

Neutral Citation Number: [2024] ECC New 1

## **IN THE CONSISTORY COURT OF THE DIOCESE OF NEWCASTLE**

**His Honour Simon Wood, Chancellor**

In the Matter of an Application to exhume and re-inter the cremated remains of Ian NIXON from the St John's Churchyard, Seaton Hirst and in the Matter of a Petition by Dominic Appleby

### **JUDGMENT**

1. This is a petition by Mr Dominic Appleby to exhume the cremated remains of the late Ian Dixon for the purpose of removing some of those remains and re-inter them within the same plot in the churchyard of St John's Seaton Hirst.
2. The basis for the petition is that, owing to an error on his part as a funeral director with William Purves Funeral Directors, the remains were erroneously interred without having retained a small quantity of the cremated remains for purposes previously discussed and agreed with Mr Nixon's family, to which I will refer below.
3. Mr Appleby, with great regret and embarrassment, acknowledges the error, which he maintains is his alone, has apologised to the family members concerned and, having notified the Diocesan Registrar of the error on 31 January, brought this petition, accompanied by appropriate consents, on 1 February.

#### The facts

4. Ian Nixon died on 3 January 2024. He leaves behind a widow, Margaret Nixon, and a grandson, Scott Nixon. Mr Nixon's funeral took place on 25 January and his cremated remains were interred on 26 January. The interment was in a family grave which contains the remains of Lynne Nixon, the daughter of Ian and Margaret Nixon and the mother of Scott Nixon. Following the death of Lynne Dixon in 2006, Scott Dixon, who was then a very young infant, was brought up by his grandparents
5. Mrs Nixon wished to retain a small quantity of cremated remains to be incorporated in a small piece of jewellery which is also intended to include a small lock of hair from her daughter. Scott Nixon, who spent much time walking in the Cheviots with his grandfather, wished to scatter a small quantity of the cremated remains in that area. These family wishes had been communicated to Mr Appleby who acknowledges the "great sentimental and emotional value" they hold.
6. On 26 January, the day after the funeral, the cremated remains were placed, in their entirety, in an oak casket and interred in the grave, the arrangements for a small quantity to be retained having been overlooked. On 29 January, Mr Appleby realised

the error made. He took steps to contact Mrs Nixon immediately, visiting her in person in recognition of the gravity of his mistake. He contacted the Area Dean for Morpeth Deanery, the Reverend Chris Grocock, seeking advice and, as mentioned, the Diocesan Registrar.

7. The petition, accompanied by written consents from Mrs Nixon, Mr Scott Nixon and Mr Grocock (the parish is in interregnum), was issued on 1 February. There is also a letter from Mr Appleby, in accordance with standard directions, confirming that the oak casket will not have degraded and that there is no practical difficulty in an exhumation taking place which, with removal of a quantity of remains, and reinterment is estimated to take no more than one hour.

#### The position of the parties

8. Beyond giving their consent, I do not have the views of Mrs Nixon or Mr Scott Nixon but, by virtue of that consent, can properly infer that they support the petition to enable their previously stated wishes to be honoured.

9. I think it is fair to say that Mr Appleby is deeply embarrassed, saying in the petition:

“As a Christian funeral director working in a Christian family business, the hurt of this situation and the sensitivity and rawness which comes with it, is not lost on us.”

10. The Area Dean, fully apprised of the facts, supports the petition.

#### The law

11. The law is well established and definitively set out in the judgment of the Court of Arches in In re Blagdon Cemetery [2002] Fam 299. The presumption of permanence is explained, arising, as it does, from the Christian theology of burial which emphasises, by reference to the Bishop of Stafford’s *Theology of Burial*, that the permanent burial of the physical body is to be seen as a symbol of the entrusting the person to God for resurrection, a concept that does not sit easily with the concept of “portable remains”. Hence the reluctance of the Consistory Court to grant faculties for exhumation is well supported by Christian theology.

12. Nevertheless, recognising that it was essentially a matter of discretion, the Court indicated the necessity of the petitioner satisfying the Consistory Court that there are special circumstances justifying the making of an exception from the norm that Christian burial is final. In so stating the Court went on to identify various factors which may indeed support such a petition.

13. In the circumstances of this case it is not necessary to look beyond the Court’s ruling that a simple error in administration can form a ground upon which a faculty for exhumation can be granted. The Court advised that in such circumstances it may be

for those responsible for the cemetery to apply for exhumation: that has not occurred here as the party responsible for the error has assumed this responsibility.

14. Whilst lapse of time is always a relevant factor it is not determinative.

Decision

15. I am satisfied that, due to simple human error, rapidly identified and confessed to the family, their previously expressed and acknowledged wishes were not complied with.

16. There has been no delay in seeking to right this mistake, the petition being issued within a week of the interment.

17. The petition is supported by the necessary consents from nearest family members and the Area Dean in the absence of an incumbent.

18. The evidence demonstrates that there has been a simple human error in carrying out the family's previously expressed and communicated wishes. The Court is wholly satisfied that the petitioner be granted the relief sought.

19. Accordingly, the faculty is granted on the following conditions, namely that the exhumation and reinterment be carried out in a dignified manner, discreetly and with the minimum delay and that the costs arising from and incidental to the petition, the exhumation and re-interment are met by the petitioner.

**Simon Wood**  
**Chancellor**  
**13 February 2024**