



Faculty – Grade I listed medieval village church (restored 1875-6) – Faculty for the exhumation of the cremated remains of the petitioner’s brother and their re-interment in a Roman Catholic churchyard in Northern Ireland – Shortly after the exhumation, and before the re-interment, their sister alleged that the petitioner had secured the faculty by misrepresenting that he had no contact details for her and her brothers, and objected to the exhumation – Whether it was just and expedient to set aside the faculty – Petitioner highly economical with the truth but the faculty should stand – Application to set aside the faculty dismissed

Petition No: 11038

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: Sunday 7 July 2024

Before:

THE WORSHIPFUL CHANCELLOR HODGE KC

In the Matter of St Michael, Horton, in the Archdeaconry of Buckingham

And in the Matter of an Application to Set Aside a Faculty for the Exhumation of the Cremated Remains of Blaise Francis Farry

Between:

Jackie Farry

Applicant

– and –

Bosco Farry

Petitioner and Respondent

This is an opposed application determined on the papers and without a hearing

The following cases are referred to in the judgment:

Re An Application for the Reservation of a Space for Cremated Remains in an Existing Churchyard Grave [2024] ECC Oxf 2

Re Blagdon Cemetery [2002] Fam 299

JUDGMENT

Introduction

1. This is an application, pursuant to rule 20.3 of the Faculty Jurisdiction Rules 2015 as amended (the **FJR**), to set aside a partly executed faculty for the exhumation and re-interment of cremated remains. The respondent petitioner and the applicant are brother and sister respectively; and the cremated remains are those of their late brother. The application raises questions as to how the consistory court should respond to disputed allegations that the petitioner procured the faculty by misrepresentation, raised after the exhumation of the cremated remains, but before their intended re-interment. The misrepresentation alleged is that the petitioner had told the Registry that apart from a sister in Northern Ireland, with whom he was in regular contact, he had not seen his other siblings in many years, and he did not know their whereabouts. The petitioner had also informed the Area Dean, who had interviewed him in her capacity as the minister because the incumbency was vacant, that there were no family members residing in the area, most being based in Northern Ireland, specifically in the village where the brothers had grown up.

2. A considerable volume of documentary material has been generated as a result of this application. I had sought to summarise all of this in an earlier version of this judgment. However, I have abandoned this attempt, and propose simply to set out the salient matters which emerge from the papers. My reasons are as follows:

(1) When this petition was first presented to me, the Registry Clerk explained to me that she had had to help the petitioner to collate the supporting paperwork as she was not sure whether he had actually read all of the information she had sent to him. In his last communication to the Registry, on 24 June, the petitioner acknowledged that he was “*not great at putting words down on paper*”. That is clearly the case. His written communications tend to lack any proper structure or punctuation; they contain obvious errors in expression; and they tend to reflect a stream of consciousness, as thoughts appear to have come into the petitioner’s head.

(2) Sadly, both the petitioner and the applicant clearly loathe each other. They have each made unsubstantiated allegations of a scurrilous and unpleasant nature, often based purely upon hearsay, against the characters and behaviour of each other, which are of no direct relevance to the issues arising on this application, despite my best efforts to focus their attention upon those issues. It would not be fair to either party to ventilate such views in a public judgment when they are irrelevant to the issues the court has to decide. Nor would it be appropriate to anonymise this

judgment, removing the parties from the beneficial public scrutiny afforded by an open judgment, simply because they have chosen to take this course.

I therefore propose to refer only to the relevant issues in dispute and explain how those essential to the court's conclusion have been resolved. I shall hope to be clear, crisp and concise. However, that does not mean that I have ignored the totality of the material that the parties have presented to me on this application. A collateral benefit of this approach is that this judgment is shorter than it might otherwise have been.

3. Having worked my way through all the many emails and email attachments presented to me, I have determined that it is expedient, having regard to the overriding objective of enabling the court to deal with the case justly, to proceed to determine this application on consideration of written representations, rather than by way of a hearing. By FJR 14.1 (1) the chancellor may order that any proceedings in the consistory court are to be determined on consideration of written representations, instead of by way of a hearing, if the chancellor considers, having regard to the overriding objective in Part 1, that it is "*expedient*" to do so. The overriding objective is, of course, that of "*enabling the court to deal with cases justly*". By FJR 1.1 (2), "*dealing with a case justly*" includes, so far as practicable -

- (a) ensuring that the parties are on an equal footing;
- (b) saving expense;
- (c) dealing with the case in ways that are proportionate to the importance of the case and the complexity of the issues; and
- (d) ensuring that it is dealt with expeditiously and fairly.

By FJR 14.1 (2), before making an order for a determination on written representations, the chancellor must invite the parties to submit in writing, within a specified period of time, their views on such a course; and the chancellor must take account of those views before deciding whether to make the order. This I have done. The petitioner failed to address the point, but raised no objection. The applicant queried the level of costs involved in any hearing without advocating for that course.

4. My reasons for proceeding by way of written representations are as follows:

(1) I already have sufficient evidence in the material produced by the petitioner to enable me to conclude that, viewed at its best from his perspective, he has been highly economical with the truth in minimising his lack of any recent contact with any of his siblings, other than his sister in Northern Ireland. An oral hearing will add little, if anything, to my understanding of the core issue at the heart of this dispute.

(2) Whilst acknowledging the importance of this case to the applicant, and those of her siblings who are said to share her concerns, a court hearing would be disproportionate to the complexity of the case and involve unnecessary expense and delay to the resolution of the ultimate issue in dispute, which is what should happen to her deceased brother's cremated remains.

(3) A court hearing would rapidly descend into an unedifying and acrimonious battle between warring siblings, who quite clearly loathe and distrust each other. I have presided over far too

many disputes of that kind when exercising my probate jurisdiction whilst sitting as a judge in the secular courts. Nor would a court hearing serve to clear the air, or lead to any sense of achieving a just resolution between the parties, because the court's insistence on confining the issues to those which are strictly relevant to the matters in dispute, and ignoring peripheral matters which clearly rankle between the siblings, would, in all probability, still leave them with a shared perception that their underlying grievances had been left unresolved.

Background

5. On 8 April 2024, I granted the petitioner, Bosco Farry (**Bosco**), a faculty for the exhumation of the cremated remains of his late brother, Blaise Farry (**Blaise**), from the churchyard of the Grade I listed medieval church of St Michael's, Horton, in the Archdeaconry of Buckingham, and their re-interment in an existing family grave at St Peter and St Paul's Cemetery, Fintona, in County Tyrone, Northern Ireland. I did not deliver a full written judgment on the petition. Rather I delivered brief summary reasons for my determination and directions (which I shall set out later in this judgment). This was in accordance with my usual practice where an exhumation application involves no novel point of law, but merely the application, to apparently non-controversial facts, of the established and well-known principles laid down by the Court of Arches in the leading case of *Re Blagdon Cemetery* [2002] Fam 299.

