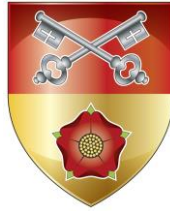


Neutral Citation Number: [2023] ECC Bla 4



Faculty – Exhumation – Council cemetery – The petitioners’ only child committed suicide in 2007 whilst suffering from depression – His body was laid to rest in his maternal grandparents’ grave – Parents not realising that the grave was in consecrated ground – Parents now wishing to create a family grave in a Baptist church burial ground about five miles away – Whether exceptional circumstances established for granting a faculty for exhumation and reburial in a family grave — Faculty granted

Petition No: 30 of 2023

**IN THE CONSISTORY COURT OF
THE DIOCESE OF BLACKBURN**

Date: Sunday, 2 July 2023

Before:

THE WORSHIPFUL DAVID HODGE KC, CHANCELLOR

In the matter of:

Burnley Cemetery

THE PETITION OF:

Michael Henry Neil Shoesmith

Valerie Hennie Shoesmith

This is an unopposed faculty petition determined on the papers and without a hearing.

No objections have been received

The following cases are referred to in the judgment:

Re Blagdon Cemetery [2002] Fam 299

Re St Bartholomen, Arborfield [2022] ECC Oxf 7

Re West Norwood Cemetery [2023] ECC Swk 4

JUDGMENT

Introduction and background

1. By a paper petition, dated 1 June 2023, the petitioners, Mr Michael Henry Neil Shoesmith, and his wife, Mrs Valerie Hennie Shoesmith, who are in their mid-seventies, seek a faculty authorising the exhumation of the human remains of their late son (and only child), Mr James Henry Nicholas Shoesmith (**James**), from a grave in Burnley Cemetery and their re-interment in a reserved grave plot (Plot 32, Grave No 3) in unconsecrated ground at the burial ground of Haggate Baptist Church, some five miles distant. The petitioners are James's only close relations. Whilst suffering from symptoms of depression, James, a schoolteacher, died by hanging himself on 23 March 2007 aged only 23. Apparently, his death was discovered by his mother when she returned home. His body was laid to rest in a coffin made of oak veneer on 2 April 2007 in a burial plot at Burnley Cemetery in which the remains of Mrs Shoesmith's own mother and father had been laid to rest in 2002 and 2005 respectively. James dies intestate; and letters of administration to his estate were granted to Mr Shoesmith out of the District Probate Registry at Manchester on 1 May 2007.

2. In his statement in support of the petition, Mr Shoesmith says this:

Looking back it is hard to imagine how we moved through the following days ... The event prompted wide interest not only from the local but the national press, adding to the difficulties.

Around all these circumstances decisions had to be made. Both Valerie and myself could not bear the prospect of a cremation. The family grave at Haggate was considered unsafe to be re-opened.

Valerie had the grave papers for a plot at Burnley Cemetery where her parents were buried. At the time this seemed the best and only solution.

...

As the years have passed one idea has begun to germinate and shared by both Valerie and myself.

I am seventy six, Valerie seventy five. Having visited Crematoriums on more occasions than we wish to remember following the death of friends and relatives, it has become clear to both of us that burial would be a requirement for ourselves.

The family grave at Haggate, where my parents, grandparents, and ancestors are buried is no longer fit for purpose and has deteriorated further since the date of James's death. The grave yard also contains the graves of many other relatives including one James Shoesmith at the entrance.

It seemed entirely appropriate for us to obtain a new plot there. This has been done.

It remains our wish that the plot is used in the first place to accommodate James so that at some point in the future the three of us will rest together in the Shoesmith family grave.

3. Amongst the papers filed in support of the petition there are: (1) a letter from the treasurer, and one of the trustees, of the Haggate Baptist Church confirming that James's remains will be accepted for reburial in the church burial ground in plot 32, grave 3; and (2) a certificate of ownership of that grave plot in the names of the petitioners.

4. The petitioners have produced a letter, dated 22 May 2023, from the Principal Environmental Health Officer of Burnley Council stating that the removal of James's remains will take place in accordance with conditions that would have applied to a licence issued by the Secretary of State had that been required. The exhumation will be overseen by the Cemeteries Manager. During the exhumation the following precautions will be observed:

(1) The removal of remains at Burnley Cemetery shall be undertaken discreetly, away from public gaze, and with due care and attention to decency.

(2) If necessary, a suitable disinfectant solution shall be freely sprinkled over the coffin and soil.

