Neutral Citation Number: [2026] ECC Lon 2

IN THE CONSISTORY COURT

DIOCESE OF LONDON

In the Matter of a Petition for the Exhumation of the Mortal Remains of the late AL, Faculty 4815
and
In the Matter of Kensal Green Cemetery (KGC)
and
In the Matter of a Petition of LL, with Objections by AV and TL to be taken into account

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JUDGMENT

October 15, 2026

Etherington Ch.

1. I shall refer to the names of the Petitioner, Objectors and other family members by their initials, because the judgment will be reported and there are obvious sensitivities in the divulging of full names. A copy of the final judgment should be sent, in addition to the Petitioner, to AV, TL and KGC and the Conditions should be sent to *Kelly of Mill Hill*, Funeral Directors. The conclusion and summary of the outcome is at paragraph 40.

2. The principal ground upon which the Petitioner (LL) seeks a faculty to exhume the remains of his late father (AL) from a mausoleum at KGC, where it has lain since 1986, is that at the time of the entombment he explained to the cemetery that the ultimate intention of the family was to repatriate his father's remains (to Italy) when his mother died and that at no time did the manager of the cemetery explain to him that the ground on which the mausoleum was to stand, or was standing, was consecrated ground. He only discovered this when he sought to exhume AL's remains from the mausoleum after his mother's final illness and death some 39 years later.

3. LL's siblings are:
   GL: born 1950 (whereabouts unknown)
   TL: born 1953 (*Objector*)
   AV: born 1959 (*Objector*)
   LL: born 1962 (**Petitioner**)
   SL: born 1967 (*Supports and consents to his father's exhumation*)
   Neither TL nor AV elected to become a Party Opponent, but both wish me to take their views into account in reaching my judgment. GL is said by LL to live in Spain and that his current whereabouts are unknown.

4. **LL'S CHRONOLOGY OF EVENTS LEADING UP TO THE PETITION**

31-08-1925: AL's birth.

25-10-1985: AL's death from heart failure, aged 60 years.

21-04-1932: AL's wife's birth.

1985: LL was informed by a Mr Burkett, then the manager of KGC, that no suitable land was available to construct a private family mausoleum in which AL's remains were to be temporarily housed pending repatriation to Italy.

1985: AL's remains were therefore placed in a KGC crypt/catacomb. LL avers that there was subsequently an unlawful entry into that crypt and some coffins, including his father's, were damaged and LL had it removed and repaired and, when he intimated to Mr Burkett that he wished to move his father's remains to another cemetery, he was offered a plot to erect a mausoleum subject to certain fees. LL says that at no stage was he told that the plot was on consecrated ground.

01-06-85: *From KGC records: AL was placed in the KGC catacombs.*

05-08-85: *From KGC records: A plot of land on which a mausoleum was to be erected was paid for by AL's widow.*

11-01-86: *From KGC records: AL's mortal remains were transferred to the mausoleum.*

2009/10: LL says that there were other 'authorised' exhumations, in the years in between, of other coffins inside the mausoleum without any knowledge that a faculty was required.

2014/15: AL's widow (LL's mother) moved to Italy and requested that LL make the necessary arrangements to repatriate AL's remains to Italy. LL says that he informed KGC of his intention, but due to his mother becoming ill, she returned to England and thereafter lived with LL.

2018: LL and his mother contacted KGC and were advised to apply to the Ministry of Justice (MOJ) for a licence.

2020: LL's mother became seriously unwell. She was suffering with heart problems and dementia. LL had an older sister who became ill with cancer and died. LL says that he commenced planning for AL's exhumation, proposing to have both his father and mother's remains cremated. KGC refused to give consent because AV had asserted she was a part-owner of the mausoleum. LL avers that the issue is no longer 'live' and it has not been disputed in these proceedings that he owns the mausoleum in question.

2021: LL's mother died.

2025: After the ownership issue was resolved a second application to the MOJ was made and LL says that he was then informed of the need to seek faculty permission because the ground on which the mausoleum is located is consecrated ground.

31-08-2025: LL petitioned the court for a faculty. The Registry sent to him the general approach of the court to applications seeking exhumations of human remains (including ashes) from consecrated ground.

5. **CONSENTS**
    a. KGC raises no objection to the Petition.
    b. The Municipal Cemetery in Pontecagnano Fiano, Salerno Province, Italy states that it is prepared to receive AL's cremated remains which will be placed in the Municipal Ossuary of the Chapel of the Catholic Church cemetery where the ashes of his father and mother will lie together.
    c. Paragraph 3 of the judgment explains the position of LL's siblings who are divided on the application.

6. **THE PETITIONER'S GROUNDS FOR SEEKING THE EXHUMATION OF HIS LATE FATHER'S MORTAL REMAINS**
    a. LL says that it was a long-standing desire of his father to have his remains repatriated to Italy and to lie next to those of his wife when she died and that this was a family wish. Repatriation was premised on both parents having died.
    b. LL says that this was a long-standing family wish also.
    c. He also says that failure to observe this wish would cause him moral and emotional distress.
    d. His next ground is that any delay in making the application was not his fault, but rather the fault of KGC.
    e. He says that neither he, nor any family member, was told by KGC or anyone else for 39 years anything to suggest that (i) there would be any problem with the proposal, (ii) that the ground was consecrated or (iii) that faculty permission would be required and was told that exhumation could take place upon the payment of a fee and the instruction of funeral directors.
    f. LL contends that he would not have permitted his father's remains to be buried in consecrated ground, which would be making such a burial permanent subject to exceptional circumstances.
    g. LL also says that KGC have permitted other exhumations from the mausoleum of other related persons without requiring faculty permission.
    h. He has made submissions in respect of ecclesiastical law which I will deal with next.

7. **BLAGDON**
    a. The leading case of *Blagdon Cemetery* [2002] Fam 299 makes clear that burial in consecrated ground is permanent and final, subject to exceptional circumstances.
    b. The concept that burial in or on consecrated ground in England is permanent and final is a very old one dating back many centuries. It was further supported by statute in the nineteenth century and has been recognised as such by the common law and the ecclesiastical courts. *Blagdon* laid down situations with definitive guidelines in which the presumption of finality could exceptionally be displaced and a number of cases at first instance thereafter examined specific situations. They include *genuine mistakes*, *provision of family graves*, *compelling medical or psychological circumstances and administrative or burial errors.* It further considers the issue of delay in making the application. There are other rare examples involving scientific, medical and historical research.

c. The principle is clear, but the question of whether an exceptional circumstance exists or not is not always straightforward and is fact-specific. Nevertheless, 'exceptional' means what it says.

8. LL, who has read *Blagdon* with careful attention, has listed a number of features which he says give rise to the exceptionality for which he contends. In my judgment, the principal ones are these:
    a. The contention that he was unaware that the ground on which the mausoleum was erected was consecrated ground.
    b. That this leads to the further consideration that he therefore did not appreciate that his plan to bury the mortal remains of both his parents in Italy would be potentially impossible to achieve;
    c. That at no stage until 2025 was he enlightened as to this obstacle; such as when he allowed remains of other individuals to be moved;
    d. That this means that he had no perception, until the period when he knew a faculty application was needed, that delay was a factor at all; and
    e. That his decision to entomb his father in the mausoleum would never have been made had he appreciated that it stood on consecrated ground.
    f. The fact that the proposal is to unite a husband and wife's remains in their homeland.
    g. That he may not be able to exhume his father's remains in accordance with his parents' wishes, which has caused, and is causing, him sustained emotional stress.

