Neutral Citation Number: [2024] ECC Man 1

IN THE CONSISTORY COURT
OF THE DIOCESE OF MANCHESTER
RE ROCHDALE CEMETERY

Francis Taylor Building
Temple
London EC4Y 7BY

Date: 7 March 2024

Before:

The Worshipful Gregory Jones KC
(Sitting as the Chancellor of the Consistory Court of the Diocese of Manchester)

Petition of:

MICHAEL CONNOLLY

Petitioner

Approved Judgment

Determined without a hearing or any legal representation.

This judgment was handed down by the Chancellor remotely by circulation to the parties by email and release to the Ecclesiastical Law Section at the Middle Temple Library. The date and time for hand-down is deemed to be 10 am 7 March 2024.

The Worshipful Gregory Jones KC (sitting as the Chancellor of the Consistory Court of the Diocese of Manchester):

Introduction

1. I address first the factual background, followed by the appropriate legal approach and analysis and finally my conclusions and determination.

2. This is an application by Michael Connolly (MC) to exhume the remains of his wife Annie Connolly (née Cannon) (AC) from a grave where she has been buried since October 2019 with her mother Joanne (known to the family as "Joan") and father, Joe Cannon (JC) in a plot previously owned by her parents (referred to in this decision *for the sake of convenience only* as the "Cannon Plot").

3. The application is opposed principally by Thomas Henry Cannon Snr. (THC) (as confirmed by his letter dated 26 June 2023). He is the younger brother of the late Mrs Annie Connolly. Mr Harold Hume (HH) who is the nephew of Mrs Annie Connolly, via her sister Mrs Joanie Marshall (whom I understand to have pre-deceased Annie), has also written stating that he would like "my aunt to stay buried with her mother." (HH letter dated 20 June 2023). I have taken this to be an objection to the Petition. Mr Thomas Cannon (TC), nephew to Mr Thomas Cannon Snr., has also written expressing the view that Annie Connolly's remains should stay where they are. (TC letter dated 20 June 2023). I regard this too as an objection to the Petition.

4. The application is supported by the Petitioner's children: Mr Darren Connolly (DC), Mr Michael Connolly Jr. (MCJ), Mr Mark Connolly (MkC) and Mrs Joanne Connolly-Teal (JCT) (DC's letter dated 6 July 2023 is signed and variously dated by himself and his three siblings). Mrs Joanne Connolly- Teale has also separately written a detailed letter of support dated 3 June 2023. Mark too has also written separately in an email dated 20 July 2023. His email is expressed in emotive terms and claims that the stress caused by this dispute has caused him mental health problems by way of depression. For a reason which is not articulated he blames "one of them" -presumably a member of the Cannon family - for the death of his mother. Given that his mother died of cancer this allegation is difficult to understand but it does reflect the degree of breakdown between the two sides of the wider family. The Petition is also supported by the Petitioner's brother, Terrance Connolly (JTC letter dated 6 July 2023).

5. I directed via the Registrar that the parties consider mediation. The parties agreed to a mediation which was potentially a positive sign. Following a delay, a mediation took place take place before the Archdeacon of Rochdale. In one sense it did not go well and descended into a shouting match (THC letter dated 12 July 2023). It was attended by the Petitioner and his daughter on one side and by Mr Thomas Henry Cannon Snr, his partner, and his daughter on the other side. It appears the mediation was somewhat side-tracked into a dispute about whether the Petitioner had deliberately claimed title to the Cannon Plot knowing

that he was not entitled to the plot. Mrs Joanne Connolly Teale has expressed her dissatisfaction that the Petitioner's side was limited to two people but when three people turned up for the other side they were all allowed to participate (JCT letter dated 3 June 2023). I have noted this point, and it may be in the future that I need to consider giving some brief guidance on these aspects of mediation. Mediation is to be encouraged. Although as I say this mediation did not go well, it was useful albeit to a limited extent. I give grateful thanks to the Archdeacon and staff who facilitated this mediation.

6. Following the unsuccessful mediation, upon my direction the Registrar wrote on 1 June 2023 to the parties to enquire whether they parties would consent for the matter to be determined without a hearing. The parties replied indicating that they did not want an oral hearing and have agreed for me to determine the matter on the papers[1]. I have agreed. However, this means I do not have the benefit of oral evidence. Thus, I have had to form my own impression of the conduct of the parties based only upon the written documentation. Following the decision to dispense with holding an oral hearing, the parties were invited by the Registrar at my direction to put anything further they wish to be considered to me in writing.

7. It is for the parties to put forward their respective cases. I have not taken up offers by the parties to request further evidence in respect of recordings of telephone conversations.[2] This is also because I do not consider the evidence to be directly relevant to the decision I have to make and the effort and further delay in producing the further evidence disproportionate to its relevance (if any) to my decision.

Summary of Factual Background

8. The circumstances in this case are depressing. There are many facts that are disputed. Fortunately, most -if not all - of the allegations that are disputed or have gone unanswered go to issues which are not directly relevant to my decision, although they assist in explaining the background to this dispute. Certain key matters are not disputed in the paper before me.

9. The Petitioner is not from a traveller family (MC letter dated 6 July 2023). He met and married the then Annie Cannon who was from a traveller family. The objectors would consider themselves to be part of the traveller community. The Petitioner and his wife were happily married for 57 years and had four children. Sadly, Annie died of cancer on 14 October 2019. Her remains were buried in a plot containing the remains of her father and mother, Joan (who died in 1968) in Rochdale Cemetery, the Cannon Plot. Apparently, there are two sets of deeds for the Plot in the names of both Joanne Cannon and Joe Cannon who

[1] Letter dated 22 June 2023 signed by the Petitioner and letter dated 6 June 2023 signed by Thomas (Henry) Cannon Snr.

[2] An example is the offer from Mr Joseph Henry Cannon Snr for recordings he says of conversations with Mrs Joanne Connolly Teale (THC letter dated 26 June 2023).

died on 14 November 2002 and was buried in the same plot with his wife (MC letter dated 6 July 2023).

10. The Petitioner says that he hoped to be buried in the Cannon Plot with his wife, Annie. He also says that this was the mutual wish of both himself and importantly the expressed wish of his wife. These statements are supported by his brother and his children. Indeed, although Mr Joseph Henry Cannon Snr. expressed "shock" that his sister was being buried with her parents he has never questioned that her wish that husband and wife be buried together. Moreover, he says that whilst he "[does] not recall Annie ever informing me that she would like to be buried with Michael in our Mam's plot,…Annie had discussed openly with me, how she would be buried with Michael in their own plot." [Underlining added] (THC letter dated 11 July 2023). Given their long and happy married life of 57 years together it also seems to have been an inherently likely natural mutual wish that they be buried together.

