

Diocese of Coventry

An Internal Review by the Diocese of Coventry in  
relation to the headstone for the late  
Margaret Keane at St Giles Exhall in the  
Deanery of Nuneaton

Reviewer: The Revd Canon Dr Mark Bratton

December 2022 – March 2023

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## I. INTRODUCTION

1. Churchyard law is distinguished by its endeavour to harmonise legal, ethical and pastoral considerations. The Church of England recognises that its churchyards hold great significance to the local community, and to the families of the deceased. The Church, therefore, seeks to balance its legal requirements with its ethical and pastoral obligations in the management of its churchyards. This includes ensuring that burials are conducted in a manner that is respectful to the deceased, their families and the local community, while also maintaining compliance with legal requirements related to the areas of health and safety, environmental protection, property rights, and other areas.
2. This internal review arises from a series of legal proceedings that have their origins in a consistory court ruling handed down in May 2020. A Chancellor of the Diocese of Coventry sitting in Consistory Court had refused a petition for the inclusion of an untranslated Irish inscription on a headstone commemorating the life of the late Margaret Keane, located in the churchyard of St Giles, Exhall, a ruling which was appealed to the Court of Arches and eventually overturned.<sup>1</sup>
3. The decision of the Court of Arches was significant in holding that a rule or presumption against untranslated foreign language inscriptions was likely to violate a petitioner's legal rights under common law and the relevant Articles of the European Convention on Human Rights.<sup>2</sup> It was also important to the family collectively as it permitted the erection of a memorial that expressed the personal impact that Bernie and Margaret Keane had on their family, and on the Irish community in Coventry to which they made a lasting contribution.
4. Although the family was successful in their endeavours to secure the kind of memorial for which they applied, they have expressed misgivings regarding several aspects of the faculty process and the processes of the Coventry Diocese.
5. Accordingly, on the 25<sup>th</sup> March 2021, at a Zoom meeting with the family, the Bishop of Coventry promised a review into circumstances surrounding the case and to provide recommendations based on its findings. The Bishop formulated the terms of reference and appointed the Revd Canon Dr Mark Bratton to conduct the review in accordance with these terms, which are detailed in Appendix 1. These outline the review's aims, objectives, scope and methodology.
6. This report will set out the perspectives given by those interviewed as accurately as possible. The reporting of such views or sentiments should not be taken as the report accepting or challenging those perceptions, but rather acknowledging or noting their

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<sup>1</sup> Re: St Giles [2020] ECC Cov 1, (6 May 2020) (consistory court decision), EACC 1, 18 August 2020 (petitioner given leave to appeal), [2021] EACC 1, 16<sup>th</sup> June 2021 (written Court of Arches judgment handed down)

<sup>2</sup> [021] EACC 1, paragraphs 11.11-11.12.

existence. For the avoidance of doubt, I accept that all the views expressed to me were given as the witnesses *bona fide* views.

## II. METHODOLOGY

7. The internal review has comprised the following:
  - Creating a timeline of events, conversations, and interventions
  - Seeking observations and reflections of the diocesan team and family members
  - Preparing a report with recommendations for learning and improvements
  - Implementing appropriate steps within the Diocese
  - Summarising the report for the Church of England's Dean of Arches, Provincial Registrars, and Chief Legal Officer, along with any areas for national consideration to enhance practices.
8. The review has gathered evidence primarily through conducting interviews with key individuals, including members of the family, the diocesan team, and other individuals with valuable insights into the case's context, events and circumstances.
9. Interviews were conducted face-to-face with family members Bez, Caz and Donna interviewed on two occasions (21<sup>st</sup> December 2022 and 30<sup>th</sup> January 2023), along with the Revd Gail Phillip, the incumbent (on 20<sup>th</sup> December and 23<sup>rd</sup> January 2023), the Archbishop of Canterbury's (ABC) Chief of Staff, David Porter (24<sup>th</sup> January 2023), the Bishop of Coventry's Secretary, Christine Camfield (26<sup>th</sup> January 2023) and the Bishop of Coventry (26<sup>th</sup> January 2023). Other individuals interviewed via Zoom include the Diocesan Chancellor, Glyn Samuel (4<sup>th</sup> January 2023), the former Diocesan Communications Officer (DCO), the Revd Canon Graeme Pringle (4<sup>th</sup> January 2023) and the former Diocesan Registrar, Mary Allanson (23<sup>rd</sup> February 2023).
10. To gather additional evidence, relevant legal literature, journalism, social media, and correspondence between the family and the Diocese were reviewed. Bundles of documents used in the appeal before the Court of Arches were generously provided by the family, proving invaluable in constructing an accurate and comprehensive timeline of events, significant conversations, correspondence, and interventions. The case generated widespread interest, nationally and internationally, and led to a wealth of legal, ethical, social and political commentary.
11. Due to the strict conventions that govern a judge's ability to publicly reflect on previous rulings, the process of gathering evidence for this review was limited. In consultation with the Bishop of Coventry, it was decided not to approach His Honour Judge Stephen Eyre QC (as he then was) for an interview. Judge Eyre had served as

Diocesan Chancellor of the Diocese of Coventry until his resignation from that office in June 2020, and had made the ruling on Margaret Keane's headstone in the Consistory Court (see timeline below).<sup>3</sup>

12. This report acknowledges that it is a constitutional convention that judges, whether ecclesiastical or appointed by the civil power, are independent. Furthermore, they refrain from commenting on their decisions either way once made, save perhaps in the context of an academic review of an area of law. This report does not comment on the behaviour of the Chancellor in any way as he is independent of the diocesan structure in his judicial role. As to whether his ruling was correct or not, that was a matter for the Court of Arches which overturned his decision for the reasons they gave in their written judgment.
13. It is also noted that the refusal of permission for leave to appeal is also a formal judicial decision applying the test laid down by rule 22.2 of the Faculty Jurisdiction Rules. The decision to refuse was made for the reasons set out at length in the decision document of June 17<sup>th</sup>, 2020. Accordingly, the Chancellor's refusal was neither a matter of choice nor of discretion. Rather it was a matter of judgment dependent on a conclusion as to whether the requisite test had been satisfied and where the Chancellor had made a judicial decision that the relevant criteria for granting permission had not been met.
14. Throughout the report, I have employed the word 'family' to refer to the Keane family collectively, acknowledging the substantial contributions of individual members. Accordingly, I use the word family in the plural number, rather than the singular. The family comprises Bernard ('Bernie'), who was Margaret Keane's surviving husband until his death on August 10th, 2022, and their children: Bernadette ('Bez'), Caroline ('Caz'), Colette, Donna, Michael, and Vincent. While Caz was named as the petitioner and appellant in the faculty and legal proceedings, Bez served as the principal correspondent with the incumbent and the Diocese.
15. Additionally, I have referred to all the interviewees named in paragraph 8 above by their titles or offices, rather than their personal names.
16. The family has in confidence shared the preliminary findings of an investigation carried out by the Parliamentary and Health Service Ombudsman suggesting that Margaret's death from the condition that had been affecting her in July 2018 could have been avoided. The emotional and psychological stress these disclosures have caused have further compounded the distress produced by Bernie's deteriorating health during the faculty process and legal proceedings. Tragically, Bernie died in August 2022 before the terms of reference for this internal review had been finalised.

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<sup>3</sup> Following his retirement, Judge Eyre was succeeded as Diocesan Chancellor by Mr Glyn Samuel in January 2021. Therefore, throughout this report, Judge Eyre is referred to as 'former' or 'then' Chancellor as appropriate, and Mr Samuel as the 'current' Chancellor.

### **III. STRUCTURE OF THE REPORT**

17. The report presents a timeline of events, significant conversations, and interventions, followed by an evaluation of the data and evidence. Specific findings and recommendations for addressing identified issues are then provided. The final summary recapitulates key findings and recommendations, identifies any broader implications for the Diocese, and highlights areas for future review. At the end of the report containing two appendices. The first appendix sets out the terms of reference for this review. The second appendix sets out a summary of this report for the attention of the Dean of Arches and other ecclesiastical lawyers, containing findings and recommendations which may be of relevance to the national church.

#### IV. CONTEXT AND TIMELINE

18. To contextualise the internal review, it is useful to examine the timeline of events that occurred after Margaret Keane's death in July 2018.

##### **July 2018 – July 2019**

19. Margaret Keane died suddenly on July 29<sup>th</sup>, 2018, due to medical complications following a brief illness. Three weeks later, she was laid to rest in a double plot at St Giles Exhall's Meadow Burial Ground, which the Keane family had purchased for themselves. In July 2019, the family submitted a memorial application to the incumbent for a grey limestone headstone with a carved Celtic cross, featuring an emblem of the Irish Athletic Association (GAA) and an inscription, "*In loving memory of Margaret Keane 31st January 1945 - 29th July 2018: aged 73 years. In ar gcroithe go deo.*" The original application was countersigned on July 8<sup>th</sup>, 2019, by JE Hackett and Sons Stonemason, who assisted the Keane family in the application process.

##### **September – November 2019**

20. The proposed memorial did not fully comply with the Coventry Diocesan Churchyard Regulations, prompting the incumbent of St Giles Exhall, the Revd Gail Phillip, to inform the Keane family that she lacked authority to approve it. Safety concerns were raised about the placement of the Celtic cross, which protruded from the headstone and deviated from the churchyard's uniformity. A Faculty was required for the headstone's erection, and the family submitted a petition setting out their rationale for the GAA emblem and the Celtic cross design.<sup>4</sup> The St Giles Exhall Parochial Church Council (PCC) and the Coventry Diocesan Advisory Group (DAC) provided independent advice to the Diocesan Chancellor on the petition. Despite concerns over the headstone's original shape, the PCC ultimately voted to support the petition, and the DAC expressed apprehension about the cross's form but did not oppose the inscription.

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<sup>4</sup> In the context of ecclesiastical law, a faculty is a legal instrument or authorization granted by a bishop or other ecclesiastical authority that permits a particular activity or use of a property.



