

In the Consistory Court of the Diocese of Worcester

Archdeaconry of Worcester: Astwood Cemetery:

Faculty petition 13-20 relating to exhumation and re-interment of the cremated remains of Mrs J Baker

Faculty petition 13-30 relating to exhumation and re-interment of the cremated remains of Mr T J Castles

Judgment

Introduction

1. Astwood Cemetery is owned and operated by Worcester City Council, as burial authority under the Local Government Act 1972.
2. The cremated remains that are the subject of these two petitions are currently located within a small area of the Cemetery where there are some 48 sets of ashes, each within a chamber containing a plastic biodegradable container beneath a granite kerb plaque recording the details of the deceased. A plan marked "Stowage" shows over 60 identified spaces. The authority has confirmed that the cremated remains in this area are contained within plastic non-biodegradable urns, and are likely to be in relatively good condition; their removal and re-interment elsewhere are thus a realistic possibility.
3. In response to enquiries made by the Registry, the burial authority has helpfully clarified various matters in relation to its normal practice with regard to the burial of cremated remains.

4. The authority made available what it described as a facility for the storage of cremated remains beneath a granite plaque. This was offered to the families of those whose remains have been cremated on the following basis:

“Ashes can be stored in a small chamber with an inscribed granite plaque in a special part of the Garden of Remembrance. Each plaque has its own PERSONAL FLOWER CONTAINER and the ashes are EASILY RETRIEVED if you should wish to relocate them at a later date.”¹

5. Normally the exclusive right to inter cremated remains, and to display a granite plaque, was granted for a period of ten years – rights to inter bodies are usually granted for 50, 75 or 99 years. On the expiry of that period, the family of the deceased are offered an opportunity to renew the display of the plaque for a further period – on payment of a further fee.
6. However, presumably, if the family do not wish to avail themselves of the opportunity, to renew the plaque, but equally do not wish the remains to remain in an unmarked grave, they would have to exhume the cremated remains and bury them elsewhere. And that would require the appropriate authorisation, in the form of a faculty from this court, which would need to be sought by the family. The burial authority would no doubt provide assistance as appropriate. Equally, if the right to display the plaque is simply not renewed, or if the family cannot be traced at the end of the relevant period, the burial authority claims the right to exhume the cremated remains and re-bury them in the garden of remembrance. That too would require a faculty; and the authority indicates that in practice that would not occur.
7. The burial of the cremated remains in these cases – and presumably in the case of the other remains in this area – was authorised by an employee of the authority who no longer works at Astwood, and it is not clear what was said to the family in each case; and the application form did not indicate the status of the right – other than as

¹ Emphasis in the original.

indicated above. Further, there appears to have been no distinction between temporary and permanent renewals of the right to display a plaque (and thus, in effect, the right to burial) in any of the literature issued by the authority. It seems that most of these remains in this area were interred on a permanent basis, but about a quarter were interred for specified periods of years.

8. The period of the interment, and thus the timing of the demand for a renewal, is simply a matter of the payment of fees. Thus in these cases the current lease period of ten years has expired, and the families are being asked for a further fee of £600 to renew the right to display the plaque. It is that that has given rise to these petitions.
9. It would seem that the authority did not appreciate at the time that the “storage” of the cremated remains in containers below ground level would, or at least might, constitute interment, such that the removal of those remains would constitute exhumation, which would require a faculty. Nor did it indicate to families the difficulties that might arise if they took advantage of the fact that the ashes could be so easily retrieved.
10. It appears that the authority is now using chambers above the ground, to avoid such difficulties arising in the future.

Petition 13-20 (Baker)

11. Mrs Joan Baker died on 5 August 1993, and her cremated remains were interred (presumably soon afterwards, although the date of interment is unknown) in plot ID 9601 in the area of Astwood Cemetery referred to above. Petition 13-20 is for a faculty for the removal of the remains from that plot in order that they can be interred in Plot No 7100 at St John’s Cemetery, Worcester.