9. **OBJECTORS**
    a. **AV** – her Objection was undated but received by me from the Registry on February 11, 2026
        i. She gives background about her parents and their decision to come to England (AL in 1948 and his wife in 1953). She describes how AL made his way successfully in England.
        ii. She maintains that her father did not want to be buried in Italy and wished to be buried in London as all his children and grandchildren were in England, although the children had said that when their parents' time came, they would take them back to Italy.
        iii. She also made a number of allegations against LL about the ownership of the mausoleum and his decision to take the cremated remains of his mother to be buried in Italy. She further told me her opinion of LL's conduct towards his mother, and I wish her to know that I have read everything she has said from beginning to end. AV (as is entirely her right) did not wish to become a Party Opponent.
        iv. I will take into account that she strongly opposes this application and wishes her father to remain buried in KGC.
    b. **LL's Response to AV's Objection –** dated February 25, 2026
        LL denies AV's allegations and states that a number of them have already been determined in his favour. He has shown me some undated correspondence from her where she makes some apologies to LL although I do not read all of the contents in quite

the same way as LL does, but the matters have not been tested in evidence and would have been of limited admissibility even if they had been. I have read everything he has said.

c. **TL's Objection** – dated January 11, 2026, but received by me from the Registry on February 11, 2026
    i. TL says that he adopts AV's Objection. He too has not wished to become a Party Opponent. He states that it was both the father and mother's wish to be buried together in England where all their family live and that LL's mother was cremated against her wishes and her remains taken to Italy.
    ii. As AV said in her Objection, TL complains of being cut off from their mother after she moved in with LL and states that, although he himself can no longer visit the mausoleum, he is aware that his sister and the family would wish to do so.
    iii. TL says that LL is motivated by a desire to sell the mausoleum.
    iv. TL objects to his father's remains being disturbed.
d. **LL's Response to TL's Objection** – dated February 25, 2026
    i. He says that TL's Objection derives from AV's Objection.
    ii. He states that TL has had no meaningful relationship with their mother for over 20 years, has had no meaningful involvement in family affairs and had no 'ongoing communication' with him or their mother.
    iii. He maintains that the mausoleum was constructed as a temporary resting place at the request of his mother and was funded by him. He disputes that it was ever intended to be a burial place for all of them.
    iv. He disputes that his *motivation* for seeking this exhumation is to sell the mausoleum.

10. **EVIDENCE OF THE WISHES OF AL OR HIS WIFE**
    a. The court is only concerned with any expressed wishes as to the burial arrangements of AL, and of his wife's wishes about his burial. The question of her own wishes as to her own burial is not a matter for the court, save that arrangements for herself may assist to an extent in discovering what she believed was the position with her late husband's remains, since she wanted them to be buried together.
    b. This was a case where AL died intestate and there were no Letters of Administration and, in the first instance, decisions about his funeral and interment would have lain with his widow, doubtless helped by one or more of her children.
    c. There is no contemporary written evidence as to the wishes of AL (or indeed his wife) and the statements of two of LL's siblings (AV and TL) conflict with the recollections of LL. SL, the youngest sibling, supports LL.

11. **OTHER MATTERS**
    a. This Petition has had a number of additional features which the court has had to deal with. This has added to the time it has taken to determine it.

b. **The Conduct of KGC**:

i. This mainly relates to the issue of 'delay', which is one of the factors that the consistory court will usually consider when deciding whether or not it should grant a petition to exhume a person's remains. It is not necessarily a decisive factor, but it is often a very important one. I interpret 'delay' to mean culpable delay: that is, allowing time to pass when the Petitioner knew of the relevant circumstances but failed to petition the court. It is particularly significant in 'change of mind' cases.

ii. LL made submissions on this aspect in his application of August 31, 2025.

iii. I gave Initial Directions on September 24, 2025. LL helpfully corrected some of the matters in those Directions by giving additional detail of the facts surrounding his father's entombment. LL responded substantively to the Directions on October 16, 2025, which was well within the time allowed. In the course of this Response, he made a detailed request for the court to give Directions to KGC and to "exercise supervisory jurisdiction over consecrated ground" and to order KGC to provide documents, correspondence and records relating to the dispute over the ownership of the mausoleum. He also asked the court to make a formal finding on the professional duty of care exercised by KGC and its officers and to determine whether KGC remains fit for purpose to "administer consecrated land and safeguard the integrity and dignity of those interred within its care". He sent me correspondence from the solicitors who acted for him in respect of the issue of who owns the plot upon which the mausoleum stands.

iv. Having taken time to consider these issues, I gave further Directions (Second Directions) which I divided into Part A and Part B. Part A was to be sent to LL and KGC. Part B of the Directions was not to be sent to LL. Part A posed certain questions to KGC dealing with a number of issues raised by LL and sought to ascertain whether any documentary evidence existed about the circumstances of AL's entombment in 1986, about whether the ground in question was consecrated in 1986 and, if not, when it was consecrated. KGC was asked whether it accepted that LL was the sole owner of the mausoleum and was shown what LL was saying in his Petition to give these requests context.

12. I set out in the Second Directions Part A that there was a further 'Second Directions', namely part B.

13. KGC replied to these Directions on January 6, 2026, a slightly longer period than usual having been granted because of the Christmas holidays. KGC said that, to the best of its knowledge, the ground in which the mausoleum stands is consecrated ground, as it was in and before 1986 and that LL is the sole registered owner of the mausoleum in question. It says that it has no documentary records to suggest that the mausoleum was to be a temporary resting place, that the staff in 1985 are not the staff now, that it is not now able

to say what (if anything) was said about the issue of consecrated ground, nor whether LL was told of the potential consequences of the ground being consecrated, nor whether KGC ever understood that it was intended to remove AL's remains on the death of his wife. The cemetery records show what happened to AL's mortal remains in the chronology at paragraph 4 of this judgment.

14. There was, as stated, a further part to the Second Directions, titled Part B. There was an issue which concerned me, namely that with the exception of SL, who wrote a short statement supporting LL's Petition, LL said that he had no contact details for his brothers. Of AV, LL said that she was aware of his Petition but had objected to it. LL told the court that he did not have AV's address and described a fraught relationship between them. I said in Part A this about the issue of contacting AV: "*The court will continue to try and ascertain the whereabouts of [AV] to give her the opportunity to consider whether or not she wishes to object to the faculty application, but its directions in respect of this inquiry will presently not be subject to disclosure to the Petitioner. The court will keep this aspect under review. The Directions dealing with this specific issue will be known as SECOND DIRECTIONS, PART B. The reason for Part B is the dispute between LL and AV (as stated by LL in his representations) which appears to the court to be a fraught situation about which the court has principally in evidence only the account of the Petitioner at this stage…*"

15. **LL's CONCERNS REGARDING DELAY, SCOPE AND PROCEDURE** – on December 23, 2025 LL wrote to the court to express a number of concerns:
    a. LL complained that the matter had been going on for 5 years and the issues before the court had been unresolved for 8 months and that the consecrated ground issue had never been raised by KGC between 1985 and 2025.
    b. LL further stated that it was an urgent Petition and time-sensitive due to arrangements at the receiving cemetery and that continued delay was disproportionate, particularly where KGC did not object to the application. He indicated that the matter of an investigation into the historic conduct of KGC was not determinative of the faculty and could properly be addressed after the faculty had been granted.
    c. He raised a 'firm objection' as to the court's inquiry as to whether KGC accepted that LL was the owner of the mausoleum and raised detailed points as to why the court should not do this, although he then wanted KGC to explain its conduct, in its handling of AV's submissions that she was a part owner of the mausoleum.
    d. He asked the court to clarify whether it was communicating with KGC and its solicitors and why he, LL, was not included in that correspondence, why he was not being copied into or provided with what was Part B of the Second Directions and
    e. He also asked why he had not been provided with KGC's written approval or consent to his application and asked the court to provide him with a copy of KGC's consent or direct KGC itself to provide LL with a copy.

