

IN THE CONSISTORY COURT OF THE DIOCESE OF PORTSMOUTH

IN THE MATTER OF A PRIVATE PETITION FOR A CONFIRMATORY FACULTY
AND IN THE MATTER OF AN EXHUMATION

JUDGMENT

1. In order to protect the privacy of the family concerned in this case, I have anonymised this judgment.
2. The petitioner is the rector of a church within the Diocese of Portsmouth. In late 2024 the ashes of a parishioner were to be interred in the graveyard of the petitioner's church. The ashes were to be put into a grave which already contained the ashes of another family member of the deceased. I shall refer to the intended grave as "the Correct Plot".
3. A relative of the deceased visited the churchyard the day before the interment. They pointed out to the parish curate (who was to conduct the interment service) that the hole which had been prepared for the ashes was not in the right place. I shall refer to the place in which the hole was mistakenly dug as "the Incorrect Plot".
4. The curate consulted the rector who advised that a hole should be dug in the Correct Plot. The next day, pre-interment prayers were said, with the family present, at the Correct Plot. The deceased's family wished to depart before the interment took place and the curate placed the ashes, in a bag, in the hole which had been dug there.

5. After the family had left, the vergers insisted that the ashes should have been placed in what I have called the Incorrect Plot. The vergers and the curate consulted the rector who, after considering the matter and the graveyard plan, concluded that a mistake had been made and advised that the ashes should be moved. The ashes were thereupon picked up from the Correct Plot and poured from the bag into the Incorrect Plot and the grave was covered over.
6. The family was informed about where the ashes had ultimately been put. They said that this was not the intended grave. The rector and curate spoke to the family and worked into the night trying to determine whether a mistake had been made or not: the vergers could not be found that evening but was in touch very early the next day.
7. The problem seems to have stemmed from a graveyard plan which divided the ground into plots which might contain a number of independent interments of cremated remains and confusion over which physical memorial items on the ground related to which interment.
8. The day after the interment the rector, without consulting the archdeacon or the diocesan registry, let alone obtaining a faculty, dug up the ashes from the Incorrect Plot. With family members of the deceased present, the ashes were reinterred on the same day by the rector and the curate in the Correct Plot.
9. The family asked for a letter explaining what had happened, including reflection by the rector on the lessons which had been learnt. The rector wrote a long and detailed letter explaining the circumstances, apologising without reservation and detailing how procedures would be reviewed to avoid the situation happening again, including procuring a three-way agreement between rector, vergers and family about the location of graves before they are dug. (Not mentioned, but surely equally necessary, is associated precision in record keeping of graveyard locations.) The rector refunded the family the parish's element in the statutory interment fee. The family accepted the apology.
10. I am satisfied that the rector made a genuine mistake in this case about the location for the interment of the ashes. I also consider that the rector took all reasonable steps after the mistake came to light to deal with the situation in an honest and pastorally sensitive manner.
11. However, it is clear that the rector should have obtained advice from the diocesan registry (and also notified the archdeacon) before exhuming the ashes from the Incorrect Plot. It is a clear principle of ecclesiastical law that Christian burial is permanent. Exhumation is only to be

permitted (by the Consistory Court) in truly exceptional circumstances: *Re Blagdon Cemetery* [2002] Fam 299. One such exceptional circumstance is where burial has been effected by mistake in the wrong place, though every case will turn on its own facts.

12. Had the rector contacted the registry for advice, the registry could have contacted me or my deputy to obtain an emergency faculty permitting the exhumation (which, in the circumstances, I would have granted). Because the rector did not do that, his actions were unlawful and, had the position not been regularised through this application for a confirmatory faculty, would have exposed him to serious sanctions.
13. It is to be emphasised with the utmost clarity that where incumbents face difficult legal situations relating to their graveyards, they should contact the registry for advice, including on an expedited, emergency basis in an appropriate case such as this. The registry is pleased to advise and assist, but they cannot do so unless contact is made.
14. Subject to the usual order allowing contrary submissions, I determine that the petitioner should pay the costs of preparing this judgment.
15. I also dispense with advertisement of the faculty under Faculty Jurisdiction Rules, r. 6.6(3).

John Summers

Chancellor of the Diocese of Portsmouth

28 April 2025