## **December 2022 - February 2020**

21. In accordance with the Faculty Jurisdiction Rules the petition was referred first to the DAC and the Notification of Advice from that committee was followed by the period of public notice. The DAC Notification of Advice was dated December 17<sup>th</sup>, 2019, and the public notice period expired on January 28<sup>th</sup>, 2020. It was only then that the matter could be referred to Chancellor. The petition was referred to the Chancellor by the Registry on the February 5<sup>th</sup>, 2020, when the Chancellor first learnt of the matter. The Chancellor sent his directions to the Registry on February 11<sup>th</sup>, 2020, and they were then processed by the Registry.
22. In his directions, the Chancellor sought clarification on specific aspects of the petition for a faculty. The Chancellor expressed concerns about the protruding cross and untranslated Irish inscription but was content with the GAA emblem's inclusion. The petitioner was given the opportunity to respond in person or in writing, and, on February 27<sup>th</sup>, the petitioner consented to incorporating the cross entirely into the headstone and provided arguments for an untranslated inscription in the Irish language. It is worth noting that this was the first time the appropriateness of the untranslated Irish inscription was raised during the proceedings, with neither the PCC nor the DAC having raised the matter previously.

## **May 2020 – the Consistory Court judgment**

23. On May 6<sup>th</sup>, 2020, the Chancellor, sitting as the Diocesan Consistory Court, ruled that a Celtic Cross could be included on the headstone provided it was integrated and an English translation of the Irish inscription was included. The family and parish priest received a copy of the judgment, along with a faculty decision and conditions for the approved works on May 13<sup>th</sup>. However, the family was disappointed and angered by the ruling, as discussed in this report.

## **June 2020**

24. In late May and June 2020, the Chancellor's ruling gained widespread public attention. . The media, social media, and legal commentators extensively covered the case. A Daily Telegraph article, and critical remarks by Francis Young, Caoilfhionn Gallagher QC, and comedian Dara O'Briain, amongst others, attracted general interest. Much of this was critical of the Church of England as a national institution. When the Bishop became aware of the case, its judgment and the response it had cause, he and the former DCO felt it necessary to release a public statement by the Diocese addressing the matter, which was published on the diocesan website, and for that Statement to include a personal message from the bishop of a pastoral rather than legal character.

## **June – November 2020**

25. On June 11th, the family sought permission to appeal the Chancellor's ruling, citing flawed and unlawful reasoning under common law and human rights law. On June 17th, the Chancellor refused to give the petitioner permission to appeal to the Court of Arches. The family subsequently applied to the Court of Arches for leave to appeal on June 30th and were granted permission on August 18th. In the following months, witness statements, exhibits, and legal arguments were prepared, including a letter from the incumbent of St Giles September 25th, providing evidence of other untranslated gravestones in the churchyard.
26. From late summer 2020, the ABC's Chief of Staff and the Bishop of Coventry sought to mitigate the family's significant legal costs. The Bishop also liaised with the ABC's Chief-of-Staff about possible ways of assisting with the costs. With the help of the Provincial Registrar, the Bishop also explored ways in which court fees could be obviated or reduced in some way.
27. In accordance with the Directions of the Dean of Arches on the November 23rd, 2020 (as varied on January 6<sup>th</sup>, 2021), the Dean appointed an Amicus Curiae with particular expertise in ecclesiastical law to assist and advise the court on ecclesiastical law matters. After discussion with the Provincial Registrar and taking legal advice to ensure that it was in order to do so, the Bishop agreed to fund the costs of the Amicus brief.
28. In late November 2020, the family discovered that their legal expenses would be substantially covered from a variety of sources, including the Diocese of Coventry and Lambeth Palace.

## **June 2020 – February 2021**

29. With substantial support from the incumbent, the family continued to keep their mother, Margaret Keane, at the forefront of public awareness. They held a "light show" at St. Giles and contacted "Irish in Britain" organisations to support their "Message to Margaret" campaign via social media and candle lighting. They also engaged in a public discussion held by the Labour Party Irish Society on February 16th, 2021.

## **February 2021 – the Court of Arches judgment**

30. On February 24<sup>th</sup> 2021, six months after granting leave to appeal, the Court of Arches delivered a judgment authorizing an inscription in the Irish language that had not been translated into English. The appeal court's decision became constitutes a precedent in churchyard law and represents a significant jurisprudential accomplishment for the family.

## **March 2021**

31. On St Patrick's Day, Father Patrick Brennan, the Roman Catholic Parish Priest, the incumbent of St Giles, the family, and a few close relatives assembled to dedicate the headstone and offer prayers in the burial ground.
32. One week later, the Bishop of Coventry joined some of the family at the graveside for a period of prayer and reflection. The following day, the family, the Bishop, the incumbent of St Giles, and the Archdeacon Pastor convened a meeting, via Zoom, to discuss the family's experience of the faculty and legal process, as well as to listen to their views about how it might be improved.
33. The meeting with the family gave the Bishop the opportunity to meet Bernie and to apologise to him and other members of the family for the distress the case had caused them. It was on this occasion that the Bishop committed himself to an internal review of diocesan procedures.

## **April 2021**

34. Following a meeting that included the incumbent, and the Archdeacon Pastor, the family drafted a document which contained points for suggested action and areas for discussion. Afterwards, they sent the document to the incumbent with the intention of having it brought to the attention of the Diocese and the national church, in the hope that the points raised in it would be brought into operation.
35. In late April, the Bishop began a planned three month period of Sabbatical leave.

## **May 2021**

36. In early May, the family sent the document to the Bishop directly. The correspondence which followed between the family and the Archdeacon indicated that the Diocese would review the document once the written Court of Arches judgment was available.

## **June 2021**

37. On June 16th, 2021, the Court of Arches released its written judgment, allowing the appeal on common law and human rights principles, and issuing directives for the issuance of a faculty to permit the erection of the proposed memorial, without the requirement for an English translation of the Irish phrase on the headstone itself.<sup>5</sup> Additionally, the court recommended that chancellors review their Churchyard Regulations in light of the legal principles articulated in the case.

## **August – September 2021**

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<sup>5</sup> The Court of Arches made it a condition of the issue of a faculty permitting the erection for the proposed memorial with an English translation of the Irish inscription that such a translation should be entered into the parish record (*Re: St Giles, Exhall* [2021] EACC 1, para.12.1).

38. At the beginning of August, the family contacted the Archdeacon Pastor with a view to having the Diocese properly address the substantive points outlined in the document they had formulated earlier that year, informed by the contents of the reasoned judgment of the Court of Arches.
39. A meeting was convened with the family at the Archdeacon Pastor's residence on August 16th, at which the Bishop's PA was also present. At this meeting, the family rehearsed their concerns regarding the faculty system and the Diocese's procedures and hoped that these concerns would be properly considered in the relevant forum.
40. Shortly afterwards, the Archdeacon Pastor informed the family that the Diocese would address those concerns once the Bishop had completed his period of Sabbatical leave. This was delayed when the Bishop contracted COVID in September.

### **January – February 2022**

41. At the beginning of the new year, the family reinitiated communication with the Diocese, revisiting the concerns outlined in the April document and reiterated in the summer 2021 correspondence. The Bishop's PA restated the Bishop's commitment to and review of its procedures, who would produce terms of reference, and invite the family to provide feedback on these.

### **August 2022**

42. On August 10<sup>th</sup>, Bernie Keane died. The funeral was held on the August 31<sup>st</sup> and Bernie was buried alongside Margaret in the Meadow burial ground at St Giles, Exhall.

### **November 2022**

43. Ten months later, the family contacted the Diocese again expressing their disappointment at the prolonged absence of communication. The Bishop wrote a lengthy email to the family apologising for the delay in instigating the review. The Bishop's PA informed the family that terms of reference had been finalised and a reviewer tentatively appointed.

### **December 2022 – March 2023**

44. The internal review lasted for three months and culminated in the production of a draft report on St. Patrick's Day, 2023.

## **V. OVERVIEW OF SUPPORTING EVIDENCE**

45. During the internal review, various perspectives emerged from the interviews and the relevant documentation, each of which is significant and must be considered on its own terms to gain a comprehensive understanding of the issues at hand. No single perspective can take automatic precedence over the others or be disregarded as each contributes a unique viewpoint that assists in developing a fuller picture of the case and, subsequently, a better understanding of how each perspective fits within the broader context. Examining the bigger picture will lead to a fairer appreciation of the motives, intentions, and limitations under which each person with a direct interest or concern in this review was operating.

### **The family's evidence**

46. This internal review was instigated by the Bishop to address a number of concerns raised by the family. These primarily relate to the family's experience of the faculty process and the perceived lack of adequate and timely pastoral intervention at the diocesan level following the consistory court judgment.
47. The family's testimony revealed several prominent themes.
48. The family were estranged from the prevailing culture of the Church of England, thus making the Diocese's legal procedures particularly challenging to navigate.
49. The family identified a lack of information clearly explaining the Churchyard Regulations, the faculty process, and ecclesiastical law in general.
50. The family felt there was delay and inadequate communication between themselves and the Faculty Office during the faculty process, causing their anxiety levels to rise.
51. The family also felt they were not given any leeway from the strict procedural timeline due to illness and COVID restrictions. They were even told that if they missed deadlines, their case would be closed. The family considered they were offered a poor service and point out that the country did not enter lockdown until late March 2020, which allowed for some slippage in the final consistory court ruling.
52. The family perceived a dissonance between the church's asserted pastoral role and the legal culture they were obliged to engage with during the faculty process.
53. The family believed that the Diocese should have extended pastoral care to the family once the former Chancellor's decision became a matter of public controversy, raising questions whether the Diocese should have intervened earlier to support the family in dealing with the overwhelming media attention and where its duty of care should extend.

