

**Neutral Citation No. [2019] ECC Chr 1**

**In the Consistory Court of the Diocese of Chester**

071/18 and 072/18

**In the matter of Middlewich Cemetery**

## **Judgment**

### **Introduction**

1. Two petitions dated the 20<sup>th</sup> August 2018 for the exhumation of cremated remains have arisen for determination in the context of a most regrettable family dispute and an apparent error made by a cemetery authority.
2. The petitioners are Michael John Allcock (68) and his sister, Diane Jane Morris (59). They are, respectively, nephew and niece to the deceased in question.
3. The deceased are Robert (Bob) Fred Ollier (1925-2011) and his wife Doris (Dot) Ollier (1928-2015). They were, respectively, aged 85 and 87 at the time of their death.
4. Their cremated remains are contained in a single, 'ordinary', wooden casket, placed in plot 244A in the consecrated section of Middlewich Cemetery.
5. Parties opponent to the petitions are Robert Stephen Ollier (63) and his wife Shirley Ollier, son and daughter in law of the deceased. Mr Ollier is cousin to the petitioners.

### **Background**

6. The history of the plot and its use is of importance as background to the present dispute.
7. Doris Ollier's brother, George Allcock, purchased a grant of exclusive rights of burial to the plot on 15<sup>th</sup> May 1924 for the sum of £1/10/00.
8. In 1963 the plot was transferred to George Alec Allcock who died in 1987.
9. George Alec Allcock, by his will dated the 16<sup>th</sup> August 1982, left the plot to his son Michael Allcock, the first petitioner.
10. Michael Allcock had a twin brother, Phillip, who died in 1950 aged about one week. Phillip's remains are in Plot 244A.
11. So too, it seems, are remains of possibly as many as six other relatives, some of whom died as babies: Arnold Allcock (d.1924), Eva Allcock (d.1927), Jean Allcock (d.1945), Patricia Allcock (d.1945), George Allcock (d.1948) and Andrew Ollier (d.1961).
12. The latter is Robert Ollier's late brother. He was buried in the plot with George Allcock's permission.
13. Mr Ollier has said that he and his parents, while the latter were alive, visited the grave regularly and his recollection was that, in the mid to late 1980s, his mother funded the addition of kerb surrounds and infill which, I believe, are still present.
14. He said it had always been his parents' clear wish to be interred in 'the babies' grave'.

15. It is also the strong wish of the petitioner, Michael Allcock, (a wish said to have been shared by his late father) that he (Michael) should in due course be buried with his twin brother Phillip.
16. It is the petitioners' case that, during December 2015, they attended (as they regularly did) Phillip's grave. The sexton, a Mr Dennis Mottram, is said to have alerted them to what he understood to be an indication from Mr Ollier of his wish to have his late parents' ashes interred in the plot. Mr Mottram was, it is said, told of the plot's ownership and it was made clear Michael Allcock's permission would be a necessary prerequisite to any further interment. Mrs Morris is said to have attended the sexton's lodge at the cemetery few days later to show Mr Mottram documents confirming ownership.
17. During another routine visit in 2016 it became immediately apparent to the petitioners that a new, book-shaped, memorial had appeared on the grave confirming the presence in the plot of the remains of Robert and Doris Ollier.
18. Mr Ollier explained that, in 2016, Mr Mottram had, at Mr Ollier's request, prepared the grave to receive his parent's ashes, which were later deposited by Mr Ollier at a simple service attended by his wife, daughter and grandson.
19. Mr Ollier has since candidly conceded he had previously been unaware that Michael Allcock's late twin brother had been interred in the grave in 1950.
20. Upon discovering what had occurred, the petitioners understandably felt distressed and immediately sought a meeting with the cemetery authorities. Mr Jonathan Williams, the then town clerk, appears to have taken a lead in the issue. Mr Mottram and others were involved in discussions.
21. Eventually, by a letter dated the 20<sup>th</sup> March 2017, Mr Williams, on behalf, of the Middlewich Cemetery Board, wrote to the petitioner, Mrs Morris, concerning Plot 244A in these terms:  
*'I can confirm, on behalf of the Cemetery Board, that you are indeed the owner of the above grave and as such that you have the right to determine anything that goes into or on to this plot.*  
*We made an error in agreeing to the request from your relative in East Anglia to inter two lots of ashes and to place a prayer book memorial on the grave.*  
*I can only apologise for this administrative error, and assure you that we acted in good faith in trying to meet the requirements of all concerned.*  
*It is up to you to decide how you want to proceed from here.*  
*Please let us know of your intention, or any redress you may wish to seek from the Cemetery Board'.*
22. Following this, the petitioners made clear to the Board their wish that Mr and Mrs Ollier's remains should be removed, principally to ensure sufficient space for Michael Allcock to be interred with his twin when the time came.
23. It was, surprisingly, not until May 2017 that Robert Ollier learnt of the problem, in a letter from the Cemetery Board. He later sought his own legal advice.
24. On the 1<sup>st</sup> September 2017, and following earlier correspondence, Robert Ollier wrote to Mr Williams explaining his perspective on events.
25. He set out his strong belief that his parents had always wished to be laid to rest in Plot 244A with, not only the remains of some of the Allcock 'babies', born to Doris's parents, but also with their own child, Andrew.