11. The Petitioner says that Joe Cannon gave deeds of the Cannon Plot to the Petitioner's wife on the basis that he was also transferring his late wife's ownership of the Plot to his daughter. (MC letter dated 6 July 2023). There is some confusion or dispute as to whether the Petitioner has claimed as THC and HH allege (THC letter dated 26 June 2023) that Joe Cannon was intending to transfer his own deeds to Annie Connolly, or whether, as the Petitioner and his daughter says, the Petitioner has only ever claimed that the benefit of the deeds belonging to Joanne Cannon. The Petitioner says that there are two separate sets of deeds, those of his mother-in-law which were given to his wife by her father, and those of her father which Harold Hulme brought down when his own mother (Mrs Joannie Marshall) had passed away (HH letter dated 20 June 2023). The Petitioner says that he asked Mr Brian Marshall – the husband of Mrs Joannie Marshall - to take them back but that he did not want them. Mr Thomas Henry Cannon Snr. says that the Petitioner called Mr Marshall to persuade him to sign the deeds over to him (THC letter dated 26 June 2023). The Petitioner says he returned those deeds to Rochdale Borough Council (the Council) (MC letter dated 6 July 2023). If the Petitioner is correct, then the two respective deeds would have been given to the two daughters of the Cannon family by their father Joe Cannon which is plausible. However, I do not consider that anything turns on this point of the purposes of my decision.

12. The Petitioner says his wife believed that her father, Joe Cannon had transferred deeds to the Cannon Plot to her by giving her the deeds belonging to his wife, which Annie had then kept since 1968 and which he says he still has in his possession.

13. At the time of his wife's burial the Petitioner instructed a stone mason to add his wife's name to the gravestone over her parents' grave. According to the Petitioner and his daughter, he was informed by way of a telephone call from the stone mason that he needed to transfer the deeds of the Cannon Plot to himself so that they could be buried together in the Cannon Plot (JTC letter

dated 3 June 2023). The Petitioner paid £75 to Rochdale Borough Council. His brother, Mr Terrance Connolly witnessed what they say they understood to be the lawful transfer of the deed from the Petitioner's wife to the Petitioner in his capacity as the next of kin to his late wife (TC Letter dated 6 July 2023). Again, there seems to be a dispute about whether the Petitioner had claimed to be the next of kin of Mr Joe Cannon rather than, as he says to this court, the next of kin of his wife whom he believed held the right via her mother's deeds given to her by her father. For my part, I have before me no evidence of the Petitioner claiming to be the next of kin of Mr Joe Cannon and certainly not any of sufficient weight to support a claim of dishonesty on the part of the Petitioner. I am therefore prepared to accept that he did not deliberately represent himself as the next of kin of Joe Cannon. However, as I have already said, and for reasons that I will explain, I do not consider the determination of this dispute is particularly relevant to my decision.

14. Mr Joseph Henry Cannon Snr. says despite his shock he was nonetheless relaxed about Annie being buried in the plot because she was in his view entitled to be buried there as a family member (THC Letter dated 26 June 2023). The Petitioner and his daughter however state that Mr Joseph Henry Cannon Snr. already knew of the Connolly family's intention both to bury Annie in the Cannon Plot and that her name should appear on the headstone. The Petitioner and his daughter say that Mr Joseph Henry Cannon Snr. and others in the Cannon family were upset about the funeral arrangements not being a travellers' funeral and he called on them on the telephone to say so (MC letter dated 6 July 2023 and JTC letter dated 3 June 2023). Again, I do not consider that it is necessary me to determine who is correct about these matters. What appears not in dispute is that the funeral was small in terms of number of hearses etc with no "tea" and with only Mr Connolly and his children returning to their home after the funeral (JTC letter dated 3 June at p.2). In short, it did not follow what is generally understood to be a typical traveller funeral and after event.

15. Around three years later the Petitioner's claim to have the deeds to the Plot came to the attention of Mr Thomas Henry Cannon Snr. (THC letter dated 26 June 2023)). It is evident that there had been unhappiness over those few years between the parties over the Plot with allegations and counter allegations.

16. Mr Thomas Henry Cannon Snr. says that following his visit to the Cannon Plot the Petitioner's daughter telephoned him and was abusive to him. This allegation is admitted by the Petitioner on his daughter's behalf; but he says that she was annoyed because Mr Thomas Henry Cannon Snr. had thrown their family flowers "everywhere." This allegation is in terms denied by Mr Thomas Henry Cannon Snr. (letter dated 11July 2023).

17. Mr Thomas Henry Cannon says that following exchanges with Mrs Joanne Connolly-Teale she had threatened to remove his mother's headstone. (THC letter dated 26 June 2023). This allegation is denied by the Petitioner. There also

appears to an issue about a security camera being placed at the grave side by the Petitioner (THC letter dated 11 July 2023). Mr Thomas Henry Cannon Snr. said he would challenge the validity of the transfer to the Petitioner. It said that he instructed or was in the process of instructing solicitors (THC letter dated 26 June 2023).

18. By contrast, Mrs Joanne Connolly Teale says that it was only their side of the family that had ever cared for the graves of her grandparents prior to the death of her mother. She says, for example, her father the Petitioner has carefully re-lettered the gold leaf on the gravestone. social media screen shot (dated 16 June WWW1`) alleges that:

> [T]his grave it's my dads (*sic*) you didnt (*sic*) go and see him when he was alive so why go and when when hes (*sic*) dead and my mams (*sic*) grave is a holy disgrace it's like a shrine for Annie…".

This was posted on an account in the name of 'Joseph Cannon Snr' but the only Joseph Cannon on the family tree is the deceased Joe Cannon, but it appears that this was posted by THC or on his behalf.

Mrs Joanne Connolly Teale also claims that plastic flowers etc. which they left following their mother's death were thrown away – she believes by Mr Thomas Henry Cannon Snr. It may be that this dispute is the origin by the Connolly family to install security camera at the grave.

19. I am told that in any event in 2022 the Council confirmed its view that is no valid transfer of deeds took place transferring ownership to the Petitioner (MC letter dated 8 June 2023). Whether the Council is correct in its opinion is not for me to decide. It is not suggested to me that their decision is to be challenged by the Petitioner.

