IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

IN THE MATTER OF A PETITION BY MRS BERNADETTE JILLIAN PETERS (No 2269)

JUDGMENT

Introduction

1. This is a petition dated 15 November 2011 by Bernadette Jillian Peters for a faculty. It was received in the Registry on 1 February 2012. By it, she seeks permission to exhume the remains of her late husband, Mark Peters, from a grave in the consecrated part of Plumstead Cemetery in Abbey Wood in the Royal Borough of Greenwich and to re-inter those remains in a grave in the consecrated part of Rye Cemetery in East Sussex.

The facts

2. The background to this matter is as follows. Mr Peters was tragically killed in a road accident on 8 December 2004. Following her husband's death, Mrs Peter suffered a breakdown, and her mother made all the arrangements for Mr Peters' funeral. His remains were buried in the consecrated part of Plumstead Cemetery, which was the nearest cemetery which could accommodate a burial.

3. It had been Mr Peters' wish to move to East Sussex with his wife and two young sons and "put down roots" there. Thus at the time of Mr Peters' death, he and his wife were looking for a house in Peasmarsh. In March 2006, Mrs Peters was able to move to

Peasmarsh with her children. As well as a house, Mrs Peters also has a permanent job in East Sussex.

4. Peasmarsh is a village to the north of Rye, a couple of miles from Rye Cemetery.

5. Mrs Peters has existing connections with the area. The remains of one of her uncles are buried in the consecrated part of Rye Cemetery, and the remains of another uncle will be there interred when the time comes. Another uncle and aunt own the grave adjacent to this grave. Opposite these two plots, Mrs Peters' parents have reserved a plot. Next to this plot, Mrs Peters has reserved a plot. If a faculty issues, Mr Peters' remains will be interred in the plot that she has bought and, in due time, her own remains. The Peters family have already bought a bench nearby in the Cemetery for the purposes of thought and reflection.

6. All the close relatives of Mr Peters support this petition.

7. The other matter I need note is that Mrs Peters considers that, if she had been in a position to make decisions for herself after Mr Peters' death, she would have arranged for her husband's remains to have been cremated and to be stored thereafter, so that she could have deferred making a decision about their ultimate destination until she was settled.

Decision

8. As Mrs Peters will realise, permission to exhume human remains from consecrated ground is granted only exceptionally: the norm of Christian burial is permanence. This

long standing principle was explained and then re-iterated in *In re Blagdon Cemetery*[1]. Nonetheless I have decided that in this case such exceptional circumstances exist, and that a faculty should issue. I set out my reasons below and, I fear, at some length. I have done this because, although each case turns on its own circumstances, I need to bear in mind decisions such as this are relied upon as precedents. The relevance of precedent was recognised in *In re Blagdon Cemetery*, and the underlying reason why it was important: *the desirability of securing equality of treatment, so far as circumstances permit it, as between petitioners*[2].

In re Blagdon Cemetery

9. I shall begin by further considering *In re Blagdon Cemetery*.

10. The Court of Arches first of all identified the test that it considered should be applied in exhumation cases. It said:

> *33 We have concluded that there is much to be said for reverting to the straightforward principle that a faculty for exhumation will only be exceptionally granted. Exceptional means "forming an exception" (Concise Oxford Dictionary, 8th ed (1990)) and guidelines can assist in identifying various categories of exception. 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.*
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> *34 The Chancery Court of York in In re Christ Church, Alsager [1999] Fam 142 , 148 quoted part of the judgment of Edwards QC Ch in In re Church Norton Churchyard [1989] Fam 37 on the subject of the discretion of the consistory court. In that passage Edwards QC Ch said: "there should be no disturbance of that ground except for good reason." In a later decision, In re St Mary Magdalene, Lyminster (1990) 9 Consistory and Commissary Court Cases, case 1 the same chancellor used somewhat different language in saying: "the question may be thus stated: has this petitioner shown that there are sufficient special and exceptional grounds for the disturbance of two churchyards?"*

[1] [2002] Fam 299,
[2] See paragraph 36 of the judgment.

35 The variety of wording which has been used in judgments demonstrates the difficulty in identifying appropriate wording for a general test in what is essentially a matter of discretion. We consider that it should always be made clear that it is for the petitioner to satisfy the consistory court that there are special circumstances in his/her case which justify the making of an exception from the norm that Christian burial, that is burial of a body or cremated remains in a consecrated churchyard or consecrated part of a local authority cemetery, is final. It will then be for the chancellor to decide whether the petitioner has so satisfied him/her.