26. Mr Ollier expressed considerable frustration that the Board had insufficiently investigated 'ownership' prior to allowing his parents' ashes to be interred. He reminded Mr Williams that he, Mr Ollier, had not stated he had the right to use the grave. Rather, he had relied on the Board's steer, indeed, he said, they had even purported to issue him with 'new deeds' – in fact a transfer document dated the 25<sup>th</sup> February 2016.
27. In that same letter, Mr Ollier spoke of plans to recover the ashes, casket and memorial stone and, in consultation with the family, to make alternative arrangements. He spoke of his intention to '*seek reimbursement of the additional costs of burial from you [the Board] which I believe is entirely reasonable in the circumstances*'.
28. It is a matter of record at the Diocesan Registry that by petition 002/18, initially signed and dated the 30<sup>th</sup> October 2017 but not, I believe, finally submitted until 5<sup>th</sup> January 2018, Mr Ollier and Ms Nicola Antoney, the Cemetery officer, sought permission for exhumation of the (same) remains upon the basis that they 'were interred in a plot that they had no right to be interred [in]. An error was made as to the ownership of [the] plot and permission was not sought. The legal owners of [the] plot have requested that they be removed'.
29. To say that Mr Ollier was a reluctant petitioner is something of an understatement.
30. Correspondence with the Registrar made clear just how unhappy he was at what had transpired, but also at the prospect of exhumation of his parents' remains.
31. Solicitors instructed on behalf of the present petitioners had been in correspondence, in fairly robust terms, with Mr Ollier, the Board and, later, the Registrar, protesting at what they considered the Board's lack of satisfactory response. They made reference to their clients' 'significant distress and legal costs'. They, in effect, demanded action.
32. In a letter to the petitioners' solicitors of 18<sup>th</sup> August 2017, Mr Williams on behalf of the Board had written:

*' The Board have considered the situation. The Board accepts that the cremated remains of Mr Robert Ollier and Mrs Doris Ollier should not have been interred in the grave in 2016. Mr R S Ollier maintained that he was the rightful owner of the grave. Unfortunately, insufficient steps were taken to verify his claim. Your clients will be aware that the late Mr and Mrs Ollier's son is buried in the grave and their wish was to be buried in this grave with him. Your clients and the Olliers are all part of the same family.*

