



***Faculty** — Exhumation — Temporary exhumation and immediate reinterment of cremated remains to facilitate second full body burial in existing family grave — Human remains of deceased's first wife buried in April 1998 — Cremated remains of first wife's mother interred in the same grave in 2005 — Deceased's surviving widow wishing to inter his body in the grave of his first wife — Temporary exhumation of cremated remains of first wife's mother required to enable husband's burial to take place — Faculty granted*

Petition No: 11112

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: Sunday, 29 June 2025

Before:

THE WORSHIPFUL DAVID HODGE KC,
CHANCELLOR

In the matter of:

St Michael the Archangel, Warfield

THE PETITION OF:

Mrs GISELA BROWNSCOMBE

This is an unopposed exhumation petition determined on the papers and without a hearing.
The Area Dean did not support the petition.

The following cases are referred to in the Judgment:

Re Blagdon Cemetery [2002] Fam 299

Re Christ Church, Alsager [1999] Fam 142

Re Mitcham Road Cemetery, Croydon [2021] ECC Swk 2

Re Shinfield Cemetery [2022] ECC Oxf 1

Re St Andren, Leyland [2021] ECC Bla 1

Re St. Andrew, Longton [2021] ECC Bla 6 (also cited as *Re Mather, Deceased*)

Re St Mary, Beenham Valence [2022] ECC Oxf 4

Re St Saviour's Cemetery, Hungerford [2021] ECC Oxf 3

JUDGMENT

Introduction

1. This is an urgent faculty petition, dated 25 June 2025, by Mrs Gisela Brownscombe to exhume the cremated remains of Mrs Florence Mitchell, the mother of her late husband's first wife, Sandra, from the grave in which Sandra's remains presently rest in order to enable the body of her late husband, Mr John Brownscombe, to be interred in that grave. Mrs Mitchell's cremated remains will then be re-interred in the same grave. That grave lies within the churchyard of St Mary the Archangel, Warfield. This is a Grade II* listed, rural church. It lies within the Archdeaconry of Berkshire, to the north of Bracknell.

2. The reason for seeking this exhumation is that the family have been advised that there is insufficient space within the existing grave to accommodate the planned burial of Mr Brownscombe's remains without first exhuming Mrs Mitchell's cremated remains. Immediately after the exhumation, the body of Mr Brownscombe will be laid to rest, and Mrs Mitchell's cremated remains will then be re-interred within the same grave. The reason for the urgency attending the disposal of this petition is that Mr Brownscombe's funeral is scheduled to take place on Monday 7 July at 1.30 pm. There will be family members attending that funeral who will have travelled to Warfield from overseas.

3. The reason why I am delivering my decision on this petition in the form of a formal, written judgment, rather than by way of a short summary of my reasons, is that the Area Dean of Bracknell Deanery, acting as ‘the minister’ during a vacancy in the incumbency of this parish church, does not support this petition. He writes, with awareness of the pastoral and theological sensitivities that such a matter entails, as follows:

I understand that the petition seeks permission for the exhumation of the cremated remains of the late Florence Mitchell, currently interred in the grave of her daughter, the late Sandra Brownscombe. The remains would be disinterred during the preparation of the grave to allow for the interment of the late John Brownscombe (son-in-law of Florence, widower of Sandra), and then immediately reinterred in the same grave above his remains. The petitioner notes that all surviving relatives agree, and that this arrangement reflects the longstanding desire of the deceased to be buried with his first wife, Sandra. The petition also suggests this does not conflict with Re Blagdon Cemetery because the disinterment would be temporary and immediately followed by reinterment.

Having considered the matter carefully, I find myself pastorally sympathetic to the motives of the petitioner and note that the standing committee of Warfield Church has expressed its support. I wish to honour the sincerity and care with which this request has been made. However, I also feel a duty to reflect on the broader theological and legal principles that govern Christian burial in consecrated ground.

Considering the judgment in Re Blagdon Cemetery, and subsequent case law, I have difficulty seeing sufficient grounds for this faculty to be granted. There is no suggestion of a mistake in the original interment, nor any significant new pastoral consideration that, in my view, rises to the threshold of exceptional circumstances. The interment of Florence Mitchell was made with due consent in 2005; and the current request seems grounded primarily in a desire for practical convenience and symbolic unity — pastorally understandable, but not necessarily compelling under ecclesiastical law.