The Legal Framework Regarding Exhumation

20. As I have noted previously Christians have buried their dead in churchyards since at least 752 AD when Archbishop Cuthbert obtained papal permission to bury within city walls. [3]

21. When a church or burial ground has been consecrated, it becomes subject to the Bishop's jurisdiction (otherwise known as the Faculty Jurisdiction). As well as consecrating churches and churchyards in the diocese, Bishops consecrate cemeteries owned by Parish Councils or other local authorities.

[3] *In re St Andrews Churchyard, Alwalton* [2012] PTSR 479 Gregory Jones Dep Ch (Ely). See also, English Heritage and the Archbishop's Council of the Church of England, *Guidance for best practice for treatment of human remains excavated from Christian burial grounds in England*, January 2005, para. 168.

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Accordingly, in the present case the Cannon Plot being on consecrated land is subject to the Faculty Jurisdiction although it is in a cemetery owned by Rochdale Borough Council. In general, therefore any disturbance of human remains in consecrated places of burial requires the authority of a faculty.[4]

22. In *Re St Mary the Virgin Burghfield* [2012] P.T.S.R. 593 Bursell Ch. stated at paragraph 13:

> [The] general law applicable to graves … is not a question of diocesan regulations but, rather, of the general law of the land. I emphasise this in order to underline that [the petitioner] is mistaken in her belief that she and her husband are 'owners of that precious piece of land', although I suspect that many others share a similar belief….

23. The Diocese of Manchester is, of course, located within the Province of York. There had been some debate about the different formulations adopted by the two appellate courts of the respective Provinces of Canterbury and York.[4] I have considered the status of each judgment, whether I am bound by either and whether the two decisions can, in any event, be reconciled and if not, whether any differences would alter the outcome in this case. This is the second time I have considered these issues, the first being in *Re St George, Unsworth* [2023] ECC Man 1.[5]

The Approach of the Chancery Court of York

24.The Chancery Court of York in *In Re Christ Church Alsager* [1999] Fam 142 ('*Alsager*') gave the following "guidance" to chancellors in respect of exhumation by providing a list of factors which would favour the grant of such a faculty, "is there a good reason and proper reason for exhumation, the reason being likely to be regarded as acceptable by right thinking members of the church at large?" Hill noted in *Ecclesiastical Law* (4th ed): that the guidance was difficult to apply in practice and that this was not assisted by the "highly subjective element of the determinative question"[6] citing in support of this criticism: P. Petchey 'Exhumation reconsidered' (2001) 6 Ecc. LJ 122.

The Approach of the Court of Arches

25. In *In re Blagdon Cemetery* ('*Blagdon*')[7] the then Dean of the Court of Arches, Cameron QC, commented on the historic attitude to the disposal of the dead:

[4] See the judgment of Wills J in *R v Dr Tristram* [1898] 2 QB 371.
[5] See e.g. David Pocklington, 'Application of Provincial Court decisions' in Law & Religion UK, 29 January 2018, https://lawandreligionuk.com/2018/01/29/application-of-provincial-court-decisions/
[6] Also referred to by the name of the petitioner as *Re Susan Bennett* [2023] ECC 1.
[7] Hill Ecclesiastical Law 4th Edition.
[8] [2002] Fam 299; [2002] 3 WLR 603.

> During the process of human history respect for the dead and the recognition of the inevitable process of decay have led to different cultural practices and laws about the disposal of the dead. Whether such disposal has been by way of burial or cremation it has been a feature of such cultures that the disposal has had an aura of permanence about it…the general concept of permanence is reflected in the fact that it is a criminal offence to disturb a dead body without lawful permission.[8]

26. More specifically, the Christian doctrinal basis for this notion of permanence- or at least in so far as the Anglican faith is concerned[9] was also examined in *Blagdon*. The Court of Arches quoted from extracts of the paper entitled, "Theology of Burial" of September 2001 prepared by the Rt. Revd. Christopher Hill, the then Bishop of Stafford. The paper included the following passage quoted at paragraph 23 of the judgment:

> The permanent burial of the physical body/the burial of cremated remains should be seen as a symbol of our entrusting the person to God for resurrection. We are commending the person to God, saying farewell to them (for their 'journey'), entrusting them in peace for their ultimate destination, with us, the heavenly Jerusalem.

27. Following delivery of the judgment in *Blagdon* a fuller and updated version of Bishop Hill's statement appeared in the Ecclesiastical Law Journal (2004) 7 Ecc. L.J. 447. Its concluding paragraph, not quoted in *Blagdon*, states:

> In cases of Christian burial according to Anglican rites, prescinding from cases where there has been a mistake as to the faith of the deceased, I would argue that the intention of the rite is to say "farewell" to the deceased for their "journey"; to commend them to the mercy and love of God in Christ; to pray that they may be in a place of refreshment, light and peace till the transformation of

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[9] See Gallagher (2010) *Raising the Dead: Exhumation and the Faculty Jurisdiction: Should We Presume to Exhume* 1 Web JCLI for an examination of the relationship of the Christian presumption of permanence and Jewish and Pagan practices.

[10] *In re Putney Vale Cemetery* (2011) 13 Ecc. LJ (Southwark Consistory Court) (April 2010) Petchey Ch., at paragraph 30 of his judgment, drew attention to the fact that in the light of the lack of objection in that case from the Roman Catholic authorities to the exhumation of the deceased remains - the deceased being a Roman Catholic - and their proposed interim storage for an indeterminate period of time of the remains at the home of the deceased's widow, the assumption made at paragraph 12 of *In re Blagdon Cemetery* as to permanence *may* not be shared by Roman Catholics. Be that as it may, the position so far as this jurisdiction is concerned as to the permanence of Christian burial is well established by the Court of Arches in its judgment *In re Blagdon Cemetery*. In *In re Hagley Municipal Cemetery* (Worchester Consistory Court) (09-36) (27 July 2010) Mynors Ch. at paragraph 48 of the judgment found that: 'The Roman Catholic Church does not recognise the significance of consecration (other than legal significance under the law of the Church of England, which forms part of the general law of England) – that is, it has no significance either theologically or in Roman Catholic canon law. Accordingly, before a burial of the remains of a Roman Catholic takes place in ground that is not part of a Roman Catholic cemetery (and thus has already been blessed), that ground is first blessed.'

> resurrection. Exhumation for sentiment, convenience, or to 'hang on' to the remains of life, would deny this Christian intention.

28. This theological approach was translated into law by the Court of Arches so that the starting point is that there exists a rebuttable presumption against exhumation. In *Blagdon* the court stated:

> 20. Lawful permission can be given for exhumation from consecrated ground as we have explained. However, that permission is not, and has never been, given on demand by the consistory court. The disturbance of remains which have been placed at rest in consecrated land had only been allowed as an exception to the general presumption of permanence arising from the initial act of interment.