6. The exhumation of Blaise's ashes was duly undertaken by a funeral director on the morning of Wednesday 24 April. The bag containing the ashes within the original casket was still intact; and these were placed in an urn provided by Bosco, which he took away with a view to their re-interment in the nominated cemetery in Fintona. The grave site was cleared, and the plot was topsoiled and re-turfed.

7. Over the weekend of 27-28 April, the parish office received a voice message from the applicant, Jackie Farry (**Jackie**), asking about the exhumation, and wanting to talk to the person who had made the decision. Jackie advised that she was Blaise's next-of-kin, and that she and her siblings were devastated. This was followed up by two email messages from Jackie. The first stated:

The decision to have my late brother's ashes taken from the ground and all taken away is terrible. None of the family were notified about this and my brother Bosco was behind this all. The rest of the family are very upset about this and I as his next of kin was told nothing. This needs to be sorted as it's a total disgrace that this is allowed to happen. We as a family are not going to let this drop.

The second added that

... my siblings and myself are very upset by all this. We should have been notified. I would like to know also as none of the family signed anything and I as his next-of-kin knew nothing. My younger brother Linus went to visit his grave yesterday only to find it all gone. It's very hard when you have your younger brother crying and sobbing down the phone to me. I was and am appalled.

8. The Registry alerted me to these developments by email on the morning of Monday 28 April. I immediately directed the Registry (by email) to take the following steps:

(1) To inform both the funeral director who had conducted the exhumation, and also the Area Dean who had interviewed Bosco, of Jackie's objections.

(2) To contact Bosco and let him know that objections to the exhumation had been received from Jackie, on behalf of herself and her brother Linus. Bosco was directed to take no further steps to implement the faculty any further, either by disposing of the items removed from the grave, or by taking any steps to rebury the cremated remains, until those objections had been considered. Bosco was also to be asked why Jackie and Linus had not been consulted about the exhumation.

(3) To contact the parish priest, and the funeral directors in Northern Ireland, and let them know the situation, and notify them that they should take no steps to re-inter the ashes in the father's grave until the present difficulties had been resolved.

(4) To inform Jackie that the exhumation faculty had been granted on the basis that it was Bosco who had originally arranged for the burial of Blaise's ashes, and that Bosco (and his sister Mary) had informed the Registry that they had had no contact with any of Blaise's other siblings since 2009, some four years before his brother's death and the interment of his ashes. The Registry was directed to let Jackie have a copy of my original reasons and directions, and to inform her of what the Registry was doing to address the situation.

9. Since the faculty had already been granted, it seemed to me that the appropriate machinery to rectify the situation would be by way of an application by Jackie to set aside the faculty under FJR 20.3. I therefore directed the Registry to invite Jackie to set out her objections to the exhumation in writing, identifying what she would have wished to say had she been served with special notice of the application before any faculty was granted.

10. In the following paragraphs of this judgment, I shall briefly summarise the material submitted in support of the petition, and of the application to set the faculty aside. I shall then proceed to set out my conclusions and my supporting reasons.

The petition

11. In his petition, dated 14 March 2024, Bosco stated that Blaise had died on 19 January 2013. His body had been cremated at Hendon Crematorium, London NW7 on 14 February 2013. Blaise's cremated remains had been interred in the churchyard of St Michael's, Horton on 8 December 2013. At first, Bosco had held on to Blaise's ashes in the hope of taking them to Northern Ireland, to be interred with the remains of his late father and sister; but at the time financial reasons had prevented this. Bosco had therefore had the ashes interred in St Michael's churchyard because at that time he had been living in Colnbrook, not far from Horton, and it was a place for him to go, and pray and reminisce. Bosco said that he had done this on a regular basis - probably every other day - and he had also looked after the grave. When Bosco moved to Liverpool in 2016, he had always come down two or three times a year. Due to his health, Bosco was no longer able to make this journey. Financially, he was now a little better off; but he no longer had the health to go with it. Bosco therefore asked the court to grant him permission to exhume his beloved brother's ashes so that he could take them home to be with his father and sister, who were buried at St Peter and St Paul's Cemetery in Finton; and because, when his own time came, that was where Bosco would also be laid to rest. As for any surviving siblings,

Bosco had confirmed to the Registry Clerk that he had a sister in Ireland, Mary Farry, with whom he was in regular contact; and he produced a handwritten letter of support from her, consenting to the exhumation of Blaise's ashes and their re-interment in the cemetery in Fintona, where she was willing to tend to them. Bosco told the Registry Clerk that there were some other siblings whom he had not seen in many years, and whose whereabouts he did not know. Bosco produced a handwritten family tree showing that their parents were dead, and that, apart from Mary and *'Baby Farry'* (who had died at birth in 1968), there was a half-brother (Sean), two sisters (Jackie and Lucy), and a brother (Linus). Bosco indicated that unfortunately he did not know the whereabouts of his brother and other two sisters, nor had he spoken to them since the passing of his mother in 2009. Mary was the only sibling who was in contact with Bosco; and she fully supported him in this difficult situation. The Registry Clerk had asked Bosco if his late brother had been married and, if so, whether he was able to obtain a letter from Blaise's widow. Bosco confirmed that his brother had been married at the time of his death, but that Blaise had been estranged from his wife at the time he had been sent to prison, where he had sadly committed suicide. At the inquest, the coroner had asked Blaise's wife about her arrangements for disposing of the body. Bosco reported that she had said that she did not want anything to do with it, and she did not even attend the funeral. It had been left to Bosco to deal with all the arrangements.

12. With the petition, there was a letter from the parish priest in Fintona confirming that Bosco had asked that the ashes of his late brother, Blaise, be interred in the grave of his late father, Jack, in St Peter and St Paul's Cemetery, and that he was happy to undertake the offices required to facilitate this. There was a letter from funeral directors in Fintona confirming that Bosco had asked them to arrange for Blaise's ashes to be interred along with his late father, Jack, in the plot in that cemetery. There was a photograph of the gravestone of the family plot in Fintona commemorating *'Baby Farry'* (d. 1968), an uncle (d. 1981) and the father, *'John (Jack) Farry'* (d. 2001). This had room for further memorial inscriptions. There was also an email from funeral directors in England, confirming that they would be able to help to facilitate the exhumation of the cremated remains should a faculty be granted, and setting out details of the process which would be carried out in that event. There was a later email from the same funeral directors reporting that Bosco now planned to remove the memorial, and make good the area, using topsoil and turf, himself; and that they would not be overseeing that part of the process. However, the funeral directors would be present for the grave-digging, the exhumation of the cremated remains, and their transfer into a new casket which Bosco planned to provide himself, sourced from a monument maker in Liverpool. The funeral directors confirmed that Bosco was aware of the dimensions required for the casket since they had provided these to him. Since Bosco was the person who had purchased the ashes plot and the memorial in 2013, he claimed to be the owner of the memorial. Finally, there was a series of emails from the Parochial Church Council (the **PCC**). They had raised various concerns, which had been addressed by the Registry Clerk, and discussed by the PCC. Amongst their concerns, the PCC reported that Bosco had "*pleaded and pleaded to have his brother's ashes with us*" in 2013. They commented that "*the rationale behind his request would have applied in 2013 as well as now. Why the initial insistence that the ashes were interred at St Michael's, and what has changed?*" The PCC also observed that "*the memorial stone shows many other family members*"; and they queried whether "*they know what Bosco is trying to do*". Ultimately, however, the PCC were content to leave the matter to the chancellor.