54. The family experienced these deficiencies as symptoms of ‘cultural presumption’ associated with expectations of deference to the Diocese’s protocols and practices, which contributed to feelings of isolation at a time of considerable vulnerability.
55. Above all, the family was incensed by the tone and content of the Consistory Court’s judgment, which they deemed to be discriminatory and xenophobic. They were particularly offended by the court’s narrow portrayal of Coventry’s diverse community as “English-speaking”, as well as its characterisation of an untranslated Irish inscription as a form of “political slogan.”<sup>6</sup>
56. These actions were seen as a direct attack on the cultural identity of the family and the broader Irish community, exacerbating the sense of grievance towards the former Chancellor, which has still not subsided. The family were deeply disappointed by what they perceived as the failure of the Bishop and the wider church to dismiss the Chancellor from his post or to hold him accountable for his allegedly discriminatory verdict.
57. The family were outraged to learn that the Bishop of Lichfield had praised Chancellor Eyre on his retirement from the position of Chancellor of that diocese for his consistent high-quality work, which they viewed as disrespectful, unjust, and untrue.
58. While the family deeply valued the unwavering and exemplary support provided throughout by the incumbent of St Giles, they were frustrated by the Bishop’s delayed initiation of his promised review.
59. This 18-month lag only served to reinforce their perception of the church’s “cultural arrogance” and lack of pastoral sensitivity at the diocesan level.
60. The family also acknowledged the church’s efforts to defray the considerable costs of litigation, particularly those of David Porter, the ABC’s Chief-of-Staff, and the Bishop of Coventry.

### **The perspectives of the current Diocesan Chancellor and the former Diocesan Registrar**

61. Given the substantial convergence between the evidence presented by the Diocesan Registrar and the current Diocesan Chancellor, their evidence will be considered jointly for ease of exposition.

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<sup>6</sup> Re: St Giles, Exhall [2020] ECC Cov, 1, 6 May 2020.

62. The Diocesan Registrar and the current Diocesan Chancellor <sup>7</sup> stated that the *Exhall case* had established fresh law on untranslated foreign language inscriptions and represented a significant contribution to the development of churchyard jurisprudence. They pointed to the rarity of appeals to the Court of Arches highlighting the exceptional nature of this case. They think it is highly unlikely that a similar case will arise.
63. The Registrar and current Chancellor stated that the former Chancellor made his decisions applying established principles and rules of law to the facts before him, concluding that an untranslated Irish inscription was not permissible, and the criteria for an appeal had not been satisfied. They also stated that the successful appeal demonstrated the effectiveness of the court system as a means of overriding ‘wrong’ decisions. They pointed out that the Chancellor was unaware that there existed in the Exhall churchyard other headstones with untranslated foreign language inscriptions which, had he known of their existence, might have influenced his ruling.
64. They responded with caution to the proposal for a standardised set of national Churchyard Regulations. Establishing a normative set of regulations may pose challenges in accommodating local variations that reflect the unique history and character of each churchyard, as well as the distinctive traditions and customs of the local area. Furthermore, adopting new regulations would entail additional administrative burdens and expenses related to their implementation. Drafting a set of national regulations to be applied across the dioceses would require limiting its scope.
65. The Registrar and Chancellor acknowledged that chancellors were generally aware the additional responsibilities that would arise from implementing standardised guidelines and that many members of the clergy would be hesitant to assume further legal obligations and liabilities. For instance, some clergy might be required to conduct site inspections to identify any untranslated memorials, although this particular duty may be unnecessary following the *Exhall case*.
66. The Registrar and Chancellor noted that a certain amount of delay is inherent in the faculty process. The former Chancellor has pointed out that he did not as is usual receive the petition until the period of public notice had expired following the issuance of the DAC’s Notification of Advice. Nevertheless, the usual delays were exacerbated by the lockdown restrictions that reduced the efficiency of the Faculty Office. This was largely due to illness and the need for remote working.

### **The parish priest’s evidence**

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<sup>7</sup> His Honour Stephen Eyre QC (as he then was) stepped down as Chancellor of the Diocese of Coventry in November 2020 and was succeeded by Mr Glyn Samuel in January 2021.

67. The Reverend Gail Phillip, the incumbent of St Giles, Exhall, highlighted the current lack of training provided to ordinands and clergy regarding churchyard care and memorialization. This stands in stark contrast to the relatively extensive instruction given to them regarding marriage law and the associated procedures.
68. Specifically, providing guidance for navigating the complex web of relationships, including funeral directors, stonemasons, the Faculty Office, the DAC, the Diocesan Chancellor, and families, would be advantageous for both ordinands and clergy. The incumbent suggests that appropriate training and instruction would prepare those responsible for churchyards to anticipate issues and manage unrealistic expectations effectively
69. The incumbent highlighted the highly procedural nature of the diocesan Churchyard Regulations, which lack adequate explanation or justification for the required procedures. This absence of clear reasoning or rationale, in her opinion, has pastoral implications. One such concern is that clergy who adhere to what they perceive as a reasonable interpretation of the regulations may be viewed by headstone applicants as excessively bureaucratic or legalistic
70. The incumbent suggested that a user-friendly summary of the Churchyard Regulations, produced by the Faculty Office, would be beneficial. Such a resource could be particularly useful to clergy, especially in the initial stages of a pastoral encounter. It would aid in familiarising applicants with the pertinent laws, procedures, and practices pertaining to churchyard memorials.
71. The incumbent drew attention to potential discriminatory aspects of churchyard law and practice. Specifically, she noted that the current regulations impose costly restrictions on the use of certain affordable types of stone, like polished granite, which disadvantages less affluent applicants who may struggle to afford the permitted materials. She proposed that incumbents (and PCCs) should have more autonomy and discretion in evaluating such applications.
72. The incumbent noted that the current faculty process is arduous and intricate, resulting in stress and difficulty for applicants. Moreover, the high cost of the process may pose barriers to those with limited means, which is compounded by the uncertainty of a successful outcome. Based on her interaction with the family in the *Exhall* case, she reflected that the legal and faculty processes were particularly taxing for bereaved families unfamiliar with the church system. On pastoral grounds, she opined that the faculty process should only be employed in truly exceptional circumstances and as a last resort.
73. The incumbent expressed surprise that there is no established mechanism for holding a Chancellor accountable for a purportedly discriminatory decision, unlike other public servants such as members of the clergy or justices of the peace, who are, in her view (though incorrectly as a matter of law with regards to JPs), subject to disciplinary proceedings.



74. The incumbent noted the existence of a prevailing culture of deference towards the Diocesan Bishop and Chancellor within the Church of England. This culture encompasses their authority and decisions and is deeply entrenched within the institution. She observed that individuals who do not share this culture, including many who do not attend Anglican Churches, may find it irritating. She believed it was impractical and presumptuous to expect outsiders to understand the internal processes, procedures, and governance practices of the church.
75. The incumbent expressed her deep appreciation for the Diocese's support following the widespread attention garnered by the *Exhall* case. She was particularly impressed by the valuable counsel provided by the former DCO, who advised her on handling the press and formulating a press statement that publicly opposed the former Chancellor's decision. She was also encouraged by the Diocese's acknowledgment of the significance of her pastoral care for the family during a challenging period, as demonstrated by her participation in an event commemorating Margaret Keane.
76. The incumbent felt that the prolonged delay in launching the internal review was interpreted by the family as indicative of a lack of consideration for their predicament by the Bishop and the Diocese.

**The combined evidence of the Bishop, the Bishop's PA and the Former Diocesan Communications Officer (DCO)**

77. Given the substantial convergence between the evidence presented by the Diocesan Bishop, the Bishop's PA and the former DCO, their evidence will be considered jointly for ease of exposition.
78. In early June 2020, the Bishop became aware of the dispute arising from the Chancellor's ruling in the *Exhall* case following a tweet from the ABC's Chief-of-Staff.
79. Upon reviewing the ruling, the Bishop promptly discerned that it carried the potential to jeopardise both the reputation of the Diocese and the national church. Additionally, the Bishop expressed apprehension about the ruling's impact on the emotional well-being of a family who were currently in a state of bereavement.
80. After seeking advice from the Chancellor of another diocese, the Bishop decided to approach the former Chancellor of Coventry to discuss their concerns regarding the language used in the decision to refuse a faculty for an Irish inscription without an English translation. It is important to note that the Bishop was not questioning the decision itself but rather the way it was communicated and the negative impact it had generated. However, the former Chancellor appeared to have taken the position that once a decision had been made, he had no further role to play, regardless of any negative reactions that may arise.

81. The DCO had hoped to come to an agreement on a joint statement regarding the ruling, but after some email correspondence and a brief phone call, the Chancellor made it clear that he was unable to comment on his decision. Instead, he advised the diocesan bodies to make a statement indicating that the decision was an independent judicial one and make no further comment.
82. During his phone conversation with the former Chancellor, the Bishop expressed his belief that the public controversy surrounding the Consistory Court ruling could be alleviated if the Chancellor were to release a statement clarifying his language and that no offense was intended by the wording of the judgment. However, the Chancellor explained that due to the convention prohibiting judges from commenting on their decisions once made, he was unable to comply with the request.
83. The Bishop acknowledged that his ability to intervene in the matter was limited as the Chancellor was not under his executive or disciplinary authority. In light of this, the Bishop believed that any attempt to intervene would be legally improper, as he had no official role in the legal process. The Bishop recognized that the law did not grant him any power to influence the decision or to take any action in this matter.
84. In anticipation of potential negative publicity, both the Bishop and the former DCO felt it necessary to release a public statement addressing the matter, which was published on the diocesan website. The former DCO recognized that the Bishop's lack of control over the faculty system made him susceptible to the reputational consequences that may result from the Chancellor's initial ruling and the refusal to grant permission to appeal. As a result, they deemed it essential to take proactive measures to mitigate any adverse effects on the reputation of the Diocese.<sup>8</sup>
85. The Bishop emphasized that he took steps to provide pastoral support to the grieving family by appointing the incumbent of St Giles and the Archdeacon Pastor to serve as pastoral figures and provide care to the family. The Bishop also requested that the incumbent convey his condolences to the family and arranged to meet with them over Zoom. Additionally, the Bishop participated in prayers with the family at their mother's graveside, demonstrating his commitment to supporting them in their time of need.
86. The Bishop recognized that there had been a significant delay in establishing the internal review, which was further compounded by a convergence of factors such as a period of Sabbatical leave, illness, and the unexpected absence of the Archdeacon Pastor. The Archdeacon Pastor had been initially responsible for producing the terms of reference for the review and, with the incumbent of St Giles, providing ongoing pastoral support to the family. The Bishop acknowledged that the delays were regrettable and apologised for any distress caused to the family as a result.
87. The Bishop expressed his admiration for the family for their determination to pursue an appeal to the Court of Arches, which ultimately led to a significant legal change for churchyards. The Bishop acknowledged the family's perseverance and courage in

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<sup>8</sup> Cf. paragraph 13.

challenging the previous decision, which resulted in a positive outcome not only for themselves but for others in similar circumstances.