16. **SUMMARY OF THE COURT'S RESPONSE OF JANUARY 7, 2026 TO LL'S CONCERNS OF DECEMBER 23, 2025.**
    a. At the time LL wrote, the case had been with the court for just under 4 months. LL subsequently clarified that he had not been referring to the court process which he agreed was 4 months at that stage but the application in its wider sense.
    b. The court was not responsible for any delay prior to the submission of the Petition.
    c. The time taken to determine a Petition depended upon the enquiries that needed to be made and the issues raised in the case.
    d. LL had raised a number of issues, particularly in relation to KGC, which were not necessary to determine the Petition and some of these enquiries, orders or directions sought would lengthen the proceedings without justification.
    e. I did not accept that it was for LL to decide which issues were 'live' in the court's enquiries and concluded that the court was entitled to seek confirmation from KGC as to whether it accepted that LL was the sole owner, which was an extremely simple process.
    f. I would certainly not grant the Petition at this stage as LL had requested and set out to LL the court's duties in determining a petition of this kind.
    g. I stated that the only matters on which undisclosed correspondence had taken place between KGC and the Registry was that which was the subject of the Second Directions Part B.
    h. I declined to disclose, or order KGC to disclose, its letter to the Registry in which it said it had no objection to his application. It had no relevance since the court accepted that KGC did not object to the Petition.

17. **LL's CONTACT WITH THE REGISTRY ON JANUARY 20, 2026**
    a. LL wrote further submissions which were largely repetitive but added that if the court would not consider wider criticisms of KGC it should nevertheless escalate his wider complaints to "appropriate authority".
    b. He again questioned why the court needed confirmation that KGC accepted that the mausoleum was solely owned by him.
    c. In a separate letter, he also asked how AV became aware of the Petition (on the question of delay) and wanted to know why only AV was invited to make representations and not her husband, whom he said could be a witness for him on the interment of AV's daughter in the mausoleum and the fact that AV was aware that her daughter's entombment was to be temporary.

18. **THE WHEREABOUTS OF AV**

    As a result of the enquiries made by the Registry, AV's address was identified and, as a result of that, TL also contacted the Registry. The usual choices were offered to both (each to become a Party Opponent or to make representations) and both elected to make representations which would be taken into account.

19. **FURTHER RESPONSE BY THE COURT ON FEBRUARY 15, 2025 TO LL's SUBMISSIONS AND LETTER OF JANUARY 20, 2026**
    a. LL was reminded that rulings on procedural matters were final unless there was a significant change in the circumstances relevant to that ruling.
    b. He was informed that the jurisdiction of the court in respect of a municipal cemetery did not extend to its governance and was confined to any consecrated ground. Wider concerns would have to be raised by LL through other channels.
    c. LL was told that I declined to revisit the question as to why the court had sought KGC's confirmation of whether it accepted that LL was the owner of the mausoleum. Likewise, I would not revisit my decision on disclosure, although, as I had previously stated, it would remain under review.
    d. I set out the procedure applying to those who objected to a petition and told LL that he was and remained the only party to the Petition. I pointed out that the court had a duty, particularly in exhumation cases, to see that interested parties such as siblings knew of it.
    e. As far as AV's husband was concerned, I reminded the Petitioner that either or both of LL and AV could inform him if they wished and, if he wished to make representations, then I would consider whether he was an interested person within the meaning of the Faculty Jurisdiction Rules. (I had at an earlier stage provided LL with a link to these rules and provided with this Response a photocopy of Part 6, r. 6.6 and Part 10, r 10.1and r.10.3).
    f. If AV's husband was a witness whose evidence LL wished to rely on, then he was invited as a first step to provide a witness statement from him to the court.

20. **LL'S LETTER OF FEBRUARY 25, 2026** – LL sent yet another response. I judged much of it repetitive, an extension of previous submissions, and, in part, arising from an inability or refusal by LL to abide by decisions already given.

21. **FINAL DIRECTIONS OF MARCH 31, 2026**
    a. I stated that my preliminary view was that the Petition could be decided on the papers and did not require an oral hearing. I indicated that it would require a full written judgment. I reminded LL that an oral hearing would inevitably increase the costs which would, also inevitably, be borne by the Petitioner.
    b. I invited him to make any comment he wished as to whether his Petition should be decided on the papers or by an oral hearing. I told him that the final decision was that of the court. I invited him to do so by April 14, 2026, and said that a nil-reply would be treated as accepting the court's preliminary view. I also invited him by the same date to serve any final evidence or make any final submissions he wished, making clear that he was under no obligation to do either. I asked him not to repeat submissions already made.

22. **LL's RESPONSE OF APRIL 7, 2026**
    a. LL responded by seeking the court's clarification as to whether its preliminary view was that the Petition was likely to succeed and wrote: *"If the Court is minded to grant the Petition, I am content for the matter to be determined on the papers."* He further stated*: "if the Court is minded to refuse the Petition, I would respectfully request an oral hearing*…" He gave a reason for this further in the same sentence: *"…as I believe that oral submissions may assist the Court in fully understanding the circumstances, addressing any concerns, and enabling me to better understand any issues that may weigh against granting my request."*
    b. He asked for confirmation that the court would take into account all his written submissions.
    c. He raised again his submission that KGC had failed to adhere to applicable rules and regulations and given its permission for previous exhumations from the same mausoleum and his submission that he was entitled to see the letter from KGC in which it said it had no objection to this Petition. He said he had a concern that these matters had not been "fully addressed" by the court.

23. **THE COURT'S ORDERS OF MAY 14, 2026**
    a. I read LL's response of April 7, 2026, taken as a whole, to mean that unless I could reassure him that I was minded to grant the Petition, then he would wish for an oral hearing for the reasons he set out.
    b. I made clear to him that I could not give him preliminary views as to the likelihood or otherwise of his Petition succeeding. I said: *"I cannot answer the Petitioner's enquiry for the simple reason that I have not made, and will not make, any decision as to whether to grant his petition until the conclusion of the process. The most I can say is that there is an issue for me to decide, and upon which I have made no decision of any kind at this time. Sometimes, a petition may be seeking permission that can be granted on its face. If that is so, then that is what happens. On other occasions, there are judgments which the court has to make before deciding whether to grant a petition or not. This decision can sometimes be made on the evidence put before the court in written form. On other occasions, an oral hearing is necessary."*
    c. I then told LL that I had considered the question of the mode of hearing again in the light of his representations bearing in mind Part I of the Faculty Jurisdiction Rules. I told him that I had concluded: *"The issues raised by the Petition are not without complexity and I am sympathetic to the Petitioner's request. I am therefore going to accede to his wish to have an oral hearing given that I can give him no indication as to the final result at this stage…"*
    d. The Registry had already made enquiries with KGC as to a suitable venue for the oral hearing and two potential sites were available. I then gave Orders for the oral hearing and asked LL to identify his availability between July 1 and July 31, 2026, giving him 14 days to respond.