12. The petitioner is Mrs Patricia Ann Crofts, the daughter and only surviving relative of Mrs Baker.

13. Mrs Baker's parents were both buried in St John's Cemetery, apparently in a single grave, and the intention is to bury both the cremated remains of Mrs Baker and those of her late husband, Mr Dennis Baker in that grave. Mrs Crofts explains that

"my father always regretted not having my mother's ashes put with her parents, and as my father and my mother were inseparable in life, I would like them to be together in death".

14. I do not know the precise location where Mr Baker's cremated remains were interred; but clearly their exhumation will require either a faculty from the St Albans Consistory Court, if they are in consecrated ground, or a licence from the Ministry of Justice, if they are not. It is not clear whether the consent of the burial authority has been sought or obtained; but it is clear to me that it would be readily forthcoming were it to be sought following the grant of a faculty.

15. The Deputy Chancellor considered petition 13-20 in March 2013, and noted that there was no particular reason why the remains of Mr and Mrs Baker were buried where they were; nor was there any obvious reason for the apparent delay in requesting their exhumation. The Registrar accordingly invited Mrs Crofts to comment on those matters, to note the general presumption against the grant of permission for exhumation, and to say whether she would like her petition to be decided on the basis of her written representations alone, or whether she would wish it to be the subject of an oral hearing. It appears that no response was ever received to that invitation.

Petition 13-30 (Castles)

16. Mr Thomas Joseph Castles died about twenty years ago, on 17th January 1994, and his cremated remains were interred on 15th March 1994 in Plot 130, also in the area of Astwood Cemetery referred to above. Petition 13-30 is for a faculty for the removal of

the cremated remains from that plot and re-interment in plot 39468 at the same Cemetery, together with the re-location of the existing grave and headstone.

17. The petitioner is Mrs Audrey Sidwell, the sister-in-law of Mr Castles. The only other surviving relatives of Mr T Castles are Mrs Dorothy Castles (the widow of Mr T Castles), Mr Anthony Castles (his son) and Mrs Teresa Radford (his daughter), all of whom have consented to the proposed works.

18. The reason given in support of the petition is that:

"The family are purchasing a Cremated Remains plot at Worcester Crematorium and wish Thomas Castles cremated remains to be moved to this area to rest with other family members."

19. The burial authority granted to Mrs Sitwell on 28 March 2013 deeds relating to gravespaces number 39468 and 39483, both in Section 02A of the Cemetery, each for the exclusive right of burial and the exclusive right to display a memorial.

20. It has also given its consent for the proposed removal and re-interment of the cremated remains in the present case; and the work, if authorised, is to be carried out by its staff.

Pending petitions (Maslen and Perkins)

21. I understand that two further petitions are pending.

22. In the first, Mrs Carola Redding is seeking a faculty for the exhumation of the cremated remains of her mother, Mrs Betty Elizabeth Maslen, which were placed in what she describes as "stowage unit 13" on 18 December 1996 following her death some two months earlier. She wished the remains to be re-interred in the Garden of Remembrance at the Cemetery.

23. By way of justification, Mrs Redding states, in a letter dated 13 May 2013:

“My late father, Mr Sydney Maslen, made arrangements for my mother’s ashes to be interred into a place where he believed it to be her final place of rest and he would be interred beside her when the time came.

My father died recently and I have since been informed that my mother’s ashes are only in temporary storage and as a result his ashes cannot be placed beside hers as the plaque placed over her is on a ten-year lease. When the lease has expired, and I will not necessarily be here to renew the lease, my Mother’s ashes could be placed elsewhere or, even worse, her ashes could remain with someone else’s plaque and name placed over her.

As my mother’s situation is temporary, I would like to lay her to rest with her ashes alongside my late father’s ashes in the garden of remembrance. I would much appreciate if this could be made possible as my father clearly misunderstood when he made the original arrangements for interment.”

Mrs Redding is the only surviving relative of Mr and Mrs Maslen.

24. In the second proposed petition, Mrs Parkins seeks a faculty for the exhumation of the cremated remains of her husband Mr Roland James Parkins, which were interred in April 1995 following his death on 12 March 1995. Their only surviving relatives are their son (Mr Wayne Parkins) and daughter (Mrs Tracey Hanson), both of whom have given their consent in writing.