*The Board is taking appropriate steps to obtain consent from the Diocese of Chester for the remains to be exhumed at your request. The memorial stone has already been removed. Ordinarily the process would include obtaining the consent of the next of kin of Mr and Mrs Ollier. It is not clear at this stage whether Mr Ollier will give that consent or not. If he does not then the application will be made without it citing all of the background information to assist the Diocese in making a decision.*

*The Board has made what it considers to be a very reasonable offer to relocate the remains of the late Mr and Mrs Ollier in the cemetery. It is hoped that Mr Ollier will accept this offer and that the matter can be brought to a conclusion to the satisfaction of all parties.'*
33. A further letter from the petitioners' solicitors to the Board of the 1<sup>st</sup> September 2017 reiterated the petitioners' frustration and spoke of '*the issue of proceedings....should the matter remain unresolved*'.
34. Another letter, of the 11<sup>th</sup> October 2017, from the solicitors, said they had '*received confirmation from Mr Ollier that he has provided his consent with regard to the exhumation of his parents' ashes from grave number 244A*'.

35. I have little doubt that Mr Ollier too experienced a good deal of stress and anxiety relating to the family conflict and to the prospect of exhumation of his parents' remains.
36. In the event, that earlier petition was not pursued by Mr Ollier or (in due course) the Board, and I, eventually, gave permission for both to withdraw the petition.
37. Attempts made by the Registrar, with my encouragement, to explore a mediation meeting with the key members of the family sadly came to nothing.
38. In an attempt to secure compromise, the Board had, at several points, offered alternative plots in the cemetery both to the petitioners and to the first party opponent, Mr Ollier. Neither had felt able to accept.

### **The proceedings**

39. I gave directions upon the present petitions on the 24<sup>th</sup> October 2018 and, later, on the 4<sup>th</sup> December 2018. I directed special notice to Robert and Shirley Ollier, who later became parties, and to the Cemetery Board, which did not.
40. I considered the matter suitable for determination upon written representations and the parties agreed to that course.
41. I have considered a number of letters (standing as statements) and documents relating to the issues. I have had the benefit of photocopy photographs of fairly good quality showing the grave itself and its several memorials.
42. According to correspondence from Ms Antoney, on behalf of the Board, the precise location in the grave of the various children's cremated remains is unclear. The remains of Mr and Mrs Ollier are, I believe, placed centrally. The Board has considered the grave 'full'. That, however, is something the parties opponent challenge, as a matter of personal judgment and common sense.
43. Robert Ollier is convinced that *'there is defiantly (sic) available grave space within this grave for Michael Allcock to be interred with his twin brother'* (letter 12<sup>th</sup> November 2018).
44. Troubled by this point, I invited the Registrar to request further information, by letter, from the Board, addressing three issues which I had identified.
45. First, whether it was considered by the Board that no further cremated remains could be added at all; second, whether it was considered no further remains could be added if those remains were placed in a conventionally sized container or casket; third, whether it was considered no further remains could be added without disturbance to remains in the grave, other than the subject remains.
46. The Board apparently considered the position at a meeting on 8<sup>th</sup> January 2019 and Mr Williams replied by e mail to the Registrar on 9<sup>th</sup> January in the following terms:  
*'After careful consideration of the questions raised, Members considered that there was only one overarching response that they could make which would cover all the possible permutations outlined in the three questions.  
That is to say, in all good faith, that the Board considers that there can be no guarantee that there would not be any disturbance to the existing cremated remains contained in grave 244A, including those of Mr and Mrs Ollier. Nor could members guarantee that any further remains could be accommodated in the event of a temporary exhumation and slight relocation within the grave itself.'*