11. The test then is the identification of exceptional or special circumstances. It is, I think, evident from the way Court of Arches expresses itself, but I think that it is worth observing that the test itself is of no assistance in identifying what the exceptional or special circumstances are. The words *exceptional* and *special* are very often used as importing of themselves a requirement out of the ordinary; and of course, if permission for exhumation be granted in any particular case against the background of the norm of Christian burial, the circumstances will, by definition, be exceptional or special. But the words exceptional impart no additional test which a set of circumstances must meet; one sees this from the fact that the Court of Arches emphasises that exceptional means a case which forms an exception. It is the the guidelines and the decided cases which will assist in identifying the sorts of facts which may be special or exceptional.

12. In that case, the Court of Arches identified six relevant factors for a court considering exhumation to take into account. These were:

(i) medical reasons;

(ii) lapse of time;

(iii) mistake;

(iv) local support;

(v) precedent;

(vi) family grave.

13. Of these (i) (medical reasons) and (iii) (mistake) are not relevant to the present case, and I have already said something about precedent.

14. As regards (ii) (lapse of time), the Court first noted that the Chancellor had in that case treated the lapse of time as determinative. The Court held that he was wrong to do so:

> *[The Chancellor] treated the lapse of time of a period in excess of 20 years since Steven's death as determinative: "Despite the particular circumstances of Steven Whittle's death and burial, and the inability of his parents to take any active steps for so long, I am forced to conclude that it is now simply too late for a disturbance of his remains to be permitted." The chancellor was probably influenced by the statement of the Chancery Court of York* In re Christ Church, Alsager *[1999] Fam 142 , 149h that "the passage of a substantial period of time will argue against the grant of a faculty". However, we do not read this statement as signifying that time alone will be determinative. It may well be a factor in relation to assessing the genuineness of the petitioner's case. Long delay with no credible explanation for it may well tip the balance against the grant of a faculty but lapse of time alone is not the test. Mr Hill pointed to a period of 110 years* In re Talbot *[1901] P 1 and examples of up to 20 years since the date of burial in other reported cases. Having found that Mr and Mrs Whittle had been unable to take any active steps earlier to apply for a faculty for exhumation of Steven's remains because of their peripatetic existence, we consider that the chancellor erred in treating the lapse of time as determinative instead of concluding that there was a credible explanation for the delay. Having so concluded, he should then have proceeded to consider what other factors operated for or against the grant of a faculty.*

15. As regards (iv) (local support), the Court said

Mr Hill [for the petitioners] argued that this court should take account of the fact that Mr and Mrs Whittle's petition is supported by Steven's closest relatives and also by the Rural Dean of Stowmarket. In so arguing he was relying upon In re Christ Church, Alsager [1999] Fam 142, 149, where it was suggested that persuasive matters may be "that all close relatives are in agreement; and the fact that the incumbent, the parochial church council and any nearby residents agree". We differ from the Chancery Court of York in this respect. ***We consider that the views of close relatives are very significant and come in a different category from the other categories mentioned by the Chancery Court.*** *We do not regard it as persuasive that there is particular support for an unopposed petition any more than support for a contested petition of this nature would affect the decision on the merits of the petition. It is the duty of the consistory court to determine whether the evidence reveals special circumstances which justify the making of an exception from the norm of the finality of Christian burial, as we have already said earlier in this judgment. The amount of local support, whether clerical or lay, should not operate as a determining factor in this exercise and will normally be irrelevant* (emphasis supplied).

16. Thus the Court discounted local support. It is less clear what the Court thought was the relevance of the views of close relatives were. I would agree that the views of close relatives are very significant in that, if such relatives do not agree about the proposed exhumation, it is unlikely to be appropriate to permit it.[3] I do not however think they count positively in favour of exhumation. As a matter of principle I do not see why this should be so; as a matter of practice, if the views of close relatives were given positive and significant weight, it would lead to permission for exhumation being granted in most cases in which it was sought.

17. As regards (vi) (family grave), the Court said:

Both [counsel for the appellant and amicus curiae[4]*] invited us to regard the death of Steven at such early age, and the circumstances of his sudden death and burial, as unnatural and thus creating special circumstances in themselves. The intention of Mr and Mrs Whittle, they said, is essentially to bring Steven's remains to a family grave. In the normal course of events, they would have expected to predecease him and be the first occupants. The concept of a family grave is, of course, of long standing. In a*

[3] See, for example, *In re St Nicholas, Pevensey* (Chichester Consistory Court: 21 May 2002).
[4] I was *amicus curiae* in this case.

less mobile society in the past, when generations of a family continued to live in the same community, it was accepted practice for several members of a family to be buried in one grave. Headstones give a vivid picture of family relationships and there are frequent examples of one or more children predeceasing their parents due to childhood illnesses, which were incurable. Burials in double or treble depth graves continue to take place at the present time. They are to be encouraged. They express family unity and they are environmentally friendly in demonstrating an economical use of land for burials. Normally the burial of family members in the family grave occurs immediately following the death of the particular member of the family, whereas in this case Steven's remains will have to be disturbed after many years in order to inter them in a new family grave.