13. From the PCC's comments, it was clear to me that the Area Dean had been consulted, and had asked the parish to provide Bosco with her contact details so that she could arrange a meeting with him. The Area Dean's initial comments were that Bosco seemed to have provided what looked like valid reasons for wanting to exhume the ashes of his late brother; but since Bosco lived elsewhere, it would be helpful for her to know who would be looking after the grave in Northern Ireland. In light of that, I indicated to the Registry that before I could determine Bosco's petition, I would need to know the Area Dean's views. On 5 April I received the Area Dean's email response. She reported as follows:

I've had a conversation with Bosco Farry regarding his desire to exhume his brother's ashes. He explained that his relocation from Colnbrook, where he lived when his brother passed away, is a primary reason behind this decision. Initially, he intended to have his brother interred in Ireland but lacked the necessary funds at the time. He admitted appealing to Revd Colin Gibson for a plot in the churchyard, reflecting his wishes back then. There are no family residing in the area, most are based in Northern Ireland, specifically in the village where Bosco and his brother grew up. Notably, other family members, including his father and sister, are buried there. The funeral directors ... have agreed to arrange the exhumation, with Neil Curtis [the parish's appointed gravedigger for the churchyard] as the gravedigger. Bosco has committed to removing the monuments and restoring the area without disturbing adjacent graves. Given the pastoral nature of this request, I am inclined to consent to Bosco's request. Hope this enables the Chancellor to move forward with a decision.

14. It was on the basis of all this material that I decided to grant the faculty that Bosco sought. In light of his assurance, as communicated to the Area Dean, that there were "no family residing in the area", I dispensed with the display of any public notices. In my written directions and summary reasons I declared myself satisfied that:

- (1) all close relatives whose whereabouts are presently known to the petitioner had given their consent to the exhumation;
- (2) the Area Dean had had a conversation with the petitioner regarding his desire to exhume his brother's ashes and had given her consent to the exhumation (the incumbency of St Michael's, Horton being in vacancy);
- (3) the PCC were content to accept the Chancellor's decision on this petition; and
- (4) the parish priest for St Peter and St Paul's Cemetery had given his consent to the re-interment.

15. My summary reasons for granting the faculty were expressed as follows:

The petitioner (who resides in Liverpool) wishes to exhume the cremated remains of his late brother (which were interred in the churchyard of St Michael's, Horton on 8 December 2013) in order to re-inter them in the family grave at St Peter and St Paul's Cemetery, Lisdergan Road, Fintona, County Tyrone, which contains the human remains of their late father, John (Jack) Farry, who died on 25 May 2001, and of a sibling who died at birth on 9 August 1968. When his own time comes, the Petitioner wishes his own remains to be laid

to rest in this family grave. In the meantime, the grave will be tended by the petitioner's sister, Mary, who is the only sibling whose whereabouts are known to the Petitioner.

The Petitioner's wish to exhume his late brother's ashes would appear to reflect a change of mind on his part since their interment in December 2013, with his relocation from Colnbrook, where he lived when his brother passed away, a primary reason behind his decision. Of itself, that would not be a special reason for permitting this exhumation. However, the exhumation would result in the bringing together of the remains of family members in a single grave, and that does provide a good and sufficient special reason for permitting this exhumation as an exception to the normal principle that Christian burial is final, despite the lapse of some 10 years since the original interment.

The faculty was granted subject to appropriate conditions.

The application to set aside

16. Bosco's initial reaction to Jackie's objection to the exhumation, as reported to me by the Registry Clerk, was to assert, quite clearly, that he had provided truthful information, and that when he had signed his petition, he had done so truthfully. He stated that his siblings had not gone to Blaise's funeral and so they would not have known where his ashes plot was located. Bosco had organised everything on his own, and the funeral directors whom he had used at the time would be able to confirm that. Bosco did not know how his siblings would have known about the exhumation; but he suspected that this was down to his ex-partner, from whom he had parted ways on bad terms shortly after Blaise's interment in 2013, but who had visited the plot with him on one occasion. Bosco speculated that she may have known about the exhumation as she has a family plot in the travelling community burial area. Since the water pipe that serves the whole of the churchyard is located next to Blaise's plot, she might have noticed that the plot was empty when collecting water to tend to her family's grave. As to his sister, Jackie, he asserted that she "*is the biggest liar that walks*"; and, having made a particular (and unsubstantiated) allegation against her, he claimed that everything she would say would be lies.

17. On 10 May, the Registry received a handwritten letter from Jackie. In it she wrote:

Bosco had no right to submit a petition to get his brother's ashes exhumed. He told nothing but lies, and none of the siblings were informed or notified of this. Bosco stated that he had no contact with his brothers or sisters since 2009, which is a lie, as Blaise passed away in 2013, where Bosco was in contact with all the family at this time. Also in 2023 he was up in Norfolk to visit his Aunty Lucy with his two brothers. He has been in contact with all of them since 2009 so therefore he lied to get his brother's ashes exhumed. Bosco, as far as I am told, wants to take the ashes and bury them with Blaise's dad, whom Blaise hated, and furthermore he never wanted to be taken back to Ireland. Myself and the other members of the family are very upset and annoyed by all this. I personally think you all have should have sought out a lot more information, before you gave him the permission. We as a family are not going to let this drop, and in the meantime can he be blocked from taking the ashes to Ireland. I look forward to hearing your reply.

18. A copy of this letter was sent to Bosco for his comments. His immediate response was what can only be described as a '*stream of consciousness*' email, which cast a series of serious (but

unsubstantiated) aspersions upon Jackie's character and conduct, and invited the court not to "believe a word that comes out of her mouth". Bosco claimed to be "the only one that organised Blaise's passing. I was the one that sat in a coroner's court for 5 days to get an explanation on why and how my brother died. This person is as toxic as the day is long but I still can't understand how she knew where the grave was." Bosco now understood that it was not his ex-partner who had told Jackie, so he speculated that it might be a friend of Blaise who was known to her. As "for me visiting my aunt Lucy I went there to visit her on my own and when I arrived my two brothers were there which was out of my control as I didn't want to upset my aunt as she is 90 years old and the last sibling on my mother's side so no I didn't go with them like she has stated as it would have been silly of me to drive to London and then Norfolk". After casting further aspersions upon Jackie, Bosco concluded: "I am sorry I can't think of anything more to say as I'm totally gutted, upset; and to make things worse I suffer from mental health issues just the same as Blaise. He should be back in his home town with people that know him like his sister Mary who worshipped him, his nieces and nephews, and great nephews and nieces, and all the friends he grew up with. Honestly it was a sad day when I got that call on the 19th of January 2013 from his friend Gerry; my life completely changed for the worse. I'm going to stop now as its make me tear up and I can't handle this.