## The parties' contentions

47. The petitioners make the following points in support of the petitions:
- (i) Mr Ollier had previously given his agreement to exhumation in an effort to resolve the matter;
  - (ii) Mr Ollier has now accepted that a mistake was made and that there was no legal right for his parents to be interred in plot 244A.
  - (iii) Both parties may, thus, be victims of unfortunate circumstances.
  - (iv) The plot is now, in consequence and for practical purposes, full.
  - (v) Any steps taken by Mr Mottram and/or by or on behalf of the Board were taken in error. Their purported transfer to Mr Ollier by the document dated the 25<sup>th</sup> February 2016, signed by Mr Mottram, was, in effect, a defective nullity.
  - (vi) The lack of satisfactory resolution of the matter has occasioned the petitioners significant inconvenience, upset and distress.
  - (vii) Mr Allcock remains anxious to be buried with his twin brother.
  - (viii) The petitioners seek no more than what legally and exclusively belonged to them, namely the right to determine the use of this grave.
48. The parties opponent make the following response:
- (i) Despite the legal error made, and for which the Board is entirely responsible, the deceased's remains were placed in the grave where Mr and Mrs Ollier had consistently wished them to be placed, where the remains of a number of family members ('the babies') rest, and indeed where their own son's remains are buried.
  - (ii) Additional space in the grave for cremated remains is, in reality, likely to be available to meet Mr Allcock's wish.
  - (iii) The interment was intended to be permanent and the remains should not now be disturbed.

## The Law

49. It has long been established that the court has a discretion to permit exhumation, but the starting point in exercising that discretion is the presumption of the permanence of Christian burial. Burial symbolises the entrusting of a person to God. It is meant to be final. Christian burial envisages deceased persons 'resting in peace'.
50. Exhumation is, thus, to be exceptional and the Court must determine in any particular case whether there are exceptional circumstances justifying the taking of such a course. The burden of establishing the existence of such circumstances rests on the petitioner/s in the case in question.
51. 'One result of being buried in consecrated ground is that ....no body buried there can be moved from its place of interment without the sanction of a faculty'; see **Re Dixon [1892] P 386** at 393,394 per Tristram Ch. Further, 'there should be no disturbance of that ground except for good reason'; see Edwards QC Ch. in **In re Church Norton Churchyard [1989] Fam 37**.
52. The key principles are to be found in two more recent appellate cases: **Re Christ Church, Alsager [1998] 3 WLR 1394**, a decision of the Chancery Court of York and **Re Blagdon Cemetery [2002] Fam 299**, a decision of the Court of Arches. Even if the former is indeed the

binding authority in the Northern province (see the analysis of Bursell QC Ch in **Sam Tai Chan [2016] Ecc Dur 2** ) the latter is both important and helpful.

53. This is not one of those, probably rare, cases where I have concluded the application of one or other test is likely to lead me to a different overall conclusion.
54. Subsection (1) of clause 7 of the Church of England (Miscellaneous Provisions) Measure 2018 will, in any event, from 1<sup>st</sup> March 2019, amend the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 by inserting a new section 14A which will have the effect of treating decisions of the appellate courts as if they decisions taken by each other. Subsection (3) applies the new section 14A to decisions of the appeal courts that were made before that section comes into force (as well as to those which are made after that).
55. The test to be derived from **Alsager** is: 'Is there a good and proper reason for exhumation, that reason being likely to be regarded as acceptable by right thinking members of the Church at large?' (p1401 D-E).
56. That in **Blagdon** is that 'a faculty for exhumation will only be exceptionally granted.....Whether the facts in a particular case warrant a finding that the case is to be treated as an exception is for the Chancellor to determine on the balance of probabilities.'(see paragraph 33). The court in **Blagdon** was not unaware of the likely difficulty presented in any attempt on the part of the court to discern or determine what 'right thinking members of the church at large' may or may not regard as acceptable in a given case (see paragraphs 28-35).
57. The Court of Arches in **Blagdon** set out a number of instances of matters which could be capable of amounting to special circumstances justifying exhumation. The Court referred to instances of genuine mistake where a person's remains were interred in the wrong burial plot or in a grave reserved for another person. At paragraph 36(iii) the Court said that 'faculties can in these circumstances readily be granted, because they amount to correction of an error in administration rather than being an exception to the presumption of permanence which is predicated upon disposal of the remains in the intended not an unintended plot or grave'.
58. In two cases decided in the Oxford Consistory Court, McGregor Ch. sought to apply these principles. I have been much assisted by his reasoning.
59. In **Re Twyford Cemetery [2015] PTSR Digest D 47** the petitioners had, in May 2014, secured an exclusive right of burial in a plot next to where their son was buried. Due to human error, the following week, the deceased mother of the parties opponent was buried in the reserved plot. The petitioners sought a faculty to authorise the disinterment of that body with the intention that it should be reinterred in the same consecrated burial ground but in a different grave space. One of the principal grounds on which the parties opponent objected was that their mother had regarded her last resting place as sacrosanct and inviolable.
60. McGregor Ch. granted the faculty. There had not been any very significant lapse of time. The court did not doubt anguish was destined to be caused in the outcome to one or other party, but was not in a position to weigh up different levels of anguish, since such distress was subjective and the court could not put itself in the position of the respective parties.
61. The Court considered that 'the most weighty factor had to be the legal position' (D48E), for the (mis)use of the plot 'amounted to a breach of a legally enforceable right which had