18. In circumstances which I shall set out below, the Court of Arches in *In re Blagdon Cemetery* allowed the Petitioner's appeal. As regards the relevance of exhumation to a family grave, the Court added:

38 Our decision is not a novel one. Faculties have been granted in the past for the bringing together, or accumulation, of family members in a single grave after many years provided special reasons were put forward for the lapse of time since the date of burial. Mr Hill drew our attention to a decision of Newsom QC Ch in In re St James's Churchyard, Hampton Hill *(1982) 4 Consistory and Commissary Court Cases, case 25 where he granted a faculty over 50 years after the death for remains to be exhumed and transported to Canada to be reburied in a family plot in Woodstock, Ontario.*

19. The facts in *In re Blagdon Cemetery* were that the petition was brought by Mr and Mrs Whittle. Mr Whittle was a publican and moved every few years to a different part of the country. At the beginning of 1978 they were living in Ellesmere Port with their son (aged 21) and their daughter (who it seems was also grown up). In that year they moved to take over the management of a public house in Blagdon, Somerset; their children remained behind in Ellesmere Port. Only a few weeks after the move, their son was tragically killed in an industrial accident. He was buried in the consecrated part of the cemetery at Blagdon. In due course, Mr and Mrs Whittle moved from Blagdon, and in fact moved several times before retiring to Suffolk. They then

petitioned for a faculty to exhume their son's remains and reinter them in a cemetery at Stowmarket.

20. The Court of Arches decided that there were special circumstances in the case justifying exhumation. It articulated these as follows:

> *…we have concluded that there are special factors in this case which make it an exception to the norm of permanence which we have explained earlier in this judgment. These factors are: (1) the sudden and unnatural death of Steven at an age when he had expressed no view about where he would like to be buried; (2) the absence of any link between him and the community in which he was buried; (3) his parents' lack of a permanent home at the time of his unexpected death; (4) his parents' inquiries of their solicitor shortly after Steven's death about the possibility of moving his remains once they had acquired a permanent home; (5) having lived in Stowmarket for several years as their permanent home and having become part of the local community, their purchase of a triple depth burial plot in Stowmarket Cemetery.*

Cases since *In re Blagdon Cemetery* concerning family graves

21. In *In re Joanne Lyndsey Martin*[5] the facts were that the petitioners were Mr and Mrs Martin. Mrs Martin's aunt died in 2003 and was buried in Gorton Cemetery. Also buried in Gorton Cemetery, but in another part of it, were the remains of Joanne Martin, Mr and Mrs Martin's daughter, who had tragically died in 1980, aged 17, in a road traffic accident. The proposal was that Joanne's remains should be moved to a grave near Mrs Martin's aunt, where Mr and Mrs Martin would be buried in due course. Further Mrs Martin's cousin (i.e. her aunt's daughter) proposed that she should in due course be buried in grave which she had purchased near her mother's grave.

22. Tattersall QC Dep Ch said

[5] Manchester Consistory Court: 5 August 2004 and 15 October 2004.

It… seems to me that, since the Petitioners could be buried in the deceased's existing grave, the real reason for the exhumation sought is so that the grave of the deceased (and in due course the Petitioners) will be close to that of Mr Martin's aunt (and in due course her daughter) and because the area in which the aunt is buried is perceived to be more peaceful and acceptable than where the deceased is currently buried. Accordingly the facts here are markedly different from those in In re Blagdon Cemetery.

23. In *In re St Andrew (Old Church), Hove*[6], the facts were that, when their mother died, the children of Mrs Guy arranged for her remains to be buried in Hove Cemetery, despite the facts that the remains of their father were buried in St Andrew's Churchyard, Old Hove, and that the remains of father and mother could have been interred together. This was because they did not like the condition of the churchyard. Having considered evidence as to state of the churchyard (which had improved) Hill QC Ch did not identify any exceptional circumstances justifying exhumation. He did not identify the family grave exception as relevant.