88. The Bishop recognized that a diocesan bishop alone cannot solve all of the Church of England's problems. However, he emphasized the significance of enhancing local practices and procedures, improving communication, and disseminating reliable information based on grassroots insights. The Bishop acknowledged that implementing these changes may take time, but he remained committed to working towards achieving positive and lasting improvements in the Diocese.
89. The Bishop acknowledged feeling a sense of isolation from the operations of the national church, particularly regarding its policy of presenting controversial issues as local ones, even when valuable assistance might be available to the Bishop privately. The Bishop recognized that this approach could limit the support available to dioceses facing difficult and complex issues. He expressed a desire for greater transparency and collaboration between local and national levels of the Church of England to enable effective resolution of such matters.
90. The Former DCO expressed concerns that the Bishop's position may have been compromised due to a potential conflict of interest arising from the Registrar's dual roles as both the Chancellor's aide and the Bishop's legal advisor. To address this issue, one possible approach suggested was for the Bishop to seek legal counsel from an independent Chancellor or seek guidance from the national church, in order to ensure the independence and impartiality of the decision-making process. This would help to mitigate any perception of bias and ensure that the Bishop's actions were transparent and accountable.

### **The evidence of the Archbishop of Canterbury's Chief-of-Staff**

91. In early June 2020, a tweet by historian Francis Young caught the attention of the Archbishop of Canterbury's Chief-of-Staff, drawing his attention to the contentious decision made by the Chancellor in his ruling of May 6th, 2020. At the same time, the Irish Ambassador to the UK contacted Lambeth Palace, seeking clarification on the situation in Coventry. The Chief-of-Staff was able to persuade the Irish Ambassador to discourage some Irish MP's who were disposed to do so from making a public statement in the Irish Parliament by drawing his attention to the Chancellor's judicial independence and providing a detailed explanation of the complexities surrounding the national church's faculty jurisdiction. This helped to avoid negative repercussions for the Church of England in both Ireland and the UK.
92. Recognizing the unfairness of imposing the financial burden of the legal expenses on the family, the Chief-of-Staff assumed a critical leadership role in spearheading the fundraising campaign to secure the necessary funds. Eventually, funding was obtained from national and diocesan sources, with the Provincial Legal Advisor being enlisted to investigate ways to reduce costs, much to the appreciation and relief of the family. It is worth noting that, in the current ecclesiastical law context, successful parties are usually required to bear the costs of appeals proceedings, which

would typically be borne by the losing party in private litigation, potentially resulting in systemic injustice.

93. Upon reviewing the Chancellor's ruling, the Chief-of-Staff, who hails from Northern Ireland, was troubled by what he perceived as an underlying anti-Irish bias. He felt that the ruling suggested that all Irish people were terrorists, which he found to be both inaccurate and offensive. The Chief-of-Staff also noted that the judgment seemed to reflect a broader systemic injustice in the British legal system, as demonstrated by past controversial criminal cases such as the Guildford Four and the Birmingham Six.
94. The Chief-of-Staff noticed signs of "cultural arrogance" in both the legal and ecclesiastical spheres, which he believed were typical of privileged, middle-class, and white circles. This attitude of cultural superiority was evident not only in relation to other cultures but also towards different social classes, particularly in the context of how grief is commemorated in churchyards. To promote greater inclusivity and cultural diversity, the Chief-of-Staff suggested taking a more comprehensive approach to decisions regarding headstones. He proposed the creation of a "panel" system that would resolve any disputes between PCCs and applicants by referring them to a diverse panel made up of an archdeacon, a diocesan officer, and a lay person. This approach would ensure that various cultural perspectives are taken into account and respected.
95. The Chief-of-Staff suggested that chancellors and legal officers should undergo training in cultural diversity to broaden their perspectives beyond the "cultural bubble" in which they tend to live. This would help them make more informed decisions and prevent any cultural insensitivity or bias in their rulings. He also noted that delays in the legal process, particularly in uncomplicated matters, can damage the Church's reputation and should be addressed.
96. The Chief-of-Staff saw the issues of cultural diversity as having wider significance for the Church of England's capacity to engage with cultural concerns and raise important missiological questions. He argued that a new grammatical approach to culture was needed, and that there was a "lost grammar" for communicating with cultural diversity within the context of churchyards. The key challenge is how to engage with the culture of remembrance in the modern era. The broader issues include matters of class, culture, and appropriateness in the act of memorialization.

## **VI. ANALYSIS OF DIVERSE VIEWPOINTS**

97. The previous section presented various perspectives and viewpoints obtained through face-to-face interviews conducted by the internal reviewer, which were recorded in contemporaneous notes and written up shortly after. These perspectives were shared by individuals who possessed a position of authority, based on personal experience, professional expertise, or formal authority such as episcopal authority. However, this section will undertake a critical evaluation of these perspectives, highlighting that possessing authority does not necessarily equate to accuracy or objectivity.

### **Responses to the Chancellor's judgment**

98. The family's frustration with the Chancellor's use of politically and culturally insensitive language to justify the decision not to allow an untranslated Irish inscription on their mother's headstone was valid. This sentiment was shared not only by the incumbent of St Giles and the former DCO but also by the ABC's Chief-of-Staff and numerous others in the Irish and general community.
99. The family was also frustrated by the diocesan legal officers and the Bishop who believed that it would be legally inappropriate to publicly comment on the Chancellor's decision due to the principle of the independence of the Consistory Court.
100. However, the Bishop and diocesan legal officers were correct in their view that it would not have been appropriate for them to intervene in a decision made by the Consistory Court. Any issues with the decision were to be addressed by the Court of Arches, which serves as the appropriate appellate jurisdiction.

### **The accountability of the Chancellor**

101. Despite the family's wishes, there was no realistic prospect of holding the former Chancellor accountable for his ruling extra-judicially. A long standing constitutional convention precludes judges from discussing their decisions, however publicly controversial or however much his ruling is a matter for public debate. Having made his decision, it was not open to the former Chancellor to revisit his judgment and any attempt to compel him to comment on it could be seen as an attack on judicial independence and the rule of law.
102. The family's victory in the Court of Arches was not just a personal triumph, but a significant achievement for ecclesiastical jurisprudence. It ensured that in the future, other grieving families would not have to justify including foreign language inscriptions on headstones. The family can take pride in this accomplishment on their own behalf and on behalf of the Irish community in Coventry and beyond. This case is a notable example of how a difficult case can lead to the establishment of good law, contradicting the legal adage that "hard cases make bad law".

103. The family's request for an intermediary level of accountability was not exclusive to them; the incumbent also shared this desire, indicating a broader need for such measures. However, the Bishop and the Diocese's legal officers were aware of the importance of the principle of political order that upholds judicial independence, and they expressed this clearly. Therefore, despite sympathising with the family's concerns, the Bishop believed that the principles of judicial independence as a legal matter prevented him from intervening or commenting on the merits of the former Chancellor's judgment.

### **The costs of litigation**

104. The family makes a persuasive case for a review of the current system for covering court costs in appeals to the Court of Arches.
105. The family was greatly concerned about the costs of appealing the case, which acted as a significant deterrent to seeking justice. The principle of access to justice is an essential aspect of the legal system, and it is crucial that individuals are not dissuaded from pursuing appeals solely due to the potential financial burden. Generally, the party that loses a case bears the costs of the appeal, which is intended to encourage parties to resolve disputes outside of court and to discourage groundless or unmerited appeals.
106. The matter of covering court costs for appeals to the Court of Arches is a complex issue that is contingent on the specific circumstances of each case and subject to the court's discretion. However, given the limited financial means of the grieving family and the novel and complex point of law raised in their appeal, it would have been appropriate for the Court of Arches to consider waiving or reducing the costs in advance, despite the costs of litigation being met by other sources.
107. The ABC's Chief-of-Staff proposed a form of ecclesiastical 'legal aid' whereby the legal costs of litigants petitioning the Court of Arches would be waived or reduced once they have successfully obtained leave to appeal from either the Diocesan Chancellor sitting as a Consistory Court, or the Dean of Arches.<sup>9</sup>

### **The adequacy of faculty process**

108. The family's input about the faculty process was valuable and should be taken into consideration by both parishes and the diocese. They brought attention to the need for clear and accessible diocesan guidance on the process, which is currently lacking, as well as a more proactive and pastoral approach by parish clergy who are responsible for churchyards. The incumbent of St Giles supported this viewpoint, indicating that it is essential to alleviate any sense of confusion that grieving families may encounter due to unfamiliar institutional practices and processes. By implementing improvements in these areas, initial delays caused by the unfamiliarity of the applicable legal system could be minimized.

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<sup>9</sup> This would, of course, be a policy matter for the national church and ecclesiastical courts.

