

CONSISTORY COURT OF THE DIOCESE OF ROCHESTER

re St Martin, Ryarsh

Introduction

1. The churchyard surrounding St Martin's Church, Ryarsh, is nearly full – I am told that there is space for only two to three more years of interments, and there are no plans to extend the churchyard. When the court received two petitions for reservations of grave spaces in the churchyard, it presented an opportunity for the court to set out in a judgment the approach which will be taken in this diocese to such petitions, and in particular when burial space is limited.

The petitions

2. The first petition, in time, was brought by Peter Smith. When, in July last year, his father was interred in the churchyard, he expressed the strong wish that he also wished to be buried there; and he was correctly told that the only way to ensure that would be to petition for a faculty for a reservation. He petitioned for a double-depth grave space, for the interment of himself and his son.
3. The second petition was brought by Jean Edwards. I am told that Mrs Edwards was motivated to petition for a faculty upon hearing about Mr Smith's petition, being anxious that there would not be space for the interment of her and her husband. She, too, petitioned for a double-depth space.
4. The personal circumstances of the two petitioners are significantly different.
 - a. Mr Smith is 54, and his son is 21. He lived in the parish as a child, and is looking to move back to the parish; but he is currently neither resident in the parish nor on the church's electoral roll, and does not attend the church. His father, and all of his grandparents, are interred in the churchyard.

- b. Mrs Edwards is 85, and her husband was 88. She lives in the parish, is on the church's electoral roll and attends the church. Neither she nor her husband have relatives interred in the churchyard.
5. The PCC supported both petitions. I have been told that this support was felt to be appropriate, given the absence of a formal policy on reservations, although it is not for the court to look behind a corporate decision to try discern its motivation.
6. I have recently heard that, since Mrs Edwards brought her petition, her husband has passed away and is now interred in the churchyard. In the circumstances, the question of a reservation has fallen away; but as I set out above, it was my intention to take the opportunity of this judgment to set out the approach of the court to such petitions, and I will continue to do that.
7. It appeared to me to be appropriate to deal with the petitions by way of written representations, and Mr Smith was invited to submit his views on such a course, together with any further material he wished to put before the court. He was also particularly asked to tell me whether he had considered and/or investigated the possibility of interment in the same grave as his father, either by burial or by interment of cremated remains. Mr Smith's response was (in his own words) blunt: *"I would appreciate if the person informed here understands the situation we are facing in that we will have to gain permission to remove my father and have another burial where we can. I am not getting into arguments or debates about this. It's either Ryarsb or we move our father. Sorry to be blunt but it is what it is."* It is a shame that he chose not to address the particular question asked of him.

Faculties for a reservation – the court's approach

8. It had been the practice in this diocese, for many years, for the court to grant a faculty for a reservation, if supported by the PCC and the incumbent, to last until the petitioner would turn 100. While this provided significant comfort to the petitioner, it may have been at a cost to others who might otherwise exercise a right to be interred in the reserved space. And as Leonard Ch. further identified in *In re St Clement, Terrington* [2020] ECC Ely 3, there is "... a moral issue in respect of

reservation ... that the faculty system advantages those who can afford to pay the fee for a faculty over those who may not be able to do so but nevertheless have a right to burial.”

9. This practice was contrary to that now applied in other dioceses across the Church of England, as demonstrated in the decisions of Hodge Ch. in *In re St Mary, Thame* [2022] ECC Oxf 2 and Hill Ch. in *In re St Leodegar, Hunston* [2023] ECC Chi 1, and the cases referred to in them and subsequently referring to them. That practice is, therefore, no longer applied in this diocese. Those who petition for such a faculty are now informed of the court’s approach in the following terms.

“There are certain people who are entitled by law to be buried in the churchyard of a particular church, for so long as the churchyard remains open and there is space: those who live in the parish; those on the electoral roll of the parish; and those who die within the parish boundaries.

The reservation of a grave space by faculty, which is entirely at the discretion of the court, serves either one or two purposes:

1. if the petitioner does not already have it, it secures the right to interment in the particular churchyard (for which the incumbent’s consent is required); and
2. it secures the right to interment in the particular grave space identified in the faculty,

in each case, for the duration of the faculty.