lawfully been granted to the petitioners' (in that case under the provisions of the Local Government Act 1972 and the Local Authority Cemeteries Order 1977, Articles 9 and 10).

62. The Chancellor concluded that the burial was 'in clear breach of article 10(6) of the 1977 Order and was therefore an unlawful act by the funeral directors arising as a result of a wholly unintentional and unfortunate mistake. Neither of the families were in the wrong. Both were victims of accidental circumstances for which they had no responsibility at all and that made matters all the more sad. So far as the law was concerned what the petitioners were doing was no more than seeking to secure a right that legally belonged to them and had been properly granted to them under legislation....' (D49A-B).
63. In **Fairmile Cemetery, Lower Assenden [2017] Ecc Oxf 2**, however, the Chancellor found it necessary to revisit his **Twyford** decision. He accepted a submission that the conclusion reached in **Twyford** 'cannot be elevated into an overriding principle' (paragraph 53), explaining that 'the conclusion [there] was arrived at on the basis of the material factors in that case. The fact that the deceased had been buried in infringement of the exclusive right of burial of the petitioner was the most significant factor in that case' (paragraph 54).
64. In **Fairmile** burials in conflict with grants of exclusive rights had occurred as a result of a series of errors made by those responsible for the management of the cemetery.
65. The petitioner argued 'mistake' and relied on **Twyford**, reasoning that he was doing no more than seeking to secure a right that legally belonged to him. The opponents argued that although a mistake had indeed been made, the circumstances did not justify exhumation. Alternative arrangements could be made.
66. McGregor Ch. rightly emphasised the discretionary nature of the decision to grant a faculty for exhumation. At paragraph 48 the Chancellor said: '**Blagdon** itself makes it clear that the court has a discretion (see for example paragraph 35). What is said in paragraph 36(iii) of **Blagdon** about mistakes does not amount to a rule, or even a presumption, that exhumation will be permitted where a mistake as to the location of a grave has been made. It is true that the Arches Court said, "Faculties can in these circumstances readily be granted, because they amount to correction of an error in administration rather than being an exception to the presumption of permanence". But I do not understand that to mean that in every case where there has been a mistake as to the location of a grave no presumption of permanence is applicable. The Court went on to say that the presumption of permanence "is predicated upon disposal of remains in the intended not an unintended plot or grave". Accordingly, where a body is deposited in an unintended grave, the law does not presume that burial to be permanent. In such a case there is no presumption against exhumation for petitioners to overcome. But where a body is buried in the place where those concerned with the arrangements for the burial intended it should be buried, the burial is presumed to be permanent and a petitioner must overcome that presumption of permanence if he is to be granted a faculty to exhume the body'.
67. Further, at paragraph 51, the Chancellor continued: 'In addition to what I have said above about intention, it also appears that where the Court of Arches addresses cases of mistake it is concerned with cases where exhumation is carried out at the behest – or at least with the support – of the family of the deceased; not with cases where it is proposed by someone else to exhume a body in the face of opposition from the family of the deceased. That the Arches Court had meant that faculties for exhumation can be "readily granted" in the latter type of case would be a surprising conclusion.....Where – as in the present case – it is "other

parties” who apply for the faculty the test would seem to be a higher one than that which applies where the application is made by the executors or members of the family.’