29. As to how then should the court address the question of whether an exception has been made out, the Court of Arches stated:

> 33. We have concluded that there is much to be said for reverting to the straightforward principle that a faculty for exhumation will only be exceptionally granted. Exceptional means "forming an exception" (*Concise Oxford Dictionary*, 8th ed (1990)) and guidelines can assist in identifying various categories of exception. Whether the facts in a particular case warrant a finding that the case is to be treated as an exception is for the chancellor to determine on the balance of probabilities.
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> 34 The Chancery Court of York in *In re Christ Church, Alsager* [1999] Fam 142, 148 quoted part of the judgment of Edwards QC Ch. in *In re Church, Norton Churchyard* [1989] Fam 37 on the subject of the discretion of the consistory court. In that passage Edwards QC Ch said: "there should be no disturbance of that ground except for good reason." In a later decision, *In re St Mary Magdalene, Lyminster* (1990) 9 Consistory and Commissary Court Cases, Case 1 the same chancellor used somewhat different language in saying "the question may be thus stated: has this petitioner shown that there are sufficient special and exceptional grounds for the disturbance of two churchyards?"

30. Thus, the burden of rebutting the presumption of permanence is upon the Petitioner[10]on the balance of probabilities.[11]

31. As Hill noted in *Ecclesiastical Law* (4th ed):

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[11] See also *In re St Peter ad Vincula, Wisborough Green*, CH025/09,30 June 2009, Hill Ch.:"…the fact [is] that [it] is for the petitioner in each case to establish exceptional grounds from doctrinal principle of the permanence of Christian burial …" at paragraph 1 of the judgment.
[12] *In Re St Nicholas, Sevenoaks* [2005] 1 W.L.R. 1011.

> Although traditionally there was no binding rule of precedent on the canon law, the judges and canonists recognised it was sensible to follow what had been established in prior decision and practice…The decision of a consistory court of one diocese does not bind that of another, but it is afforded considerable weight and often approved and followed unless strict theoretical canonist would see no place for precedent in canon law, it being a doctrine of the common lawyers, the decisions of ecclesiastical courts are today generally considered to be binding on the particular court making the decision and on the courts of inferior jurisdiction.

32. In *Re Sam Tai Chan* [2016] ECC Dur 2 in which Bursell Ch. concluded that by reliance upon 'rules of precedent … within the 2 Provinces'"(paragraph 9) that "in so far as the Northern Province the *Alsager* test still prevails" (paragraph 22). Chancellor Bursell was one of the three judges of the Chancery Court which decided *Alsager* . He is also a distinguished ecclesiastical lawyer, being the editor of the ecclesiastical law volume of *Halsbury Laws.* According to Professor Norman Doe, the position as to precedent is as follows:[12]

> Finally, central to Arches' practice is judicial precedent. This has been so for centuries. For instance, in 1756, the Dean relied on 6 earlier decisions of the Arches and Court of Delegates; the next year, he used 5 common law cases and 1 from the Prerogative Court. By the 19th century, the binding force of precedent was fully accepted. An Arches' decision bound lower courts in Canterbury Province, as did a decision of the Chancery Court in the York Province. But an Arches' decision did not bind the Chancery Court, nor *vice versa* – it was persuasive, even though the Dean and Auditor were the same person after 1874. However, in *Re St Nicholas Sevenoaks* (2005) the Dean, held as to Arches and Chancery decisions, because 'all chancellors are judges of each court and the offices of Dean and Auditor are…held by the same person, it is realistic to treat the Arches Court and Chancery Court…as being, for the purposes of the doctrine of precedent, two divisions of a single court'. Accordingly: consistory courts in each Province should have regard to decisions of the appellate court, whether or not given in their Province, and a later decision should prevail if it differs from that given in an earlier decision irrespective of the Province concerned'. A new rule appears in the 2018 Measure[13]: a decision of the Arches or of the Chancery

[13] The Court Of Arches: Jurisdiction To Jurisprudence –"Entirely Settled"? Norman Doe Professor of Law, Cardiff University St Mary-le-Bow, Cheapside, City of London, 20 November 2019.

[14] Ecclesiastical Jurisdiction and Care of Churches Measure 2018:

4A Decisions treated as taken by each Court

(1)A decision of the Arches Court of Canterbury or the Chancery Court of York is to be treated by the other Court, and by the lower ecclesiastical courts in the province of the other Court, as if it were a decision which the other Court had itself taken.

> Court is to be treated by the other Court, and by the lower courts in the province of the other Court, as if it were a decision which the other Court had itself taken. Lower courts are the Vicar General's court of the province (including under the Clergy Discipline Measure 2003), and the consistory court for a diocese or a disciplinary tribunal. This rule applies to a decision of the Arches or Chancery made before or after the commencement of this rule. It was enacted to combat a 2016 decision of Durham Consistory Court. [*Re Sam Tai Chan*]. In 2019, Leeds Consistory Court pointed out that, as a result, in exhumation cases: 'In dioceses of the Northern Province…it is no longer necessary to consider the test propounded by the Chancery Court…in *Alsager* [1999]…to the extent that such test was revisited and re-framed by the subsequent [Arches] decision…in *Re Blagdon* [2002]'. In *Blagdon* the Arches favoured the principle that a faculty to exhume will only be exceptionally granted, because of the norm that Christian burial is final. Chancellor Hill concludes: 'The somewhat sterile question of whether the *Alsager* and *Blagdo*n tests might lead to different outcomes is now entirely academic'. In his book Ecclesiastical Law, he recognises the change reflects (1) 'the pragmatic approach which has generally been adopted by most ecclesiastical judges when applying the ecclesiastical common law in the light of the [available] judgments'; (2) the change in the composition of the Arches and Chancery Courts into a single appellate court of appeal; and (3) 'to a lesser extent, the benign adoption of the reasoning of one consistory court by another'.