It therefore has the concomitant consequence that, for that period, it removes the possibility of any other interment in that particular grave space. Further, in the common case where the available burial space is limited, it may well mean that someone else with the legal right to be interred in the churchyard will not, when their time comes, be able to exercise that right.

It is now widely accepted across the dioceses of the Church of England that reservation of grave spaces should not be allowed to have the effect of curtailing the legal right of another person – as yet unidentifiable, but still certainly existing – to be interred in the graveyard. Still less will they be granted where this is the intended effect (that is, to “jump the queue”, deliberately denying another person of the exercise of their right of interment). The only way to avoid this is to ensure that the duration of any faculty is restricted to, at most, the period for which space for interments is expected to remain available.

This means that where grave space is severely limited, it is likely that no reservations at all will be granted. Where it is anticipated that the graveyard will be full within a limited number of years, any reservation that is granted will not be granted for a period longer than the period for which space for interments is expected to remain available. The court may take into account pressing pastoral reasons and any plans to acquire more interment space in exercising its discretion.”

10. I would add that if a faculty is granted for a reservation for a limited period, it remains open to the petitioner to apply for an extension of the period at any time, should their personal circumstances change or in the event that more space becomes available in the churchyard such as by the consecration of an extension to the churchyard or a policy on re-use of older graves being adopted. Without in any way seeking to pre-judge the outcome of any such application, whether or not any extension is to be granted is likely to depend upon: (1) the personal circumstances of the petitioner and any partner at that time; (2) whether, by that time, arrangements have been made to provide additional space for burials, whether by the acquisition of further land, or the re-use of parts of the churchyard, or otherwise; (3) the views of the incumbent at that time; and (4) any then-current policy of the PCC towards the reservation of grave spaces.
11. It is a feature of the present petitions that the PCC does not have a policy on reservations. This means that whenever the question arises, the PCC and incumbent are put in what may potentially be a pastorally difficult position, if they consider that the correct and appropriate response is to withhold their support for the petition. Particularly where, as here, interment space is severely limited (but not uniquely limited to that case), PCCs are encouraged to consider formulating and adopting a policy by which such petitions will be considered. Any policy must be reasonable; it must take into account those things, and only those things, which are relevant; and should be not adopted in bad faith or as an *ad hominem* response to an individual petition. While such a policy cannot prevent an affected person from petitioning the court notwithstanding the lack of PCC support, and it cannot bind the court to refuse to grant a faculty in those circumstances, the court will place great weight on any such policy and would only depart from it in exceptional circumstances.

The present petition

12. I have considered carefully the petition of Mr Smith, for himself and his son. I regret to say that I can discern no reason to make an exception to the general principle set out above. He is only in his 50s, and his son is a young man. He is not presently entitled to be interred in the churchyard, as he is not resident in the parish and not on the electoral roll. To grant a faculty for the time for which grave spaces will be available would be pointless; to grant one for longer would inevitably cause injustice to those with the right of interment in the churchyard who would consequently not be able to exercise that right. I therefore dismiss his petition.
13. I do understand his wish to be interred in the same churchyard as his father. I would encourage him, as I did before, to consider whether it might be possible for his remains to be interred in his father's grave when his time eventually comes. If, however, he decides to follow the course foreshadowed in his response to the court of petitioning for a faculty for the exhumation of the remains of his father, that petition will be considered according to the law and on its merits.
14. Although I am now not deciding the petition of Mrs Edwards, it may be helpful for those reading this judgment to know that if I had been, I would have taken into account her and her husband's entitlement to interment in the churchyard (through both residence and membership of the electoral roll); their advanced age and her husband's infirmity; and the lack of any other potential location for their interment in the churchyard . I would have concluded that the risk of prejudicing the rights of others was not great; and that these factors were sufficient to constitute an exception to the general rule. I would have granted a faculty for a reservation; and on the particular facts of that case, it would have been for a period of 10 years.
15. I waive my fee for writing this judgment.

The Wp^{ful} David Willink
Chancellor

14 May 2025