

In the Consistory Court at Lincoln

In the matter of Bourne Abbey Churchyard and Alan David Peglar deceased.

### Judgement

1. By a petition dated 3 April 2012 the Petitioners apply for a faculty for the exhumation of the remains of their father Alan David Peglar deceased who died on 10<sup>th</sup> August 2008 and whose cremated remains were buried in the churchyard of the Bourne Abbey on 4<sup>th</sup> September 2008. The Petitioners wish their late father's remains to be reinterred at Pardon Wood Cemetery in Harlow where their mother cremated remains have recently been interred following her death in September 2011.
2. In support of her petition, Fr Atkinson, the Vicar of Bourne has written a letter dated 7 March 2012 in support of the Petition. I have also read a number of other letters from the Petitioners and also from Mr and Mrs Dobson dated 26 September 2011.
3. An MoJ licence has been issued for the removal dated 14 February 2012, because the Pardon Wood cemetery is not consecrated, and South Kesteven DC environmental Health services have no objection (see their letter dated 7 October 2011). Although Fr Atkinson has given his support, I do not have a resolution of the PCC. I need to have such a resolution to confirm that they are in agreement too.
4. What has happened here is that Mr and Mrs Peglar had lived their lives in Essex and moved to Bourne in their retirement in late 2007. Their children and extended family all live Essex or Kent. Shortly after retirement to Bourne Mr Peglar became ill and died in August 2008 and his cremated remains were buried in Bourne. Tragically Mrs Peglar fell ill herself only 2 years later. Her family have interred her ashes in Pardon Wood Cemetery in Harlow where I understand other members of the family have been interred.
5. Shortly after this the family approached Fr Atkinson seeking advice as to how they could go about removing their father's ashes and reintering them with their mother in Harlow. Before she died Mrs Peglar has been considering a move back to Essex but this was a big decision not least because Bourne was where her husband's remains were interred.
6. Plainly the whole focus of the family in the Essex area and the links with Bourne have been shortlived. Mr and Mrs Dobson tell me that Harlow was a very happy place for Mr and Mrs Peglar and this is the area around which the immediate family live. I have read letters from the Petitioners that all express the wish to visit their parents' graves together. They have unhappy memories of Bourne which is understandable, of course.
7. In considering this Petition it is important that the petitioners understand the law that I must apply, which is founded upon a Christian understanding of what burial of the body or the cremated remains, signify. The principles by which an exhumation from consecrated

ground is permitted are well known and set out in the case of In Re Blagdon Cemetery 2002 Fam p299.

8. The presumption is that burial of human remains in consecrated ground is permanent. This presumption arises from the Christian theology of burial which was set out at para 23 of the judgement in Blagdon in the quotation from The Bishop of Stafford's paper on the 'Theology of Burial'. He wrote

“ The funeral itself articulates very clearly that its purpose is to remember before God the departed; to give thanks for their life; to commend them to God the merciful redeemer and judge; to commit their body to burial/cremation and finally to comfort one another.”

He went on to explain:

“ The permanent burial of the physical body/ the burial of the cremated remains should be seen as a symbol of our entrusting the person to God for resurrection. We are commending the person to God, saying farewell to them (for their ' journey'), entrusting them in peace for their ultimate destination, with us, to the heavenly Jerusalem. The commending, entrusting, resting in peace does not sit easily with 'portable remains' which suggests the opposite: reclaiming, possession, and restlessness; a holding onto the 'symbol' of human life rather than a giving back to God”

9. The principle of permanence can only be departed from if there are special circumstances which justify an exception to the principle that Mr Peglar was laid to rest in 2008 and his remains should not now be disturbed.

10. The Court of the Arches in Blagdon identified various factors which may support a submission that special circumstances have arisen which permit the remains to be exhumed. These factors are:

- (i) medical reasons.  
The Court made it clear that the only medical reasons which could assist a petitioner in these circumstances would be those which showed quite clearly that a serious psychiatric or psychological problem had arisen caused by the location of the grave to whom the petitioner had a special attachment. The Court made it quite clear mere decline in health and mobility due to advancing years could not be a reason which would displace the presumption of permanence.

There is no suggestion here of the necessary serious psychiatric illness linked to the location of the grave.

- (ii) lapse of time.  
The Court held that the passage of a substantial period of time before an application for exhumation was made could not be determinative of the application in itself. However, it would be a factor in assessing the genuineness of the Petitioners case.

In this case there has been delay of only 2 years; and the family raised the issue with Fr Atkinson as soon as their mother had died.

(iii) mistake.

Where there has been a simple error in administration, such as burial in the wrong grave, the Court held that faculties for exhumations could readily be granted. Of more difficulty is where there is a failure to understand or appreciate the significance of burial in consecrated ground in a municipal cemetery. In the case of In re Crawley Green Road cemetery, Luton 2001 Fam 308 the family of a humanist was permitted an exhumation on this ground: also In re Durrington Cemetery 2001 Fam 33 orthodox Jews were permitted to exhume. The Court emphasised the need for greater clarity about the significance of burial in consecrated ground in cemeteries.

There has been no mistake in the burial place here.

(iv) precedent.

The Court held that consideration of the effect of precedent by the grant of the application is properly made because of the desirability of securing equality of treatment, so far as circumstances permit between petitioners.

I take this issue in to account.

(v) family grave

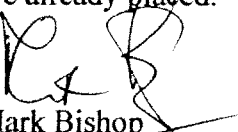
The Court held that the use of family graves are to be encouraged because they both express family unity and they are environmentally friendly in demonstrating an economical use of the land for burials.

12. In my judgement this application can be granted on the basis that Mr Peglar's ashes be placed in a family plot together with Mrs Peglar's ashes. The condition of this exhumation is that they are being placed together in one place, rather than Mr Peglar's ashes being exhumed from one separated location, to be reinterred into another separated location albeit in the same cemetery as his wife. It is because this is an application for a family grave that it is granted. If the application had been simply on the basis that it was inconvenient for the family to visit Bourne, or distressing because of the associations, this would not be sufficient disturb the grave where the presumption in Christian burial is permanence.

13. The conditions for the grant of this faculty are:

(i) the PCC support the application

(ii) the re-interment of Mr Peglar's ashes are in a family grave in which Mrs Peglar's ashes are already placed.

  
Mark Bishop  
Chancellor

19 June 2012.