

**DIOCESE OF SHEFFIELD
In the Consistory Court**

Her Honour Judge Sarah Singleton QC
Chancellor

In the matter of David Bell deceased

1. This judgment should be read together with my first judgment in this matter dated 4th September. I have set out the primary facts in that judgment and do not intend this judgment to repeat that material.

Since my first judgment:-

-) The Petitioner has confirmed her agreement to this matter being dealt with in writing.
-) She has corresponded by email with Edlington Cemetery which is run by Edlington Town council; her correspondent is Mr Simon Oldham, the Town Clerk.
-) She has similarly corresponded with Rose Hill Crematorium which is run by Doncaster Council where her correspondent is Ms Amanda Carr the Bereavement Services manager.
-) Finally, she has been in correspondence with the Cooperative Funeral Service in Kirkcaldy, Scotland.

From the documents now in my possession including Ms Swift's own accounts I have gathered the following (in addition to the primary facts set out in the first judgment):-

-) That her father died young from cancer and that his death was extremely distressing for the family. They believe that his death might have been avoided had he had better medical treatment. Her mother was unused to dealing with financial and other practical matters including not knowing how to write a cheque. She had never had to do so. I consider it likely that she found the aftermath of her husband's death extremely difficult. She was supported by the Scottish extended family.
-) The family had only moved to England from Scotland so that the Petitioner's father could work as a miner in order to provide for them. He had lost his job as a miner in Scotland because of mine closures there. Ms Swift and her sister spent most of the school holidays in Scotland being looked after by family members whilst their parents were working.
-) I infer from Mr Oldham's emails, although it is not said expressly, that Edlington Cemetery would permit the exhumation to take place if I authorise it although they would not be able to carry it out themselves because they do not have the necessary expertise.

- J That the area of the cemetery where plot no.3184 is located is known to hold a lot of surface water and that given the length of time that has elapsed it is likely that the coffin holding the deceased's remains may have seriously decomposed if not disintegrated completely and that therefore the exhumation, if authorised, would not be straightforward.
- J That, with the support of Ms Amanda Carr of Rose Hill Cemetery the Petitioner has identified that Cooperative funeral care would be willing to undertake the exhumation despite the likely difficulties.
- J That the exhumation would be very private and that Ms Swift and her sister could be present with religious support if they chose. The deceased's remains would be taken to Rose Hill Crematorium for a private cremation service. Ms Carr has confirmed that Rose Hill could undertake the cremation.
- J That the reserved plot at the cemetery at Dysart in Scotland would have space for the remains of the deceased, his widow, now also deceased and cremated and the Petitioner herself when she dies. Her sister intends her remains to be buried with her family in London.

2. The Law

In my first judgment I referred to the law governing the discretionary exercise necessary when determining petitions for exhumations as that derived from *Re Blagdon Cemetery* [2002] Fam 299. My interim judgement gives the clear impression that *Re Blagdon*, a decision of the Court of Arches is a binding authority whereas, because the Diocese of Sheffield is in the Province of York, this is not the case. Whilst decisions of the Court of Arches are important and highly influential in fact the binding authority for the Province of York on this topic remains *In re Christ Church Alsager* [1998] 3 WLR 1394. The test to be derived from *Alsager* is as follows:-

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? [1401 D to E]

In the Consistory Courts, depending on the nature or location of a dispute there are three alternative appeal courts exercising a parallel but distinct reviewing jurisdiction. The resulting complexities of the principles and application of precedent in the Consistory Courts have recently been considered by The Reverend and Worshipful Rupert Bursell QC Chancellor of the Diocese of Durham in the matter of *St Chads Bensham* and the Petition of *Sam Tai Chan*. ([2016] Ecc Dur 2. By coincidence this case concerns the proposed exhumation of the remains of Mr Chan who had been buried in October 1978. Bursell Ch. permitted the exhumation on the usual terms after applying the *Alsager* test. He also had in mind and referred to the *Blagdon* test.

3. My Decision

I have decided that there are *good and proper reason (s)* which would be *likely to be regarded as acceptable by right thinking members of the Church at large* to allow the petition and permit this exhumation. I also consider that the case is exceptional within the meaning of Blagdon. Thus I consider that I can exercise my discretion accordingly bound by the Alsager test and guided by the Blagdon test. My reasons are as follows:-

- a. David Bell had a strong cultural and familial connection with Kirkcaldy. He only came to live in England because economic vicissitudes forced him to do so in order to provide for his family.
- b. A family plot for the deceased, his widow and the Petitioner is available at Dysart cemetery in Scotland.
- c. Other relatives including the deceased's siblings are buried at Dysart Cemetery.
- d. David Bell had expressed a desire to return to Scotland in life and in death.
- e. The Petitioner's mother's impecuniosity as a young widow with dependents prevented her father's wishes being fulfilled at the time of his death. Furthermore the impact of this impecuniosity was exacerbated because the deceased had always taken charge of financial and other administration and his widow struggled to cope with basic matters following his death.
- f. The petitioner's mother's strongly expressed wishes and expectation during her life were that she and the deceased would be buried together in Scotland. This petition is brought to try and fulfil those wishes.
- g. The petition has been brought as soon as possible after the death of the deceased's widow who had suffered from dementia for a number of years before her death.
- h. This is a family grave case reinforced by the particular circumstances that applied when David Bell died namely the shock and distress of his death at a young age, the impecuniosity of his widow and her inability through limited experience to fulfil what were his wishes. Furthermore the wishes of the deceased were reflective of his culture and nationality. He only found himself in England at the date of his death by misfortune and his desire to provide for his family.

I was concerned that the lapse of time since the burial of the deceased might mean that what is sought here cannot be achieved in a decent, dignified and respectful manner but I am satisfied having read the correspondence and emails now submitted by the Petitioner that this can be done albeit at a cost and no doubt with difficulty. I note also that Chancellor Bursell was dealing with a similar lapse of time in his Sam Tai Chan decision where the undertakers had warned that not the remains might be able to be removed from his grave. In addition Chancellor Bursell referred in his decision to that of *Re Talbot* [1901] P1 where an exhumation was permitted after 110 years.

In all the circumstances I direct that a faculty should issue for exhumation on the usual terms.

Sarah Singleton QC,

Chancellor

29th October 2016