24. In *In re Arthur Mallinder, deceased*[7] the facts were that the petitioner's grandparents had been buried in Killamarsh Cemetery where many generations of his family were buried. However when his father died in 1992, his ashes were buried in Aston Cemetery Towards the end of her life, his mother expressed a wish that her remains should be interred in Killamarsh Cemetery. Accordingly shortly after his mother's death, the petitioner sought permission to exhume the remains of his father from Aston Cemetery and re-inter them in Killamarsh Cemetery.

25. McClean QC Ch said:

[6] Chichester Consistory Court: 14 July 2005.
[7] Sheffield Consistory Court: 9 January 2006

I think … that the Blagdon case does not establish any special rule in "family grave" cases … In the Blagdon case, the ultimate decision to grant a faculty rested not on the mere "family grave" argument but on the special factors of that case. It involved the sudden and unnatural death of a young child[8]*, at a time when his parents had no permanent home; prompt inquiries about moving the remains; and the purchase of a triple depth plot. There are no comparable features in the case of the present petition.*

Accordingly he refused the petition.

26. In *In re Hither Green Cemetery*[9], Mr Ellis died in 1993 and his ashes were buried in a grave in Hither Green Cemetery, where his father and uncle were also buried. At the time of hi death, however, he had been living in Basingstoke for 17 years.

27. Mrs Ellis died in 2006. Her remains were buried in Worting Cemetery, Basingstoke. By the time of her death she had come to think that the interment of her husband's remains in Hither Green Cemetery was a mistake.

28. George QC Ch found no exceptional circumstances and, in doing so, rejected an argument based on the establishment of a family grave. He said:

I accept that the present intention of the family is that they too should eventually be buried in Worting Cemetery, but there was no suggestion that additional grave spaces had been purchased, nor was evidence given of any intention to use the mother's grave in the longer term (whether for further family burials or interments)…no final decisions have yet been made by family members as between burial and interment. Thus I do not regard this as a case where a true family grave is planned.

29. In *In re William Radcliffe, deceased*[10]. The facts were that William Radcliffe had died in 1999 and his remains had been interred in Egremont Cemetery. Within a very short time of that interment, a new Garden of Remembrance was opened in the cemetery, and Mr Radcliffe's widow (who was then in her eighties) came to regret the fact that

[8] Chancellor McClean was wrong about this. As set out above, Steven Whittle was aged 21.
[9] Southwark Consistory Court: 5 February 2008
[10] Carlisle Consistory Court: 18 February 2008.

her husband's remains had not been there interred - it was more personal, private and peaceful. Her daughter inquired of an undertaker as to the possibility of exhumation but he advised that the matter should be addressed after her mother's death. After the sudden death of her daughter's husband, her daughter bought two plots in the Garden of Remembrance, one for the remains of her husband, and one in which it would be possible for her father's remains to be interred, together with those of her mother in due course. It was apparently not possible for Mrs Radcliffe's ashes to be buried with those of her husband in the Garden of Remembrance, and, by the time of the Petition, she decided that she would like her remains to be buried with his. Her daughter petitioned for the exhumation of her father's remains so that they could be buried in the Garden of Remembrance.

30. Tattersall QC Ch said:

18. Had the Petitioner not voiced her concerns about the unsatisfactory present location of the deceased cremated remains and her belief that the proposed new location is in her opinion a far more satisfactory final resting place, I would have found this application much easier to resolve. I expressly say that because I do not believe that there could be justification for my granting a faculty on such a ground alone and indeed in In re Martin deceased*, I refused an application for a faculty where I adjudged that the real reason for the exhumation sought was to move remains to another area of the churchyard which was perceived to be more peaceful and acceptable.*

19. However on the facts of this case I am satisfied that the real reason for the exhumation sought is that the cremated remains of the deceased and his widow should be together in what is akin to a family grave. In reaching such conclusion I am particularly influenced by the fact that, when pressed by me fully to explain all matters relied upon by her in support of her application, the Petitioner did not refer at all to any perceived advantages of the remembrance garden.

20. On the facts of this case I am satisfied that, had the remembrance garden been open at the time of the deceased's interment or had the Petitioner known that it was about to open, the Petitioner would have ensured that the deceased's cremated remains were interred in that remembrance garden because that was a place where (unlike the place where the deceased's cremated remains are now interred) in due

course her mother's remains could also be interred because it was the expressed intention of both her parents that their cremated remains should in due course be interred together.

31. As regards the delay, Tattersall QC Ch said

21. Although I am concerned that over 8 years have elapsed since the interment. I do not think that such delay should be held against the Petitioner, given that the advice which she had receieved from a funeral director dissuaded her from taking any action.