(3) The remains, and any article apparently buried with the deceased, shall, if necessary, be placed in a fresh shell.

(4) The remains shall, without undue delay, be re-interred at Haggate Church Cemetery, Burnley; and in any intervening period, they shall be kept and transported safely, privately, and decently.

An Environmental Health Officer will be present at the exhumation to ensure that respect for the deceased person is maintained, and that public health, and, where relevant, health and safety regulations, are observed and protected.

5. Alderson & Horan Funeral Services Limited were the the funeral directors who were responsible for James's interment in April 2007 in a coffin constructed of oak veneer. Due to the length of time the coffin has been interred, they would expect some deterioration. Initially, they were unable to comment on the ground conditions as these are under the control of Burnley Borough Council. However, in a later letter, Alderson & Horan confirm that the ground conditions have now been inspected and should enable the exhumation to take place without difficulty. The burial remains will be exhumed and transferred to Haggate Burial Ground in accordance with the letter from the Environmental Health Department at Burnley Council. It is anticipated that the coffin will have deteriorated, and a replacement will be available, if necessary. The exhumation will take place during the early morning when the Cemetery will be closed to the public. All the arrangements have been notified to the Manager of the Cemetery Office at Burnley.

6. Having considered the petition and the supporting documentation, I directed the Registry to write to the petitioners stating that I was minded to determine the petition on consideration of written representations instead of by way of a hearing because I considered this to be expedient having regard to the overriding objective in Part 1 of the Faculty Jurisdiction Rules 2015 (as amended) of saving expense, dealing with the matter proportionately, and ensuring that it is dealt with expeditiously and fairly. I invited the Registry to inform the petitioners of this, and to invite them to submit in writing their views on such a course, including any reasons for seeking an oral hearing. If they were content to proceed by way of written representations, I invited the petitioners to submit their written representations within 14 days. I asked the Registry to remind the petitioners that since there is a presumption that Christian burial is permanent, and that human remains should not be portable, only exceptionally would a faculty for exhumation be granted; and that it was for the petitioners to satisfy the Chancellor, on

the balance of probabilities, that in the present case there were special circumstances which constitute good and proper reason for making an exception to the norm that Christian burial is final.

7. In response, on 9 June I received a letter from Mr Shoesmith, dated 8 June, enclosing the petitioners' written representations, together with a letter from his niece, written on behalf of herself and her mother. The letter states that the application received their absolute support as they were both very close to James during his lifetime. The proposal for the petitioners and James to be buried together in a grave for their exclusive use was described (perhaps not entirely aptly) as "*the perfect solution for their lives together*".

8. Mr Shoesmith's written representations are dated 8 June 2023. He refers to the reasons which the court in *Blagdon* considered might amount to sufficient justification for allowing an exhumation; and Mr Shoesmith addresses these in turn, as follows:

(1) Medical Reasons

There is no reason to cite anything under this section as both applicants for the faculty are in good health at the present time.

(2) Lapse of Time

The length of time from the original interment is seen as a reason of difficulty. This factor has already been mentioned in the application. Sixteen years have now passed since the original interment. As the applicants become increasingly older, the resolution of an exhumation has become much more relevant. Although thoughts of an exhumation have been considered previously, consideration of one's own mortality, has created the reason for action.

The circumstances of James's death created a situation for which no parent could possibly be prepared. A totally unexpected suicide, and the surrounding media interest and publicity, created intensive pressures which made routine decisions much more difficult to make within the available time space. To place this into perspective Mrs Shoesmith returned home on 23 March 2007 to find James hanging in the hallway. This resulted in her receiving medical attention which continued for a considerable time after the event. The time from date of death to interment was ten days.

Having taken the view that cremation was not acceptable to either of James's parents, a burial location was considered. The obvious place was a family grave at Haggate, Burnley where Mr Shoesmith's father, his parents and other ancestors were buried. On enquiry, the sexton mentioned to Mr and Mrs Shoesmith that further interments in the grave would cause irreparable damage, and that there would be insufficient space in any event. The only alternative was a plot at Burnley Cemetery, in which Mrs Shoesmith's parents were buried. At the time, this seemed the only alternative available to the petitioners. Decisions had to be made quickly around the many other pervading pressures. Neither of the petitioners realised that the ground was consecrated. This only became apparent when enquiries were made at Burnley Cemetery during 2023.

