



JUDICIARY OF
ENGLAND AND WALES

HIS HONOUR JUDGE PAUL DOWNES LLD LLM
MAGISTRATES' LIAISON JUDGE
CHANCELLOR OF THE DIOCESES OF WAKEFIELD AND NORWICH

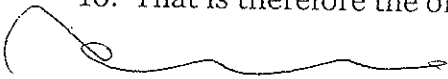
In re: Mirfield Community Church Consistory Court Hearing

JUDGMENT ON COSTS

1. The Court has taken full account of the Respondent's written comments on costs, which was invited in the formal judgment at the conclusion of the hearing, and has similarly taken into account the observations of the Petitioners on the matter of costs.
2. In the final judgment it was indicated that the Respondent, having been successful on the major element of her objection should not be out of pocket in terms of her travelling expenses, and that, as a matter of discretion, she should be refunded the costs of second class travel by rail together with taxi fares, to and from Wakefield to Mirfield. These costs should be paid by the Petitioner, in view of the Respondent's partial success in the major area of her objections.
3. The Ecclesiastical Judges Association has recently set out and expanded upon the general guidance on matters of costs and the Court refers to that document, a copy of which is attached to this judgment. The general terms of that order are that normally the Petitioner should be responsible for the costs of obtaining a Faculty, on the basis that they are the party wishing for the faculty, whether or not they are successful, since it is important for all relevant matters to be investigated. However, where there is an appeal, the unsuccessful appellant is likely to be ordered to pay the costs.
4. The exception to that rule is where it can be shown that either party, (but normally the Party Opponent), has been unreasonable in pursuing an objection.
5. It is the Court's view, that whilst some of the Respondent's views and proposals were somewhat unfocussed and ill-advised, nevertheless they were views held honestly, even if her interest was on the fringes of the boundary of "interest", and their presentation somewhat diffuse.
6. The Petitioners and the Respondent, in the Court's view showed a lack of flexibility, in that it must have been obvious that the Respondent's interest was

largely the matter of the tombs, and that other proposals were less significant, and also that the law on the topic of monuments was different to the other questions of re-ordering. The likelihood, therefore, was that the Court would be unlikely to grant the removal of the tombs.

7. The Court takes the view that it would not be possible to fairly characterise the Respondent's conduct as unreasonable, however inflexible and unfocused it may have been. The procedure in the Consistory Court is not a usual experience for litigants in person (even barristers), and it may be that decisions as to which matters to pursue, and which witnesses to call and/or challenge would not be easy ones to decide.
8. Equally the Petitioners had some responsibility to take account of the likely decision in connection with the tombs, given the relevant law on the topic, and although mediation was offered and rejected by the Respondent, no other movement in relation to the tombs can be detected in the documentation.
9. It is the Court's view that, as a matter of discretion, the usual rule should apply i.e. that each party should stand their own costs, with the exception that the travel costs of the Respondent should be paid by the Petitioners, the amounts to be taxed by the Registrar.
10. That is therefore the order the Court makes in this case.



HH Judge Paul Downes
Chancellor
10th December 2010