32. In *In re Maurice William Egerton*[11], the facts were that Mr Egerton had died in 1983. His remains were interred in the Garden of Remembrance in the consecrated part of Peasdale cemetery. By the time of her death in 2008, Mr Egerton's widow did not want her remains to be buried there. This was became her husband's grave had become overshadowed by an oak tree and the Garden of Remembrance had become untidy. She wished for her remains to be interred in another part of the cemetery, which she hoped would in due course would become a family plot, accommodating her remains, those of her son and daughter in law and, she hoped, of her late husband. In accordance with her wishes she was buried in this plot and not in the Garden of Remembrance. Mr and Mrs Egerton's son and daughter in law petitioned for the exhumation of the remains of Mr Egerton to allow them to re-interred in the family grave. Jordan Ch considered that there was a good and proper reason to permit exhumation. He said:

15 … *The proposal has the agreement of all close relatives and, as was said in* In re Blagdon Cemetery, *the views of close relatives is to be treated as "very significant". The agreement of the incumbent and the PCC has been given in heavily supportive terms. There are no nearby residents who are affected.*

[11] Guildford Consistory Court: 20 December 2008.

16. Perhaps the most significant factor against any disturbance is the simple passage of time, now over 25 years. However, the lapse of time is not determinative. In In re Blagdon Cemetery *the interment had occurred 20 years before. There is, of course, the principle that exhumation should not be seen as the continued wish to exercise control of the possession of remains that have been entrusted to God. I have no hesitation that all those concerned are well aware of the permancy that should be one of the crucial factors of a Christian burial and that they have no wish to challenge that principle in this petition. It is an understandable balance that they wish to strike between permitting the remains of Maurice Egerton to rest in peace and the equally compelling reason to recognise the expression of family unity on which this petition is based. I have no hesitation in finding that this is a principle which the Church should encourage in these circumstances.*

33. In *In re St John the Baptist, Dudley*[12], the facts were that the remains of the son had in 1996 been buried in Queen's Cross Cemetery, Dudley, the remains the father in the churchyard of St John's Church Dudley and the remains of the mother in Queen's Cross Cemetery. The option of interment in the churchyard of St John's Church Dudley was not available for the remains of the mother because that churchyard could only accept cremated remains, and she had expressed the wish not to be cremated. In circumstances which he explains, Mynors Ch approached this as a "mistake" case. However he added a second factor for granting permission:

…the result of allowing the present petition would be that the remains of these three family members who have died - father, mother and son David - will now be together. And it may be supposed that other family members will be interred at Queen's Cross. This case thus comes within the spirit at least of exception (vi) [in In re Blagdon Cemetery*]*.

34. In *In re Frederick Randall, deceased*[13], the facts were that Mr Randall was Irish and had been living with his wife and son in Dorking when he died. He was buried in the consecrated part of Dorking Cemetery. The petitioners, his son and now widow, had at the time of the petition moved back to Ireland. They sought permission to exhume

[12] Worcester Consistory Court: 24 February 2009.
[13] Guildford Consistory Court, 12 July 2011.

Mr Randall's remains and re-inter them in the family plot in St Stephen's Cemetery in New Ross, County Wexford. Jordan Ch addressed the family grave factor identified in *In re Blagdon Cemetery* as follows:

> 10 … *It was said in* In re Blagdon Cemetery *that the concept of a family grave is of long standing and, in a less mobile society where generations of the family continued to live in the same community, it was accepted practice for several members of the family to be buried in one grave. Indeed they are still to be encouraged as they express family unity. However where that sense of family unity is at its strongest is at the time of burial and there was no suggestion that in the decades during which his family lived in Dorking that Mr Randall should be buried in Co Wexford.*
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> 11. *It may be a particularly compelling reason where there are features about the deceased's death and interment which have emotional overtones which cannot easily be catered for in a list of guidelines. So much was true in the case of Stephen Whittle and in* In re Blagdon Cemetery *where Steven had died at a tragically early age in an industrial accident in circumstances where his family then had no settled place in which to bury him*

35. In the circumstances, Jordan Ch did not identify any exceptional circumstances, and permission was refused..

36. In *In re Graham George Marston, deceased*[14], the facts were that Mr and Marston lived in Nottingham. Mr Marston was active in the Boys' Brigade and, over the years, attended many Boys' Brigade camps at Saltfleetby in Lincolnshire. Saltfleetby is 80 miles from Nottingham. In 1998 he died suddenly when away at a camp, during a service. He was aged 53. Mrs Marston decide to inter Mr Marston's ashes in the consecrated part of Skidbrooke burial ground in Saltfleetby.

