

**Re: Hickling Cemetery
Proposed exhumation of remains of Hannah Denise Fraser**

JUDGMENT

1. This petition of John Fraser, Neil Fraser and Mark Fraser seeks the exhumation of the ashes of Hannah Denise Fraser from Hickling Parish Cemetery, and for their re-interment in the Churchyard of St John of Beverley, Whatton-in-the-Vale together with the cremated remains of her late widower Stuart Fraser. The petition is unopposed. I have requested that the petitioners obtain an indication from all living family members as to their respective views on this petition and all family members are unanimously in favour.

Factual Background

2. Hannah Denise Fraser (known as Denise) died on 6th February 2009 and her cremated remains were interred into Hickling Parish Cemetery on 17th July 2009. They were buried in an oak casket provided by the funeral directors. I am told that this casket will be sufficiently preserved after 7 years to be capable of exhumation without disintegration.
3. It was intended by all family members that the remains of her husband, Stuart Fraser, would be interred with her remains in due course.
4. In 2012 Stuart married Patricia Blackmore, with whom and with whose late husband the Revd Geoffrey Blackmore he and Denise had been long-term family friends. This appears to have been a remarriage welcomed by the parties' children and extended family. This family now has an unusual structure in that Mark Fraser (the son of Denise and Stuart) had already married Jane Fraser (nee Blackmore) the daughter of Patricia and Geoffrey Blackmore.
5. At the time of Denise's death Stuart and Denise did not have any link to any particular parish. They both wished to be cremated and neither had any desire to be buried in any particular place. The extended family however, decided they did wish to have a place they could visit to remember Denise,

and chose Hickling Parish Cemetery as it was convenient for family members, rather than of any particular significance to the deceased or Stuart.

6. Following Denise's death, Stuart changed his mind about the value of a place to visit and formed two views of what he wished for when the time came to bury his own remains. He wished his remains to be buried with those of Denise, and he wished for both their remains to be buried in the Churchyard of the Church of St John Beverley in Whatton-in-the-Vale. Stuart has also now recently died, although I am not told the date of this. His body has been cremated and his children and widow wish to bury his remains in keeping with his wishes, so far as possible.
7. The significance of Whatton Churchyard is that following his move to Whatton and marriage to Denise, Stuart became a regular churchgoer and closely involved in the life of the Church of St John.
8. I am told there is space available in Whatton Churchyard and that the vicar of St John's is willing to bury both sets of remains there if the faculty is granted. I have seen a letter from the Rev'd Bryony Wood dated 20th April 2016 that confirms this.
9. I am also told that the Parish Council of Hickling also supports the application for permission for exhumation, again a letter from them dated 25th April 2016 confirms this.
10. At the time of the burial of the ashes of Denise the family were not aware that this took place in the consecrated part of the cemetery. Indeed the records kept in respect of the cemetery have been such that it has been difficult to determine until recently whether or not the burial took place in the consecrated part. The details of this are set out in the letter of Jane Fraser dated 14th April 2016. It has now be ascertained that the burial was in fact in consecrated ground, hence the matter coming within the jurisdiction of the Consistory Court. As an aside I am pleased to note that more recently the consecrated and unconsecrated parts of the cemetery have been clearly marked. At the time of the burial of Denise's ashes it was not intended for the remains to be placed in consecrated ground and the burial was not done with any understanding of the doctrine of the permanence of Christian burial. No priest or minister was involved in the burial of the ashes. It was undertaken by family members themselves, upon having secured a plot from Cemetery authorities.
11. It is intended, if the faculty is granted, for both Denise's and Stuart's remains to be buried together.

The law

12. Human remains, whether a body or cremated remains, may only lawfully be removed from consecrated ground under the authorisation of a faculty. Such a faculty will only be granted in exceptional circumstances. The basic rule is that Christian burial is permanent and that there must be no interference with it save for good and proper reason. This applies whether or not the plan is to re-inter the human remains in consecrated ground.

13. The law relating to when a faculty for exhumation of human remains may be granted is set out by the Court of the Arches in *Re Blagdon Cemetery* [2002] Fam 299. The position may be summarised by the following excerpt:

“We have concluded that there is much to be said for reverting the straightforward principles that a faculty for exhumation will only exceptionally granted. Exceptional means “forming an exception” and guidelines can assist in identifying various categories of exception. Either 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.

14. As was stated by Chancellor Charles Mynors in *Re Astwood Cemetery* [2016] ECC Wor 1 :

“This makes it plain that the drawing up of guidelines can assist in identifying categories of exceptionality; but also that there is no necessity to show that a particular case falls within one or other of those categories.”

15. One situation where a faculty for exhumation has been granted is where it is intended to re-inter the remains in a family grave. This multiple use of grave space was encouraged in *Re Blagdon Cemetery* both as an expression of family until and as an economical use of land for burials. Whilst the latter point is more strongly made in respect of the burial of bodies, it does also apply to the burial of ashes. However, a grant of faculty is not necessarily automatic where the use of a family grave is intended. This is also made clear in *Re Blagdon Cemetery*.

16. Second, mistake can also be a relevant consideration. This can include a lack of knowledge that burial was taking place in consecrated ground with its significance as a place of Christian burial. This is also set out in *Re Blagdon Cemetery*.

17. Third, the views of close relatives are also very significant. This too was indicated in *Re Blagdon Cemetery*.

Conclusion

18. In my judgment the facts of this case are sufficiently exceptional so as to allow the petition for exhumation and reburial. The combination of the initial

mistake as to whether the burial took place in consecrated ground, the intention to re-inter together in a family grave and the unanimous family wishes together create sufficient good and proper reasons for this exceptional order to be made.

Faculty and conditions

19. I therefore direct that a faculty permitting the exhumation of the cremated remains of Hannah Denise Fraser be issued, subject to the following conditions:

- 1) The exhumation takes place reverently, privately and discreetly so as to cause no distress to third parties.
- 2) The cremated remains are reverently re-interred as soon as practicable in the churchyard of St John of Beverley in Whatteon-in-the-Vale together with those of Stuart Fraser.
- 3) An application for a faculty for the removal of the memorial stone to Hannah Denise Fraser from Hickling Parish Cemetery is submitted within 1 year of the date of this faculty.

JACQUELINE HUMPHREYS
Acting Chancellor
28.6.16