24. Finally, I addressed his outstanding concerns set out in his Response of April 17 as follows: "*The Petitioner has made these observations: "I would be grateful*

for confirmation that the Court's judgment will take into account all of the issues I have raised in my written submissions, including in particular:

a. *That the involvement of the Consistory Court arises solely because Kensal Green Cemetery (KGC) knowingly and deliberately interred my late father in consecrated ground, despite my clearly expressed intention to repatriate him to Italy; and that, but for this error, no Petition would have been required.*
b. *That my Petition is supported by a sworn statement from my brother, which I respectfully submit is a relevant factor that should be expressly considered."*
c. I stated: "*The point made by the Petitioner at…'a' will be considered by the court, but no indication is given at this stage as to the court's view of (a) the facts described (b) the conclusion(s) drawn by the Petitioner or (c) the relevance of (a) or (b). Those are matters that will be dealt with in the judgment after the evidence is considered. The court will take into account the witness statement of the Petitioner's brother, [SL]. It is part of the evidence in the case.*"

25. I also stated: "The Petitioner raises these outstanding concerns. He says: "*I also wish to record my concern that certain matters I have raised have not been fully addressed, namely:*

a. *The apparent failure by KGC to adhere to applicable rules and regulations, including, not least, the fact that KGC has permitted three exhumations from my mausoleum without a faculty having been sought from the Court. This is a matter of concern to me, as it forms part of the factual background to the Petition.*
b. *That I was not provided with a copy of KGC's letter of support, nor copies of correspondence between the Court and KGC. Despite KGC indicating that they would provide me with a copy of their letter, they did not do so, notwithstanding that I understand I am entitled to receive it. The court also refused to provide me with a copy. I would respectfully expect the Court's judgment to address this point and explain the position, particularly if that letter has any bearing on the Court's decision.*"
c. I responded: *"The Petitioner's position set out at [12]'a' above has been made clear to the court. The Petitioner may also wish to make such oral submissions as he sees fit on the relevance of this material to his Petition. The court will make clear in its judgment whether and to what extent it considers the position advanced, if established to the court's satisfaction by the Petitioner, has any relevance to the decision in respect of his Petition.* In respect of 'b' I stated: *The court's decision (which concerned only the issue of whether the court should disclose the letter to the Petitioner) was that the letter referenced…has no relevance to the determination of the petition outside of the fact that KGC does not oppose his request for the exhumation to take place which the court will*

clearly take into account. Whether KGC provides him with a copy of the letter is a matter between KGC and the Petitioner."

26. LL did not respond to the court's orders, including availability for a hearing, within the 14 days permitted. There was a very good reason, out of LL's control, for this which I accepted without reservation.

27. **LL's RESPONSE OF JUNE 8, 2026 – *"I respectfully submit that the Petition is now capable of determination on the papers without the need for oral representations, attendance by additional persons, or legal advocacy. In the Final Directions dated 31 March 2026, the Court expressed the preliminary view that the matter could appropriately be determined on the papers and there was "nothing to be gained" by an oral hearing; and that an oral hearing would unnecessarily increase costs which would inevitably be borne by me as Petitioner. I proceeded on that basis. Importantly there is no Party Opponent; the objections before the Court remain written objections only; the factual background and evidence are already before the Court; and Kensal Green Cemetery itself does not oppose the Petition. Whilst I fully appreciate that the final procedural decision rests with the Court, I respectfully submit that the issues are now sufficiently narrow and documentary in nature that further oral procedure is unlikely materially to assist determination of the Petition. I am also concerned that requiring attendance, advocacy, or expanded oral submissions would introduce disproportionate cost and further delay into proceedings which have already been ongoing for a considerable period of time. I respectfully invite the Court to determine the Petition on the written evidence and submissions already provided."***

28. LL made no reference to his previous submissions on this topic and appeared to have changed his mind on the mode of hearing if I could not give him a preliminary indication that his Petition was likely to succeed. Whilst this had meant the use of more time and involved the court in making what turned out to be unnecessary orders for an oral hearing, I bore in mind that LL did not and does not have any legal representation. I consented to his application that the matter could and should be decided on the papers. A hearing on the 'papers' had been my preliminary view, one which I had changed, principally due to his representations of April 7, 2026.

29. As there was to be now no oral hearing, I gave a final opportunity to LL on July 3, 2026, if he wished, to make any final submissions before I determined the Petition.

30. He availed himself of that opportunity and responded on July 17, 2026.

31. The Registry informed me that I had been in error in stating that LL had sent the *actual letter* from AV. What he had done was to tell the Registry that his

sister had sent him a letter and to explain the gist of it. He had communicated it to the Registry for my information on June 17, 2026. It read: "*This is for information only. Can you please inform the Chancellor that I received a recorded delivery letter from [AV] this morning. She has informed me that she is exhuming her daughter from my Mausoleum to cremate her. I have been asked to provide consent and to inform KGC accordingly*." LL made it clear that this revelation was for information only. In view of the history of this mausoleum, I asked the Registry to check whether KGC were aware of this and KGC answered on July 6, 2026, confirming that they were indeed aware of AV's intention of possibly seeking an exhumation of her daughter's remains from the mausoleum, adding a further detail which at the time seemed to have no significance. Whilst reviewing all of the papers in writing this judgment, I had cause to return to this letter, as it appeared to me as possibly having some significance in LL's final submissions.

32. **LL's FINAL SUBMISSIONS OF JULY 17, 2026**

    a. On the question of previous exhumations from LL's mausoleum, he said: "*The fact that exhumations have previously taken place from this mausoleum bears directly on whether the circumstances of this Petition are exceptional. It shows that the mausoleum has not, in practice, been treated as a place from which remains could never be removed. Each petition must of course be decided on its own facts, but the history of this particular mausoleum is relevant to understanding how it has actually operated. It also explains my own state of mind. I was aware that previous exhumations had taken place, but not that a faculty from the Consistory Court had been required for them. That awareness shaped my belief that, if circumstances required my father's eventual relocation to Italy, this could be done in the same way. Nothing known to me, or to my mother, suggested that burial in this mausoleum was meant to be irrevocable in practice. Consistent with that belief, I made further requests to exhume and repatriate my father, in 2010 and again in 2015, though I did not pursue either to completion. At no point did I understand that a faculty would be needed. In fact, the Court is already aware that this is not an isolated understanding within the family. Following the death of my father's cousin…his wife asked me if he could be placed temporarily in the mausoleum pending his repatriation to Naples. I agreed. A funeral was held and he remained in my mausoleum for six months before eventually being exhumed and returned to Italy. No application for a faculty was made. I simply informed the cemetery, and the undertakers made the necessary arrangements. Had his wife known that removal would only be possible by application and with the court's permission, it would have been highly unlikely that she would have placed her husband there in the first instance. This background forms part of the exceptional circumstances upon which my Petition relies.*"

b. In respect of AV's recent letter, LL said: *"My sister's recent correspondence is, I submit, of real significance. As the Court is aware, she has recently applied to remove the remains of her daughter, my niece, from the mausoleum. Her conduct provides compelling evidence of her understanding at the time of the interment. By seeking her daughter's removal now, she has shown that she always believed such a move would be possible if circumstances required it. The arrangement I made with her and her husband was, in fact, intended from the outset to be temporary. At the time of my niece's interment, they had already obtained permission from Southgate Cemetery to build a family mausoleum, and it was understood that her remains would be moved there once construction was complete. Had she appreciated that removal would only be possible in exceptional circumstances and with the Court's leave, it seems unlikely she and her husband would have chosen to place her daughter there in the first place. This is not speculation about her state of mind - it is a proper inference from her own subsequent conduct, and it supports my evidence that members of my family did not understand the legal consequences of interment in the mausoleum."*