109. The family experienced notable delays in the processing of their petition, which understandably caused frustration. However, it is important to take into account that these delays may have been due to the mandatory period of public notice and the challenges posed by the COVID crisis in early 2020, such as reduced efficiency caused by illness and the switch to remote working. The Diocesan Registrar's view that in normal circumstances, the petition would have been handled promptly and efficiently carries some merit.
110. The family raised important concerns regarding the status and implementation of Churchyard Regulations in the Coventry Diocese and the Church of England as a whole. They expressed their desire to reduce the potential for subjective interpretations of the regulations that may lead to judgments like the one in the *Exhall* case. The family proposed two possible solutions: first, revisiting the nomenclature still present in paragraph 40 of the Coventry diocesan Churchyard Regulations, which contains words such as 'quirky' and 'eccentric'; and second, seeking greater consistency in the interpretation and practice of churchyard care across the dioceses.

### **Nomenclature of paragraph 40**

111. It is worth noting that while it is important to review the language of the regulations and consider any potentially insensitive associations, the use of words like 'quirky' and 'eccentric' in paragraph 40 of the Coventry diocesan Churchyard Regulations may actually be intentional, affirming personal and cultural distinctiveness and identity. However, it is also important to acknowledge that the regulations should not be inflexible and should be subject to amendment by the Diocesan Chancellor in line with evolving legal requirements, developing good practices, and wider consultation.<sup>10</sup>

### **Standardisation of Churchyard Regulations**

112. While standardization could bring greater clarity and reduce confusion over the interpretation and implementation of Churchyard Regulations, it may not be able to

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<sup>10</sup> Although, the then Chancellor does not cite paragraph 40 explicitly, it could be argued that the Chancellor's refusal to entertain an untranslated Irish inscription on Margaret Keane's headstone was inconsistent with the spirit of paragraph 40, which was not a point raised before the Court of Arches. The relevant portion of the provision reads:

“However, the inscription need not be confined to the name and the dates of birth and death of the person who has died. There does not have to be a characterless uniformity in the inscriptions in a churchyard. Human individuality and diversity – indeed human eccentricity and non-conformity – are gifts from God and are to be celebrated as such. Accordingly, individuality and diversity in churchyard inscriptions reflecting the diversity and different characters of those commemorated are to be encouraged. Very many churchyards are enhanced, and their purpose reaffirmed by inscriptions which are varied (and often quirky or eccentric) and which convey something of the character or life of the departed person. The message that we are individuals and are loved by God as individuals with our God-given differences and eccentricities is an important part of the Christian message proclaimed in our church buildings and to which our churchyards should bear witness.”

accommodate the unique needs and circumstances of individual churchyards. This could result in overly restrictive regulations that are difficult to implement.<sup>11</sup> However, the incumbent of St Giles emphasized the importance of fully articulating the rules and principles of law and good practice in Churchyard Regulations. This would help to ensure that everyone is aware of the reasons behind the regulations and the rationale for their existence. Ultimately, this would promote greater understanding and acceptance of the regulations amongst local communities.<sup>12</sup>

### **The incorporation of diverse values in headstone decisions**

113. The family's suggestion for greater and ongoing dialogue between the church and local community stakeholders is reasonable and beneficial for ensuring that churchyards remain relevant and meaningful spaces for both the church and the wider community. Despite attempts made by Churchyard Regulations to balance the religious and cultural values of the church with the needs and concerns of the wider community, regular communication and consultation with local stakeholders is important to ensure that their voices are heard and their needs are considered. The Diocesan Registrar reported that a previous consultation exercise by the former Chancellor received a lacklustre response, and this reviewer, who participated in one such consultation, noted the limited presence of lay representatives and members of the local community. Therefore, a more concerted effort to engage with and involve the wider community in such consultation exercises may be necessary to achieve meaningful dialogue and consensus.

### **The role of the faculty process and Chancellor in churchyard matters**

114. The idea of proposing an alternative or intermediary decision-making mechanism outside the faculty process for decisions relating to headstones to embrace wider diversity sociologically and culturally is an important one. Such a mechanism could potentially help to ensure that the diverse social and cultural backgrounds of individuals are considered when making decisions about headstones in a cemetery or graveyard. One possible approach would be to establish a panel of individuals with diverse cultural and social backgrounds, or a community-based decision-making process where members of the community are invited to provide input on headstone decisions. The Chief-of-Staff proposed a panel consisting of clergy and lay representatives. Overall, the value of any intermediate decision-making procedure should be to ensure that the needs of diverse individuals are considered outside potentially alienating legal structures.

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<sup>11</sup> It should be noted that in the *Exhall* case, the Chancellor was not bound by precedent in the exercise of his discretion refusing an untranslated Irish inscription, a course which is no longer open the chancellors following the Court of Arches' ruling.

<sup>12</sup> Informal research by a family member has revealed great variety in form and content of Churchyard Regulations across the Diocese.



115. Removing churchyard matters from the faculty jurisdiction could create challenges for clergy in making consistent decisions in response to pressing pastoral needs, and managing expectations. Currently, clergy can defer negative decisions to the jurisdiction of the Chancellor, allowing them to depersonalise their role. Without this legal framework, clergy may face increased pressure and scrutiny to make decisions that are perceived as fair and consistent. Given the complex and emotional nature of churchyard matters, this could be difficult. Additionally, navigating conflicts and disputes within their communities may be more challenging without the legal framework and support to make decisions that are both fair and appropriate in a Church setting.

### **The adequacy of the pastoral response from the parish and the Diocese**

116. The family have consistently conveyed their gratitude for the exceptional level and quality of pastoral support provided by the incumbent of St Giles throughout both the faculty and appeal proceedings.
117. Nevertheless, the family became disheartened as they felt that the Bishop and the Diocese were sluggish in offering pastoral support once the case gained public attention.
118. The family felt notably let down by the Bishop's seeming reluctance to explicitly distance himself from the former Chancellor's views expressed in the Consistory Court judgment, once he became aware of them. The prolongation in commencing the internal review further intensified their feelings of seclusion.
119. The Bishop expressed that he had to navigate a delicate balance between competing interests. This included balancing the principle of independent decision-making by the Consistory Court, his obligation of care towards the family, and his responsibility for the potential impact on the reputation of the Church.
120. The Bishop and the former DCO expressed regret over the former Chancellor's firm refusal to issue a public statement or provide additional clarification. While acknowledging the Chancellor's stance to stand by his decision, the Bishop was taken aback by the Chancellor's unwillingness to elaborate on his decision in light of the circumstances that had emerged.
121. Nonetheless, the Bishop endeavoured to publicly express his personal pastoral support for the family and Irish community. To deliver such care, the Bishop maintained regular contact with the incumbent and Archdeacon Pastor to ensure that the necessary pastoral support was being provided.
122. The Bishop's objective in releasing the diocesan statement was to convey pastoral sympathy and concern for the family while respecting the judicial independence of the Chancellor and the Consistory Court. To navigate this delicate balance, the Bishop sought guidance from the legal office of the Church of England.

123. In January 2022, the Bishop reached out to the Dean of Arches, who serves as the Chief Legal Officer, and Provincial Registrar, and subsequently had a meeting with them in February. As a result of this meeting, a process was established, which was explained to the family. They were then partially informed about the process in a letter dated December 13th, 2022.
124. Following the Court of Arches' verbal judgment, the Bishop proposed to initiate an internal investigation to assess the adequacy of the Diocese's practices and procedures by examining the family's case.
125. The Bishop is willing to take suitable measures, which may include offering apologies to the family and implementing corrective actions aimed at preventing similar incidents from happening in the future.
126. The Bishop fully accepts responsibility for the unwarranted delay in commencing the internal review aimed at addressing the implications of the family's case. The Bishop acknowledges that there were mitigating factors that contributed to the delay, including the Archdeacon Pastor's enforced absence, the timing of his Sabbatical, and his COVID illness. However, the Bishop emphasizes that these factors were not used as excuses but were cited as contributing factors to the delay.

## **VII. FINDINGS AND RECOMMENDATIONS**

127. After a thorough examination of the relevant documentation and interviews, the following findings (with explanation) and recommendations have been made:

### **Finding 1**

My recommendation is that the Diocese evaluates how its administrative practices and processes in the Church of England are perceived by outsiders. This evaluation can be a useful initial step in pinpointing areas that require improvement.

### **Recommendation 1**

My recommendation is that the Diocese evaluates how its administrative practices and processes in the Church of England are perceived by outsiders. This evaluation can be a useful initial step in pinpointing areas that should be addressed.

### **Recommendation 2**

My recommendation is that the Diocese give priority to enhancing engagement and communication with people who seek support from the church during vulnerable moments in their lives, particularly those who are not regular church attendees. One way to achieve this is by offering training and guidance to church staff on developing effective and empathetic communication skills.

### **Recommendation 3**

My recommendation is that the Diocese looks into ways of simplifying and streamlining the faculty process, while still balancing pastoral care against legal considerations. The Diocese should consider the needs of those seeking support during difficult times and ensure that pastoral care is a weighty factor in the decision-making process.

### **Recommendation 4**

My recommendation is that the Diocese reviews and simplifies the language and procedures linked to ecclesiastical roles, offices, and titles to make them more accessible and understandable to the general public. This could entail simplifying the language used in official documents and providing clear explanations of the roles and responsibilities of church officials to assist the public in better comprehending their functions.

### **Finding 2**

My finding is that there has been insufficient communication between the parish church, the Diocese, and the families throughout the faculty and appeals process for obtaining a headstone.

### **Recommendation 5**

My recommendation is that the Diocese should evaluate how individuals and families seeking memorialisations in parish churchyards can be informed and reassured about the legal processes that govern them in a timely and appropriate manner. This could be achieved by providing them with clear and concise guidelines and resources in plain language, such as brochures or online materials, to assist them in understanding the requirements and procedures for obtaining a headstone. This information should include a warning that their application or petition might not be successful.

### **Recommendation 6**

My recommendation is that the Diocese should establish regular communication with families who are seeking headstones by providing timely updates on the status of their petition and explaining any delays or requirements or objections from any quarter in a clear and supportive manner. Families should be given a clear point of contact who can address their questions and concerns throughout the process.