Furthermore, the argument that the disinterment is temporary and followed by immediate reinterment does not, I believe, circumvent the theological presumption of permanence in Christian burial. As previous rulings have made clear, this presumption exists precisely to uphold the integrity of burial as a final resting, and to resist the incremental erosion of that principle over time.

While the matter falls entirely within the jurisdiction of the Consistory Court and would not require a licence from the Secretary of State, it is nevertheless worth noting that civil authorities take a similarly cautious stance. The requirement of Home Office approval for exhumation outside consecrated ground reflects a broader societal commitment to the dignity of the dead and the finality of interment. The existence of ecclesiastical jurisdiction does not diminish that standard but reinforces the need for consistent and compelling grounds before any disturbance of remains is permitted, even in the case of cremated ashes.

I absolutely do not intend to oppose the petition in any confrontational sense, and I support both Mrs Brownscombe’s right to make the application and the local church’s efforts to accompany her compassionately. However, on the evidence presented, I respectfully submit that the case does not appear to meet the threshold for faculty approval.

Of course, I am open to correction, and it is entirely possible I have overlooked an angle that you as Chancellor may rightly discern. I am not an ecclesiastical law specialist! Which is why despite these observations I support Mrs Brownscombe's right to apply and respect the right of the standing committee to support her application. I offer these reflections though humbly and in service to the discernment of the Court.

4. I am extremely grateful for the helpful contribution of the Area Dean to the court's deliberations, and for the care that he has taken in presenting his views as Area Dean from the theological perspective.

5. Since this faculty petition is not formally opposed, and, for pastoral and practical reasons, it needs to be disposed of urgently, I am satisfied that it is expedient, in the interests of justice, and in furtherance of the overriding objective of the Faculty Jurisdiction Rules 2015 (as amended), for me to determine this petition without a hearing, and on the basis of the papers. Doing so will save expense, and will enable the court to deal with the case proportionately, expeditiously and fairly.

Factual background

6. I take the factual background from Mrs Brownscombe's petition, and the documents submitted in support of her faculty application.

7. Sandra, Mr John Brownscombe's first wife, died on 7 April 1998. She was buried in the churchyard of Warfield Church on 16 April 1998. Sandra's mother, Mrs Florence Mitchell, died on 23 August 2005. She was cremated at Slough Crematorium on 2 September 2005. At the request of Mrs Mitchell's only surviving daughter, Sheila (now deceased), Mr Brownscombe agreed that Mrs Mitchell's cremated remains should be laid to rest in the grave of her daughter (his late wife). This was done on 26 October 2005 at a service conducted by the Reverend Canon Dr Brian Meardon (who was the incumbent of the parish of Warfield from 1982 to 2009).

8. The petitioner explains that, for practical and ecological reasons, she and her late husband, John, had agreed that when their time came, he would be buried within the grave of his first wife, Sandra; and the petitioner would be buried within the adjoining grave of her late husband, Vincent. For this to happen, Mrs Mitchell's cremated remains will have to be disinterred during the digging of John's grave. They will then be re-interred in the same grave immediately after John's burial. The petitioner states that she has secured the agreement of all of Mrs Mitchell's surviving relatives to this course. Mrs Mitchell had one other child, Sheila, who now, sadly, is deceased. Sheila has three surviving children (Chris, Michael and Janet); and Sandra has one surviving child (Mark). The petitioner also states that in the absence of any present incumbent minister, she has secured the consent of the former incumbent (and the officiating clergyman at Mr Brownscombe's funeral), the Reverend Canon Dr Brian Meardon. In a separate email to the Registry, the petitioner states that she understands that the standing committee of the PCC have all given their consent to the petition.

9. The petitioner undertakes that the disinterment, and subsequent reinterment, will be conducted with due care and decency. She also states that, having carefully considered the judgment in *Re Blagdon Cemetery* [2002] Fam 299, she has concluded that it is not relevant to the present situation "*as this is a temporary exhumation and immediate reinterment in the same place*".