19. Bosco later sent a further email to the Registry providing evidence that he had arranged Blaise's funeral. This took the form of an image of an undated letter, addressed 'To whom it may concern', from a senior funeral director of a firm in Burnt Oak, Edgware, Middlesex confirming that at the time of Blaise's passing, on 19 January 2013, all of the arrangements had been organised by his brother Bosco. The letter continued:

Blaise had siblings and a wife but no family, other than Bosco, would take on the responsibility for the arrangements at the time of his passing.

The death was registered and organised by Bosco directly with the coroner who then proceeded to make the funeral arrangements with myself.

Blaise passed in prison which was Wormwood Scrubs and the prison dealt with the financial side of the funeral and payment was made directly to us from the prison.

The cremation was taken place [sic] on the 14th February 2013 at Hendon Crematorium, the ashes were collected from the crematorium by [the funeral directors] and was [sic] later collected by his brother Bosco from our funeral home in Burnt Oak Edgware.

I note that this letter says nothing about the later interment of Blaise's ashes in the churchyard of St Michael's, Horton.

20. Included as part of this email stream were a number of images taken by Bosco showing the site of Blaise's grave both before and after his interment. These disclose multiple breaches of both the current (2016) Churchyard Regulations for this Diocese of Oxford (which came into effect on 1 January 2017) and the previous 2009 Regulations which were in force at the time of the interment of Blaise's cremated remains. The headstone bears three photographic images; there is a statute of the Virgin Mary carrying the baby Jesus; there are multiple vases and flower pots containing both cut and what appear to be artificial flowers; there are lights, kerbs, black and gold decorated metal railings bearing the word 'BLAISE' (in gold capital letters), stone chippings, black and white coloured pebbles, hearts, an open-book shaped ledger displaying on the left side The Lord's Prayer and on the right The Hail Mary, and four other inscribed

rectangular stones, one bearing in large gold capital letters the name 'BLAISE' against a reflective black or blue surface. All of this is prohibited unless permitted by faculty, which would only be granted in exceptional circumstances.

21. Bosco followed this up with a further email, on the morning of Monday 13 May, which I reproduce almost verbatim, tidying up only the most obvious errors, and introducing punctuation, as follows:

I was wondering if you could ask the chancellor to give me an answer quickly as I've made arrangements for Blaise's ashes to be interred with my dad on his 24th anniversary in Fintona. I know it's a lot to ask from him as he's obviously a very busy man but it would mean a lot to me to be able to do this even though a certain individual is against the idea but what would she know with her being anti-religious. I'm lucky to be here as Blaise's death really turned me upside down and inside out. If it hadn't of been for a lot of good friends and my sister Mary, who kept in contact and stayed with me, I wouldn't be writing this. I personally made Blaise's resting place a shrine because he was a special brother, one that you could depend on and trust. If he was alive today he'd tell you what he thought of them all and one other reason: Blaise was special; we were born 10 months apart, both served as altar boys in our early days, always watched my back when I was doing my security work in London, always called me on the nights I worked to make sure I was OK and safe so I think whatever this delusional so-called person says, it's only right that Blaise is reunited with his dad and sister in the family grave.

The court's directions

22. In response to Bosco's communications, on 14 May I directed the Registry to inform Bosco that he could not have Blaise's ashes interred in his late father's grave in Ireland until this matter had been finally resolved. I also made a directions order. This contained the following recitals:

(1) On 8 April 2024 the Court granted a faculty to the Petitioner, Bosco Farry ('**Bosco**'), authorising the exhumation of the cremated remains of his late brother, Blaise Francis Farry ('**Blaise**'), from the churchyard of St Michael's, Horton and their re-interment in the Farry family grave at St Peter and St Paul's Cemetery, Lisdergan Road, Fintona, County Tyrone.

(2) The exhumation took place on the morning of Wednesday 24 April 2024 and the cremated remains are now in Bosco's possession.

(3) Over the weekend of 27-28 April 2024, Jackie Farry ('**Jackie**'), a sister of Blaise, contacted the Parish Administrator to advise her that she and other members of Blaise's family had not been informed about the exhumation in advance and were very upset that this had taken place. They object to the re-interment of Blaise's cremated remains in Northern Ireland.

(4) When this was reported to the Court on 29 April, it directed that the Registry was

(a) to contact Bosco and let him know that objections to the exhumation had been received and that he should take no further steps to implement the faculty, either by disposing of any of the articles removed from the grave, or by taking any steps to rebury the cremated remains, until those objections have been considered; and

(b) to contact the parish priest and the funeral directors in Northern Ireland and let them know the situation, and that they should take no steps to re-inter the cremated remains in the father's grave at St Peter and St Paul's Cemetery, Lisdergan Road, Fintona, County Tyrone until the present difficulties have been resolved.

(5) The Registry has since received conflicting emails from both Bosco and Jackie concerning the state of relations within the family.

23. The Order recorded that the court was treating the objections received from Jackie as an application pursuant to FJR 20.3 (1) (a) to set aside the faculty. The operative part of the Order then provided as follows:

(1) The Petitioner, Bosco, is prevented from taking any further steps to implement the faculty. In particular, he is not to take any steps to dispose of any articles removed from the grave of his late brother, Blaise, nor is he to take any steps to rebury his cremated remains, whether in their late father's grave at St Peter and St Paul's Cemetery, Lisdergan Road, Fintona, County Tyrone or elsewhere, until after Jackie's objections have been considered and her application to set aside the faculty has been finally determined.

(2) The issues on which the Court requires evidence are:

(a) Any wishes Blaise may have expressed before his death concerning his place of burial;

(b) The state of the relationship between Blaise and his late father;

(c) The state of the relationship between Blaise and his brothers and sisters;

(d) Who made the arrangement for Blaise's funeral;

(e) Who attended that funeral;

(f) Which of Blaise's relations have visited or tended his grave, how frequently, and how recently;

(g) What contact there has been between Bosco and his brothers and sisters since 2009, and his knowledge of their respective whereabouts and their addresses;

(h) How Jackie found out about the exhumation.

(3) Witness statements setting out the evidence to be given by any witness on those issues are to be sent to the Registry, and served on the other party, no later than 4.00 pm on the date which is 21 days after the service of this Order.

(4) Any witness statement must be:

(a) verified by a statement of truth in the following form -

"I believe that the facts stated in this witness statement are true"; and

(b) signed and dated by the witness.

(5) Any documents (letters, emails, text, WhatsApp, or other social media messages) referred to or relied upon by the witness are to be sent to the Registry and served on the other party with their witness statement.

(6) Without the permission of the Court, neither party may rely upon the evidence of more than three witnesses. Any request for such permission is to be sent to the Registry, and served on the other party, and must set out the reasons why the evidence of more than three witnesses is necessary.

(7) Within 14 days after service of the other party's witness statements, each party is to send to the Registry, and serve on the other party, a written statement setting out their views (with reasons) on whether, having regard to the overriding objective in Part 1 of the Faculty Jurisdiction Rules 2015 (as amended) of dealing with the case justly, it is expedient for this application to be determined on consideration of written representations instead of at a hearing.