25. By way of justification, Mrs Parkins states, in a letter dated 13 May 2013:

“In the future, the ashes of myself cannot be together with my late husband, so I would like his ashes can be scattered in the new Garden of Remembrance. Also I do not want to burden my children with any future payments for maintenance of the plaque.”

26. The consent of the burial authority has been obtained for both proposed exhumations and re-interments.

27. No fee has been received by the Registry in respect of either of these two petitions.

Previous faculty 07-71 (Allen)

28. In 2007, I granted a faculty for the exhumation of the cremated remains of John Thomas Allen. He had died on 22 September 1996, and his remains were placed in a plot that could be rented for ten years. Following the death of his wife, his children sought to exhume the remains of Mr Allen so that they could be re-interred together with hers, in a single plot elsewhere in the same cemetery.

The statutory background

29. The Cemetery is owned and maintained by Worcester City Council, in its capacity as the burial authority under section 214 of the Local Government Act 1972, and operated under the terms of the Local Authorities Cemeteries Order 1977.² The Council has made rules and regulations for the management, regulation and control of the Cemetery, dated 1 April 2013, in reliance upon its powers under the 1972 Act.

30. Article 10 of the 1977 Order specifies that:

"(1) A burial authority may grant, on such terms and subject to such conditions as they think proper -

(a) to any person -

(i) the exclusive right of burial in any grave space or grave, or the right to construct a walled grave or vault together with the exclusive right of burial therein; or

(ii) the right to one or more burials in any grave space or grave which is not subject to any exclusive right of burial.

(b) to the owner of a right described in (a)(i) or (ii) (or to any person who satisfies them that he is a relative of a person buried in the grave or vault, or is acting at the request of such a relative and that it is impractical for him, or such relative, to trace the owner of the right so described), the right to place and maintain, or to put any additional inscription on, a tombstone or other memorial on the grave space, grave or vault in respect of which the right so described subsists;

² 1977 SI 204, as amended.

- (c) to any person, the right to place and maintain a memorial in a cemetery otherwise than on a grave space, grave or vault in respect of which a right described in (a)(i) has been granted, but—
 - (i) in the case of a memorial to be placed in a chapel provided as mentioned in article 6(1)(b), only at the request of persons appearing to the burial authority to be representative of the Church of England or other particular denomination or religious body at whose request the chapel was provided; and
 - (ii) in the case of any other memorial being an additional inscription on an existing memorial, only with the consent of the owner of the right to place and maintain such existing memorial.

(2) Subject to paragraph (3), a right under paragraph (1), other than a right described in (a)(ii), shall subsist for the period specified in the grant, being a period beginning with the date of the grant and not exceeding 100 years.

...

(4) A burial authority may from time to time extend the period of any grant under paragraph (1) or under paragraph (1) of article 9 of the order of 1974 or any enactment replaced by that provision (subject, if they think fit, to any modification of its terms or conditions) for up to 100 years from the date on which the extension is granted."

31. And article 23 of the Order provides:

"Nothing in this order shall be construed as authorising the disturbance of human remains."

32. The consecration of ground within a local authority cemetery brings that land within the faculty jurisdiction of the consistory court. The consistory court is itself subject to the appellate jurisdiction of the Court of Arches (see *Welford Road Cemetery, Leicester* [2007] Fam 15). Further, where exhumation of human remains from a consecrated churchyard or cemetery is authorised by a faculty, there is no need to obtain a licence from the Ministry of Justice under section 25 of the Burial Act 1857, as would be required in the case of any other land.

33. Taken together, these provisions indicate that a burial authority may grant an exclusive right of burial for a limited period, and may require a fee for the renewal of the right.

However, if the right is not renewed, the exhumation of the remains would still require a faculty. It follows that, if a periodic fee has been charged at the outset for, say, ten years, there could be no requirement for a person to pay a further charge enforceable by a requirement to exhume the remains in question.