10. There is an email, timed at 22.41 on 24 June 2025, from Mr Christopher Roberts to the petitioner (and copied to Mr Michael Roberts and Mrs Janet Brown), written on behalf of all three siblings, stating:

We fully agree that the exhumation of the ashes of our grandmother, Florence Mitchell, and the immediate reinterment should take place on July 7, 2025, so that our uncle, John Brownscombe, can be buried in the grave of our aunt, Sandra Brownscombe, his late wife.

I also have an email, timed at 03.42 on 25 June, from Mr Mark Brownscombe (the son of John and Sandra, and the grandson of Florence) to the petitioner “and to whom it may concern”. This states:

I fully agree that the exhumation of the ashes of my grandmother, Florence Mitchell, and immediate reinterment should take place on July 7 2025 so that my father, John Brownscombe, can be buried in the grave of my mother, Sandra Brownscombe, his late wife.

11. There is also a signed letter addressed to me from the Reverend Canon Dr Brian Meardon. He is now a retired priest in the Diocese of Salisbury where he has permission to officiate; and he is on the national register of clergy. The Reverend Canon explains that following the death of Mr John BrownBscombe, and the family’s understanding that his wish was to be buried with Sandra, he has been asked to conduct his funeral service and subsequent burial since the parish of Warfield is in an interregnum. Having known all those involved over many years, he states that he fully supports the present application to exhume and reinter the ashes of Florence Mitchell to enable John to be buried with his first wife. He goes on to provide the following background information:

I first knew Sandra and John Brownscombe when I was inducted as Vicar in 1982. Sandra was a governor of Warfield C of E Primary School and assisted John as PCC Treasurer. I therefore knew them extremely well and over the years; they were close friends.

Their son, Mark, when older, also was very involved being on the leadership team of one of the Warfield Church Plants.

I came to know Gisela and her previous husband, Vincent, when they joined Warfield Church following their conversions to Christianity and both being baptised at Warfield.

They too became very involved, Gisela as a Pastoral Assistant and later Governor of Warfield C of E School; and Vincent trained and became a Lay Reader.

The two couples knew each other well.

Sandra Brownscombe died in April 1998, and I conducted the funeral and burial.

John continued his relationship with his mother-in-law, Florence.

Then, in September 1998, Vincent died whilst on holiday abroad with Gisela. I conducted his funeral and burial in the next grave along the row in the churchyard.

Over the subsequent years, John and Gisela became close; and I married them in Warfield Church on Saturday, 2 February 2002.

When Florence died, John, along with other members of her family, asked me to conduct her funeral in Slough and burial of ashes with her daughter Sandra.

John and Gisela continued to keep in touch with other members of Florence's family.

If permission is given for the exhumation and reinterment of the cremated remains taking place immediately before and immediately after the full body burial of John Brownscombe, with no significant interval of time between them, then I would ensure that everything is done in order.

The Funeral Directors are A. B. Walker, who were the directors for Florence's funeral and ashes burial and the funerals of Sanda Brownscombe and Vincent Page.

12. Finally, there is an email from the funeral directors, A. B. Walker, which forwards an email from their contracted grave-diggers, timed at 4.17 pm on 26 June 2025. This reads:

Regarding the likely condition of the cremated remains interred on October 26, 2005:

** If the ashes were placed in a poly plastic container, we anticipate it would remain intact.*

** If a wooden casket was used, it would likely have decomposed.*

** Should the ashes have been poured loosely into the plot, they would be dispersed within the soil.*

For their removal, we would proceed as with any exhumation, locating the ashes and carefully removing them as appropriate for their condition.

For temporary storage during Mr. Brownscombe's burial, we recommend providing a child-sized coffin (approximately 2' x 1'). The container or soil containing the ashes would be placed within this coffin upon removal and then reinterred after Mr. Brownscombe's burial.

Analysis and conclusions

13. I am satisfied that all of Mrs Mitchell's surviving descendants have given their consent to the grant of the proposed faculty for the temporary exhumation and reinterment of her cremated remains. It is therefore appropriate for me to dispense with the giving of any public notice. I have not thought it necessary to call for any written representations, or to hear any oral evidence, since I am satisfied that, despite the concerns of the Area Dean, the petitioner has demonstrated a sufficient case for the grant of a faculty for the temporary exhumation of Mrs Mitchell's cremated remains.