68. The Chancellor, at paragraph 53, added: ‘I also accept [counsel’s] submission that the conclusion that was arrived at in Twyford cannot be elevated into an overriding principle. It is axiomatic that in exercising a discretion – as the court is doing in determining whether to grant a faculty which it has jurisdiction to grant – the court must take into account all material factors.....It is contrary to the nature of a discretion that it must inevitably fall to be exercised in a particular way provided certain conditions are met’.

## Discussion

69. The court is thus faced with an unenviable exercise of discretion, the outcome of which is inevitably likely to be a degree of further distress and disappointment to the petitioners or the parties opponent.
70. On the one hand, the petitioners are indisputably the holders of an exclusive right of burial and Mr Allcock has, I accept, for a very long time held a perfectly understandable wish to be buried ‘with’ his twin.
71. On the other hand, Mr Ollier’s parents have been buried, now for some two and a half years, in the grave of their choice and wish, shared as it is with a number of relatives including their own son.
72. I have little doubt that they, and Mr Ollier, in making the arrangements they did, had in contemplation that plot 244A would be their ‘final resting place’.
73. There is no dispute rights were and remain granted, but, as McGregor Ch. made clear in **Fairmile** (paragraph 58), ‘where the right is granted in respect of a plot in the consecrated part of a cemetery, the right is subject to the law and doctrine of the Established Church’.
74. Is the presumption of permanence overcome in the present case by the combination of the petitioners’ legal ‘rights’ and Mr Allcock’s legitimate, personal burial aspiration?
75. To refuse the petition may appear to deny the petitioners their rights and to thwart their wishes. To grant it will necessitate the exhumation of the remains of two people and their reburial in a location yet to be determined, possibly, though not necessarily, a proximate one, which will inevitably occasion Mr Ollier distress at the thought he is unable to fulfil his parents’ wishes in respect of their grave of choice.
76. Not for the first time have I had cause to reflect upon the poverty of theological understanding which unfortunately sometimes characterises exhumation disputes. The permanence of Christian burial has theological undergirding. It speaks of letting go and moving on, of fully and finally committing the remains of one’s loved ones to God in the hope of resurrection.
77. What, in my judgement, does not have a theological basis is any assumption a parent should necessarily be buried with a child or that siblings should necessarily be buried together. Those wishes are, of course, often deeply felt and certainly frequently expressed. Further, as **Blagdon** recognised (see paragraph 36(vi)) ‘family graves’ are a long standing concept, are to be encouraged, can be indicative of family solidarity or unity and are often ‘environmentally friendly in demonstrating an economical use of land for burials’. But, in reality, such yearnings often have more to do with sentiment and personal preference than with Christian hope or sound doctrine.