33. However, in his reply, the then Dean of the Court of Arches, Charles George QC, speaking *extra* judicially challenged some of these assertions, asking:

> [To] what extent is the Court of Arches bound by its own previous decisions? And if so, is there a *Young v Bristol Aeroplane* (1944) exception? This goes unmentioned in Norman's lecture, although Norman described to us the use of precedent as "central to Arches' practice", and told us that "by the nineteenth century, the binding force of precedent was fully accepted". You may recall that in *Duffield* (2013) the Court of Arches departed quite considerably from the

(2)The reference to a decision of the Arches Court of Canterbury or the Chancery Court of York is a reference to a decision taken by it in the exercise of -
(a) its jurisdiction under section 14(1), (2) or (3), or
(b) its jurisdiction under section 7 of the Ecclesiastical Jurisdiction Measure 1963 (disciplinary jurisdiction).
(3) "Lower ecclesiastical court", in relation to a province, means -
(a) the Vicar-General's court of the province (including as constituted in accordance with the Clergy Discipline Measure 2003),
(b) the consistory court for a diocese in the province, or
(c) a disciplinary tribunal within the province.]
Textual Amendments
(S. 14A inserted (1.3.2019) by Church of England (Miscellaneous Provisions) Measure 2018 (No. 7), ss. 7(1), 17(3) (with s. 7(3)); S.I. 2019/67, art. 2(1)(f)).

approach to listed buildings in St *Luke the Evangelist*, *Maidstone* (1994) which had endorsed the *Bishopsgate* principles. What we said (para 85) was this: "Because this court stated in *Maidstone* that it was merely "setting out certain guidelines, emphasising that they are not rules of law", we are not constrained by the doctrine of judicial precedent (in so far as, if at all, that doctrine is strictly applicable in this court, a point we do not have to decide: see *In re Lapford (Devon)* Parish Council [1955])". In *Lapford* the Dean of Arches, Sir Philip Wilbraham-Baker, declined to hold that he was bound by a previous decision of the Court of Arches. What he said was this:

> "Sitting in this court I am perhaps less strictly bound [than the consistory court]. The question of re-opening previous decisions of ecclesiastical courts was discussed in *Read v Bishop of Lincoln* [a Privy Council decision of 1892]; but although some latitude may be allowable it would need strong reason to justify me in departing from Sir Lewis Dibdin's decision in the *Capel St Mary* case." *Read v Bishop of Lincoln* (to which the Dean was referring) is instructive as showing that the Privy Council is not strictly bound by its previous ecclesiastical decisions. As Lord Halsbury LC said at 655: "whilst fully sensible of the weight to be attached to such [previous] decisions, their Lordships are at the same time bound to examine the reasons upon which the decisions rest and to give effect to their own view of the matter" (something quite different from a strict doctrine of *stare decisis*). But Norman in his The Legal Framework of the Church of England (1996) is clear that "The Arches Ct is bound by its own previous decisions". In *Sam Tai Chan* (2017) Chancellor Bursell endorsed this view, but made no mention of *Lapford*, notwithstanding, I may playfully add, that he had himself been a member of this court in *Duffield*! Careful readers of s.7 of the Church of England (Miscellaneous Provisions) Measure 2018 to which Norman referred in his lecture will have noticed the absence of any reference to precedent, binding or otherwise. That oversight was deliberate. [Underling added].

34. However, as Petchey correctly says in respect of s.7 of the 2018 Measure[14] "This doesn't tell you whether to apply *Alsager* or *Blagdon*."

35. In *Re St George, Unsworth*, having set out what I have now largely repeated above, I expressed the view that since *Blagdon* is the more recent judgment of the two courts and precedent aside, in the light of section 7 of the 2018 Measure, there seems to me to be no reason why I should not follow it. In any event, I expressed the view, that the apparently more "liberal" guidance in *Alsager* can

[15] Briefing paper on Exhumation to the Ecclesiastical Law Judges Association Seminar, dated 27th April 2023 at paragraph [17].

for practical purposes be reconciled with the "stricter" guidance in *Blagdon*. I pause to observe that I do not think in practice the application of one is necessarily more strict than the other, but be that as it may, the two approaches shortly stated are: "the straightforward principle that a faculty for exhumation will only be exceptionally granted' (*Blagdon*) as opposed to the *Alsager* approach which asked: "Is there a good and proper reason for the exhumation, that reason being likely to be regarded as acceptable by right thinking members of the Church at large?"

36. As noted above, critics have identified the introduction of the concept of "right thinking members of the church at large" as the principal problem. But in my view, this need not be troubling as the skilled advocates in *Blagdon* submitted. It is not to be taken literally, so for example, as to require a polling or referendum within the Church of England as a whole or even the relevant Parish itself. The hypothetical "right thinking member of the church at large," just like "the reasonable man," or "the man on the Clapham omnibus' is in reality the court itself, steered by the guidance of the superior courts and other material considerations such as the stage society has reached. In this respect I agree with the reasoning in defence of this aspect of *Alsager* mounted by Bursell QC Ch. in *Sam Tai Chan* at para [22].[15]

37. The later *Blagdon* judgment of the Court of Arches contained the paper entitled "Theology of Burial" of September 2001 prepared by the Rt. Reverend Christopher Hill, the then Bishop of Stafford. As Hill notes, the Bishop was called by the court to give expert evidence. As I said in my view, a right-thinking member of the [Anglican] church can currently be presumed to adhere to the theology on burial as contained in that note.[16] It is upon this basis that any

[16] None the less, in the light of the criticisms in the *Blagdon* case I note that the civil courts have had no difficulty in applying the approach of the equally notional man on the Clapham omnibus (see *McQuire v Western Morning News Co Ltd* [1903] 2 KB 100 , 109, per Collins MR) or of the right thinking members of society, the officious bystander, the reasonable landlord and the fair minded and informed observer: see *Healthcare at Home Ltd v Common Services Agency for the Scottish Health Service* [2014] PTSR 1081, paras 1–4. Indeed, in the Healthcare at Home case the Supreme Court explained that these legal fictions, at para 2: belong to an intellectual tradition of defining a legal standard by reference to a hypothetical person, which stretches back to the creation of the Roman jurists of the figure of the *bonus paterfamilias*. For this reason no evidence can be called in civil cases as to how such a hypothetical person would respond to the situation under consideration and, as the ecclesiastical law is part of the general law of England, there seems to be no reason why a 'right thinking member of the [Anglican] Church' should not be approached in a similar, hypothetical way."