14. On any application for a faculty authorising the exhumation of human or cremated remains – and no distinction should be made between them – essentially three matters fall for consideration:

- (1) The 'threshold' condition of whether the court has the necessary jurisdiction to order their exhumation.
- (2) Whether the court should exercise its discretion to make such an order.
- (3) The conditions subject to which any exhumation should be ordered.

15. The decision of the Court of Arches (which is the appeal court for the Southern Province of Canterbury) in *Re Blagdon Cemetery* [2002] Fam 299 authoritatively establishes that the interment of human, or cremated, remains in consecrated ground is intended to be permanent, and that such remains should not be treated as *'portable'*. Before the court can grant a faculty for exhumation, the petitioner must satisfy it, on the balance of probabilities, that there are special circumstances which constitute a good and proper reason for making an exception to the norm that Christian burial is final. At paragraph 36 of their judgment, the Court considered a number of possible special factors that might constitute such good and sufficient reason. One such special factor (considered at paragraph 36 (vi)) is the creation of a family grave. The court considered that this is something to be encouraged, both as an expression of family unity, and because family graves are environmentally friendly, since they constitute an economical re-use of land for burials. Thus, the bringing together of the remains of family members in a single grave may provide a special reason for permitting an exhumation, even though a long period of time may have elapsed since the first burial.

16. I am satisfied that this threshold condition is available to the petitioner on the particular facts of the present case. At paragraph 40 of their judgment, the Court of Arches expressly states that:

... it should not be assumed that whenever the possibility of a family grave is raised a petition for a faculty for exhumation will automatically be granted. As in this case it is to be expected that a husband and wife will make provision in advance by way of acquisition of a double grave space if they wish to be buried together.

Here, the petitioner wishes the remains of her late husband to be laid to rest with those of his first wife in an existing family grave that already contains the cremated remains of the first wife's mother. These, however, must be temporarily displaced for the further burial of the husband's remains to take place. In my judgment, that is sufficient to pass the high threshold for the grant of exhumation faculty approval.

17. It may be that there exists another special factor in the present case which would make it an exception to the norm of permanence, and which would found the necessary jurisdiction to grant a faculty for exhumation. In *Re Blagdon*, the Court of Arches recognised that a mistake as to the place of burial might amount to exceptional circumstances that would justify such a faculty. One example of such a mistake is the interment of human remains in the wrong burial plot, or in a space reserved for someone else in a churchyard. The resulting difficulties will have to be sorted out as fairly and sensitively as possible; and this will usually involve permitting the exhumation of the human remains. But another type of operative mistake that has been recognised in previous cases is one that goes to the practicability of creating a family grave in a particular grave plot. Had there been more time to adduce, and consider, evidence of the intentions of Mr Brownscombe, and the petitioner, concerning the future use of this burial plot at the time of the original interment of Mrs Mitchell's cremated remains, the petitioner might have been able to advance the argument that a mistake had been made in burying those remains where they were because this would prevent them from giving effect to their intentions that Mr Brownscombe's remains should be interred in that same burial plot when his time should come. As it is, I do not consider that the evidence before the court is sufficient to demonstrate such a

case of operative mistake. It is certainly a possibility; but the court can only act on probabilities, and not possibilities.

18. The present case does bears some similarities to the case of *Re Shinfield Cemetery* [2022] ECC Oxf 1, which I decided in February 2022. There the petitioner's maternal grandmother had been buried in a grave space in Shinfield Cemetery in 2006. The ashes of her grandfather had been buried in the same grave in 2009. The petitioner sought permission for the temporary exhumation of her grandfather's ashes in order to facilitate the burial of her mother's body in the same grave as her parents, with the ashes of the petitioner's grandfather then being reinterred in the same grave. I decided that as the ashes had been buried at too shallow a depth to allow the further burial, it was an appropriate case for the grant of a faculty for their temporary exhumation and reinterment.

19. In the course of my judgment (at paragraphs 9 to 11), I said this:

9. In Re Mitcham Road Cemetery, Croydon [2021] ECC Swk 2, the petitioners had applied for the temporary exhumation of the cremated remains of their brother, Cedric, from their father's grave, so that their mother could be buried in the same grave. The brother's cremated remains would then be returned to the father's grave immediately after the mother's burial. Chancellor Petchey (in the Diocese of Southwark) granted a faculty permitting this. He explained that the petitioners had discovered that the position of the ashes within the grave obstructed the burial of their mother's remains. At paragraph 5, Chancellor Petchey said this:

"Permanence is the norm of Christian burial and permission for exhumation is granted only exceptionally. However this is a case where a mistake has occurred through no fault of the Petitioner or her family; I note moreover that Cedric's ashes are to be removed only temporarily before being returned to the same grave from which they are to be exhumed. I rather doubt in these circumstances if the rigour of the inhibition on exhumation has application. If exceptional circumstances are required, I hold that they exist and accordingly I direct that a faculty should issue."