37. Mrs Marston and her family soon came to regret their decision to inter Mr Marston's ashes so far away from Nottingham, and considered it a mistake. Mrs Marston became

[14] Lincoln Consistory Court: 20 February 2012.

seriously ill in 2011 and, at that time, was distraught at the thought of her ashes being buried at Saltfleetby so far away from her family. In a note she made it clear that she wanted to be buried locally. However she also wanted to be buried close to her husband's ashes.

38. Mrs Marston died in 2011 and her body was cremated. Her family wished that her remains should be interred in Chilwell Cemetery in Nottingham (run by Bramcote Crematorium), together with those of Mr Marston. Accordingly, they petitioned for permission to exhume the remains of Mr Marston and inter them in Chilwell Cemetery in Nottingham.

39. Bishop Ch addressed in turn the identified factors[15], holding that (i) (medical reasons) was not relevant and as regards (iii) this was not a case of mistake. He said that he took the issue of precedent into account.

40. As regards (ii) (lapse of time) he said:

In this case the delay of 12 years before presenting the Petition is a factor I must weigh up. There has been an explanation as to the reason for the application being made now after 12 years. They have not interred Mrs Marston's ashes until after the outcome of this application.

41. As regards (vi) (family grave) he said

…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 the economical use of the land for burials. In a letter dated 19 January 2012 from the bereavement services manager at Bramcote Crematorium who confirms that the ashes of both Mr and Mrs Marston will be placed together in a single grave.

[15] He did not address local support.

9. I am satisfied that it is permissible due to special circumstances to permit the exhumation of Mr Marston's ashes for interment into the same grave as that of Mrs Marston. The basis for this is that it is a family grave and such arrangements are to be encouraged in the expression of family unity, as well as being environmentally friendly.

42. For completeness, I should note four further cases. *In re St Mary's Churchyard, Goring by Sea*[16] was a case where, by mistake, the Petitioner's father's ashes had not been interred in the family grave in which were interred the remains of her grandmother, grandfather and step-grandmother. One of the reasons why Hill Ch granted a faculty was the bringing together of remains in a family grave. *In re Doreen Oxley, deceased*[17] a petition to exhume the ashes of the Petitioner's mother was prompted by her father's conversion to Roman Catholicism which led to his wishing to be interred in due course in a different place to where his wife's remains were interred (he was then still alive). It was intended that her father's remains would be interred with those of her mother in due course. Walford Ch found no exceptional circumstances without specifically referring to the creation of a family grave as relevant. In *In re Harold Greaves, deceased*[18], the facts were that the Petitioner's father had been buried in one cemetery and his mother in another. He sought permission to exhume the remains of his father and inter them in the grave of his mother, where his remains could also in due course be interred. Walford Ch, who refused permission, did not find the existence of any exceptional circumstances; he did not refer expressly to the possibility of the petition being justified on the basis of the creation of a family grave. In *In re Allen Godfrey Rodley, deceased*[19], the Petitioner's mother had been buried in accordance with her wishes in a different

[16] Chichester Consistory Court: 29 April 2009.
[17] Bradford Consistory Court: 15 March 2010.
[18] Bradford Consistory Court: 29 June 2010.
[19] Bradford Consistory Court: 12 January 2011.

cemetery to that of his father, although this necessarily meant that her remains could not be buried together with those of her husband (which also was her wish). Walford Ch found no exceptional circumstances without referring to the creation of a family grave as relevant.

Consideration

43. In *In re Alan Brown (deceased)*[20] (which was not a family grave case) McClean QC Ch observed:

> …*[*In In re Blagdon Cemetery*] the Arches Court attached some importance to the proposal in that case to create a "family grave", evidenced by the purchase of a triple-depth grave. In common with some other Chancellors, I do not find this part of the Blagdon judgment very clear…*[21]

44. Moreover the cases show that chancellors have applied it in different ways.

45. The obvious reading of *In re Blagdon Cemetery* is that, in accordance with paragraph 33 of its judgment, the Court of Arches was, by way of a guideline identifying the creation or consolidation of a family grave as one of a number of categories of circumstance in which it might be appropriate to make an exception to the norm of permanence of Christian burial. That reading would receive support from the reference in paragraph x with approval to *In re St James Churchyard, Hampton Hill* which was a case in which the only ground relied upon was the fact that the exhumation was to a family grave.

[20] Newcastle Consistory Court: 27 April 2008.
[21] See paragraph 9 of his judgment.

