

Unincorporated religious communities were voluntary associations in law and their constitutions were civil contracts by which members agreed to be bound. The courts would not adjudicate on the decisions of an association's governing body unless there was a question of some infringement of a civil right or interest. However, doctrinal and liturgical disputes were non-justiciable unless they engaged civil rights or interests or reviewable questions of public law. The governing body of a religious voluntary association had to act within its contractual powers and if, for example, it sought a union with another religious body *ultra vires* its constitution, a member of the community could invoke the jurisdiction of the courts to restrain it. Similar considerations applied where a member of a religious association was dismissed or disciplined and claimed that the association had acted *ultra vires* or in breach of due process. The jurisdiction of the courts was not excluded because the cause of the dispute was a matter of theology or ecclesiology; the role of the court in such circumstances was to keep the parties to their contract. There was a clear line of authority which contradicted the proposition that a court could treat as non-justiciable a religious dispute where the determination of the dispute was necessary in order to decide a matter of disputed legal right; and unless the parties could resolve their differences the court might have to adjudicate upon matters of religious doctrine and practice in order to determine who were the trustees entitled to administer the trusts. [Frank Cranmer]

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Re St Gwenfaen, Rhoscolyn

Bangor Diocesan Court: Doe Ch, 27 June 2014

Memorial plaque

The chancellor considered a petition for the introduction of a memorial plaque to commemorate the life of the petitioner's late mother in replacement for an existing memorial plaque on the church organ. The petitioner's mother had lived in the parish and served the church and community there for a period of forty years until her death. She had played significant roles as church organist, local teacher, fundraiser and community benefactor. She had played a principal role in saving the church from closure and in bringing the church hall back into use. The parochial church council (PCC), which had a policy against new memorial plaques, supported the petition by a majority, although it had unanimously rejected a previous petition in similar form. The vicar, diocesan advisory committee (DAC), area dean, archdeacon and former incumbent all opposed the petition.

The chancellor reviewed the case law pertaining to the introduction of memorial plaques and considered the existing policies and norms. He acknowledged that a faculty for a memorial plaque would only be granted in an exceptional case and listed the following factors as relevant to the consideration of exceptionality:

- i. An association between the person commemorated and the church should be established, the presence of other family plaques would not be determinative and care must be taken not to give the impression of privilege or superiority;
- ii. Sufficient time should elapse after death to allow perspective to be put on the life, character and service of the deceased so as to enable careful, mature and objective assessment of these;
- iii. If the person's character or contribution was already marked in some way then the plaque might be unnecessary;
- iv. The petitioner should engage with the church authorities to explore alternative means of commemoration, such as by way of gifts based on the actual and genuine needs of the church;
- v. There must be clear evidence of the very special or outstanding contribution of the deceased to the church, community, country or humankind. Simple assertions without supporting evidence would be of little or no value. For exceptionality it must be established that the service of the person goes substantially above and beyond that expected by the Church, should withstand the test of time and be of meaning to future generations, not simply contemporaries of the person to be commemorated;
- vi. Although some comparison of service is necessary, it should be undertaken with caution and avoid giving the impression that some of the faithful are of greater value than others;
- vii. The chancellor needs to rely on the counsels of the church, including the PCC, DAC, clergy and parishioners. Substantial consensus of opinion is desirable. Decisions should ensure consistency, although each case should be decided on its merits. The DAC is competent to advise on exceptionality, and due weight should also be given to the views of the clergy given their day-to-day contact with the faithful. A PCC should not make controversial decisions in an interregnum without the advice of senior clergy responsible for supervision of the interregnum;
- viii. Given the primary purpose of a church as a place of worship and mission, it is relevant whether a plaque would serve as an inspiration, deepening the faith of others or as a focus for disunity and resentment;
- ix. It is relevant whether the church already has an excess of plaques so as to cause clutter;

- x. The plaque must be an artistic adornment and in keeping with the church's character and the words should make sufficient link to the character and service for which the person is to be commemorated.

The chancellor found that the petitioner's mother was adequately commemorated elsewhere in the church and that her contributions, though considerable and significant, had not been very special or outstanding such as to go substantially above and beyond the faithful discipleship expected by the Church of all of its members. The faculty was refused. [RA]

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Re The Blessed Virgin Mary, Ellesmere

Lichfield Consistory Court: Eyre Ch, 5 July 2014

Disposal – gift – redundancy – public access

In 1880, following subsidence, the east window of this Grade I listed church, which had been formed of mediaeval tracery and stained glass dating from 1829, had been replaced. In 1975 the church recovered the glass and moved it to the stained glass museum at Ely Cathedral on permanent loan. In 2005 the tracery was moved back to the church and laid on gravel near the east window. A petition to sell the tracery was withdrawn following advice from the Society for the Protection of Ancient Buildings. The petitioners now sought a faculty to convert the loan of the stained glass into a gift to the museum, where it would continue to be on public display, expertly curated and also studied as part of a project with the University of York. The petition was opposed by two church members, who wanted at least some part of the stained glass reunited with the tracery and displayed in the church.

The chancellor acknowledged the presumption against disposal, particularly in a case of disposal by gift where there was no consequent benefit to the church. Nevertheless, disposal could be justified if the item was redundant or its disposal would enhance its public availability. The fact that the item was separated from the church was not *per se* a factor. In this case the glass could no longer form the east window of the church and its long separation from the church contributed to that redundancy. The fact that it would be properly curated by the museum and would enhance knowledge of stained glass by its study at the University of York increased its accessibility and wider public benefit. Therefore, on the basis of both redundancy and access, the disposal was appropriate. The minimal value of the glass meant that disposal by gift was also appropriate. [Catherine Shelley]

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