From the date of his death, the concept of establishing points of permanent memory for James has been constant. In the application, reference had been made to an honours board, prizes at the schools where James was educated and where he taught, and the compilation of a book about his life. As the years have passed, the petitioners' thoughts have turned to their own plans,

with the constant thought that a solution which should bring them all together would be the ideal.

In Mr Shoemith's opinion, the circumstances around death by suicide of an individual of only twenty three years of age, and the decision made at the time for the use of a particular grave, do create an exceptional circumstance supporting the request for an exhumation. The time to consider all the implications of the petitioners' actions at the time was not available.

(3) Mistake

The decision made at the time seemed to be the best solution. As the years have passed, the concept now appears flawed, as the concept of a new family grave was beyond the remit of the petitioners' thoughts at the time.

(4) Family support

The application receives the absolute support of both petitioners as James's closest relatives. Mr Shoemith has a sister and a niece. Both of them had an extremely close relationship with James during his lifetime during their many visits to see each other. Both of them give their absolute support to this application, confirmation of which has been provided. Mrs Shoemith has no living relatives.

(5) Precedent

The setting of a precedent is understood. This application is brought about by very particular circumstances resulting from the death of an only son by suicide, and the very simple requirement for a place to exist in the future where the Shoemith family unit can remain together. The only conceivable means of doing this is for the three members to be buried in the same grave.

(6) Family grave

The court will have regard to the existence of an established family grave plot, and may be prepared to grant a faculty to bring the remains of family members together in one plot. In the present case, the original family grave could not be utilised. The solution of a new family grave would seem to be an acceptable alternative. The grave is at the same burial ground as the original family grave, and is in close proximity to it. It has a specific capacity for the remains of three people only, namely James and his parents, the petitioners. It will be a final resting place for the three of them; and will be a lasting memorial to three people who, during their respective lives, have meant everything to each other.

(7) Conclusion

For the reasons outlined, Mr Shoemith invites the court to decide that the circumstances of this petition form an exception to the established general rule, brought about by the suicide of the petitioners' son and the significant pressures of the surrounding circumstances at the time, making it impossible to give consideration to the future implications of the petitioners' actions. The passage of time has enabled them to clarify their thoughts and work to a solution which would meet their wishes, based on their lifetime reflections, and the petitioners' wish for the remains of the three of them to be together forever.

The legal framework

9. It is convenient for me to begin by setting out the legal framework by reference to which this faculty petition falls to be determined. The leading authority is the decision of the Court of Arches, the appeal court for the southern province of Canterbury, comprising Cameron QC (the Dean of the Arches) and Chancellors Clark QC and George QC, in the case of *Re Blagdon Cemetery* [2002] Fam 299. In that case, as recorded in the head-note to the official law report, the petitioners' son had died in an industrial accident in 1978, and his remains had been buried in consecrated ground in a cemetery in Somerset, near to where the petitioners (but not their son) had lived at the time. The petitioners subsequently moved home on several occasions before retiring to Suffolk. In 1999 they petitioned for a faculty authorising the exhumation of their son's remains so that they could be reburied in a cemetery in the community which they had chosen for their retirement, in a triple burial plot in which the petitioners wished their remains also to be buried after their deaths. In the consistory court, the chancellor had refused a faculty on the grounds that there was no good and proper reason for exhumation, which was likely to be regarded as acceptable by right-thinking members of the Church at large, since there had been too great a lapse of time since the burial, and it was not a sufficient reason that the purpose of the petition was to enable the petitioners to visit their son's grave more easily.

10. The petitioners' appeal was allowed. The Court of Arches held that since there was a presumption that Christian burial was permanent, and that human remains should not be portable, a faculty for exhumation would only exceptionally be granted; that it was for the petitioners to satisfy the court, on the balance of probabilities, that there were special circumstances which constituted good and proper reason for making an exception to the norm that Christian burial was final; that in deciding whether such good and proper reason had been made out, it was not practicable to consider whether that reason was likely to be regarded as acceptable by right-thinking members of the Church at large; that advancing years, deteriorating health, and moving to a new area were not, in themselves, adequate reasons for permitting exhumation; that the passage of a substantial period of time since the burial was not, in itself, fatal to the petition, although it might be of potential relevance in assessing the genuineness of the petitioner's case; that since double and triple graves, in which the remains of members of the same family could be buried together, were to be encouraged, the bringing together of family members' remains in a single grave could provide special reasons for permitting exhumation, despite the lapse of a long period of time since the burial, although where no burial had yet occurred in a family grave, clear evidence as to the existence of the legal right to such a grave would be required to justify exhumation of the remains of a child who had predeceased his parents; that, although mistake as to the location of the grave or, in certain circumstances, as to the significance of burial in consecrated ground, could be good and proper reason, mere change of mind as to the place of burial by those responsible for the interment could not; that, although the views of close relatives were a very significant factor, the amount of local support for the petition would normally be irrelevant; that, in view of the desirability of securing equality of treatment between petitioners, so far as circumstances permitted, the court had to take into account the impact its decision was likely to have on other similar petitions; and that, in view of the sudden and unnatural death of the petitioners' son at an age when he had expressed no view about his place of burial, the absence of any link between him and the community in which his remains were buried, the petitioners' lack of any permanent home at the time of the burial, the fact that they had inquired of solicitors shortly after their son's death about the possibility of moving his remains once they had acquired a permanent home, and the petitioners' purchase of