46. However, doubt arises in respect of such a reading by reference to paragraphs 37 and 38 of the judgment. If all that was required to justify exhumation was the creation or consolidation of a family grave, it would not have been necessary for the Court to have referred to the other four factors identified in paragraph 37 (or, alternatively, it could have referred to the first four factors as being additional matters justifying exhumation). In paragraph 38 there would have been no need to add the proviso, *provided special reasons were put forward for the lapse of time since the date of burial*.

47. Moreover, in practical terms, if the creation of a family grave were sufficient of itself to justify exhumation, it would be possible to invoke it in every case where exhumation was sought. It might of course be said of the typical situation - where the remains of a widow or widower are being moved to a new grave where it is intended that the husband or wife should be interred in due time - do not involve the creation of a family grave but

- it achieves economy in the use of burial space;
- it is expressive of family unity;
- in many if not most cases it would be possible to find willing family members (children and in laws) who would readily agree to be buried in due time in a family grave.

48. If, with this in mind, the factors relevant to exhumation identified in *In re Blagdon Cemetery* are re-examined, it will be seen that the Court was nowhere saying that the creation of a family grave was of itself a sufficient reason justifying exhumation, but that only that it was a relevant matter.

49. It seems to me that this **is** the true reading. Moreover, following the approach adopted in paragraph 37 of the judgment and the proviso identified in paragraph 38 of the judgment, it seems to me that in any case which involves the consolidation of a family grave the question must arise as to why the remains were not interred in that grave in the first place; and that in any case that involves the creation of a family grave, the question must be asked as to why a family grave was not established at an earlier date.

50. Thus I agree with McClean Ch in *In re Arthur Mallinder, deceased* that *In re Blagdon Cemetery* does not establish any special rule in "family grave" cases; however, if the passage of his judgment that I have quoted were taken to suggest that the creation or consolidation of a family grave is not relevant at all (which superficially at least it might do), I do not think that such an interpretation of *In re Blagdon Cemetery* is correct.

51. The practical problem remains for chancellors as to how much weight should attach to the creation or consolidation of a family grave. Absent authority and as a matter of principle it seems to me that the weight attaching to this factor should be much the same in all cases. The way I would approach the matter is to say that:

- if there are reasons why the remains were not interred in the family grave in the first place or why the family grave was not established at the time of the burial; and/or

- there are other factors justifying a departure from the norm of permanence

then the fact that the exhumation is to a family grave counts as an additional factor in its favour, i.e. as being economical in the use of grave space and as expressive of family unity.

52. It is impossible to foresee every case and, accordingly, I would not want to be categorical, but I would not generally regard the consolidation or creation of a family grave of itself as sufficient to justify exhumation. This is because, despite the benefits arising out of the consolidation or creation of family graves, to hold that consolidation or creation of such a grave were sufficient would undermine the norm of permanence.

53. It think that is instructive to examine the cases with this approach in mind. In *In re Joanne Lyndsey Martin* the Chancellor was surely correct to consider the facts as markedly different from those in *In re Blagdon Cemetery*. Any case involving the tragic death of someone at an early age is likely to raise difficulties, but it seems to me that this was a case in which there was not an adequate reason for the establishment of a new family grave 23 years after Joanne Martin's death. Although I accept that there might be cases where what was said on behalf of a petitioner was colourable, for my part, I would be reluctant to embark upon an exercise involving what was the **real** reason for the petition, although (perhaps this was all that was meant) I can see that the **predominant** reason might not be the creation of a family grave - either a family grave was being created or it was not. In *In re St Andrew (Old Church) Hove*, there was no adequate reason why, when Mrs Guy died, her remains could not have been buried together with those of her late husband in the churchyard of St Andrew (Old Church) Hove. In *In re Arthur Mallinder, deceased* there was no explanation as to why the petitioner's father's remains had not been buried in Killamarsh Cemetery or why his mother's remains had not been buried with those of her father. In *In re Hither Green Cemetery*, the question of the creation of a family grave did not arise; but if there had been a firm commitment to the creation of a family grave at Worting Cemetery, the questions would have arisen as to why such a family grave had not