### **Recommendation 7**

My recommendation is that the Diocese should evaluate how the appeals process for families seeking permission to erect headstones can be improved to provide a better experience. This may involve offering additional support to families during the appeals process or exploring alternative dispute resolution mechanisms.

### **Recommendation 8**

My recommendation is that the Diocese should assess its website to ensure that it offers clear and accessible information regarding the faculty and appeals process for obtaining headstones. The website should also provide guidance on how families can obtain further support and advice if needed.

### **Finding 3**

My finding is that there are indications that the differences in Churchyard Regulations across Dioceses have resulted in inconsistent practices, causing controversies that can potentially erode public trust in the faculty process.

### **Recommendation 9**

My recommendation is that the Diocese should collaborate with national church and ecclesiastical law authorities to standardise Churchyard Regulations across Dioceses, promoting consistency in the faculty process. This may involve reviewing current regulations to address any inconsistencies or discriminatory practices and creating guidelines for new regulations.

### **Recommendation 10**

My recommendation is that the Coventry Diocese should enhance the transparency of its Churchyard Regulations by providing clear and concise explanations for any

prohibitions on inscriptions, materials, or designs. This will foster public confidence in the faculty process and ensure that decisions are based on objective criteria.

#### **Recommendation 11**

My recommendation is that the Diocese should urge national church and ecclesiastical law authorities to consider standardised support and guidance to Dioceses and families regarding Churchyard Regulations and the faculty process. This may involve creating user-friendly resources such as handbooks or online materials.

#### **Finding 4**

My finding is that there are concerns that the language and tone of the Diocesan Churchyard Regulations may be culturally biased and that certain language in the Churchyard Regulations, such as "quirky" and "eccentric," may be interpreted in a culturally biased manner. For example, these terms could apply to a headstone inscribed in a non-English language which is misinterpreted because of a negative social or political association.

#### **Recommendation 12**

My recommendation is that the Diocesan Churchyard Regulations should be reviewed to remove subjective language that could be open to interpretation, such as "quirky" and "eccentric." Instead, the regulations should establish clear, objective criteria for what is and what is not acceptable in headstone inscriptions.

#### **Recommendation 13**

My recommendation is that the Churchyard Regulations should be examined to ensure that they are culturally sensitive and do not unintentionally discriminate against any specific group.

#### **Recommendation 14**

My recommendation is that the Churchyard Regulations should be made clear and transparent to families who wish to petition for headstone inscriptions. This will ensure that families understand the criteria for acceptance and the process for obtaining approval.

#### **Finding 5**

My finding is that there needs to be a more inclusive and systematic process of formulating Churchyard Regulations by considering a wider range of perspectives, including those from diverse cultural and social backgrounds. This will ensure that the regulations are culturally sensitive and do not inadvertently discriminate against any particular group.

### **Recommendation 15**

My recommendation is that the Diocese implement a more systematic and inclusive approach to developing Churchyard Regulations that includes input from a wider range of perspectives, including those from diverse cultural and social backgrounds. The Diocese should ensure adequate representation from various groups and stakeholders during these discussions.

### **Finding 6**

My finding is that that the cost associated with applying for permission and appealing decisions can be a significant burden for families who are already grieving the loss of a loved one. This financial strain may create a perception of unfairness from both the church and the legal system, ultimately leading to damage in the reputation of the church.

### **Recommendation 16**

My recommendation is that the Diocese, national church, and Court of Arches review the principles governing costs in appeals proceedings, particularly where the petitioner has been granted leave to appeal. The current system, in which the petitioner bears the cost burden even if they succeed, should be reconsidered to avoid a sense of unfairness.

### **Finding 7**

I find that there is a need for an improvement in the training of clergy members with regards to churchyards and burial grounds.

### **Recommendation 17**

My recommendation is that the church establish a comprehensive and systematic training programme to better equip clergy members to provide pastoral support to bereaved families and intervene in the faculty process more effectively. This training should cover topics such as the care and maintenance of churchyards, the interpretation of regulations, and the development of relationships with funeral directors, stonemasons, and the Diocesan Advisory Committee.

### **Finding 8**

My finding is that the parish incumbent, the Revd Gail Phillip, played an invaluable role in providing pastoral support to the family throughout the bureaucratic and legal process.

### **Recommendation 18**

My recommendation is that the Diocese takes measures to ensure that parish clergy are adequately trained to offer pastoral support to families throughout the faculty process. This could involve providing relevant training to equip clergy members with the skills and knowledge needed to provide effective support to families.

### **Recommendation 19**

My recommendation is that the Diocese clarify the roles and responsibilities of parish clergy, diocesan officers, and the Bishop when handling disputes that may arise during the faculty process. This will help to avoid confusion and ensure that everyone is aware of their specific roles and duties.

### **Finding 9**

My finding is that the roles and responsibilities of the Chancellor and the Consistory Court in the faculty process need to be made more transparent to the public.

### **Recommendation 20**

My recommendation is that the Diocese and national church take steps to clarify and explain the work of the Consistory Court and the specific role of judges in the faculty process. This could include providing clear and accessible information on the church website, developing educational resources for clergy and other stakeholders, and conducting public outreach to promote greater awareness and understanding of the court's function and responsibilities.

### **Finding 10**

My finding that there may be a conflict of interest for the Bishop when fulfilling his duty of care to the family, his duty of loyalty to the Chancellor, and his duty of care to the Diocese, which requires careful management.

### **Recommendation 21**

My recommendation is that the Diocese establishes protocols that provide clear guidance to the Bishop and other diocesan officers in situations where there may be competing obligations or interests, to ensure that the Bishop's role in memorialization disputes is not hindered. These protocols should be developed to help balance the competing interests and obligations that may arise in these situations.

### **Finding 11**

My finding is that the Bishop's position may have been compromised due to a potential conflict of interest arising from the Registrar's dual roles as both the Chancellor's aide and the Bishop's legal advisor, as reported by the Former DCO.

### **Recommendation 22**

My recommendation is that the decision-making process be made more impartial. One possible approach could be for the Bishop to seek legal counsel from an independent Chancellor or to seek guidance from the national church. This will help to ensure that the decision is made without any undue influence or conflict of interest.

## VIII SUMMARY

128. This report has provided a detailed and comprehensive timeline of significant events, exchanges and interventions. The family, along with the diocesan team members, including legal officers and the Bishop, have shared their insights and perspectives on diocesan processes and practices, which emerged during the family's endeavour to procure a fitting headstone for their mother.
129. The report highlights those aspects from which there needs to be learning, with recommendations on how best to put that learning into practice as well as identifying areas that were experienced as positive in the process. The report has identified key areas for learning and provided recommendations for practical implementation, while also highlighting positive aspects of the process.
130. Specifically, the report suggests that the legal costs imposed on petitioners pursuing appeals to the Court of Arches should be re-evaluated in cases where there is a viable prospect of success as leave to appeal has been granted.
131. The report also emphasises the importance of providing adequate training for ordinands and clergy regarding churchyard law and practice, as well as the need for clergy to engage with families early on in the process to ensure understanding of, and compliance with, churchyard requirements and the faculty process.
132. Furthermore, the report advocates for a comprehensive review of Churchyard Regulations, including their language, details and consistency, to achieve a balanced approach between ensuring uniformity in their interpretation across different dioceses and accommodating the unique needs and conditions of local communities.
133. Serious consideration should be given to the notion of transferring decisions concerning churchyard memorials away from the current faculty process, either partially or entirely. Instead, these decisions could be entrusted to a more diverse and inclusive panel consisting of local individuals, subject to the overall objective of providing an appropriate Christian space consistent with the Church of England's ethos and values.
134. The report recognises the tremendous stress, anguish and hardship endured by the family as they navigated a protracted, bewildering and costly legal process in their quest to obtain an appropriate headstone for their mother.
135. The report has considered the exceptional circumstances precipitated by the COVID lockdown, which serve to explain some of the significant delays the family encountered in the faculty process.



136. The report also acknowledges the legal limitations that hindered the Bishop from providing more resolute pastoral support to the family and the broader Irish community in response to the Diocesan Chancellor's consistory court ruling, which was an abiding source of frustration and distress for the family. The Bishop could not interfere in a decision of a Diocesan Chancellor ruling in the Consistory Court, nor, were he to disagree with that decision, could he otherwise sanction the Chancellor.
137. The incumbent of St Giles, supported by the Archdeacon Pastor, provided unwavering pastoral support to the family during their ordeal, partly alleviating the pastoral shortcomings that had arisen.
138. The Bishop takes full responsibility for the delay in launching the internal review, which was exacerbated by an unfortunate combination of factors, and for the anguish, frustration, and distress it has caused the family, who have already suffered deeply in losing both their parents.
139. It is hoped and prayed that the completion of this internal review, and the acknowledgment of the significant contributions made by the family to the development of churchyard law, will provide some measure of redress for the ordeals they have endured, above the death of two much-loved parents.

## IX BROADER IMPLICATIONS AND AREAS FOR FUTURE REVIEW

140. This report has identified areas within the Diocese's practices and procedures relating to churchyard law that require improvement, and it outlines how these areas can be addressed. While most of these areas fall under the Diocese's responsibility, there are some, such as the expenses associated with appealing to the Court of Arches and the standardisation of Churchyard Regulations, that do not. In such cases, the findings of this report may serve as a foundation for a more organized review of these issues by the national church and ecclesiastical law authorities in response to the concerns raised by this case.
141. Law expresses the ethical principles that it upholds. Francis Bennion, a legal scholar, famously stated that law is the "hard edge" of ethics, emphasizing the close relationship between the two.<sup>13</sup> In the context of churchyard law, these principles align with the Church of England's mission to provide pastoral care. If a legal process is a source of suffering, the manner of its application should be reconsidered by not only the Diocese but also the national church and its lawyers.
142. Important questions are also raised in the report about how the culture of the Church of England is perceived by those who engage in its processes, particularly non-attenders and 'outsiders'. What is 'appropriate' in acts of memorialisation engages complex issues of diversity and culture. The Court of Arches opens its judgment in the *Exhall* case with the emphatic declaration that "[T]he church of Jesus Christ is arguably the most international, multi-ethnic, multi-cultural, multi-lingual body on the planet."<sup>14</sup> Striking the proper balance between the needs of individuals and the community, and the ethos, principles, and values of the Church of England may call for a certain 'cultural humility' as it adapts to the evolving 'cultural grammar' of the pluralistic world the appeal court describes.