34. Finally, the Faculty Jurisdiction Rules 2013 explicitly defines “exhumation” to include:

“the removal of a body (or part of a body) or of cremated human remains from a catacomb, mausoleum, vault or columbarium”.

The need for a faculty in these cases

35. It would be possible to argue that the storage of containers containing human remains in small chambers beneath plaques, as occurs at Astwood, is equivalent to the storage of ashes in a columbarium. There are many examples of columbaria at cathedrals, churches, cemeteries and crematoria in various countries; and the common feature is that the cremated remains are stored for a limited period in a chamber marked by a commemorative plaque, in exchange for a fee. The columbarium may be above or below ground, or within the crypt of a church or other building. Usually the chambers containing the remains are arranged to form a vertical wall, which may be either within a building or in the open.
36. I am not aware of any reported authority on the point, but it has probably always been assumed that a faculty is always required for exhumation – that is, any kind of exhumation. But that would of course include the removal of cremated remains from a columbarium.
37. In the present case, I note that the chambers are below the surface of the ground, and are laid out in a manner that approximates more clearly to an area reserved for the conventional burial of cremated remains. I suspect that many of those who deposited cremated remains in chambers in the designated area thought that the arrangement

would be permanent; see in particular the statement of Mrs Redding, quoted at paragraph 23 above. I note too that the burial authority states in its most recent letter that

“we claim the right to dispose of the ashes into the Garden of Remembrance, if the plaque renewal is not taken up, but obviously this would require a faculty.”

That does not determine the matter one way or the other, but it tends to suggest that the deposit of the cremated remains was considered to be sufficiently permanent that their removal required a faculty.

38. On balance, therefore, I consider that a faculty is required for the exhumation of the cremated remains in each of the present cases – a conclusion that was simply assumed in my earlier decision in *Allen* (see paragraph 28).

The grant of a faculty for exhumation: basic principles

39. There have been many decisions of consistory courts around the country in recent years relating to exhumation in various circumstances; and the appeal courts have on three occasions in recent years examined the relevant law in an attempt to clarify the position.³ In the two principal cases, the Chancery Court of York in *Alsager, Christ Church* and the Court of Arches in *Blagdon Cemetery* have both emphasised the general rule that, once bodies or ashes have been buried in ground consecrated according to the rites of the Church of England, they should not be disturbed except for some good reasons, and that a faculty for exhumation will only be exceptionally granted.⁴

40. In *Blagdon*, the Court relied on a paper that had been produced by Bishop Christopher Hill to provide some theological context to the law in this area. He explained the position as follows:

³ *Alsager, Christ Church* [1999] Fam 142; *Blagdon Cemetery* [2002] Fam 299, Court of Arches; *Sevenoaks, St Nicholas* [2005] 1 WLR 1011, Court of Arches..

“The biblical understanding of resurrection as expressed in 1 Corinthians 15 allows for real continuity and real discontinuity. There must be reverence and respect for human remains, but they are not what ultimately matters. The permanent burial of the body or the burial of cremated remains should be seen as symbolic of our entrusting the person to God for resurrection. ... This commending, entrusting, resting in peace does not sit easily with ‘portable remains’, which suggests the opposite: reclaiming, possession, and restlessness; a holding on to the symbol of a human life, rather than a giving back to God. ..

In general, therefore, the reluctance to agree to faculties for exhumation is well grounded in Christian theology and eschatology. It is also right generally from the point of view of mourners, who must learn to let go for their psychological and spiritual health.”⁵

It is perhaps significant that the court quoted the first of those two paragraphs, but without the first two sentences (which emphasise that “human remains are not what ultimately matters”).

41. The Court in *Blagdon* to some extent departed from the decision four years earlier in *Alsager*, and made it clear that it is now sufficient for petitioners to satisfy the court that there are special circumstances in their case that justify the making of an exception from the norm that Christian burial, that is, burial of a body or cremated remains in a consecrated churchyard or the consecrated part of a local authority cemetery, is final. But it also emphasised that making a decision on a petition for exhumation is essentially a matter of discretion.⁶
42. A request for exhumation is likely to arise in a variety of circumstances, the most common of which are summarised below. But each case must be considered on its merits; and new situations continually arise that will require to be dealt with on their particular facts, and without seeking to shoe-horn the particular circumstances into one or other of the circumstances referred to in the previous cases.