78. In the present case, both 'sides' may legitimately lay claim to a desire to maintain a 'family grave'.
79. As I have sought to evaluate the other issues likely to impact the exercise of my discretion in this case, I have not concluded delay (by anyone) is a particularly persuasive factor one way or the other. I have not been alerted to views of any other members of the family beyond those of the parties. This is not a case where to grant the exhumations sought would be to trigger further petitions in respect of other remains. It is quite impossible adequately to judge degrees of 'distress' likely to be caused by my decision - to any of the parties. This is not a case where psychological or psychiatric evidence has been advanced. There is nothing in principle to suggest the casket itself would have deteriorated since 2016 so as to prevent exhumation.
80. For the purposes of my decision, I have concluded on the evidence I should proceed on the basis that plot 244A is effectively 'full'. The cautious sounding response to my queries to the Board suggested that was the case, though I was, I confess, left wondering whether, with a little flexibility and goodwill, and without other disturbance to existing remains, room might not be found in due course for Mr Allcock's ashes somewhere in the plot.
81. Suffice to say, there is at least the possibility of alternative locations becoming available in the cemetery, should either party choose to avail themselves of them.
82. I have reflected too on the question (such as arose in **Fairmile** ) of whether, if a faculty were not granted in a case such as this, that would leave the petitioners who lawfully held an exclusive right of burial without a remedy in respect of infringement of that right.
83. As McGregor Ch concluded (see paragraph 84), where a body has been buried in breach of rights as a result of poor management of a cemetery by the burial authority, the person whose right has been infringed 'has the option of pursuing the matter with the Local Government Ombudsman or by bringing a claim in the temporal courts for damages'.
84. As in that case, so in this, the Board has accepted responsibility for an error made. It has apologised and offered to make alternative plots available. It appears to have acted in good faith and reasonably to have tried to make amends.
85. My concern is solely with the issue of exhumation.
86. The onus is on the petitioners to satisfy the court there is 'a good and proper reason for exhumation', alternatively, that there are special circumstances warranting an exception to the norm that Christian burial is final.
87. Whilst the error made in respect of the breach of the petitioners' exclusive right of burial, together with a desire to fulfil Mr Allcock's personal wish, are certainly capable of constituting special or exceptional circumstances, my appraisal of the overall circumstances, the history as I have outlined it above, the wishes and intentions of the deceased and the fact of other, existing, burials in the plot linked to both 'sides' of the family, have led me to the conclusion the petitioners have not, in this particular and unusual case, discharged the burden resting upon them.
88. I know it will be a disappointment to the petitioners, but in all the circumstances I have concluded it is right here to uphold the permanence of Robert and Doris Ollier's place of burial in this particular plot.
89. The petition for exhumation is therefore dismissed.

90. I note in Mr and Mrs Ollier's letter of 12<sup>th</sup> November 2018 to the Registrar, their express request that 'the Chancellor agrees that my mother and father's tablet memorial can be replaced on Plot 244A...'
91. That, of course, seems in principle entirely appropriate. My hope is this memorial, or an acceptable alternative memorial to be agreed, may reflect the continuing presence of these remains in the grave. To refuse some suitable memorial might, in respect of members of the same family, be thought somewhat spiteful and I trust that situation may not arise. I do not, however, consider I have power to order the restoration of any memorial, should the petitioners, in the exercise of their rights, not consent. Again, I hope this situation may not arise.
92. In the normal course of events, I would have made no order as to costs as between the parties themselves and ordered the petitioners to pay the prescribed fees and costs of and in connection with determination of the petition, to include a correspondence fee payable to the Registrar.
93. Here, however, I consider it may be appropriate to order the Middlewich Cemetery Board (or its parent Authority, if appropriate) to pay those costs.
94. Fairness demands the Board, in the circumstances, should receive notice of my thinking and be given the opportunity to submit, in writing, any representations it wishes to make before I reach a decision.
95. I shall direct the Registrar to forward this judgment to the Board and to call their attention to the possible order. I shall request the Registrar to give an estimate of the fees/costs involved, in the hope that the matter may be resolved swiftly and by agreement.
96. In default of agreement, I shall direct joinder of the Board as a party to the proceedings and require any representations as to costs to be submitted on behalf of the Board no later than 21 days from receipt of the judgment. Subject to any need to give further directions, I shall then determine the costs issue and conclude the proceedings.

David Turner

4<sup>th</sup> February 2019

His Honour Judge David Turner QC

Chancellor of the Diocese of Chester