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<sup>13</sup> Bennion on Statutory Interpretation (multiple editions).

<sup>14</sup> *Re: St Giles, Exhall* [2021] EACC 1 at para.1.1.

## **X LIST OF RECOMMENDATIONS [as *per* main text]**

### **Recommendation 1**

My recommendation is that the Diocese evaluates how its administrative practices and processes in the Church of England are perceived by outsiders. This evaluation can be a useful initial step in pinpointing areas that require improvement.

### **Recommendation 2**

My recommendation is that the Diocese give priority to enhancing engagement and communication with people who seek support from the church during vulnerable moments in their lives, particularly those who are not regular church attendees. One way to achieve this is by offering training and guidance to church staff on developing effective and empathetic communication skills.

### **Recommendation 3**

My recommendation is that the Diocese looks into ways of simplifying and streamlining the faculty process, while still balancing pastoral care against legal considerations. The Diocese should consider the needs of those seeking support during difficult times and ensure that pastoral care is a weighty factor in the decision-making process.

### **Recommendation 4**

My recommendation is that the Diocese reviews and simplifies the language and procedures linked to ecclesiastical roles, offices, and titles to make them more accessible and understandable to the general public. This could entail simplifying the language used in official documents and providing clear explanations of the roles and responsibilities of church officials to assist the public in better comprehending their functions.

### **Recommendation 5**

My recommendation is that the Diocese should evaluate how families seeking memorialisations in parish churchyards can be informed and reassured about the legal processes that govern them in a timely and appropriate manner. This could be achieved by providing families with clear and concise guidelines and resources in plain language, such as brochures or online materials, to assist them in understanding the requirements and procedures for obtaining a headstone.

### **Recommendation 6**

My recommendation is that the Diocese should establish regular communication with families who are seeking headstones by providing timely updates on the status of their petition and explaining any delays or requirements in a clear and supportive manner.

Families should be given a clear point of contact who can address their questions and concerns throughout the process.

#### **Recommendation 7**

My recommendation is that the Diocese should evaluate how the appeals process for families seeking permission to erect headstones can be improved to provide a better experience. This may involve offering additional support to families during the appeals process or exploring alternative dispute resolution mechanisms.

#### **Recommendation 8**

My recommendation is that the Diocese should assess its website to ensure that it offers clear and accessible information regarding the faculty and appeals process for obtaining headstones. The website should also provide guidance on how families can obtain further support and advice if needed.

#### **Recommendation 9**

My recommendation is that the Diocese should collaborate with national church and ecclesiastical law authorities to standardise Churchyard Regulations across Dioceses, promoting consistency in the faculty process. This may involve reviewing current regulations to address any inconsistencies or discriminatory practices and creating guidelines for new regulations.

#### **Recommendation 10**

My recommendation is that the Coventry Diocese should enhance the transparency of its Churchyard Regulations by providing clear and concise explanations for any prohibitions on inscriptions, materials, or designs. This will foster public confidence in the faculty process and ensure that decisions are based on objective criteria.

#### **Recommendation 11**

My recommendation is that the Diocese should urge national church and ecclesiastical law authorities to consider standardised support and guidance to Dioceses and families regarding Churchyard Regulations and the faculty process. This may involve creating user-friendly resources such as handbooks or online materials.

#### **Recommendation 12**

My recommendation is that the Diocesan Churchyard Regulations should be reviewed to remove subjective language that could be open to interpretation, such as "quirky" and "eccentric." Instead, the regulations should establish clear, objective criteria for what is and what is not acceptable in headstone inscriptions.

### **Recommendation 13**

My recommendation is that the Churchyard Regulations should be examined to ensure that they are culturally sensitive and do not unintentionally discriminate against any specific group.

### **Recommendation 14**

My recommendation is that the Churchyard Regulations should be made clear and transparent to families who wish to petition for headstone inscriptions. This will ensure that families understand the criteria for acceptance and the process for obtaining approval.

### **Recommendation 15**

My recommendation is that the Diocese implement a more systematic and inclusive approach to developing Churchyard Regulations that includes input from a wider range of perspectives, including those from diverse cultural and social backgrounds. The Diocese should ensure adequate representation from various groups and stakeholders during these discussions.

### **Recommendation 16**

My recommendation is that the Diocese, national church, and Court of Arches review the principles governing costs in appeals proceedings, particularly where the petitioner has been granted leave to appeal. The current system, in which the petitioner bears the cost burden even if they succeed, should be reconsidered to avoid a sense of unfairness.

### **Recommendation 17**

My recommendation is that the church establish a comprehensive and systematic training programme to better equip clergy members to provide pastoral support to bereaved families and intervene in the faculty process more effectively. This training should cover topics such as the care and maintenance of churchyards, the interpretation of regulations, and the development of relationships with funeral directors, stonemasons, and the Diocesan Advisory Committee.

### **Recommendation 18**

My recommendation is that the Diocese takes measures to ensure that parish clergy members are adequately trained to offer pastoral support to families throughout the faculty process. This could involve providing relevant training to equip clergy members with the skills and knowledge needed to provide effective support to families.

### **Recommendation 19**

My recommendation is that the Diocese clarify the roles and responsibilities of parish clergy, diocesan officers, and the Bishop when handling disputes that may arise

during the faculty process. This will help to avoid confusion and ensure that everyone is aware of their specific roles and duties.

#### **Recommendation 20**

My recommendation is that the Diocese and national church take steps to clarify and explain the work of the Consistory Court and the specific role of judges in the faculty process. This could include providing clear and accessible information on the church website, developing educational resources for clergy and other stakeholders, and conducting public outreach to promote greater awareness and understanding of the court's function and responsibilities.

#### **Recommendation 21**

My recommendation is that the Diocese establishes protocols that provide clear guidance to the Bishop and other diocesan officers in situations where there may be competing obligations or interests, to ensure that the Bishop's role in memorialization disputes is not hindered. These protocols should be developed to help balance the competing interests and obligations that may arise in these situations.

#### **Recommendation 22**

My recommendation is that the decision-making process be made more impartial. One possible approach could be to seek legal counsel from an independent Chancellor or to seek guidance from the national church. This will help to ensure that the decision is made without any undue influence or conflict of interest.

**THE REVD CANON DR MARK BRATTON**

**ST PATRICK'S DAY 2023** (circulated in draft)

Amended in the light of stakeholder responses on

## APPENDIX 1

### **An internal review by the Diocese of Coventry conducted by the Reverend Dr Mark Bratton in relation to the headstone for the late Margaret Keane at St. Giles, Exhall in the Deanery of Nuneaton.**

#### **Terms of Reference**

##### 1. Objectives of the Review

- i. To provide the Diocese of Coventry with a report which, having engaged with those involved in this case from within the diocesan structures, including its legal officers and key members of the family of Margaret Keane, and reflected on their experience and observations, noting where learning is to be found, makes recommendations on how to enable best practice in the future, especially in areas of communication concerning processes and costs, and in the provision of pastoral care and support for bereaved families facing similar circumstances.

##### 2. Scope of the review

- i. The review will examine processes at diocesan level, recognizing and respecting at all times the independence and autonomy of the Consistory Court itself.
- ii. Notwithstanding 3.vi, matters that pertain to the national processes, some of which have already been raised with the Dean of Arches by the Bishop of Coventry, are beyond the remit of this Diocesan Review.

##### 3. Methodology

- i. A timeline of events, significant conversations or correspondence and interventions will be produced.
- ii. Members of the diocesan team, including its Legal Officers and the Bishop, will be invited to provide reflections on the process beginning with an initial meeting of the Vicar, Director of Communications, and the Bishop's PA.
- iii. Members of Margaret Keane's family will be invited to provide any further reflections on the process and their experience additional to those they have already communicated.

- iv. A report will be prepared highlighting those aspects from which there needs to be learning, with recommendations on how best to put that learning into practice. The report will also identify any areas that were experienced as positive in the process.
- v. Appropriate steps will be taken to put that learning into practice insofar as such steps will be within the purview of the Diocese.
- vi. A summary of the report will be provided for the Dean of Arches, Provincial Registrars and Chief Legal Officer of the Church of England to which will be added areas worthy of national consideration to improve practice across the Church of England

4. Timing:

- i. The review will be concluded by March 1<sup>st</sup>, 2023, unless by February 1<sup>st</sup>, 2023, it is deemed that further time is needed. In the event of a later completion date, the family will be informed.