been established in 1993 and what the justification was for breaking up an existing family grave. In *In re William Radcliffe, deceased* it was relevant that Mrs Radcliffe's remains could not be interred with those of her husband, and it was evidently bad luck that the Garden of Remembrance had opened within three weeks of the interment of her husband's remains. This matter could be categorised as a mistake, since one would have expected the funeral director to have known about the imminent opening of the Garden of Remembrance, and the cemetery authorities must have known. The delay in petitioning had been adequately explained. Tattersall QC Ch evidently found this a borderline case, observing that …*this is a very unusual situation which should in no way be regarded as a precedent for the future*. I should here note here that in *In re Christ Church, Alsager*[22] the Chancery Court of York had held that precedent was an irrelevant consideration in exhumation cases, a view with which the Court of Arches disagreed in *In re Blagdon Cemetery.* The Consistory Court of Carlisle being a court constituted within the Province of York, Tattersall QC Ch did have the basis for what he said about precedent. Whatever the position in the Province of York, it seems to me that I am bound by what was said about precedent in *In re Blagdon Cemetery. In re Maurice William Egerton, deceased* is in my view a difficult case. I have set out above my view as to the relevance of the views of close relatives. In practice, Mrs Egerton was posthumously putting her next of kin and the Chancellor in a difficult position because unless the petition was granted, her remains would be separate from those of her late husband in circumstances where she did not wish this to happen, causing thereby distress to her next of kin. However the Chancellor himself did not find the case a difficult one, or refer to this aspect of the matter in his judgment. *In re St John the Baptist, Dudley* is an example of an expression of family unity weighing

[22] [1999] Fam 142.

in the scales of a petition where there was another reason for granting it. In *In re Frederick Randall, deceased* there was an explanation as to why the deceased was not buried in Ireland at the time of his death (which sad though it must have been, apparently occurred in the ordinary course of events) which was that he and his family were then living in Dorking. However, the Chancellor did not regard that as a sufficient reason, evidently taking the view that he could have been buried in Ireland. In my view, In in re Marston is another difficult case. As articulated, the only basis for permitting the petition is the creation of a family grave. I do however note that Mr Marston had died suddenly and away from home; but for this his remains would have been interred in Nottingham. It is possible to see in this fact the sort of additional matter that I consider is appropriate before a faculty is granted on the basis of the establishment of a family grave. In *In re St Mary's Churchyard, Goring-by-Sea*, there was a very powerful reason why the petitioner's father's ashes were not interred in the family grave at the time of his death. In *In re Doreen Oxley, deceased, In re Harold Greaves, deceased* and *In re Allen Godfrey Rodley,* the creation of family grave (or, if it were to be regarded differently a double grave in the nature of a double grave) was not considered as constituting the basis for an exception to the norm of the permanence of Christian burial.

54. It seems to me that, although the approach I set out at paragraph 51 may be novel in its articulation, it does generally fit the decisions that Chancellors have actually reached. If potentially there are one or two cases where Chancellors have apparently adopted a less restrictive approach, then I must respectfully disagree with them. All of us are doing our best in this difficult and sensitive area; in due course we may be assisted by further guidance from an appeal court.

The approach identified at paragraph 51 above applied to the facts of this case

55. It will be seen that *In re Blagdon Cemetery* has important similarities with the one that I have to consider. Mr Peters died suddenly and and unnaturally without expressing any view about where he wanted to be buried. There was a link between him and the community in which he was buried (Plumstead was near where he lived) but at the time of his death he was hoping to move somewhere else. Mrs Peters did have a permanent home at the time of her husband's death, but she was hoping to move somewhere else. Mrs Peters has brought this petition after acquiring a permanent home in East Sussex. The move of Mr Peters' remains will facilitate the establishment of a family grave.

56. To these factors Mrs Peters would like to add the fact that, had she been able to make the funeral arrangements herself, she would have arranged for Mr Peters' remains to be cremated and stored. I am sure that this is what Mrs Peters now thinks, but it does seem to me a matter of speculation. Decisions were then forced upon Mrs Peters' mother which, with the benefit of hindsight, Mrs Peters wishes had been taken differently; but it seems to me that, at the time, were reasonable and sensible ones, and ones which Mrs Peters herself (had she been able to act) might have taken.

57. I think that the matters identified in paragraph 55 above are matters providing an explanation why a family grave was not established in 2004 and that these matters, taken together with the benefits arising from the creation of a family grave, are sufficient to justify exhumation. I can see that it could be urged that this is insufficient to maintain the norm of the permanence of Christian burial or, to put the same point another way, is too lenient an approach. For my part I think that where an important

part of the justification for permitting exhumation flows from the circumstances arising following a personal tragedy, the Court may more readily be satisfied that permission should be given. This is because one does not wish to add to pain that has already been endured: that a tragedy cannot of itself justify a petition is shown by *In re Joanne Lyndsey Martin.* I think that those who have to consider the judgments of the Consistory Courts would not view the sympathetic treatment of cases involving personal tragedy as undermining the norm of the permance of Christian burial.

58. Accordingly, I direct that a faculty shall issue in this case.

PHILIP PETCHEY

Chancellor

10 May 2012