⁴ *Church Norton Churchyard* [1989] Fam 37, Chichester Consistory Ct; *Stocks* (1995) 4 Ecc LJ 527, Sheffield Consistory Ct; *Alsager, Christ Church*, at p 148G; *Blagdon Cemetery* 299, Court of Arches, at paras 33-35.

⁵ Subsequently published as *A Note on the Theology of Burial in Relation to Some Contemporary Questions*, (2004) 7 Ecc LJ 447.

General considerations

43. There are certain factors that do not of themselves indicate that a faculty for exhumation should be granted or withheld, but which may be relevant in many cases in the balancing exercise undertaken by the chancellor in the exercise of discretion.
44. Firstly, the passage of time, especially when this runs into years, may make it less likely that a faculty will be granted; but this will not be determinative.⁷ Indeed, in one or two cases a faculty has been granted for the exhumation of a body many decades (or even centuries) after it was interred.⁸ But in most cases – and in particular where a petitioner is relying on a mistake having come to light – it will be necessary to show that the matter is being progressed with a reasonable degree of expedition.
45. Secondly, the chancellor will not consider a petition for exhumation unless the views of all close relatives have at least been sought. Such views will be very significant; and if one or more is against the proposal, that will almost certainly be the end of the matter.⁹ but if, as is normal, all the close relatives have expressed their support in writing, that will not of itself be sufficient to justify the grant of a faculty; there must be some other reason in addition. As for wider support for a proposed exhumation, the Court in *Blagdon* indicated that the amount of local support, clerical or lay, will normally be irrelevant.¹⁰
46. Thirdly, it is sometimes argued that granting a faculty for exhumation in one case will act as a precedent for others. However, in practice, each case will always be considered on its own merits, and the weight accorded to previous decisions will often not be significant. In any event, even if the consistory courts were to allow all petitions for exhumation, it is unlikely that there would be a rush of similar proposals. It has

⁶ *Blagdon*, at para 35.

⁷ *Alsager*, at p 149B.

⁸ *Talbot* [1901] P 1, London Consistory Court; *Hurley, St Mary* [2001] 1 WLR 831, Oxford Consistory Court; *Sledmere, St Mary* (2007) unreported, York Consistory Court.

⁹ *Blagdon*, at para 36(iv)..

thus been noted that the practice of the Ministry of Justice in response to applications for licences for exhumation from unconsecrated ground is to grant a licence wherever requested to do so by the next of kin, provided that all close relatives are in agreement – a practice significantly different from the restrictive approach of the consistory courts in respect of exhumation from consecrated ground.¹¹ But that has not in fact resulted in a huge number of exhumations.

47. Lastly, the issue of human rights has been raised in some more recent cases.¹² However, the Court in *Blagdon* suggested that arguments relying on the Act are unlikely to be determinative.

Situations in which exhumation will usually be acceptable

48. There are two relatively straightforward situations in which a faculty will usually be granted for exhumation of a body from consecrated ground. The first is where a coffin is buried in a single grave, but there is then a wish to bury a second or subsequent body at precisely the same location, so that it is necessary to bring to the surface the coffin that has already been buried in order to deepen the grave. Secondly, mistakes do sometimes occur at the time of the initial burial – such as where a body can be shown to have been buried in the wrong grave, or in a plot that was (and therefore still is) reserved for use by someone else. In these circumstances, the matter should be dealt with reasonably promptly after the mistake has come to light; but a faculty can then readily be granted – because what is proposed amounts to the correction of an error in administration rather than being an exception to the presumption of permanence, which is predicated upon disposal of remains in the intended not an unintended plot or grave.¹³

¹⁰ *Blagdon*, at para 36(iv).

¹¹ *R (Rudewicz) v Secretary of State* [2013] QB 410, Court of Appeal.