[17] Certainly, in the absence of any equally authoritative theological expert evidence to the contrary before the consistory court in question. In his reply to Professor Doe, referred to in the body of this judgment, Charles George QC questioned the validity of the approach adopted in *Blagdon* saying that 'there remains an element of uncertainty as to how far the Court of Arches (and its sister court in York) may venture into doctrinal matters, given that s.14(1) of the 2018 Measure excludes an appeal which "to any extent relates to matter involving doctrine, ritual or ceremonial" – as [Professor Doe] mentioned, such appeals go to the Court of Ecclesiastical Causes Reserved which has been eagerly awaiting such an appeal since 1987. You referred in a different context to *Blagdon* (2002), an appeal in which I was myself a winger in the Court of Arches, where undoubtedly part of the reasoning related to a matter of doctrine, namely the alleged Anglican doctrine of the one-off nature of burial and the importance of maintaining, save most exceptionally, its

exhumation would only be justified in exceptional circumstances (see *Blagdon,* and also see*, In re St Peter ad Vincula, Wisborough Green*, CH025/09,30 June 2009, Hill Ch.: who quite correctly refers to the *Blagdon* presumption having arisen out of *doctrine* see further fn. 14).

38. Accordingly, in *In re St George, Unsworth* I expressed my opinion that applying *Alsager* guidance in the light of the evidence in *Blagdon* a good and proper reason in accordance with the right-thinking member of the Church would have to be of an "exceptional" nature sufficient to override the rebuttal presumption arising from Anglican doctrine as to the permanence of burial. Applied in this way I see no necessary conflict between the two approaches. Certainly, in any event, in applying *Alsager* I said I would regard the paper produced by Bishop Hill as to be a highly relevant consideration in any judgement of mine as to what a right-thinking member of the church at large would consider to be a good enough reason to permit exhumation.

39. Petchey comments upon my approach in *In re St George, Unsworth* in the paper cited above. He is, of course, writing *extra* judicially but his high standing in this field of law and the considered nature of the analysis means to my mind the paper albeit, in the form of a briefing, should be treated as having persuasive weight. He says:

> 21…in the Consistory Court of Manchester, Jones KC Ch addressed the matter afresh without reference to *Clayton* or *Lambeth*…
>
> 22. What is being said is that if there are exceptional circumstances as per *Blagdon* then it will be a case in which right thinking members of the Church would consider exhumation appropriate.
>
> 23. This deprives *Alsager* of any independent application and doesn't reflect the fact that as formulated they are two separate tests; and however this may be his conclusion Jones KC Ch applied both tests separately."

40. It is true that I do not expressly cite either *In re Clayton Cemetery, Bradford* [2019] ECC. Lee 2 or *In re Lambeth Cemetery* [2020] PTSR 2103 in my decision. However, at para [29] of the *In re St George, Unsworth* judgment I do refer to *In re Clayton Cemetery, Bradford* as a case in the Diocese of Leeds when quoting a

permanence. Was the evidence of Bishop Christopher Hill in that case inadmissible? Once the relevance of the issue became clear, should the court have referred the matter to the two three bishops and two senior secular judges of the Court of Ecclesiastical Causes Reserved? In *Sam Tai Chan* reported in [2017] Fam 68, Chancellor Bursell, sitting in the other Province, boldly described the Court of Arches' "active consideration of the theology of burial" in *Blagdon* as having been *ultra vires*. and to "raise questions as to the overall authority of that decision". https://www.stmarylebow.org.uk/wp-content/uploads/2019/11/COA-lecture-and-response-2019.pdf

passage from Professor Doe[17] that captures the relevant statement by Hill QC Ch. in which he said this about the effect of section 14A: "In dioceses of the Northern Province (of which Leeds is one) it is no longer necessary to consider the test propounded by the Chancery Court of York in [*Alsager*] to the extent that such a test was revisited and re-framed by the subsequent decision of the Court of Arches". As Petchey comments *In Re Lambeth Cemetery* at para [17] "[Hill Ch.] did not say why he preferred the authority of *Blagdon* to *Alsager*." Accordingly, apart from being the approach taken by the distinguished ecclesiastical lawyer Hill Ch. it does not of itself advance the debate very far.

41. In *In re Lambeth Cemetery* at paras [12]-[24] Petchey Ch. considered the correct approach to section 14 by grappling with the issue of conflicting precedent by reference to secular case authority that established a general rule that where there are conflicting decisions of courts of co-ordinate jurisdiction, the later decision is to be preferred, if it is reached after full consideration of the earlier decision.[18] This led him to the view at para [25]:

> In the light of this high judicial pronouncements, it seems to me that I should start from the position that it is appropriate for me to follow *Blagdon* rather than *Alsager* unless there are particular reasons why I should not.

42. Petchey Ch. then examined the various criticisms of both tests including those I have discussed above and, in particular, in respect of the Court of Arches in *Blagdon* calling a witness to give evidence on matters of doctrine before giving a reasoned conclusion as to why he considers there is insufficient reason to depart from the general approach to precedent in circumstances where, as here, the earlier decision has been subject to detailed consideration in the latter decision. I also took the view that if there was conflict then I saw no good reason why the *Blagdon* approach should not be taken (even in the Northern Province) (see para [31] of *In re St George, Unsworth*).

43. Petchey describes my attempt to reconcile the two tests as being: "if there are exceptional circumstances as per *Blagdon* then it will be a case in which right thinking members of the Church would consider exhumation appropriate." But I would characterise my approach slightly differently to that as I seek to explain below.

44. Neither *Blagdon* nor *Alsager* set out a defined closed list of what counts as "exceptional circumstances" or "good reasons"; the "overarching principle" being that each petition falls to be considered on its own facts – in other words,

[18] "Leeds Consistory Court pointed out that, as a result, in exhumation cases: 'In dioceses of the Northern Province…it is no longer necessary to consider the test propounded by the Chancery Court…in *Alsager* [1999]…to the extent that such test was revisited and re-framed by the subsequent [Arches] decision…in *Re Blagdon* [2002]'."

[19] *Minister of Pensions v Higham* [1947] 1 All ER 347 considered and applied in *Colchester Estates (Cardiff) v Carlton Industries plc* [1986] Ch 80 and approved by Lord Neuberger of Abbotsbury MR in *Patel v Secretary of State for the Home Department* [2013] 1 WLR 63 at paragraph 59.

there is no overarching principle. *Alsager* did consider factors that could potentially arise in connection with a petition for exhumation. These were: medical reasons; lapse of time; mistake; local support; precedent; and family grave. Plainly, this is not an exhaustive list. In *Blagdon*, the Court of Arches also set out general guidance on what might constitute an exceptional reason and what would fail to meet this threshold by giving examples. For example, the presence of a serious psychiatric or psychological condition linked to the location of a grave, mistake as to location of a grave and the burial of family members in double or triple depth graves may all fall within the exceptionality test. Advancing years, deteriorating health, change of residence, a long delay with no credible explanation, change of mind by relatives and local support are all listed as insufficient reasons for setting aside the presumption in favour of permanence. The list of examples given by the Court of Arches has no express coherent policy basis upon which to guide future exception cases. At least, the *Alsager* list can be understood against the general guidance given as to what is likely to be regarded as a good reason. However, it is notable that the lists of examples given in *Blagdon* and *Alsager* are broadly similar although "local support" is an example of a difference.

