

**IN THE CONSISTORY COURT OF THE DIOCESE OF LIVERPOOL
IN THE MATTER OF ST HELENS CHURCHYARD, SEFTON
AND IN THE MATTER OF THE EXHUMATION OF THE CREMATED
REMAINS OF THE LATE DAVID SHAW AND SHEILA SHAW**

JUDGMENT

1. This petition seeks the exhumation of the cremated remains of David Shaw, who died in February 2008 and his wife Sheila Shaw who died less than 12 months later in January 2009, and which are both interred in caskets in a grave, plot N2 8/3, and the reinterment of both caskets in a new plot nearby. The petition has been brought by the Minister (team vicar) and the PCC of St Helen's Church and has been issued in the most unfortunate of circumstances.

2. I deal first with the situation of the Shaw family and the deceased parents. Carol Smith and Julie Tyghe her sister, their adult offspring, have helpfully set out in a letter of objection to the special notice that was issued by the Registrar on 13th June the background to the interment of their parents ashes, and have raised a number of concerns as to the way in which the need for the exhumation is said to have arisen. It would appear that they had reserved the plot N2 8/3 after their parents' death as a resting place for their ashes, some 12 years ago. A service took place for the interment in approximately 2012. The family derived great comfort knowing that their parents, some years after their passing, were now together in the same burial location, as they had been promised when they were alive. They arranged for a memorial stone to be put in place with an appropriate inscription, and regularly attended the grave to pay their respects to the memory of their parents with other family members. Doubtless having reserved this plot they expected that it could be used for further interments in coming years.

3. Ms Marilyn Bancroft is an elderly lady who is terminally ill in a nursing home in Southport. Her brother was aware that the Bancroft family had a family grave in St Helens churchyard in which George Bancroft senior had been buried corporeally in October 1977 in a plot listed as N144. Both he and his sister sought to make enquiries as to her full burial in the family grave which had been purchased over 40 years earlier. When investigations were carried out into the records by the vicar, Reverend Ali Chesworth, it emerged that in fact N144

and N2 8/3 were the same plots, and that the Shaw family and the Bancroft family, albeit at different times, had reserved the same grave space. It was not clear how the burial of the ashes of Mr and Mrs Shaw could have taken place in a plot which had already been reserved for the Bancroft family, although there had been no marker or memorial stone placed on the Bancroft grave. It might have been expected that the churchyard records contained sufficiently accurate plans to have identified the available plots and those in which there had already been interments.

4. Thus the unhappy, and for the families distressing situation had developed that if the wishes of Ms Bancroft and her brother are to be fulfilled, this will require the exhumation of the caskets containing the ashes of Mr and Mrs Shaw. There is a question of a sharing of the grave by different families, that has been postulated by Miss Smith and Ms Tyghe. Apart from the fact that this would be inappropriate for the purposes of future use of the grave space, it is understood that a corporeal, that is full burial of Ms Bancroft is sought. I will deal with this in more detail below.

5. When the matter first came to light, the Reverend Chesworth did not have precise contact details, despite the fact that the grave was regularly attended. However she made some local enquires, and eventually she was able to get in touch with the sisters to explain that an exhumation was sought with the reinterment of the caskets in a new grave plot within the churchyard, with the relocation of the headstone. They were extremely unhappy at the prospect of this happening, but after initially agreeing to the process, indicated their strong objections. One of the reasons which may well have grounded their unhappiness at the way in which the matter has been handled and which has fortified their objections, was an understanding that despite an assurance provided by the vicar that no steps had been taken to interfere with the grave, they noticed that part of the surface had been disturbed, and the grave “partially dug up”. In fact the evidence from the vicar is that steps had been taken by a specialist grave digger to identify the precise location of the caskets in relation to the surface of the grave, and how easily they could be accessed by utilising a rodding process.

6. For their part, Ms Smith and Ms Tyghe were under the impression that they had been misled, and whilst I do not intend to embark upon any fact-finding exercise, I am satisfied that any work that had been undertaken was no more than a minor, and in the circumstances probably sensible, investigation before proceeding with this petition.

7. For Ms Smith, matters have been compounded by the fact that her own deceased daughter required a second funeral some years ago following the Redfern enquiry into the Alder Hey organ controversy, and she herself is suffering from cancer that has required extensive treatment recently. Doubtless this would have led her to reflecting on her own mortality adding to the upset that the proposals have been causing.

8. In their representations to the Registrar, the sisters have raised a number of questions about the manner in which this situation has been allowed to develop, and they have requested answers before any decision is made in relation to the exhumation. One of their obvious concerns is the state in which the caskets may be found in view of the ground conditions in St Helen's churchyard, being somewhat boggy and waterlogged from time to time. For understandable reasons, they have lost a lot of trust in the church and have been especially upset because they believe the communication to have been poor and the situation handled with little sensitivity.

9. The vicar has made enquiries of a local undertaker who has expressed the view that it is more likely than not that the caskets will still be intact having been made of oak, although the screws are likely to have rusted.

10. Following the issue of the petition, the families were asked whether or not they wish to object to the petition formally, that is to become parties opponent, but they have declined so to do, instead asking that their representations be taken into account by me in considering the petition. Again this is understandable, bearing in mind the additional distress that a fully contested process is likely to cause. Accordingly, I deal with the matter on the basis of written representations.