¹² *Durrington Cemetery* [2001] Fam 33, Chichester Consistory Ct; *Luton, Crawley Green Road Cemetery* [2001] Fam 308, St Alban Consistory Ct.

¹³ *Blagdon*, para 36(iii); and see *Holbeach Hurn, St Luke* [1991] 1 WLR 16, Lincoln Consistory Ct..

49. It was suggested in *Blagdon* that a mistake may also occur due to a lack of knowledge at the time of burial that it was taking place in consecrated ground with its significance as a Christian place of burial. This seems with respect to be a slightly contrived argument, as it is very unlikely that many people – with or without Christian beliefs – have any knowledge of the significance of consecration when arranging for burials; and it may be difficult to believe someone who suddenly claims to have acquired such knowledge at a later date. It would therefore seem to be unwise to place too much reliance on this argument.

Family graves

50. One situation where a faculty may sometimes be granted for exhumation is where it is proposed to re-inter the body in an existing or proposed family grave. This may arise in three situations:

- the transfer of the body to an existing family grave or group of adjacent graves containing the bodies of more than family member;
- transfer to the existing grave of a single family member;
- transfer to a newly created family grave.

51. Such multiple use of grave space is generally encouraged, as an expression of family unity and as an economical use of land for burials. This was indeed the principal justification for a faculty being granted in *Blagdon*. However, at the conclusion of its judgment in that case, the Court sounded a note of caution:

“... it should not be assumed that whenever the possibility of a family grave is raised a petition for a faculty for exhumation will automatically be granted. As in this case it is to be expected that a husband and wife will make provision in advance by way of acquisition of a double grave space if they wish to be buried together.”¹⁴

¹⁴ *Blagdon*, para 40.

52. A number of chancellors have admitted in subsequent cases that this part of the judgment in *Blagdon* was “not very clear”.¹⁵ Some twenty or so of the more recent judgments relating to family graves, of which roughly one third were in each of the above three categories, have recently been analysed by the Deputy Chancellor of this diocese in *Fairfield, St Mark*, showing that chancellors have not adhered to a particular or uniform approach.¹⁶ He also noted the comment in *Kenilworth* that faculties had been granted in the past for the bringing together, or accumulation, of family members in a single grave after many years, provided special reasons were put forward for any lapse of time since the date of burial.¹⁷ He concluded that exhumation and re-interment in a grave or graves containing more than one existing family member is capable of constituting an exceptional or special reason outweighing the presumption in favour of permanence of burial; whether it will do so in a particular case will depend on the strength of the reasons for any delay in seeking exhumation.¹⁸

Situations which do not of themselves justify exhumation

53. There is a further group of circumstances that have been identified in the cases that are sometimes relied on by petitioners as justifying exhumation, but which in fact will not influence the decision either one way or the other. It is thus not sufficient for a petitioner to prove:

- that there has been a change of mind on the part of the relatives of the deceased who were responsible for the initial interment, or
- that some or all of those relatives are no longer able conveniently to visit the grave, either because of advancing years or deteriorating health, and a resulting change of residence, or for any other reason; or
- that a surviving spouse or other close relative has subsequently been buried elsewhere.

¹⁵ *Mallinder* (2006) 25 CCCC 1, Sheffield Consistory Ct; *Brown* (2008) 27 CCCC 11, Sheffield Consistory Ct.

¹⁶ *Fairfield, St Mark (Camp)* [2013] PTSR 953, Worcester Consistory Court, per Fookes Dep Ch at paras 50, 51.

¹⁷ *Kenilworth Cemetery* (2012) unreported, Coventry Consistory Ct.

54. Those factors, which are commonly argued, arise in many cases, and do not in themselves indicate that a faculty should be refused; but they are not sufficiently “exceptional” to justify setting aside the normal presumption against exhumation.¹⁹ In particular, in many cases petitioners rely on a chain of circumstances which, when analysed, in truth amount to no more than a realisation that they now wish they had made a different decision at the time of the initial interment. That will not on its own be sufficient; although the court will consider carefully the factual position in each case to see whether they are sufficiently unusual to justify the issue of a faculty.