45. I am sceptical as to how objective the "exceptional circumstances" test can really be. *Blagdon* requires that a reason for the exhumation must be "exceptional" to qualify. Taken literally this would mean something which is not an everyday set of facts, even if a right-thinking member of the church would not approve of it as a good reason for exhumation is sufficient. However, it must be recognised that in truth, sometimes an "exceptional circumstance" may not actually be really that uncommon. As I have observed previously[19] one can look by analogy to the approach that has evolved in the secular town and country planning regime in respect of protection of the green belt. The National Planning Policy Framework (NPPF) provides at paras [136] and [137] respectively that:

> Once established Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified through the preparation or updating of plans.
>
> The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land *permanently* open." (emphasis added).

Nonetheless, in *Compton Parish Council* v *Guildford Borough Council* [2019] EWHC 3242 (Admin) Sir Duncan Ouseley held that "exceptional circumstances" is an undefined policy concept requiring a "planning" judgement to be made. The judge confirmed that a finding by the Court that a factor relied on by a planning decision-maker as an "exceptional circumstance" was not in law capable of being one, is likely to require some caution and judicial restraint. To be lawful the circumstances relied on, taken together, must only rationally fit within the scope of "exceptional circumstances." He held that matters such as general planning

[20] *In re St Andrews Churchyard, Alwalton* [2012] PTSR 479 Gregory Jones Dep Ch. (Ely).

needs, such as ordinary housing, are not precluded from the scope of exceptional circumstances; indeed, he commented that meeting such needs is often part of the judgement that such circumstances exist. The phrase was not limited to some unusual form of housing, nor to a particular intensity of need. Furthermore, there was in his view no requirement for more than one individual "exceptional circumstance"; such circumstances could arise due to the combination of circumstances, of varying natures, which entitle the decision-maker, in the rational exercise of a planning judgment, to say that the circumstances are sufficiently exceptional to warrant altering the Green Belt boundary. Decision making in the planning field can, of course, draw upon an extensive array of national and local planning policy guidance (such as the NPPF and statutory development plans) when exercising their judgement, there are policies to establish whether to not there is a housing need (prescribing a requirement to have a so-called 5-year supply of housing and the policy consequences if that is not met).

46. By contrast, the decision maker in this jurisdiction must exercise the equivalent ecclesiastical judgement when deciding whether to allow an exhumation without any equivalent set of extensive policy guidance background. Just because something is factually exceptional does not mean it would qualify; for example, it may "exceptionally" be the first time that the community has ever supported a petition for exhumation, but we are told in *Blagdon* itself that such a reason will not pass the *Blagdon* test. An application for a faculty justified, for example, on the exceptional basis of a £1million bet or as part of a TV show prize competition, offered to secure the exhumation of a relative's remains, is plainly exceptional as well as distasteful. However, I would expect such a reason not to be regarded as justifying an exhumation. Accordingly, there must be a <u>further</u> factor beyond being factually "exceptional" in order to qualify as an exception to the presumption against disturbance of remains. Any exercise of judgment must also be by reference to some wider set of values or objectives? Briden Ch. in *Blagdon* at first instance noted that "*In re Christ Church, Alsager* sets out guidelines as opposed to rules of law…". Why can these guidelines not advise whether something factually exceptional is also one which should be permitted?

47. Having discussed the Bishop's evidence as to the doctrinal justification for the presumption of permanence, Petchey notes in his briefing paper at para [10]:

> 10. In practice, Chancellors need not be too concerned for the reason for the norm of permanence. However it is put, burial in a particular space set permanently set aside for God is clearly intended to be permanent and support for the norm is not controversial. Support for the norm doesn't generally help in identifying reasons for making exceptions.

48. I agree and would further suggest that the "support for the norm" is another reference of a similar concept as the right-thinking person of the church. Indeed,

what I was trying to say in *In re St George, Unsworth* - albeit perhaps not with sufficient clarity - was the reverse of Petchey's characterisation: namely, whether an exception is to be made is to be guided by asking whether the exceptional circumstances give rise to a reason that is also regarded as acceptable to right thinking members of the church. I recognise, of course, that this may well deprive *Alsager* of an independent application but that is a consequence of the reconciliation. At least it gives the exception test some framework by which the decision maker can judge whether the circumstances are proper reasons and can justify an exception to the norm and thereby rebut the presumption against exhumation.

Analysis and Determination

49. I turn to the application of the law to the facts before me. This is an unfortunate case. The wider family relationship is fractured. As I reflected in *In re St George, Unsworth*, breakdowns in family relationships are now becoming an increasingly familiar aspect of contested petitions for exhumation.

50. As Christians and, in particular, Anglicans, we believe that when a person dies, the Holy Spirit is released from the body to be returned to God while the body is returned to the earth that had sustained it through life. Accordingly, in that sense, there is nobody buried in a plot, the spirit has moved on. However, I also agree with my immediate predecessor, Tattershall Ch, when he said in *In re St James Daisy Hill Westhoughton* [2020] Man 2 at paragraph 24 when he quoted with agreement Eyre Ch when he said in *Re St James, Newchapel* :

> 16. Churchyards are consecrated to God, Father, Son and Holy Spirit. Accordingly, they must be treated and cared for in a manner consistent with that consecrated status. Churchyards fulfil important spiritual roles. They provide appropriate settings for Christian places of worship and as such send out a message of the Church`s commitment to worshipping God in the beauty of holiness. They contain memorials to departed Christians demonstrating the Church`s continuing love for them and its belief in the communion of saints. In addition, they are places of solace and relief for those who mourn. It is notable also that many people find comfort in knowing that their mortal remains will be interred in a particular churchyard and in a particular setting. That comfort derives in part from a confidence that the character of that setting will be preserved.

51. This grave is in consecrated ground albeit within a cemetery, but in my view the same general sentiments apply. It is necessary to recognise the relationship of deceased person with those still alive. That obligation in any event arises under article 8 of the European Convention of Human Rights (ECHR) which I address further below. It is clearly important to the Petitioner and the Connolly family that when the time comes his remains should be buried with those of his wife.