## APPENDIX 2

### **A summary Report of an internal review by the Diocese of Coventry conducted by the Reverend Dr Mark Bratton in relation to the headstone for the late Margaret Keane at St. Giles, Exhall in the Deanery of Nuneaton.**

#### **I. INTRODUCTION**

1. This appendix contains a summary of a Report originating in an internal review commissioned by the Bishop of Coventry, and conducted by the Reverend Canon Dr Mark Bratton, in relation to the headstone for the late Margaret Keane at St Giles, Exhall in the Deanery of Nuneaton. The intended recipients are the Dean of Arches, Provincial Registrars and Chief Legal Officer of the Church of England and, if appropriate, the wider ecclesiastical law community.
2. The background to the Report and summary was a recent decision of the Coventry Consistory Court concerning the use of an untranslated Irish inscription on a headstone where the Court of Arches overturned the Coventry Diocesan Chancellor's refusal of a faculty on several legal grounds.<sup>15</sup>
3. Following the appeal court ruling, the Bishop corresponded with the Keane family and pledged to instigate an internal review inviting family members and diocesan officers, including the Bishop, to provide their reflections and observations on the workings of the diocesan faculty process. This was to be carried out with a view to highlighting those aspects of the process from which lessons needed to be learnt and making recommendations as to how to translate those findings into improved practices.
4. The review was conducted between December 2022 and March 2023. Evidence was collected from numerous face-to-face interviews, legal materials, public commentary, and other relevant sources. In the Report, a detailed timeline of events relating to the family's efforts to procure a fitting headstone for their mother was constructed. The evidence was outlined in detail, and following an analysis of the different perspectives presented, eleven substantive findings were identified resulting in twenty-two practical recommendations. The family, the Bishop and the former Diocesan Chancellor were given opportunities to comment on full draft versions of the Report for factual and textual inaccuracies before a final version was produced and issued.
5. The summary calls attention to those aspects of the Report which promise to be of wider interest within the Church of England and applicable to other dioceses. The

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<sup>15</sup> *Re: St Giles, Exhall* [2020] ECC Cov 1, (6 May 2020) (consistory court decision), EACC 1, 18 August 2020 (petitioner given leave to appeal), [2021] EACC 1, 16<sup>th</sup> June 2021 (written Court of Arches judgment handed down)

summary extracts from the Report relevant recommendations which, though mainly addressing local complications, are nevertheless deemed potentially worthy of national consideration. Indeed, twenty of the twenty-two recommendations made in the Report appear relevant to the wider church. They are offered to the national church and ecclesiastical law authorities as a resource to improve practice within the faculty jurisdiction across the Dioceses of the Church of England.

6. I have listed the relevant findings and recommendations are below. Briefly put, the Report suggests re-evaluating legal costs for appeals and providing better training for clergy on churchyard law and engagement with families. It also recommends a comprehensive review of Churchyard Regulations and a more diverse and inclusive panel for decisions regarding memorials.

## **II. FINDINGS AND RECOMMENDATIONS**

7. The relevant findings and recommendations from the Report are list below:

### **Finding 1**

My recommendation is that the Diocese evaluates how its administrative practices and processes in the Church of England are perceived by outsiders. This evaluation can be a useful initial step in pinpointing areas that require improvement.

### **Recommendation 1**

My recommendation is that the Diocese evaluates how its administrative practices and processes in the Church of England are perceived by outsiders. This evaluation can be a useful initial step in pinpointing areas that should be addressed.

### **Recommendation 2**

My recommendation is that the Diocese give priority to enhancing engagement and communication with people who seek support from the church during vulnerable moments in their lives, particularly those who are not regular church attendees. One way to achieve this is by offering training and guidance to church staff on developing effective and empathetic communication skills.

### **Recommendation 3**

My recommendation is that the Diocese looks into ways of simplifying and streamlining the faculty process, while still balancing pastoral care against legal considerations. The Diocese should consider the needs of those seeking support during difficult times and ensure that pastoral care is a weighty factor in the decision-making process.

### **Recommendation 4**

My recommendation is that the Diocese reviews and simplifies the language and procedures linked to ecclesiastical roles, offices, and titles to make them more

accessible and understandable to the general public. This could entail simplifying the language used in official documents and providing clear explanations of the roles and responsibilities of church officials to assist the public in better comprehending their functions.

### **Finding 3**

My finding is that there are indications that the differences in Churchyard Regulations across Dioceses have resulted in inconsistent practices, causing controversies that can potentially erode public trust in the faculty process.

### **Recommendation 9**

My recommendation is that the Diocese should collaborate with national church and ecclesiastical law authorities to standardise Churchyard Regulations across Dioceses, promoting consistency in the faculty process. This may involve reviewing current regulations to address any inconsistencies or discriminatory practices and creating guidelines for new regulations.

### **Recommendation 10**

My recommendation is that the Coventry Diocese should enhance the transparency of its Churchyard Regulations by providing clear and concise explanations for any prohibitions on inscriptions, materials, or designs. This will foster public confidence in the faculty process and ensure that decisions are based on objective criteria.

### **Recommendation 11**

My recommendation is that the Diocese should urge national church and ecclesiastical law authorities to consider standardised support and guidance to Dioceses and families regarding Churchyard Regulations and the faculty process. This may involve creating user-friendly resources such as handbooks or online materials.

### **Finding 4**

My finding is that there are concerns that the language and tone of the Diocesan Churchyard Regulations may be culturally biased and that certain language in the Churchyard Regulations, such as "quirky" and "eccentric," may be interpreted in a culturally biased manner. For example, these terms could apply to a headstone inscribed in a non-English language which is misinterpreted because of a negative social or political association.

### **Recommendation 12**

My recommendation is that the Diocesan Churchyard Regulations should be reviewed to remove subjective language that could be open to interpretation, such as "quirky" and "eccentric." Instead, the regulations should establish clear, objective criteria for what is and what is not acceptable in headstone inscriptions.

### **Recommendation 13**

My recommendation is that the Churchyard Regulations should be examined to ensure that they are culturally sensitive and do not unintentionally discriminate against any specific group.

### **Recommendation 14**

My recommendation is that the Churchyard Regulations should be made clear and transparent to families who wish to petition for headstone inscriptions. This will ensure that families understand the criteria for acceptance and the process for obtaining approval.

### **Finding 5**

My finding is that there needs to be a more inclusive and systematic process of formulating Churchyard Regulations by considering a wider range of perspectives, including those from diverse cultural and social backgrounds. This will ensure that the regulations are culturally sensitive and do not inadvertently discriminate against any particular group.

### **Recommendation 15**

My recommendation is that the Diocese implement a more systematic and inclusive approach to developing Churchyard Regulations that includes input from a wider range of perspectives, including those from diverse cultural and social backgrounds. The Diocese should ensure adequate representation from various groups and stakeholders during these discussions.

### **Finding 6**

My finding is that that the cost associated with applying for permission and appealing decisions can be a significant burden for families who are already grieving the loss of a loved one. This financial strain may create a perception of unfairness from both the church and the legal system, ultimately leading to damage in the reputation of the church.

### **Recommendation 16**

My recommendation is that the Diocese, national church, and Court of Arches review the principles governing costs in appeals proceedings, particularly where the petitioner has been granted leave to appeal. The current system, in which the petitioner bears the cost burden even if they succeed, should be reconsidered to avoid a sense of unfairness.

### **Finding 7**

I find that there is a need for an improvement in the training of clergy members with regards to churchyards and burial grounds.

### **Recommendation 17**

My recommendation is that the church establish a comprehensive and systematic training programme to better equip clergy members to provide pastoral support to bereaved families and intervene in the faculty process more effectively. This training should cover topics such as the care and maintenance of churchyards, the interpretation of regulations, and the development of relationships with funeral directors, stonemasons, and the Diocesan Advisory Committee.

### **Finding 9**

My finding is that the roles and responsibilities of the Chancellor and the Consistory Court in the faculty process need to be made more transparent to the public.

### **Recommendation 20**

My recommendation is that the Diocese and national church take steps to clarify and explain the work of the Consistory Court and the specific role of judges in the faculty process. This could include providing clear and accessible information on the church website, developing educational resources for clergy and other stakeholders, and conducting public outreach to promote greater awareness and understanding of the court's function and responsibilities.

### **Finding 10**

My finding that there may be a conflict of interest for the Bishop when fulfilling his duty of care to the family, his duty of loyalty to the Chancellor, and his duty of care to the Diocese, which requires careful management.

### **Recommendation 21**

My recommendation is that the Diocese establishes protocols that provide clear guidance to the Bishop and other diocesan officers in situations where there may be competing obligations or interests, to ensure that the Bishop's role in memorialization disputes is not hindered. These protocols should be developed to help balance the competing interests and obligations that may arise in these situations.

### **Finding 11**

My finding is that the Bishop's position may have been compromised due to a potential conflict of interest arising from the Registrar's dual roles as both the Chancellor's aide and the Bishop's legal advisor, as reported by the Former DCO.

### **Recommendation 22**

My recommendation is that the decision-making process be made more impartial. One possible approach could be for the Bishop to seek legal counsel from an independent Chancellor or to seek guidance from the national church. This will help to ensure that the decision is made without any undue influence or conflict of interest.

### III. BROADER IMPLICATIONS AND AREAS FOR FUTURE REVIEW

8. Law expresses the ethical principles that it upholds. Francis Bennion, a legal scholar, famously stated that law is the "hard edge" of ethics, emphasising the close relationship between the two.<sup>16</sup> In the context of churchyard law, these principles align with the Church of England's mission to provide pastoral care. If a legal process is a source of suffering, the manner of its application should be reconsidered by not only the Diocese but also the national church and its lawyers.
9. Important questions are also raised in the Report about how the culture of the Church of England is perceived by those who engage in its processes, particularly non-attenders and 'outsiders'. What is 'appropriate' in acts of memorialisation engages complex issues of diversity and culture. The Court of Arches opens its judgment in the *Exhall* case with the emphatic declaration that "[T]he church of Jesus Christ is arguably the most international, multi-ethnic, multi-cultural, multi-lingual body on the planet."<sup>17</sup> Striking the proper balance between the needs of individuals and the community, and the ethos, principles, and values of the Church of England may call for a certain 'cultural humility' as it adapts to the evolving 'cultural grammar' of the pluralistic world the appeal court describes in its written decision.
10. Perhaps the most immediate area of concern at the Court of Arches is Recommendation 16. By definition, if permission to appeal to the Court of Arches has been given, whether by that court or the Diocesan Consistory Court below, then *ex hypothesi*, the case has a realistic prospect of success on appeal, or it is in the wider public interest or the interest of the Church that it be heard. Given that public interest in the case being heard at the higher level it is difficult to see why that should be at the expense of the appellant who may be of modest means and unable to devote proportionate funding to support the careful that is in the Church's best interest.

**The Revd Canon Dr Mark Bratton**

**St Patrick's Day 2023**

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<sup>16</sup> Bennion on Statutory Interpretation (multiple editions).

<sup>17</sup> *Re: St Giles, Exhall* [2021] EACC 1 at para.1.1.