33. The purpose of giving LL a final opportunity to make submissions or submit further evidence was to allow him to put his case as fully as possible. As rehearsed in paragraph 32b above, he was submitting that the information about AV's possible intention to apply for a faculty to permit the exhumation of her late daughter's mortal remains was not simply 'for information' but that it was of "*real significance*" and provided "*compelling evidence of her understanding at the time of the interment.*" In reviewing the evidence, I looked again at the letter from KGC. Some of it dealt with an enquiry of AV to KGC in respect of a potential application. It accorded very broadly with what LL says was said to him in AV's letter.

34. There is, however, a further passage in KGC's letter. I wished LL to confirm its accuracy or otherwise. It referred to a notification letter allegedly left by LL in or on the mausoleum in August 2025 and allegedly addressed to his sister. Under the heading *"Immediate Instructions"*, the letter stated: "*You are instructed to vacate the Mausoleum and make alternative arrangements for the interment of my niece [name redacted by the court] as soon as possible...*" It was said further that the letter went on to state that this eviction should be completed by the end of 2025. The cemetery manager says that LL also provided her with a copy of the same letter for her information.

35. LL had told me in his Response to my Initial Directions of a letter/notification he wrote and placed in or on the mausoleum following a meeting with the cemetery

manager at a time that would be consistent with the letter mentioned at paragraph 34 of this judgment.

36. I asked LL the following:
    a. Did he accept or deny that he left a written letter/notification addressed to AV at or around August 2025?
    b. Did he accept or deny that it was headed “Immediate Instructions” stating “You are instructed to vacate the mausoleum and make alternative arrangements for the interment of my niece as soon as possible.”?
    c. Did he accept or deny that he informed AV in the same letter that this should be completed by the end of 2025?
    d. Did he accept or deny that he had given a copy of this same letter to the cemetery manager for her information?

    I made clear that I only sought these answers now because of his most recent submission about AV’s letter to him and that all of the facts sought would be within his own knowledge.

37. LL responded promptly. He confirmed the facts set out in paragraph 36.

38. **LAW GENERALLY**
    a. It is a criminal offence for a body or any human remains which have been interred in a place of burial to be removed (Burial Act 1857, Section 25 as amended by the Church of England (Miscellaneous Provisions) Measure 2014, Section 2, unless the body is or the remains are removed in accordance with a faculty granted by the consistory court of the diocese or under licence from the Secretary of State and in accordance with any conditions attached to the licence. There are certain exceptions relating to cathedrals, coroners’ inquests, disused burial grounds etc which are not applicable to this case.
    b. Exhumation from a burial ground (below or on the ground) such as a churchyard or a municipal cemetery <u>always</u> needs permission: either from the State, nowadays in the form of a licence issued by the MOJ on behalf of the Secretary of State or from the consistory court for the diocese or, on occasion, both, subject to one exception in the case of unconsecrated ground. Where the place of burial is on or in unconsecrated ground then an MOJ licence is required whether the proposal is to remove the body or remains to consecrated or unconsecrated ground, save for contained cremated remains held above ground (such as in a mausoleum). Exhumations which involve a body or any human remains interred in a place of burial which stands on consecrated ground require a faculty from the relevant consistory court whatever the ultimate destination. This also applies to contained cremated remains above ground, unlike the MOJ licence.
    c. ‘Consecrated’ means a burial ground, or area of a burial ground, that has been sanctified in accordance with the rites of the Church of England. An MOJ licence is not generally required when it is sought to exhume a body lying in consecrated ground and subsequently to cremate it, although a proposed cremation is a factor which the consistory court may consider in deciding whether to grant the application or not.

d. Removal of a body or human remains (including contained cremated remains) from a consecrated burial ground in circumstances such as exist here is not permitted without an ecclesiastical faculty, whoever else agrees or purports to agree to it. In the specific circumstances of a proposed exhumation of AL's mortal remains, this required a faculty; but, even had the ground been unconsecrated, it would still have required a licence from the MOJ.

39. **ANALYSIS AND DECISION**

a. **The Broad Issues**

i. The first issue is whether the Petitioner has established on the balance of probabilities that the facts in his case create an exception to the rule that burial in consecrated land is final and permanent or whether one or more *Blagdon* exceptional circumstance displaces the permanence principle.

ii. If one or more of them do create that exception, then the faculty should not be denied on the permanence principle.

iii. If individually or collectively they do not create a *Blagdon* exception to permanence, then the Petition must be denied.

iv. The second issue is that, if an exception does exist, are there any other grounds for denying the faculty? If there are not, then the faculty should be granted. If there are, then those grounds have to be examined to see if exhumation should nevertheless be denied.

v. Where applications are made for an MOJ licence to exhume a person's body or remains, where they lie in unconsecrated ground), there will be no application of the permanence principle, but this does not mean that such an application will necessarily succeed. The application form requires (Q7) the applicant to describe if they are the nearest surviving relative, and, if not, to explain why they (and not any others of the surviving relatives) are making the application and whether any other relative is of the same degree of kinship to the deceased. It also asks (Q8) whether all family members are aware of the application and whether the applicant knows of any person (relative or otherwise) who may object to the proposal to remove the remains or is likely to do so. Their signatures expressing consent (Q9) are also required. The table of kinship applied by the MOJ licence in order of precedence is (1) a spouse or civil partner of the deceased, (2) all children of the deceased, (3) all brothers and sisters of the deceased; and (4) all grandchildren.

vi. The consistory court is also obliged to consider whether there are any objections to the petition from kin or any other properly interested party.

b. **Approaching the *Blagdon* question**

i. In determining whether (a) the cemetery understood that AL's entombment in the mausoleum was temporary and (b) what, if anything was said about it, I am required to consider LL's evidence about conversations between him and the cemetery manager in 1985/6 and in 2014.