11. Before addressing the merits of the application for exhumation, I will provide a brief summary of the approach which is taken by the Consistory Court in the circumstances, and the principles which apply; an outline of this has already been provided by the registrar in his communications with the families.

12. These principles respect the permanence of Christian burial, whether the remains are buried or cremated, and raise a presumption of finality. The guidance given by the appellate court in **Re Christ Church Alsager [1999] Fam 142** reinforced the position that exceptional

circumstances are required for the grant of a faculty for exhumation, and if the discretion of the court is to be exercised, it should only be for a good and proper reason. Such a good and proper reason might arise in the circumstances where a mistake was made in the initial interment but will usually be refused where there has been a significant passage of time.

13. In **Re Blagdon Cemetery [2002] Fam 299**, the court again emphasised the permanence of Christian burial, quoting in its judgment the paper from the Bishop of Stafford on the "*Theology of Burial*". The court also made it clear in **Re Blagdon** that a number of different factors might provide special grounds to justify that application of exceptional circumstances. The list was not intended to be exhaustive or exclusive of other matters which might be taken into account. Amongst those factors, a situation was identified where a family grave had been established, and the use of such graves was encouraged because of the expression of family unity as well as the efficient and economical use of land for burials.

14. The guidance provided by these and other cases which are regularly reported is helpful, although the highly unusual situation that has arisen for these families is unprecedented. The same burial plot has been reserved by two different families, albeit 30 years apart. A significant amount of time has passed even since the ashes of the Shaws were interred, a factor which should usually encourage a cautious approach. On the other hand the error which has led to the same grave space being used by different families has only just come to light. If the petition is refused, the Bancroft family, who are desirous of a corporeal burial, will be in the invidious position of having to bury Ms Bancroft in a grave which already contains two caskets, but more significantly is marked by a headstone which identifies the deceased as Mr and Mrs Shaw. Although an altered headstone is not impossible, it would mean that two separate and unconnected families are combined on the same memorial. This would be an inauspicious legacy for future generations. The only alternative for the Bancroft family would be to be allocated another grave space, clearly at no cost to them, but this would run against the wish of Ms Bancroft to be buried with her father, a factor which doubtless justified the reservation in the first place as a family grave.

15. This is not an easy conundrum to resolve. Of course in the vast majority of exhumation cases it would be the family of the deceased which is seeking the relocation. Here, it is the converse, where the family (Ms Smith and Ms Tyghe) is opposing it. I am satisfied that the exhumation itself, on the basis of the evidence that the caskets would probably not have

degraded, could be carried out with dignity and sensitivity, that the test of good and proper cause is satisfied and that this is an exceptional case in principle. The only remaining consideration is whether the balance might be tipped against allowing the exhumation because of the expectation of Mr and Mrs Shaw's family over many years that this was their family grave, which they have tended with loving care, and that disturbing the cremated remains of their parents would cause unconscionable distress which outweighs the upset and inconvenience which would be visited on the Bancroft family.

16. I have come to the conclusion, in all the circumstances, that the balance is *not* so tipped against allowing this petition for the exhumation of the remains of Mr and Mrs Shaw. The error here, which on any interpretation is egregious, should not be allowed to visit a disadvantage on the family which acquired the grave almost 50 years ago in the expectation that they would be able to use the space for subsequent family burials. I am satisfied that the greater harm would be caused to the Bancroft family if the petition was refused. I am also satisfied that the proposals for a further interment are a reasonable if not entirely perfect solution to an almost intractable problem. It goes without saying that this should be at no cost to the family of Mr and Mrs Shaw.

17. I have taken into account the request of Ms Smith and Ms Tyghe that the exhumation determination is delayed until answers have been provided to the very reasonable questions which they have raised. Regrettably I am not able to do this, because not only is there a degree of urgency, in the light of the terminal health condition of Ms Bancroft, but also it is not the kind of enquiry which would normally be made by the consistory court. I have no doubt that the issues which they raise, including the quality of record keeping of grave spaces, should be the subject of a thorough investigation by internal enquiry involving not just the vicar and the PCC, but with the supervision and oversight of the Archdeacon. Whilst I cannot compel this, it would be sensible if a full report was provided to include the steps which are now being taken to prevent a recurrence of ashes interments in the incorrect location. This can then be approved by the Archdeacon, and a copy lodged with the registry.

18. I am confident that the exhumation and reinterment can be carried out with sensitivity and dignity, as I have indicated. Because of the distress which this has already caused Ms Smith and Ms Tyghe and their respective families, I make it a condition of the faculty grant that it does not take place until they have both been fully consulted as to whether they would wish to be present at either the exhumation or the reinterment, and the nature of any religious service which

they would wish to be carried out. I would strongly recommend their involvement in the reinterment, but not in the exhumation itself, although this should be overseen by clergy in conjunction with a suitably appointed specialist undertaker. In the highly unlikely event that the caskets have degraded which would make transfer impossible, I make it a further condition of the faculty that the exhumation process is ceased immediately and the matter referred back to the registrar so that further directions can be given.

19. All costs and fees associated with this faculty petition must be borne by the petitioner.

His Honour Judge Graham Wood KC
Chancellor of the Diocese of Liverpool

24th September 2024