55. Nor is it relevant to show that a surviving spouse or other close relative has subsequently been buried elsewhere, or wishes to be buried (in the future) in the same place as the deceased – but that a further burial at the same location as that which has already taken place is either for some reason now impossible or else considered to be undesirable.²⁰

56. It is sometimes argued that the refusal of a faculty for the exhumation of a spouse or parent will lead to great distress on the part of a surviving relative (often a widow or widower). However, this will only rarely justify the grant of a faculty in the absence of any other exceptional reason.²¹

Situations in which exhumation will usually not be acceptable

57. The court in *Alsager* identified certain situations in which exhumation will normally not be allowed – that is, a faculty will be refused even if there are other factors in favour of the proposal. These include the following:

- the existence of a family feud, in which the grant of a faculty will inevitably involve supporting one party or another;

¹⁸ *Fairfield* at paras 82, 83.

¹⁹ *Alsager*, at pp 149A; 149H; *Blagdon*, at para 36(i), (iii).

²⁰ *Fairfield (Mingham)* 1999, 18 CCCC 33, Worcester Consistory Court, at para 18.

²¹ *Blagdon*, at para 36(i).

- where it can be shown that exhumation would be contrary to the expressed intentions of the deceased;
- where there is reasonable opposition from at least some of the family; or
- where there is a risk of upsetting the neighbourhood.²²

None of these is particularly surprising.

58. The Court also held that a lack of any intention to re-inter the body in consecrated ground would be a factor that would normally militate against the grant of a faculty – which would rule out, for example, the exhumation of ashes to scatter them at sea or elsewhere. However, this has been set aside in some cases, and will not necessarily be determinative.²³
59. Sometimes a request for an exhumation originates from historical curiosity,²⁴ or in connection with some other kind of research.²⁵ Exhumation in such cases has generally not been allowed, but it may be acceptable where a petitioner can demonstrate a case for the legitimacy of the proposed research in relation to either a matter of great national, historic or other importance or a particular research project or scientific experiment.²⁶ And faculties have been granted exceptionally for the exhumation of people of distinction to enable them to be buried in a more appropriate location elsewhere.²⁷

Summary of the case law

60. This brief review of the decided cases indicates that there are some general principles applicable in many if not all cases. But it also clearly demonstrates that no set of

²² *Alsager*, at pp 149H-150A.

²³ *Durrington*, at p 36F; *Luton, Crawley Green Road Cemetery*.

²⁴ *Bosham, Holy Trinity* [2004] Fam 125, Chichester Consistory Court; *Sevenoaks, St Nicholas* [2005] 1 WLR 1011, Court of Arches.

²⁵ *Sledmere, St Mary* (2007) unreported, York Consistory Ct.

²⁶ *Bosham*, at para 31.

²⁷ *Talbot* [1901] P 1, London Consistory Court; *Hurley, St Mary* [2001] 1 WLR 831, Oxford Consistory Court.

guidelines, however complete, will cover all situations; and petitions for exhumation, more than many others, will still require the exercise of discretion by the chancellor on a case-by-case basis, albeit against the background of the clear presumption in favour of the permanence of burial.

Application to the present cases

61. There has been no particular delay in these cases, since the petitions have been submitted reasonably promptly once the position as to the demand for a renewal had come to light. And all surviving relatives have given their support. It is true that the grant of a faculty in this case would act as a precedent to encourage others in similar circumstances to seek a faculty; but such precedent as might be created would be of limited applicability. Further, as noted above, it seems that the burial authority in this case has amended its practice and now arranges for the storage of cremated remains above ground.
62. As a for a possible mistake, arguably the situation that has arisen in these cases is not the result of a “mistake” on the part of the families of the deceased, but of a mistake on the part of the burial authority, in not drawing to their attention the full consequences of the need to renew the licence for the plaque and the problems that might ensue if they did not.
63. Thus it could be argued that the families should in each case have thought through the consequences of their decisions at the time of the first death. However, that is a counsel of perfection, since the recently bereaved are often not in a good position to think through fully the consequences of their decisions – especially if their attention is not forcibly drawn to the need to renew the storage arrangement every ten years, and where the relevant paperwork states that the remains would be “easily retrieved” if there was a wish to relocate them at a later date (see paragraph 4 above). And it would be harsh to punish the families for errors made by the authority.