(8) Within 7 days after service of the written statements directed by paragraph 7 of this Order, the Registry is to return all the papers to the Chancellor for him to decide whether these petitions are to be determined on consideration of written representations or at a hearing, and for him to give any further or consequential directions.

(9) Either party may apply to the Registry in writing to vary or set aside any of these directions. The application must set out the reasons for seeking a variation, and a copy must be served upon the other party.

24. There has been no application to vary any of these directions.

25. Before this Directions Order was sent out, the Registry Clerk reported to me that she had spoken to Bosco by telephone to make him aware of the court's directions and briefly to explain what was required of him. She told me that the conversation had been very difficult and distressing for Bosco, who had broken down a few times, saying that he could not provide anything further. He said that he suffers with his mental health, which was evident to the Registry Clerk. Bosco also reported that Jackie had found out where he lived, and had sent a threatening letter to him. Bosco had obtained legal advice through the Citizens Advice Bureau, which had apparently advised him that he had every right to bury his brother's ashes in the existing family plot. After a lengthy conversation with Bosco, and gradually explaining what was required of him, the Registry Clerk was hopeful that he would not do anything further with his brother's remains until this matter was resolved.

The witness evidence

26. Jackie's evidence takes the form of a handwritten letter, not verified by any statement of truth. In it she states as follows (after editing out any unsubstantiated and irrelevant assertions of a personal nature):

(a) As Jackie was Blaise's next-of-kin, he had discussed with her on numerous occasions that if anything ever happened to him, he wanted to be cremated, and his ashes were to stay in London.

(b) Blaise and Jackie did not have a relationship with their father as so many times they had all witnessed him beating their mother, and neither Blaise nor Jackie had attended his funeral.

(c) Blaise had had a good relationship with his sister Lucy, brothers Sean and Linus, and Jackie. He did not get on so well with Bosco because he could not trust him and he always told lies; nor did he really get on so well with his sister Mary and her family.

(d) The arrangements for Blaise's funeral were made by Bosco, Linus and Sean.

(e) Sean, Linus, Bosco, Lucy, and Jackie all attended Blaise's funeral, along with some of Blaise's friends.

(f) Linus and Sean have helped on quite a few occasions with the upkeep of Blaise's grave. As recently as 2023, they did some work on Blaise's grave. Jackie attended just once as it was too painful for her.

(g) Bosco had contact with his brothers Sean and Linus, and his sisters Lucy and Mary. Jackie herself has had no contact with Bosco for at least four years. Jackie included addresses and phone numbers for Sean (in Luton), Linus (in Frimley, Surrey), Lucy (in Chesterfield, Derbyshire) and Mary (in County Tyrone). Bosco was said to know all their addresses and phone numbers. Jackie would rather the Registry contact Bosco's siblings as they could give the Registry a clearer picture of how recent contact had been with them.

(h) Jackie had found out about the exhumation when her brother Linus rang her in tears, and told her that everything was gone. Jackie knew instantly that it had to be down to Bosco. Any further information as regards contact with Bosco could be obtained from his siblings.

27. The Registry responded to Jackie's letter, in which she had provided the telephone numbers and addresses of her siblings, pointing out that, ideally, she should have provided their statements as part of her own witness evidence, as set out in the chancellor's Directions Order. However, when the chancellor came to consider Jackie's statement, along with that of Bosco, he could make a further direction as to whether he would require Jackie to obtain statements from them. The Registry also invited Jackie to set out in writing her views on how the chancellor should consider this matter, either by: (1) an in-person court hearing, where Jackie and Bosco could each speak to set out their views (with the ability to instruct a solicitor to help with this), or (2) confirming that any further views should continue to be set out in writing (known as 'written representations'). Jackie replied by email explaining that she had provided phone numbers and addresses for her siblings because it would be easier for them to let the Registry know the contact that Bosco had recently had with them. As for herself, Jackie was *"still very upset at Bosco as he has spouted nothing but lies. I will also be in touch with Fr Mulligan as he did not know Blaise and as regards Bosco I never and will not speak with him again. My late brother's ashes should never have been exhumed and I will see Bosco in court."*

28. Bosco's evidence takes the form of an email, timed at 00.43 on the morning of Saturday 18 May. It is verified by a statement of truth. It appears to address the issues on which the court requires evidence, as set out in the directions order. Again, I reproduce the email almost verbatim, tidying up only the most obvious errors, introducing punctuation, and omitting unsubstantiated and scurrilous allegations, as follows:

(a) As far as Bosco was aware, Blaise had never made a will because it was probably not something that had ever crossed his mind. He was close to his mother and father in his own way.

Although he could speak his own mind, if anyone had asked him about his post-mortem wishes, he would have said *“burn me and stick me in a hole”*, probably joking; but Blaise was a character and a joker so you would not know whether to believe him or not as his death was unexpected and a tragedy anyway.

(b) Blaise had a good relationship with his father in his own way; the same with his mother. When their father passed away on 25 May 2001 Blaise was incarcerated. When he was told of his father's passing, he was upset and saddened. They were going to take him to the funeral from prison, escorted under security, but he refused because he had not wanted to bring shame upon the family.

(c) Blaise was a private person but his relationships with his family were take it or leave it. He got on well with Mary and Lucy, but he could not stand Jackie as she was a compulsive liar even though she said different. As for Sean and Linus, they spoke when they spoke as Blaise did not see them that often, and when he did see them it was for about five minutes max. Bosco always saw Blaise on a Friday, Saturday and Sunday as Bosco worked the doors (as a security supervisor), and Blaise would always come to Bosco's place of work and stand for hours having a laugh and talking about his job, etc.

(d) It was Bosco who had made the arrangements for Blaise's funeral. It could have been around 22 January 2013, when Bosco had gone round to see the funeral directors in Edgware to make the arrangements because Blaise had to have a post mortem done and they could not release the body until that was done so Bosco had signed the contract with the funeral directors at that time.

(e) Everyone who knew Blaise attended his funeral. It was a full house and Bosco did not know which family members attended because he was at the front of the church and on the altar when he read out the eulogy. Bosco give Blaise the send-off he so rightly deserved.

(f) After Bosco interred Blaise's ashes on 8 December 2013, he attended and visited his resting place every other day until he moved to live in Liverpool in 2016. After that, Bosco came down twice a year, on Blaise's birthday and his anniversary, to clean the grave and tidy it up. Every time Bosco visited the grave, it looked as though no-one was visiting it as everything was filthy and had to be disposed of and replaced. It was not as though the other family members had not known where the grave was as Bosco's sister-in-law had been informed of it so there was no excuse.

(g) Bosco had not had much contact with his siblings since 2009 when his mother had passed on. He had seen Linus and Sean at his auntie's house in Norfolk when he went to visit, but that had not been expected, so out of respect and for the sake of his auntie (who was 90 years old), Bosco had kept the peace.

(h) Jackie found out about the exhumation afterwards when Bosco put it on Facebook.