10. In my judgments (in this Diocese) in Re St Saviour's Cemetery, Hungerford [2021] ECC Oxf 3 and Re St Mary, Beenham Valence [2022] ECC Oxf 4 I stated that I had no doubt that the approach of Chancellor Petchey involved a principled application of the law governing exhumation from consecrated ground which I should be prepared to follow. I share Chancellor Petchey's doubts as to whether, in such a case, the rigour of the inhibition on exhumation has any application; but if exceptional circumstances are required, they clearly exist in a case of temporary exhumation, with a view to facilitating a further burial, with the exhumed remains being returned immediately to the same grave from which they are to be exhumed. I followed this approach (in the Diocese of Blackburn) at paragraph 28 of my judgment in Re St. Andrew, Longton [2021] ECC Bla 6 (also cited as Re Mather, Deceased), where I added:

"I am not aware that it has ever been suggested that there is no requirement for an appropriate faculty in such a case, presumably because there is generally uncertainty about the precise location, and consequent degree of disturbance, of the existing cremated remains;

but in such a case any necessary faculty should issue almost as a matter of course in order to further the Church's policy of favouring the creation of family graves."

That is particularly so in a case, such as the present, where, by mistake, the container enclosing the cremated remains has been buried at too shallow a depth to accommodate a second burial.

11. I therefore have no hesitation in granting a faculty permitting the temporary removal of the deceased's ashes to facilitate Angela's burial, on the basis that those ashes are immediately re-interred in the same grave. I do not consider that, by allowing this petition, any undesirable precedent will be, or will be at risk of being, created. For what it is worth, I also consider that the alternative test, formerly laid down and applied in Re Christ Church, Alsager [1999] Fam 142, of the existence of a good and proper reason for exhumation which most right-thinking members of the Anglican church would regard as acceptable, is also satisfied.

20. I consider that any objective observer would find it difficult to distinguish the facts and circumstances of *Re Shinfield Cemetery* from those of the present case. Earlier in my judgment in that case (at paragraph 8), I emphasised the importance of treating like cases alike, as follows:

In my judgment in Re St Andrew, Leyland [2021] ECC Bla 1, I explained (at paragraph 10) why I find it helpful to consider the decisions of consistory courts in earlier cases, not as precedents slavishly to be followed, or even as tramlines guiding my way forward, but as affording potentially helpful indications as to how the particular circumstances of other, similar, but not identical, cases have been viewed when considering whether it is right to make an exception to the principle of permanence. I reminded myself of the desirability of securing equality of treatment, so far as circumstances should permit, as between petitioners, and of treating similar cases in similar ways, avoiding over-fine distinctions; but also that, ultimately, the duty of this court is to determine whether the circumstances of the present case, properly considered and evaluated, are such as to justify making an exception to the presumption of the permanence of Christian burial.

21. Against this background, I set out my conclusions. First, as to jurisdiction, I doubt whether the rigours of the usual inhibition against exhumation has any application to a case, such as the present, of a temporary exhumation, carried out solely in order to facilitate a further burial in the same grave, with the exhumed remains being returned immediately to the same grave from which they were exhumed. But if I am wrong about this, and the full rigours of the decision in *Re Blagdon* do apply here, then I consider that the petitioner's wish to honour her late second husband's desire to be laid to rest in the existing grave of his first wife founds the necessary jurisdiction in this court to order the exhumation of Mrs Mitchell's human remains.

22. The Area Dean does not believe that "the argument that the disinterment is temporary and followed by immediate reinterment" can operate to "circumvent the theological presumption of permanence in Christian burial. As previous rulings have made clear, this presumption exists precisely to uphold the integrity of burial as a final resting, and to resist the incremental erosion of that principle over time." However, as I have sought to show, there is case law authority to the contrary. The Area Dean also refers to the current exhumation request as seeming to be "grounded primarily in a desire for practical convenience and symbolic unity — pastorally understandable, but not necessarily compelling under ecclesiastical law". However,

in *Re Blagdon* itself, the Court of Arches has recognised that the bringing together of the remains of family members in a single grave may provide a special reason for permitting an exhumation, even though a long period of time may have elapsed since the first burial.