ii. I have also had to consider the information from LL about other interments in this mausoleum and the apparent removal of other bodies or cremated remains without faculty consent.
iii. It is a feature of the Petition that little or nothing by way of documentary evidence is available in support or denial of LL's assertions about what was said at the time of the original entombment.
iv. In 1985/6, when I accept he would have been a much younger man, LL says that he made it clear that his father's interment in London was temporary, pending the eventual repatriation of his remains to Italy to rest with his wife's when she died. He says that it is uncontested that both parents wished ultimately to be interred in their family cemetery which he says is a fact known long ago to KGC. In another written submission, he says that Mr Burkett, the general manager at that time, was fully informed and aware that a mausoleum was required only as a temporary resting place, pending AL's repatriation to Italy.
v. This raises a number of questions. Informing someone of something can, at one end of the scale, be conversational, through, at the other extreme, to a formal process. Seeking to reconstruct conversations that occurred in 1985/6 is extremely difficult and all the more so when none of the cemetery staff are now the same, something that LL should have realised might well be the case over a potentially lengthy period of time. Was LL (or his mother) just conversationally expressing a future intention they held at that time? Were either of them seeking to establish that there would be no issue with this? If the latter, it would at the very least have been prudent to have memorialised the agreement by putting LL's intentions down on paper, putting what he was seeking KGC to do or permit (if anything) on paper and keeping any written reply from KGC as a record. If it had been an important consideration at the time, this struck me as somewhat odd, given that LL has been a meticulous and detailed correspondent in this Petition,
vi. I would be very sceptical of any suggestion that LL did not believe, even in 1985/6, that subsequent exhumation of a human body would not require *some* permission over and above that of the cemetery, unless he had been told specifically by the cemetery that it would not. I cannot imagine any funeral director agreeing to exhume a deceased's body without appropriate permission in the form of an MOJ licence or faculty as appropriate. The cemetery has no records that support LL's contentions. That does not mean that LL's assertions are not as he states, but that KGC does not, 40 years later, have any records that either corroborate or disprove them. The court is, nevertheless, also able to examine the history of the interment and events connected with the mausoleum to see if they provide corroboration for LL's contentions.
vii. LL told me of the events surrounding the (subsequently abandoned) attempt to repatriate AL's remains in 2014/15, which

are themselves 12 years ago. LL's case is that in 2014/15 he successfully applied to repatriate him (I am taking it that this was an MOJ licence) and that KGC consented. He says that funeral directors were appointed and preparations made in Italy. I do not know what he said in the application about the consent or otherwise of the next of kin, except that he did inform AV, whom he says had agreed to purchase the mausoleum. This developed into a dispute between LL and AV. Importantly at that time, their mother was alive and capable of making decisions. It was because of her declining health that she decided to return to England. LL also mentions a request to repatriate his father's body in 2010 which was not completed for some reason.

viii. The events of 2020 to the serving of the Petition are the subject of much criticism by LL about the conduct of KCG and the time it took for them to accept that LL was the owner. Given that I am not taking into account any question of delay, it is irrelevant and not for me to make any judgment on the rights and wrongs (if any) within this period.

ix. The next topic is inferences. LL has said that I am entitled to, and should, take into account other exhumations in and from the mausoleum which he alleges have occurred. The inference he principally asks me to draw is that since neither he nor the families concerned were advised by KGC that a faculty would be required, it follows that either KGC did not realise a faculty was required because KGC itself did not appreciate that the ground was consecrated or did but failed to appreciate the consequences.

x. There are four such examples he draws to my attention. The first relates to the disturbance of AL's remains, two more relate to family members whose remains were held temporarily in the mausoleum and one to his father's cousin, AB, unless I have misunderstood and AB's exhumation is one of the two already counted.

xi. I understand from LL that AL had to be disinterred and reinterred following damage to AL's coffin. Any disinterment from consecrated ground and reinterment, even in the same consecrated ground, requires the court's permission usually by way of faculty. Whilst I do not condone an official failure to obtain permission, if the facts are as the Petitioner has stated, there is no way at this remove that I can sensibly investigate this aspect.

xii. The exhumations of the two (or three) relations have potentially a greater significance, although, again, investigation of these instances is impractical at this remove. The question of what degree of approval was given is not entirely clear, although I accept that the permission of the consistory court was neither sought nor given. As far as the exhumation of LL's father's cousin's (AB) remains are concerned, LL says in his final submissions of July 17, 2026 that, following a funeral, AB's wife asked LL for permission to entomb her husband's remains in the mausoleum before being exhumed and returned to Italy. He says that no application for a faculty was made in respect of this

exhumation, and that LL simply informed the cemetery and the funeral directors made the necessary arrangements. He said this also in his initial representations: "*KGC themselves authorised LL to arrange three separate exhumations from the same mausoleum (including that of a relative AB who was returned to Italy without Faculty or licence).* In these initial representations, however, he enclosed an email he had sent to the general manager of the cemetery in which he said *"…I have successfully applied for three exhumations since 1985, for my father, a niece and a relative [AB]. In one case, I successfully applied to the MOJ to exhume [AB] and subsequently had him transported to Italy".*

xiii. It is my understanding, as I have already stated, that the MOJ makes an exception if the requirement to obtain a licence to exhume is for cremated remains held above ground on unconsecrated ground (see Q3 on the licence application form). This is in distinction to non-cremated remains whether held above or below in unconsecrated ground. These do require a licence. I repeat that ecclesiastical law requires a faculty in all circumstances where it is proposed to remove or disturb remains whether cremated or not, when held on, above or below consecrated ground. If it was not appreciated that the mausoleum was standing on consecrated ground for whatever reason *and* the remains of a relative were contained cremated remains, then this would explain why an MOJ licence would not have been necessary. In making these observations, I make clear that they do not represent a legal judgment on the requirements of the MOJ but my understanding of them. This judgment is in respect of the ecclesiastical law within the faculty system and anyone contemplating exhuming human remains from unconsecrated ground anywhere should seek advice from the MOJ as to its requirements.

xiv. The issue here is whether it would be reasonable and proportionate to hold that the principle of finality and permanence should apply in the circumstances on the facts I find here. That depends on LL's genuine understanding about first, the status of the ground on which the mausoleum stood and, second (if he did understand that the ground was consecrated) whether he understood the consequence of that status, although not understanding the consequence of burying a person in what you knew or believed to be consecrated ground is not of itself an exceptional circumstance.

xv. There are a number of pieces of corroborative evidence which support LL's contention that he was unaware that the mausoleum he had built, housing his father's remains, stood on consecrated land and I accept his account that he was unaware of that fact. I note that neither AV nor TL suggest that they or LL were aware that the ground on which the mausoleum stood was consecrated or the consequences of that. Whatever the objective facts of the dealings and conversations he or his late mother had with the cemetery management in 1985/6 (which are very difficult to

ascertain and judge now) I am satisfied on the balance of probabilities that he was not told that the ground was consecrated and what the consequences of that were. I am satisfied it is very likely that LL said something about an ultimate intention of the family to repatriate AL to Italy when his mother died but whether this was just conversational chatter or a formal notification (or something in between) is impossible to assess. This repatriation was potentially (and in fact turned out to be) a very long time away in the future and, depending on the formality of any discussion and what assurances (if any) LL or his mother received from Mr Burkett, I cannot make any clear finding 40 years later as to why they were not told of the consecrated status of the ground on which the mausoleum was to be erected.

