clergydiscipline/davies1.pdf> and of the imposition of penalty at <http://www.ecclaw.co.uk/clergydiscipline/davies2.pdf>

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Archdeacon of Colchester v Gair

Disciplinary Tribunal, Diocese of Chelmsford, November 2008

Adultery – impartiality of tribunal

The Archdeacon brought a complaint that the respondent, the Rector of Debden with Wimbish and Thunderly, had conducted an inappropriate affair with a parishioner, Mrs X, whose husband had turned to him for support when the marriage was in difficulty. The tribunal found, on the balance of probability, that the relationship was of a sexual nature and therefore conduct unbecoming. He was prohibited from the exercise of the functions of his order for seven years from the date of the determination. There were several preliminary rulings in this case. The respondent sought to ensure that both clerical members of the