

In the Consistory Court of the Diocese of Lincoln

In the matter of the late Ernest Archer Swaby, deceased

And in the matter of St John's, Washingborough

The Venerable Timothy Reed Barker

Peter Shepherd

Jonathan Clark

Petitioners

And

The Lincolnshire Co-operative Funeral Services

Respondents

Judgement

1. A Petition has been presented to me by the Archdeacon of Lincoln and the churchwardens of St John's Washingborough seeking a faculty to permit the exhumation of the remains of the late Ernest Archer Swaby and the reburial of those remains in the same plot. The reason for the application is explained in the material placed before me. Mr Swaby died on 4th February 2009 and was buried in the churchyard on 19th February 2009.

2. Regrettably, the undertakers who were Lincolnshire Co-operative Funeral Services failed to ensure that the grave digger had dug the grave sufficiently deep. In consequence of this failure the coffin is now exposed to the surface at one end where the ground has sunk. Additionally the ground anchors supporting the headstone have pierced the top corner of the coffin and the coffin lid is now broken or has rotted since burial.

3. This most unfortunate situation is to be remedied by an undertaker exhuming the coffin and the human remains and re-digging the grave and then reintering therein as well as resetting the headstone. The family are anxious for this to take place as soon as possible for understandable reasons.

4. The Ministry of Justice have granted their licence for the exhumation dated 30th October 2014 subject to conditions.

5. The requirements of ecclesiastical law are that any burial in a churchyard must be permanent. However this is subject to exceptional circumstances arising which may make it permissible for an exhumation to take place. I am quite satisfied that such exceptional circumstances have arisen in this case caused by the failure to dig the grave to the correct depth in 2009. It is quite clear that the exhumation should be permitted to enable the grave to be dug again and then re-interment is to take place in the same plot.

6. The PCC have unanimously supported the Petition. I understand that the undertakers have recognised the problem and accepted responsibility.

7. The faculty for exhumation will therefore be granted on condition that:

- (i) it is carried out under the supervision of the Archdeacon or such priest as he may appoint for this purpose;
- (ii) the 7 conditions of the Ministry of Justice licence are conditions of this Faculty
- (iii) the environmental health officer for the area must be notified of this exhumation, and any requirements that he/she may have for the exhumation must be complied with.

8. I note that Mr Swaby's grand-daughter wishes to be present for the exhumation. The terms of the MoJ licence which I have incorporated into the conditions of this Faculty are that the exhumation is to be undertaken discreetly, away from public gaze, and with due care and attention to decency. With this assurance, coupled with the supervision of the Archdeacon or another priest, it may be that Mr Swaby's grand-daughter may feel that it would not be necessary for her to attend the exhumation. Such an attendance would be unusual and could no doubt be distressing for her. It may be better that pastoral advice and reassurance from

clergy could be provided here, rather than any order from me on this topic. I can give further directions should that be requested.

9. I am concerned to know who is paying for the cost of this exhumation including the faculty fees. I am currently of the view that this liability should rest with the Lincolnshire Co-operative Funeral Services but will give them 28 days to make any written representations to me showing cause why they should not pay all these costs. I direct that they are made party to this Petition so that an order for costs can be made against them. If no written submissions are received within 28 days then my order will be that the Lincolnshire Co-operative Funeral Services pay all the costs of the exhumation and the Faculty fee and any other associated costs of this Faculty.

10. I hope that this distressing matter can now be resolved.

Mark Bishop

Chancellor

25 November 2014