xvi. People who do not identify with being members of the Church of England can elect, prior to their deaths, to be buried in consecrated ground or those responsible for their burial arrangements can make that decision on their behalf. In churchyards, the qualification for burial in an open churchyard is living in the parish at the time of death (or dying within the parish) or being on the church electoral role. At the incumbent's discretion (or that of the Parochial Church Council with the area dean during vacancies) people outside of the parish may also be buried in the churchyard, but not of right. Whilst there are restrictions on types of memorial and what may or may not be displayed on them, it follows that those of any religion or none may be buried in their parish churchyard and that area will almost invariably be consecrated ground.

xvii. Municipal cemeteries are different. There, although there may be residence restrictions, not all of the ground will be consecrated as it usually would be in a Church of England churchyard, and some areas will usually be reserved for those of different faiths or denominations. And other ground may simply be unconsecrated and without specific designation. I understand that AL had a Roman Catholic funeral. There is in fact a Catholic cemetery close by KGC. People vary greatly in the degree to which they are concerned about being buried in part of a cemetery dedicated to their faith, if indeed they have a faith. Equally, some may wish to be buried in ground consecrated according to the rites of the Church of England even if they are not Anglicans and even if they do not wish to be buried in accordance with the Church of England's prescribed service for the buried; a right enshrined in the Burial Law Amendment Act 1880 as amended by the Local Government Act 1963, §44(4). I consider it unlikely in this case that LL or his mother would have wanted AL buried in ground consecrated according to the rites of the Church of England, particularly if they had understood the implications.

xviii. I should make clear that I would not have found that any of the other potential exceptions set forth in *Blagdon*, taken either separately or together, are engaged in this particular petition, except the one I have found established, namely that LL was not

made aware that the ground on which the mausoleum stood was consecrated until after the death of his mother, nor the implications of that. Had LL been aware that the ground was consecrated, I would not have found that the wish of the deceased to be repatriated, distress at not being able to honour his father's wishes, the family's wishes (which are in any event divided) or a desire to bury his mother and father together (which clearly was their wish) would have sufficed to displace the principle that burial in consecrated ground is permanent and final. If LL knew the ground was consecrated, then it would have been for him (and his mother) to take into account his father's wishes by either not burying or entombing him in consecrated ground or deciding to ignore his wishes. The same would apply to the family's wishes even if they were united. The distress it would have caused to LL would have been self-inflicted, and, in any event, was never established evidentially to be of such an order as to constitute an exceptional circumstance. The decision to have his mother's remains cremated and buried in Italy was LL's and was taken before he had received *any* permission to exhume his late father's remains and pre-empted such consent.

c. **The Objections**

i. The fact that the principle of permanence is, in my judgment, displaced by a *Blagdon* exception for the reasons I have set out, does not mean that permission to exhume is therefore automatically granted. In the secular system, when dealing with exhumations from unconsecrated ground, permission is not automatically given by the MOJ simply on request. As already stated, one important factor the MOJ licence application requires is the identification and views of family members. I too must, and will, also consider these.

ii. LL, the Petitioner, is in a category of kinship that on the facts of this case is the closest to the deceased, his mother now being dead. SL, the youngest of AL's living children supports AL's Petition and is in the same category, as are AV and TL who object to the proposal.

iii. In considering the Objections to LL's petition from TL and AV, I make clear that I am conscious that AV and TL are Objectors but declined to become Parties Opponent and that therefore allegations made either by AV and TL against LL or vice versa have not been tested in oral proceedings.

iv. It is clear that the dispute between AV and LL is, and has been, very bitter. The way in which people behave in such disputes may not always be appropriate or lawful, and this is what LL says of AV's conduct, but that does not mean (even if well founded) that the person criticised does not have genuine and strong feelings. Indeed, it rather supports the fact that they do. It is clear that both AV and TL do not wish their father's remains to be taken to Italy for the reasons they set out. That TL, in effect, 'adopted' AV's objection does not affect its potency. It is quite common in any formal complaint or objection for objectors or complainants to

adopt another person's objection or complaint or to use very similar wording.

v. Of course, people's views on their own funeral arrangements and those of their family members for whom they have that responsibility do not necessarily remain the same. That is understandable, not only because people's views can change but also their circumstances may (and often do) alter.

vi. LL says that he bore the responsibility, shared with his mother, of his father's funeral arrangements and later those of his mother, who in due course came to live with him as her health deteriorated. She lived to a very advanced age and inevitably became frailer both physically and mentally. He said in his submissions that two of his brothers (GL and TL) were estranged from his mother and that AV's objection, which he had clearly thought likely from the outset, is actuated by malice because of a dispute over ownership of the mausoleum.

vii. The allegations and cross-allegations are not suitable to be determined by this court. First, AV and TL are not parties. This restricts the court's ability to test all the evidence. Even if it were able to do so, the amount of time and cost that would be involved in trying to assess the rights, wrongs and relevance of each disputed issue would be disproportionate.

viii. When approaching an irreconcilable difference over a potential exhumation from consecrated ground, the court will first apply the permanence principle. If that is not displaced by a *Blagdon* exception or exceptions, the views of family members will not be sufficient to justify an exhumation.

ix. If the permanence principle *is* displaced because of an exceptional factor or factors, then the court will examine the wishes of the kin deemed closest to the deceased which would, in this case first be those of AL's wife and the mother of LL, TL and AV.

x. The facts here are that the mother clearly relied closely upon LL in making AL's funeral arrangements and he carried them out. It is clear that she discussed her wishes with him and LL says (although AV disagrees) that it was always the intention to repatriate his father's remains to Italy on his mother's death. If reasons of faith did not prevent it, the obvious solution might well have been cremation which would have avoided this saga. LL says that his mother did not want her husband to be cremated at the time and only much closer to her own death changed her mind in respect of her own remains. AV and TL disagree, saying that she never did change her mind.

xi. Whatever the arguments about how the situation evolved as it did, the reality is that the mausoleum was built, likely for the reason given by LL, and that the entombment of AL in it represented the wishes of his wife and probably without any opposition from other family members at that time.

xii. Again, notwithstanding the arguments about its ownership made principally by AV and whatever the investigation by KGC or the

establishing of LL's registration and his instruction of solicitors (all questions that are outside of the jurisdiction of the court for the purposes of this Petition) KGC does not dispute that LL is the registered owner of the mausoleum.

xiii. It is likely that their mother would have agreed with LL's proposal to have AL's remains exhumed for repatriation to a joint or adjacent grave in Italy. LL states that she did. Even if AV's opinion is that her mother was unduly influenced by LL in her later years, that is likely to be a perception and AV was not a disinterested observer. In either event, I conclude that it was their mother's wish for the repatriation and joint burial. I also have to bear in mind that AV has had a number of disputed issues in relation to the mausoleum at which I accept she was a regular visitor and where her father's and daughter's remains lie. LL has ordered AV's late daughter's remains to be evicted from the mausoleum on more than one occasion, including relatively recently.

xiv. I agree with LL that earlier attempts to evict AV's daughter support to an extent his proposition of his (and her) unawareness of the status of the ground, although he will have been aware of it by August 2025. I make it clear that any further unauthorised interference with any deceased person's remains in this mausoleum will be treated as a very serious matter. They are not, once entombed, portable property to be treated as a possession of any individual at will, whatever their relationship with the deceased. For AV to exhume her late daughter's mortal remains, she too will require a faculty as would LL if he wished her remains to be exhumed.

xv. I have concluded that LL should be permitted to exhume his late father's remains because, the permanence principle being displaced on these unusual facts, it is clear that he has had the principal responsibility for his mother (who lived with him in her last years), and later her mortal remains, and his father's mortal remains throughout.

xvi. It is an application the outcome of which was bound to cause both disappointment and distress to at least two of AL's children whether it was granted or refused. That is unavoidable.

xvii. I am aware that the proposal is to cremate AL's remains. I have borne in mind that the permanence principle has been displaced. I have also considered the practical limits to the court's control once the body has been exhumed. Likewise, I have considered the desire of AL and his wife to be buried together. I will include in my Conditions, directions as to procedure.

