

reason for his dismissal. Mr Gould claimed, however, that he had been dismissed because of the difficulties in his marriage. Had he not been married he would not have been dismissed and, therefore, he had been directly discriminated against on the ground of marriage, contrary to section 13 of the Equality Act 2010 read with section 39(2)(c). The Employment Tribunal dismissed his claim and he appealed.

Counsel for the trustees argued that Mr Gould had been dismissed because of the unresolved difficulties in his marriage, not because he was married. Many married couples did not face marriage difficulties, while many unmarried couples faced equivalent relationship difficulties – therefore marriage difficulties were not a proxy for marriage. Simler J was unconvinced, stating that the decision to dismiss Mr Gould depended on the fact that he was married and having marital difficulties, with the emphasis on ‘marital’ rather than ‘difficulties’. The trustees found marital difficulties problematic because of the importance they attached to the institution of marriage and there was an arguable case that that had been the reason for Mr Gould’s dismissal. That composite reason was why the trustees had treated him as they had and the case should have been permitted to proceed. She was satisfied that the Employment Judge was in error of law in striking out Mr Gould’s claim. The appeal was allowed and the decision to strike out the claim set aside. [Frank Cranmer]

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### **Re St Peter, Bredhurst**

Rochester Consistory Court: Gallagher Ch, 11 October 2017

[2017] ECC Roc 9

*Churchyard regulations – illegal items – removal by parish*

Over a long period a number of items, such as gnomes, figurine angels, balloons and solar lamps, had been introduced onto graves in the churchyard, contrary to the diocesan churchyard regulations. Informal efforts to resolve the situation had failed and the team rector and churchwardens petitioned for a faculty permitting the removal of those items. A number of families wrote letters of objection, though chose not to become parties opponent in the case. The chancellor refuted the argument that everyone should be entitled to mourn in their own way, stating that, where regulations existed, it was manifestly absurd to permit them to be broken as each person saw fit. He referred to *Re St Mary, Roughton* [2017] ECC Nor 1, noting that incumbents are but temporary custodians of the churchyard, which has served and will serve the parish as a place of peaceful reflection and prayer. The petitioners were to be commended for properly seeking to enforce the law. The faculty was granted for the removal

of existing items and any future items placed on graves. Reflecting a Diocesan Advisory Committee proviso, the chancellor made it a condition of the faculty that the parish ensure that an agreement be signed before each funeral takes place, whereby the family concerned agree to comply with the churchyard regulations, with one copy being retained by the family and another by the Parochial Church Council. [RA]

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### Re St Bartholomew, Old Whittington

Derby Consistory Court: Bullimore Ch, 12 October 2017

[2017] ECC Der 4

*Churchyard regulations – variation – memorial – material – PCC policy*

The incumbent had refused permission to the petitioner for the introduction of a York stone memorial over her husband's grave on the basis that 'the regulations' required memorials in that area of the churchyard to be of honed grey stone. The petitioner sought a faculty permitting the introduction of the memorial. The incumbent and the Parochial Church Council (PCC), supported by the archdeacon, were opposed to the petition on the basis that there was a long-standing rule, agreed by the PCC and understood by local memorial masons, that only honed grey memorials would be permitted in the relevant area. They argued that to allow the petition would be to introduce a visual disharmony into that area, would set a precedent to encourage further disharmony and would be unfair to those who had abided by the rule in the past. A number of individuals wrote letters of objection in support of that position, although none chose to become parties opponent.

*Obiter*, the chancellor expressed the view that no special burden lay upon a petitioner who sought permission for a memorial which lay outside the churchyard regulations. Rather, the chancellor simply had to be satisfied that the memorial was suitable, although some proposed departures from the regulations, such as kerbs or chippings, would be unsuitable. The chancellor noted that York stone memorials were permitted under the diocesan churchyard regulations and that there was no other objection to the proposed memorial. No minute could be produced of a PCC resolution limiting the colour of stone in that area of the churchyard, although around 90 per cent of the memorials in that area were honed grey. The chancellor doubted, but did not decide, whether such a decision had been made by the PCC. He acknowledged that variations to the churchyard regulations might be necessary and advisable from time to time in relation to particular churchyards. Nevertheless, if the regulations were to be altered, the chancellor would need to authorise any changes,