a triple depth burial plot in the community in which they had settled, good and proper reason had been shown for granting the petition.

11. The appeal court directed that a faculty should issue out of the consistory court for the diocese, on the usual terms, for the exhumation of the human remains from the cemetery and for their transportation to, and reinterment in, their new resting place, on condition that the exhumation should not take place unless and until a Home Office licence had been obtained authorising the reinterment as proposed in the new cemetery. (I should observe that an amendment to the law in 2014 did away with the need for both a faculty and a licence from the Secretary of State, and s. 25 of the Burial Act 1857 now only requires a faculty to be granted by the court: see paragraph 7.112 of *Hill's Ecclesiastical Law* (4th edn)).

12. The general principles laid down in the *Blagdon* case have been the subject of much judicial discussion in later cases; but since the actual decision in any particular case is highly fact-sensitive, and will depend upon the actual circumstances of that case, it is only necessary for me to refer to two recent decisions of the consistory courts, which bear some similarity to the present case. The first is my own decision (in the Diocese of Oxford) to grant a faculty for an exhumation in *Re St Bartholomew, Arborfield* [2022] ECC Oxf 7. The petitioners, who lived in Lincolnshire, wished to exhume, from an Oxfordshire churchyard, the cremated remains of their son and only child, who had died from leukaemia in 1981 at the age of six. They wished to reinter his remains in a new family grave in a churchyard in the Diocese of York, where many of his mother's relatives were already buried, and where the petitioners wished their remains to be buried. I considered that special circumstances existed which constituted good and proper reasons for making an exception to the normal rule that Christian burial is final. These included the intense grief experienced by the petitioners at the death of their only child, at a time when they felt under the pressure to have his remains interred as soon as possible; and the desire to create a new family grave (as well as certain features absent from the present case, such as the absence of any connection between the child and the churchyard where he was buried, and the fact that the petitioners had had no settled home at the time of their son's death). The second recent case is the decision of Chancellor Petchey in *Re West Norwood Cemetery* [2023] ECC Swk 4. There the Chancellor determined that ignorance of the fact of consecration, and the creation of a family grave, were circumstances which justified an exception to the norm of the permanence of human burial. He therefore granted a faculty for the exhumation of the remains of the petitioner's late mother's stillborn child from the consecrated children's section of West Norwood Cemetery to a plot adjoining a double depth plot in unconsecrated land at Mitcham Road Cemetery, Croydon which had been reserved for the mother (who had recently passed on) and her husband. At paragraphs 9 and 10, Chancellor Petchey said this:

9. It is obviously very significant that Mr and Mrs Ward did not appreciate that the plot in West Norwood Cemetery was consecrated. It is possible that had they done so, they would still have gone ahead with the burial of Lisa's remains there but, as it was, they did not consider the matter in this light and, in particular, the long term implications of doing so.

*10. In the light of Mr and Mrs Ward's ignorance of the fact that the plot was consecrated it would be hard to justify refusing exhumation on the basis of permanence of Christian burial, albeit tempered by the fact that, as a generality, Mr and Mrs Ward would have sympathised with the principle involved. Moreover there is a further justification for what they propose, namely the creation of what will be, in effect, a family grave. As *Blagdon* recognised, family graves are intrinsically a good thing, as expressive of family unity. It seems to me that*

the two relevant factors – namely, ignorance of the fact of consecration and the creation of a family grave – constitute exceptional circumstances justifying an exception to the norm of permanence. I note that the re-interment will be in an unconsecrated plot. However one cannot imagine circumstances in which this would not be the final resting place for the remains of Lisa Ward; and the plot will, I am told, be blessed by a Roman Catholic priest before the interment takes place.