Bosco added a short postscript to his email in which he accused Jackie of having asked the undertaker for three *“veils”* (presumably vials) of Blaise's ashes which she had taken away before Bosco had collected the urn containing the ashes. One was said to be for Jackie, another for Sean, and one for a named third party. Bosco wanted all three of them back so that Blaise could

“go home in one piece”. Bosco also produced some images of Blaise’s grave, showing the way he had looked after it. I have already referred to the appearance of the grave at paragraph 20 above.

29. Bosco also relies upon (1) a personal statement from a mutual friend, Mrs Linda Traynor; and (2) a signed letter from the parish priest, Father Sean Mulligan. Neither is verified by a statement of truth.

30. Mrs Traynor confirms that both she and her husband, Peter, attended Blaise’s funeral on 14 February 2013, and that this was both arranged, and the grave regularly maintained, by Bosco. Peter and Bosco have been friends since 2000. Mrs Traynor met Bosco in London in 2001, and they have continued to be friends for many years, continuing their friendship since the Traynors returned home to Ireland in 2017, and maintaining regular contact. Bosco stayed with Mr and Mrs Traynor recently as he came home to Ireland to tend to his mother’s grave. He spoke to Mrs Traynor about his mental health as she is a psychiatric nurse (although not working with Bosco), and she knows that he has been struggling with the decisions made in 2013 regarding the burial of Blaise’s remains. Mrs Traynor believes that Blaise and his family were raised as Catholics in Fintona, Northern Ireland. Being cremated was something that used to be frowned upon, but Bosco adhered to his brother’s wish to be cremated. Unfortunately, at the time of Blaise’s tragic passing, Bosco was struggling with his mental health due to this tragedy, and this subsequently affected him financially; but he was determined to get his brother’s remains home and buried with his father in a Catholic ceremony. Bosco has been saving for years to do this, along with getting a headstone for his late mother’s grave, which he came home to do in February 2024, when the Traynors last saw him. Mr and Mrs Traynor are Catholics, and they profess a belief in the resurrection of the dead, and affirm that the human body is an essential part of a person’s identity. The Catholic church insists that the bodies of the deceased be treated with respect, and laid to rest in a consecrated place. Mrs Traynor knows that Bosco feels the same about this, and has gone to great lengths, and expense, to arrange this Catholic burial, and ceremony, since it is important to carry out his last promise to Blaise as a Catholic man. It saddens Mrs Traynor to think that anyone would want to stop this final act of kindness going ahead; and she questions the rationale in doing so. Mrs Traynor proceeds to refer to certain hearsay allegations directed at Jackie which are irrelevant to the present application. She concludes by assuring the court that Bosco has the best of intentions in seeking to carry out his plans; and she also thinks that it will bring him peace knowing that he has given his beloved brother the burial that coincides with his religious identity.

31. Father Sean Mulligan states that Bosco had asked him if he would forward a witness statement to the court regarding the proposed interment of the ashes of his brother, Blaise, in the parish cemetery of Donacavey (Fintona). According to the parish records, Blaise was born on 18 May 1967. He was baptised in the parish, in St Lawrence’s church, on 25 May 1967; and he was confirmed there, along with his brother, Bosco, by Bishop Patrick Mulligan on 18 April 1978. Bosco contacted Father Mulligan some time ago to ask if it would be possible to re-inter his brother Blaise’s ashes in his parents’ grave in St Peter and St Paul Cemetery in Fintona. Bosco said that following his brother Blaise’s death, he had had the ashes interred in a cemetery close to where he was then living in London. However, in 2016 Bosco had moved to Liverpool, and he had only been able to visit the grave two or three times a year since then, due to the cost of travelling to visit the grave, and the cost of accommodation in London, as he had no one to

stay with when he visited the grave. In recent years Bosco's health has declined, and it is becoming increasingly difficult for him to visit his brother's grave. According to Bosco, up until recently no other family member had visited or maintained the grave in London. Therefore, in May 2023 Bosco had decided to look into exhuming his brother's ashes and transferring them to his home parish of Donacavey (Fintona). That is when he had made contact with Father Mulligan. He had informed Bosco on that occasion that he would have to go through the formal process of applying to exhume his brother's ashes before the parish could proceed with his request; but that should he be successful in obtaining permission to exhume his brother's ashes, the parish would accommodate his request to inter those ashes in his parents' grave. Subsequently, Bosco had contacted Father Mulligan, through the local funeral director, to inform him that he had obtained permission to exhume his brother's ashes, and was now in possession of them, and would like to arrange for their interment in his parents' grave. They had arranged to have the ashes interred in St Peter and St Paul Cemetery on 25 May. However, Father Mulligan had then received an email from the Registry on 29 April stating that Mr Farry's sister, Jackie, had objected to the exhumation of her brother's ashes and their re-interment in St Peter and St Paul cemetery in Fintona, and so they were not to proceed with the proposed re-interment of the ashes until the matter was resolved. Father Mulligan has since spoken to Bosco and informed him that should this matter be resolved, the parish remained happy to facilitate his request to re-inter his brother's ashes in Fintona, either in his parents' grave in St Peter and St Paul Cemetery, or in a new plot in St Lawrence's cemetery. Bosco had informed Father Mulligan that it is his wish to have his own funeral in his home parish of Donacavey; and he would like to be buried with his brother, Blaise, should he receive the required permission to inter his brother's ashes there. From the parish's perspective, it seems a very reasonable request for Bosco to have his brother, Blaise's, ashes interred in the parish of Donacavey as this is Blaise's home parish, where he was baptised and confirmed, and where he grew up. According to their Catholic faith, the ashes must be interred in consecrated ground, and so the parish were eager to have this matter resolved as soon as possible.

32. Following the service of his witness evidence, Bosco emailed the Registry on 7 June stating that after a long discussion with his solicitors in Northern Ireland, they had advised him that as there was no criminal activity involved in the exhumation of Blaise's ashes, it was now a civil matter. If the person or persons who were objecting to the exhumation and interment wished to get a court order to stop Bosco from proceeding with the interment, then well and good.

“Also if yourselves wish to do the same well and good which will probably cost thousands of pounds and as you and [the funeral directors who conducted the exhumation] have already been paid for your services it has nothing more to do with you as you are only solicitors acting on behalf of the Diocese therefore it's down to my toxic sister???. Please let me know; also I will proceed with the burial either in the North of Ireland or the Irish Republic if you don't get back to me by Friday week either with a court order from yourselves or toxic [sister]”.

33. In response to this email, the Registry wrote to Bosco, by email and attached letter dated 10 June. They explained that under the original exhumation faculty, dated 8 April, Bosco initially had permission to remove his brother's cremated remains from their existing grave. That faculty

had been granted on the basis of Bosco's representations that, with the exception of his sister, Mary, he had been unable to make contact with any of his other brothers and sisters so that the chancellor could seek their views on moving his brother's cremated remains. The letter set out in full paragraph 1 of my Directions Order, stating in terms that:

The Petitioner, Bosco, is prevented from taking any further steps to implement the faculty. In particular, he is not to take any steps to dispose of any articles removed from the grave of his late brother, Blaise, nor is he to take any steps to rebury his cremated remains, whether in their late father's grave at St Peter and St Paul's Cemetery, Lisdergan Road, Fintona, County Tyrone or elsewhere, until after Jackie's objections have been considered and her application to set aside the faculty has been finally determined.