23. Second, as to the exercise of the court's discretion, I consider that the following special factors are sufficient to make the present case an exception to the normal rule that the committal of Mrs Mitchell's body to consecrated ground should be treated as permanent:

(1) The sole reason for the exhumation is to facilitate the creation of a family grave containing the remains of Mr Brownscombe and his first wife, next to the family grave that, in due time, will contain the remains of his widow.

(2) The exhumation will be temporary, with the cremated remains being returned almost immediately to their present resting place. Any encroachment upon the norm of the permanence of Christian burial will be entirely ephemeral.

(3) The petition, and the proposed exhumation, are actively supported by all of Mrs Mitchell's descendants. At paragraph 36 (iv) of *Blagdon*, the Court of Arches considered that the views of close relatives were very significant, and fell into a different category from other expressions of local support.

(4) The proposal has the full support of the former incumbent, who knew all the family members involved, who presided over all the relevant burials, and who will officiate at Mr Brownscombe's funeral. Clearly, he has no theological difficulty about the proposed exhumation.

(5) Although he does not support the petition, the Area Dean finds himself "*pastorally sympathetic to the motives of the petitioner*". He notes "*that the standing committee of Warfield Church has expressed its support*". He would also "*wish to honour the sincerity and care with which this request has been made*". For the reasons I have given, I consider that such request is legally permissible.

(6) Whilst I am conscious of the objection that precedent does not operate in the realm of fact, as distinct from the area of law, it has long been recognised that a decision in one case may well act as a precedent in another case. This is because of the desirability of securing equality of treatment as between different petitioners (so far as the circumstances of the individual case permit). There are clear similarities between this case and my earlier decision in *Re Shinfield Cemetery* (cited above).

(7) There is nothing, on the unusual facts of the present case, that could possibly be said to suggest that any undesirable precedent is, or is at risk of, being created. This is not a '*portable remains*' case.

(8) The lapse of time since the interment of Mrs Mitchell's ashes and the presentation of this petition is entirely explicable. There was no need to apply for the temporary removal of Mrs Mitchell's ashes from their present resting place until after Mr Brownscombe's death and the consequent need to bury his body in his first wife's grave. In any event, I bear in mind that at paragraph 36 (ii) of their judgment in *Blagdon*, the Court expressly refuted any notion that

... time alone will be determinative. It may well be a factor in relation to assessing the genuineness of the petitioner's case. Long delay with no credible explanation for it may well tip the balance against the grant of a faculty but lapse of time alone is not the test.

I do not consider that the 20 years that have elapsed since the interment of Mrs Mitchell's ashes should outweigh the various factors that I have identified as pointing in favour of ordering the exhumation of those ashes.

(9) The grave-diggers have provided a realistic method statement for dealing with the temporary exhumation of Mrs Mitchell's ashes.

24. For all these reasons, I will grant the exhumation faculty sought by the petitioner. The faculty will be granted subject to the following conditions:

(1) The exhumation will be undertaken on 7 July 2025, immediately before Mr Brownscombe's burial, in accordance with the method statement provided by the grave-diggers in their email timed at 4.17 pm on 26 June 2025 (cited at paragraph 12 above).

(2) So far as possible, any coffin or other receptacle containing Mrs Mitchell's ashes is to be kept out of the sight of mourners attending Mr Brownscombe's funeral.

(3) At all times, Mrs Mitchell's cremated remains will be treated with all due care, decency, dignity, and respect.

(4) Mrs Mitchell's cremated remains will be reinterred in the same grave immediately after the mourners leave following Mr Brownscombe's burial.

(5) The petitioner is to inform the Registrar upon completion of the exhumation and reinterment.

25. The petitioner must pay the costs of this application; but, in the usual way, I charge no fee for this written judgment.

David R. Hodge

The Worshipful Chancellor Hodge KC

The Feast of Saints Peter and Paul

The Second Sunday After Trinity

29 June 2025