40. **CONCLUSION**

The faculty application is granted and will pass the Seal (with Conditions) on the ground that the permanence principle is displaced, because I find that, on the balance of probabilities, the Petitioner was not informed that the ground was consecrated (or the consequences of this) at the time that his father was entombed in the mausoleum and only discovered it when he made arrangements to repatriate his father's body in the 2020s.

Considering the Petition in the light of this finding, I find that the Petitioner should be permitted to exhume his father's mortal remains as he has had primary control (together with his mother when she was able) over them and the proposal is to reunite the cremated remains of both AL and his wife in the cemetery in southern Italy, which, whilst for the reasons stated was not of itself sufficient to displace the permanence principle, is something I do permit once the exception relating to lack of knowledge of consecration has been established.

41. **ANCILIARY MATTERS**

There are certain matters to which LL has referred during the proceedings: he wishes clarification as to how AV was informed of his Petition, disclosure of the correspondence from KGC and identification of the appropriate authority for oversight of the cemetery operator. The way in which AV discovered the existence of the Petition is irrelevant to any matter I have been considering. The court has disclosed correspondence where it potentially bore on a matter of relevance. Similarly, the correspondence from KGC which revealed that it had no objection to LL's Petition was addressed to the court, not LL. Anything else in the letter was not judged by me to have any relevance to the issues I had to decide. If there are matters that LL wishes to raise about the general governance of the cemetery, as he has indicated in his Petition, that has to be a matter for him.

42. I initially ordered that the costs of this written judgment pursuant to The Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2025, Paragraph 5, Table 1, No. 13 [SI 2025 No.1005] in the sum of £1,272.00 shall be paid by the Petitioner, subject to his being given an opportunity to make submissions on both costs and Conditions.

43. I gave the Petitioner 28 days from receipt to pay those costs or to make any submissions to me as to why I should not so order. I gave the same period of time for any submissions (if any) as to the Conditions. I ordered that the judgment would remain in draft only to the extent that the Petitioner might make representations, if he chose, as to the costs and Conditions, but said that its contents other than that were final, except for the correction of purely typographical errors. The Petitioner did make further submissions and I have added an addendum at paragraph 46 giving my final judgment on costs and Conditions.

44. **CONDITIONS**

a. The faculty shall not pass the Seal until the Order for costs is satisfied and no exhumation is to take place until the faculty is in the possession of LL.
b. No further bodily remains (whether cremated or not) may be entombed in the mausoleum except on the basis that, absent any exceptional circumstance, of which ignorance of the ground being consecrated will not be one, this will be their final and permanent resting place.
c. Any application to exhume existing mortal remains (whether cremated or not) entombed in this mausoleum (other than those of AL in this

Petition) must be made by December 31, 2026 after which the question of delay will become relevant.

d. The exhumation and cremation of AL must be under the direction of *Kelly of Mill Hill*, Funeral Directors, 9 The Parade, Holders Hill Road, London NW7 1LY.
e. The court has standard directions for exhumations. Those in italics may be utilised at the discretion of the Funeral Directors in consultation with KGC, and if required, the Chief Environmental Health Officer of the Royal Borough of Kensington and Chelsea or their appointed deputy. The overriding objectives are that (i) the exhumation must be seemly; (ii) it must be carried out with the minimum of disturbance to other users of the cemetery and (iii) it must pose no risk to public health.
f. The standard directions of the court are:
    i. That the removal be effected with due care and attention to decency, early in the morning and the grave screened from the view of the public.
    ii. *That freshly made lime be freely sprinkled over the coffin, the soil or any other matter that may be offensive.*
    iii. *That the remains, when removed, be contained in a well pitched shell and entirely surrounded by four inches of newly made vegetable charcoal or sawdust.*
    iv. That the cremated remains be contained and re-interred as soon as is possible in the new appointed grave in the Municipal Cemetery, Pontecagnano, Italy; the final arrangements for transfer and transportation by the Petitioner having been made before the exhumation.
    v. That the funeral directors must give an undertaking to carry out the exhumation in a reverent manner and comply with any instructions which may be given by the Chief Environmental Health Officer.
    vi. That due notification of the time of the proposed exhumation be given to the Chief Environmental Health Officer and any instruction given by him or his representative, either before or at the time of such exhumation, must be carefully carried out in addition to the conditions above.
g. Notification of the date and time of the exhumation must be given to the Registry 5 clear days before it occurs, excluding weekends, who will arrange for the Objectors to be notified should they wish to attend. Other family members who might wish to attend should be notified by the Petitioner.

45. Notification of the Judgment shall now be sent to the Petitioner, the Objectors, KGC and the Funeral Directors. KGC and the Funeral Directors should be asked particularly to note paragraphs 42 to 44.

46. **ADDENDUM**
    a. The Petitioner has made submissions on (i) the content of the judgment apart from the draft order for costs and the draft Conditions; (ii) costs and (iii) Conditions.

i. **The content of the judgment apart from the draft order for costs and the draft Conditions.** There appears to be a misunderstanding. I did not invite any submissions on the content of the judgment except in respect of costs and Conditions (apart from any typographical errors). On the contrary, I made clear that the judgment (save for any submissions on costs and Conditions) was final. Final means final and it is not open to further argument and submissions. It stands as it was, save for minor typographical corrections and this Addendum.

ii. **Costs.** In this petition, there is only one party, namely the Petitioner (LL). He is, therefore, the only party susceptible to any order for costs in respect of the judgment. I considered carefully at the time, and have considered again, whether it is appropriate to make a costs order. I have set in the judgment the complexities of the Petition and the issues it involved (including a number of which the court had to exclude for the reasons set out). LL makes the point that his application succeeded. It did. He reminds me that there was no Party Opponent. There was not. He says, again correctly, that he was an unrepresented Petitioner attempting to navigate a specialist jurisdiction. He also prays in aid that he raised no objection to an oral hearing and, in the end, and although the final decision was mine, he did so consent to the Petition to being decided on the papers. The fact that there was not an oral hearing has avoided the much higher costs he would likely have incurred had there been one. He also reminds me of why it was necessary to seek the Petition. I understand what he says, although seeking to exhume his father's remains was his choice. I also want to make it clear that I am not imposing the order because I am somehow penalising him for seeking a faculty but because these are the conservative costs of the judgment and I see no reason why he should not pay them. All of the principal features of this Petition can readily be seen in the judgment. The order for costs of £1272.00 stands.

iii. **Conditions.** LL made submissions about the Condition that the costs' order should be satisfied before the faculty passed the Seal. The submissions were conditional upon my either removing the order for costs or reducing the sum imposed. Since I have done neither, LL has no further submissions in respect of the Conditions, all of which I therefore now impose and make final.