The letter went on to explain that this Directions Order, which had been sent to Bosco by email on 14 May, is an order of the court to the effect that the permission the chancellor had previously given Bosco was suspended until the views of his brothers and sisters had been fully considered, and the application brought by Bosco's sister, Jackie, to set aside the original faculty had been finally determined. It was an order that Bosco must not move Blaise's cremated remains out of England, and must not reinter or bury them at this stage. That prohibition would remain in place until the chancellor had handed down his final judgment on Jackie's application. The court had not said that Bosco had done anything criminal or illegal; but it would now be unlawful for him to go against the court's order. Bosco's solicitors in Northern Ireland should be made aware of that email, and of the court's Directions Order; but they were not likely to be authorised to practise law in England in any event. If Bosco should need further legal advice about the present position, he should consult a solicitor in England. The Registry could suggest the names of some solicitors experienced in these matters if that would assist Bosco.

34. Bosco responded by email on the afternoon of 10 June. He referred to Jackie's assertion in her statement that she was Blaise's next-of-kin, and he asked whether she had any proof of that as Blaise had been married, and his wife, Heather Farry, was legally his next-of-kin. Also, Jackie had said that she had not had any contact with Bosco for four years. That was characterised as another lie since it had been more like 15 years. After further allegations against Jackie, Bosco concluded thus:

I'm telling you she is a qualified liar and plays the victim but I'm sorry; if she wants to proceed she can at her expense because I'm finished answering and asking questions so let her get a high court order to stop me and she can pay solicitors.

The Registry Clerk responded making it clear that Bosco was not to do anything with Blaise's cremated remains until further notice from the court.

35. As noted earlier in this judgment, at the time I was considering Bosco's petition, the Area Dean (in the absence of any incumbent minister) had had a conversation with Bosco Farry regarding his desire to exhume his brother's ashes, during which he had explained that there were no family residing in the area, with most of them being based in Northern Ireland. It was in reliance upon that assurance that I had seen no point in directing any public notices. I invited the Registry to approach the Area Dean to ask if she had any observations to make upon Jackie Farry's application, having first provided her with copies of Jackie's letters, and the responses

from Bosco and his supportive sister, Mary. The Area Dean responded promptly by email as follows:

I had a lengthy telephone conversation with Mr Bosco Farry around the 5th April to establish the reason for his request to exhume the ashes of his brother Blaise Farry. Mr Farry explained that he had been looking after the grave but as he now lives in Liverpool it was difficult for him to get to Horton and would prefer that his brother's ashes were in the family plot in Ireland where his father and sister are buried. He also states that it is his desire to be buried in the same place when the time comes. Mr Farry was quite emotional as he spoke about the circumstances surrounding his brother's death and that they had been very close. I specifically asked if there were other family members living in the Horton area and he replied no there weren't and that he had not been in touch with them for a very long time, he was the only one who looked after the grave. The information gathered provided a plausible reason for the request.

A few questions:

How often was the grave visited by the other siblings?

This request has been ongoing for two years, were the siblings not aware of this?

The discovery that the exhumation had taken place was within a few days of it taking place, how did this come about?

The addresses provided are all some way away from Horton

Hope this helps

36. There is a further handwritten letter from Jackie, dated 11 June, and received by the Registry on 13 June. It reads:

I am writing to inform you that I wish to carry on to stop this ridiculous escapade of Bosco's. I do not know why he is making this all about himself. It's Blaise and the immediate family he should be thinking of. I did not hear from [a third party] re Blaise's exhumation; it was from my brother Linus, who attended the grave to find nothing there. As re Bosco's people witnesses, I nor did Blaise know of Father Mulligan from Fintona, or never heard tell of him, and as for the Traynors we did not know them. As well you failed to contact any of the numbers which I sent to you in my last letter re proof that Bosco was indeed in contact with family members since 2009. Like I said, this is to do with Blaise, and nothing else. As a matter of interest, how much would it cost for it to go to a court hearing, at the end of the day Bosco has spouted nothing but lies and you all seem to believe him. It's to do with Blaise.

37. Having worked my way through all the many emails and email attachments in this paper-heavy case, I determined, for the reasons I have set out at paragraph 4 above, that it was expedient, having regard to the overriding objective of enabling the court to deal with the case justly, to proceed to determine this application on the basis of written representations, rather than by way of a hearing. I therefore directed the Registry to write to Bosco and to Jackie asking them if they wished to submit any written representations in addition to all the material they had already placed before the court. At my invitation, the Registry emphasised to them that it was not new evidence that the court was inviting them to present, but simply further statements

based on the evidence that had already been submitted. They were each given seven days to do so; although they were also told that should they need a little more time, then they might ask the court for this in writing within the seven-day period, setting out their reasons, and the court would consider their request.

38. Jackie responded, stating that she had nothing more to add; she still felt the same, as did other members of the family. Bosco replied at greater length. He wanted to appeal to the court one last time, saying that his intentions had been pure, and that he believed that he was morally obliged to bring his brother's remains home and respectfully bury them with his father, whom they had both adored, and "*spoke about our fond memories frequently*". Bosco continued as follows (although I have sought to punctuate his flow of words):

Unfortunately, eleven years ago when Blaise passed, I was not financially or mentally in a place to take Blaise home and I had to bury the vial [of his ashes] I had in my possession in the cheapest way possible. However it was always my intention to take Blaise home and this was well known as I had discussed this with my sister-in law Ann; she was the only member of the family I was in contact with at the time. There was never an issue as we all had our own vials which we kept individually, and I never had contact, or questioned what other family members did with their vial of ashes. It wasn't my place to question anyone and vice versa. This is why I am so surprised that this is even questioned now, eleven years on.

I was advised many years ago by mental health professionals to cut toxic family members out of my life for my own mental health and well-being and this was an extremely hard decision to have to make, especially after losing Blaise so tragically. I think this is a way of punishment for doing so, a way of controlling me once again and I must stand up for myself and Blaise.

Please do not hesitate to contact me if you would like to discuss this further.

Analysis and conclusions

39. By FJR 20.3 (1) (a) the consistory court may set aside any faculty (either in whole or in part) if it appears to the court "*just and expedient*" to do so. Although I have been unable to find any authority directly in point, no doubt because such a situation is unlikely ever to have arisen in the ecclesiastical jurisdiction, I am prepared to hold that a faculty may be set aside where it was issued as a result of a material misrepresentation on the part of the petitioner.