In a footnote, the Chancellor points out that there was no objection in Blagdon arising from the fact that the re-interment of the exhumed remains was to unconsecrated ground.

Analysis and conclusions

13. No-one could fail to be profoundly affected by the tragic circumstances of James's death, and the effect of this upon his parents. Any feeling human being, of any faith or none, would have the most profound sympathy for the petitioners' unhappy situation. I confess to a sense of relief that a proper application of the law permits me to give effect to their wishes. As in the case of West Norwood Cemetery, two relevant factors, namely, ignorance of the fact, and the implications, of consecration, and the creation of a family grave, unite to constitute exceptional circumstances justifying an exception to the norm of the permanence of human burial.

14. In the present case, the petitioners have satisfied me, on the balance of probabilities, that special circumstances exist which constitute good and proper reasons for making an exception to the normal rule that Christian burial is final, despite the passage of some 16 years since the original interment of James's human remains. Those special circumstances consist in the combination of the following:

(1) The tragic death of the petitioners' only son, by his own hand, whilst suffering from symptoms of depression, at a time when James had been in no position to form any considered view about the place of his interment.

(2) The horror, and the shock, of Mrs Shoemith's discovery of the dead body of her only son, and the incredible grief experienced by the petitioners at the loss of their only child by his own hand at such a young age.

(3) The significant pressures created by the circumstances surrounding, and immediately following, James's suicide, which made it impossible for the petitioners to give due consideration to the future implications of their actions around James's burial.

(4) The petitioners' failure to appreciate that the grave plot to which they were committing James's body was consecrated ground, and the implications of this.

(5) The petitioners' heartfelt, considered, genuine, understandable, and realisable wish to create a family grave in a churchyard, where the remains of many of James's father's own relations have already been laid to rest.

15. These circumstances are reinforced by:

(6) The positive, considered support for the proposed exhumation and reinterment from both of James's surviving relations.

(7) The lack of any opposition or objection to this proposal.

(8) The fact that granting this petition will have no undesirable precedential effect.

I also note - although it forms no part of my essential reasoning - that to refuse this petition would hardly be consistent with the vision of this Diocese to serve the common good by praying for God to transform communities and bring joy to Lancashire by pouring out his Holy Spirit across the Diocese of Blackburn.

16. I emphasise that this is not a case of: (a) mere advancing years, (b) deteriorating health, (c) moving to a new area, or (d) change of mind as to the place of burial on the part of the petitioners, as those who were responsible for the original interment of James's body. I have also borne in mind that in view of their opposition to cremation, it is not possible for the petitioners to achieve their wish of creating a family grave by making arrangements for their own remains to be interred within James's grave space when their own time comes.

17. For these reasons, the court will grant a faculty for the exhumation of James's body from Burnley Cemetery, and its transportation to, and reinterment in, a new family grave to be created in Plot 32, grave 3 of the burial ground of Haggate Baptist Church. The faculty will be subject to the following conditions:

(1) The removal of James's remains from the existing grave at Burnley Cemetery shall be undertaken discreetly, away from public gaze, and with due care and attention to decency, after all the arrangements have been notified to the Manager of the Cemetery Office at Burnley.

(2) The exhumation is to be undertaken by Alderson & Horan Funeral Services Limited during the early morning when the Cemetery will be closed to the public.

(3) If necessary, a suitable disinfectant solution shall be freely sprinkled over the coffin and soil.

(4) The remains, and any article apparently buried with the deceased, shall, if necessary, be placed in a fresh coffin, for which purpose a replacement coffin should be made immediately available, if necessary.

(5) The remains shall, without undue delay, be re-interred, with due care and attention to decency, in Plot 32, grave 3 at Haggate Church Cemetery, Burnley; and in any intervening period, they shall be kept and transported safely, privately, and decently.

(6) An Environmental Health Officer of Burnley Council is to be present at the exhumation to ensure that respect for the deceased person is maintained, and that public health and, where relevant, health and safety regulations, are observed and protected.

18. The petitioners must pay the costs of this petition; but, in the usual way, I charge no fee for this written judgment.

David R. Hodge

The Worshipful Chancellor Hodge KC

The Feast of St Thomas the Apostle

The Fourth Sunday After Trinity

2 July 2023