64. As for a family grave, it seems that the first petition falls within the first of the categories identified at paragraph 51 above (transfer to an existing family grave), in that the remains of both Mr and Mrs Baker are to be re-interred in the grave of Mrs Baker's parents. The second petition falls within the third category (transfer to a newly created family grave), as the intention is apparently to remove the remains of Mr and Mrs Castles, along with those of other family members, to a new family grave. The third petition (Maslen) is arguably within the third category, but it is questionable whether the burial of a husband and wife in a single plot constitutes a "family grave". The fourth proposal is to scatter the ashes of Mr Parkins, rather than to bury them in a family grave.
65. The two petitions that are formally before the court for determination – Baker and Castles – are thus allowable on that basis alone. But the two pending petitions – Maslen and Parkins – are not.
66. All four petitions arguably involve some of the factors identified in paragraphs 53 to 56 above, which are not determinative one way or the other. None of them raises any of the factors mentioned at paragraph 57 that would indicate that a faculty should not be granted – save that the fourth petition (Parkins) proposes that the ashes be scattered rather than re-interred, which would not be appropriate.

Exhumation in circumstances where the original deposit of ashes was not intended to be permanent.

67. It is noteworthy that the case law clearly demonstrates that the list of categories in which exhumation might be acceptable is not closed.
68. It seems to me that the justification for the presumption against exhumation arises on the basis of an understanding of burial as being permanent (see paragraph 40 above). I have already noted (at paragraph 34 above) the very wide definition of "exhumation", which includes the removal of human remains from catacombs,

mausoleums, vaults and columbaria. The initial deposit of remains in such a location may have been intended to be permanent, in which case the normal presumption against removal should apply. But in some cases there may have been no such intention; the deposit may have been on a temporary basis, until a decision could be permanent as to the permanent disposal of the body or the ashes. That is indeed recognised by the time-limited arrangements offered at Astwood Cemetery and elsewhere. And there would seem to be no particular distinction according to whether the deposit was above or below ground level – what matters is the intention of those responsible at the time.

69. I thus consider that a faculty should not, as a matter of principle, be required where remains are to be removed from a chamber in circumstances where it can be shown that was assumed by all concerned that they were only deposited in the chamber in the first place on the clear understanding that the arrangement would be temporary. I am therefore arranging for the list of minor matters that do not require a faculty (maintained under section 11(8) of the Care of Churches [etc] Measure 1991) to be amended accordingly. And it might be helpful if the Rule Committee were to clarify the position in such cases when it defines on a national basis the matters for which a faculty is not required, under the new arrangements to be introduced by clause 5 of the Care of Churches and Ecclesiastical Jurisdiction (Amendment) Measure currently proceeding through the General Synod.

70. In the meanwhile, I note that in the present cases there is considerable uncertainty both as to what was said to the families of the deceased at the time of the original interment, and as to what was their intention. I therefore do not have enough information to be able to grant a faculty in the two current petitions (Baker and Castles) on the basis that the original interment in each case was intended to be only temporary.

71. If either of the two pending petitions (Maslen and Perkins) are to be granted on that basis, the petitioners would need to show that they only intended the original interment to be temporary.

Conclusion

72. For the reasons explained at paragraphs 64 and 65, a faculty should issue for the exhumation of the ashes of Mrs Joan Baker from Plot ID 9601 at Astwood Cemetery, in order that they can be re-interred along with that of her parents and her husband in St John's Cemetery. For the same reasons, a faculty should issue for the removal of the ashes of Mr Castles from Plot 130, in order that they can be re-interred along with those of other family members elsewhere in Astwood Cemetery.

DR CHARLES MYNORS

Chancellor

14 April 2014