40. In the present case, I am satisfied that Bosco's own evidence, viewed at its best from his perspective, demonstrates that he has been highly economical with the truth in minimising his lack of any recent contact with any of his siblings, other than his sister in Northern Ireland. When commenting upon the petition, the PCC had observed that "*the memorial stone shows many other family members*"; and they had queried whether "*they know what Bosco is trying to do*". In support of his petition, Bosco told the Registry Clerk that there were siblings in addition to Mary whom he had not seen in many years, and whose whereabouts he did not know. Prior to the grant of the faculty, the Area Dean reported to the Registry that Bosco had told her that there were no family residing in the area; most were based in Northern Ireland, specifically in the village where Bosco and his brother had grown up. In answer to the court's queries in response to the present application, the Area Dean has reported that during her lengthy telephone conversation with

Bosco on or around 5 April, she specifically asked him if there were any other family members living in the Horton area. He had replied that there were not, and that he had not been in touch with them for a very long time; he was the only one who looked after Blaise's grave. It was in the light of this information, provided by Bosco, that the court dispensed with the display of any public notices.

41. In his initial response to Jackie's evidence that in 2023 Bosco was up in Norfolk to visit his Aunt Lucy with his two brothers (presumably Sean and Linus), Bosco stated that: "*I went there to visit her on my own and when I arrived my two brothers were there ...*": see paragraph 18 above. In his witness statement, served pursuant to the court's directions order, Bosco stated that he "*saw Linus and Sean at my auntie's house in Norfolk when I went to visit but that wasn't expected so for my auntie's sake with her being 90 years old I kept the peace to show respect to my aunt*": see paragraph 28 (g) above. Had the fact of such recent contact with two of his siblings been communicated to the Registry or the Area Dean, they could, and probably would, have asked Bosco to communicate with his aunt Lucy, or her relations, to establish the contact details of Blaise's other siblings.

42. Had the court known of the existence of any family members living in the area of the churchyard, or who visited Blaise's grave, the court would have required the display of the usual public notices alerting anyone who saw them to the exhumation application. Had the court known the contact details of any family members, such as brothers or sisters of Blaise, it would have directed that they be given special notice of the exhumation application. In light of her present, forcefully expressed views, had Jackie received special notice of the exhumation application, there is every likelihood that she would have objected to it in trenchant terms. It is less clear whether the display of the usual public notices would have come to her attention within the period for objections; but given the speed with which she contacted the parish administrator to object to the exhumation after it had taken place, there must be a real prospect that it would have done, and led her to object to the exhumation application.

43. One can never know for certain what would have happened if Jackie or any of Bosco's other siblings had objected to his exhumation application. But it is unlikely that the matter would have proceeded to the grant of a faculty without a contested hearing at which the court would have had to inquire into all the relevant facts and circumstances, including an investigation into Blaise's own wishes, and his relations with his late father (in each case, if ascertainable). As a result of Bosco's conduct, Jackie has been denied the opportunity of successfully objecting to Blaise's exhumation and re-interment in the family grave in Northern Ireland.

44. What then should the court do about this state of affairs? There is considerable force in the view that Bosco should not be allowed to benefit from his own failure to be open and candid with the court about his recent contact with Sean and Linus, and his potential ability to provide the court with contact details for his siblings. However, the court must look to the realities of the case: Blaise's cremated remains have already been exhumed from their last resting place. That exhumation was not unlawful because it was carried out under the authority of a faculty granted by a court of competent jurisdiction. The question for the court is whether that faculty should be fully implemented, by allowing the reinterment of Blaise's remains in the family grave plot in the cemetery in Northern Ireland, situated within the parish where Blaise was baptised, and then confirmed, and where the remains of his father now rest. However reprehensible Bosco's conduct may have been in helping to secure the grant of the faculty in the first place, strictly that

course would not involve covering an unlawful act with the cloak of subsequent legality. The alternative course is to require Blaise's remains to be returned to the grave in which they have lain for a little more than the past decade.

45. Not without some slight hesitation, I have formed the clear view that the existing faculty should be fully implemented, and the application to set it aside dismissed. My reasons are as follows:

(1) There is no written statement, or any reliable contemporaneous expression, of Blaise's wishes as to his last resting place. Bosco and Jackie have expressed conflicting views; each accuses the other of being a habitual liar; and, on the evidence, it is not possible to decide between them. Whilst this might have militated against permitting the exhumation of Blaise's remains from their present resting place, I regard it as a neutral factor post-exhumation, when the court is considering where those remains should be reinterred.

(2) Objectively, a family grave plot in a Roman Catholic cemetery in Northern Ireland, situated within the parish where Blaise was baptised, and then confirmed, and where the remains of his father now rest, would seem a more appropriate final resting place for Blaise's cremated remains than a grave in a Church of England churchyard to the west of London which was originally chosen, not because of any connection that Blaise had with the churchyard, but simply because his brother, Bosco, was living nearby at the time Blaise's ashes fell to be interred. The reinterment of Blaise's ashes in his former grave space might have had some merit had any family member wished to be laid to rest there with Blaise; but there has been no suggestion of that in any of the evidence. Jackie has repeatedly, and rightly, proclaimed that this is to do with Blaise, and not with Bosco; but that tends to ignore the fact that it was Bosco who appears to have determined the choice of grave space in the first place.

(3) Jackie has suggested that Blaise did not have a relationship with his father on the grounds that he had witnessed him beating his mother many times. As I have recently emphasised in my judgment in *Re An Application for the Reservation of a Space for Cremated Remains in an Existing Churchyard Grave* [2024] ECC Oxf 2, at paragraph 25, the Church of England in general, and this Diocese in particular, takes abuse in any form most seriously. However, as I also explained in that case, the consistory court should not accept a mere assertion of domestic abuse unless there is some credible evidence, put forward in good faith, to support its existence. Here, there is nothing more than Jackie's bare assertion that Blaise hated his father because of the way he had treated their mother. Bosco asserts that Blaise had a good relationship with his father, and that he only failed to attend his funeral because he was serving a prison sentence and had no wish to bring shame upon the family by attending as a prisoner under escort. It is impossible for the court to determine the nature of Blaise's relationship with his father now that both of them are dead, and in the face of such a conflict of evidence between family members, with each accusing the other of being a habitual liar. This is not a case where I can be satisfied that there is cogent evidence of any abuse on the part of the father.

(4) It is simply not possible to recreate Blaise's old grave space in the churchyard of St Michael's, Horton, or anything like it. I have already described the appearance of the former grave space at paragraph 20 above. As Diocesan Chancellor, I simply could not sanction the wholesale violation of the Churchyard Regulations that would be involved in any attempt to restore the grave to its

former condition. Whilst I appreciate that there may be other grave spaces in this churchyard which contravene the Regulations, that does not mean that I should be seen to be actively permitting, or condoning, any further such contravention.

46. For these reasons, I dismiss the application to set aside the faculty. Paragraph 1 of the court's Directions Order, preventing Bosco from taking any further steps to implement the faculty, is to remain in full force and effect for a further 28 days from the date of this judgment; but, subject to any further order of this court, after that period of 28 days, the reinterment of Blaise's ashes may proceed in accordance with the terms of the faculty.

47. In the usual way I charge no fee for this written judgment.

David R. Hodge

The Worshipful Chancellor Hodge KC

The Sixth Sunday after Trinity

7 July 2024