52. I have no reason to doubt that Mrs Annie Connolly wished her husband to be buried with her. That is confirmed even by the principal objector, Mr Thomas Henry Cannon Snr. I also have no serious evidence to suggest that she did not believe that her husband would have the right to be buried with her. Indeed, although many things are disputed by the objectors nobody has challenged these two propositions. The closest I have is the statement by Mr Thomas Henry Cannon Snr. that he has "no recollection" of his sister saying that she wished to be buried in the Cannon Plot and that she wished to be buried with her husband in their own Plot. Even if true, that does not conflict with Mrs Annie Connolly believing that she had the right to be buried with her husband in that Plot, or that she regarded the Cannon Plot as "their Plot" or that she might have later thought that she and her husband could be buried together in the Cannon Plot.

53. The status surrounding the Cannon Plot is not entirely clear. However, the Petitioner has been told by Council that he does not have an unqualified entitlement to be buried there. It appears to me notwithstanding the statement to the contrary by Mr Thomas Henry Cannon Snr., that it is most likely that he has inherited some rights in connection with the Plot but that even if I am wrong about that, it is more likely than not that the Council would require the consent of Mr Thomas Henry Cannon Snr., (or possibly some other member of the Cannon family) before they would agree to allow the Petitioner's remains to be buried in the Cannon Plot.

54. I find that Mrs Annie Connolly's remains were buried in the Cannon Plot in the mistaken belief held by both herself, and the Petitioner, that her husband was entitled as of right to be buried there in due course.

55. It is true that I have no unequivocal statement from Mr Thomas Henry Cannon Snr. or indeed, any member of the Cannon family that they would object to the remains of the Petitioner being buried in the Cannon Plot. However, they have had ample opportunity to make clear that they would not object. By so doing, they would have removed the entire need for this Petition and the possibility of the undesirable disturbance of the remains of Mrs Annie Connolly. They have chosen not to do so. It is also plain to me that the family relationship is such that they are most unlikely to give consent. I am reinforced in this view, not only by the history of disputes between the parties, but also by the nature of the objections to this Petition. This is particularly so where, as here, the principal objector, Mr Thomas Henry Cannon Snr. acknowledges that it was his sister's wish to be buried in a plot with her husband.

56. It is well-established under both the *Blagdon* and *Alsager* tests that a mistake of this nature can satisfy the requirements by which the general presumption against exhumation can be rebutted. Even absent my attempt at reconciliation by combining the two approaches, I find both to be independently satisfied by

the facts of this case. There are numerous examples of various types of mistake being held to be sufficient to justify exhumation.[20]

57. Given the joint nature of the mistake, I do not consider it is necessary for me to decide whether absent the mistake on her part, Mrs Annie Connolly herself would have insisted on not being buried in the Cannon Plot. However, were it necessary to decide it that would be my finding. My conclusion is based upon the (albeit hearsay) evidence of the Petitioner and his children and the absence of any suggestion, still less, evidence to the contrary. I would also hold that the mistake on the Petitioner in burying his wife's remains in the Cannon Plot believing himself entitled to be afterwards buried with her is enough on its own to justify the grant of the faculty on either approach.

58. I consider that the exhumation will have an additional benefit of removing a source of ongoing friction between the Connolly and Cannon families. Given my finding as to mistake it is unnecessary for me to consider whether the removal of this cause of conflict would of itself amount to, or contribute as part of, an exceptional or good reason to justify the exhumation.

59. As I have said it has not been necessary for me to resolve many of the factual disputes between the parties. I have therefore not needed to take an overly forensic approach to the disputed statements.[21]

Human Rights

60. Although it has not been raised in Petition, I have considered the implications of the ECHR, in particular, articles 8[22] and 9[23] of the ECHR and

[21] *In re St Leonard's Lawned Cemetery* [2023] ECC Lin 1. The remains of another person had been buried by mistake by in a plot next to a husband, the plot having been reserved by his wife for her burial. *In re Hither Green Cemetery* [2018] ECC SwK. 3 where grieving parents who were not practising Christians buried a young child at a local cemetery in a humanist ceremony unaware the land was consecrated land

[22] Such as examining the absence of any signatures on any of the statements produced on the Cannon side of the argument (a point made by the Petitioner at p.3 of his letter dated 6 July 2023 at p.3) – in contrast to the signed form from Mr Thomas Henry Cannon Snr. agreeing to the matter being determined without a hearing.

[23] Article 8: (1) Everyone has the right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

[24] Article 9: (1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. (2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.

article 1 of the first protocol[24] to the ECHR. The dead have no rights in common law (*R v Price* (1884) 12 QBD 247) and the ECHR does not grant human rights to the dead. The duty of executors, administrators or the state decently to inter the body gives rise to an exception to the general common law principle that there is no property in a corpse, as those with the duty to dispose of the corpse gives rise to the right to possession of the corpse for the purpose of decent disposal (*Williams* v *Williams* (1882) 20 Ch. D 659). That right to possession of the corpse for decent disposal is recognised at common law but it is only enforceable in equity. In the present case, that duty of disposal was satisfied when Mrs Annie Connolly's remains were interred in the cemetery. As stated above, the grave plot is not owned by the Petitioner. Accordingly, I do not consider that article 1 to the first protocol to the ECHR is engaged by facts of the present Petition.

61. In the present case, the desire of the Petitioner to exhume his wife's remains is not a matter of conscience or the result of any religious belief. Accordingly, article 9 of the ECHR is also not engaged.

62. I turn to consider article 8 of the ECHR. In this case the Petitioner is the husband and next of kin of the deceased. He is supported by their children. His right to family life is in relation to the deceased and her children. It conflicts with the family relationships of Mr. Thomas Henry Cannon Snr. who is the younger brother of the deceased, as well as other members of the Cannon family on record as being opposed to this Petition. Having regard to the longevity of the marriage and the unequivocal support of the children from that marriage, in my judgement the family ties between the Petitioner and his children with the deceased are plainly and obviously stronger than those of with any member of the Cannon family still alive.

63. In accordance with section 2(1) (a) of the Human Rights Act 1998, I must take into account any relevant judgments of the European Court of Human Rights (ECtHR) - although I am not bound by them. In the case of *Elli Poluhas Dödsbo v Sweden*[25] the ECtHR proceeded on a concession made on behalf of the Kingdom of Sweden that the refusal to allow exhumation was an interference of the article 8 rights of the deceased's widow. The ECtHR held that such interference was justified under article 8 as *being necessary in a democratic society*. The test used by the Swedish authorities as to whether to permit exhumation was the existence of "special reasons" which, in my view, is very similar to the

[25] Article 1 to the first protocol of the ECHR: Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.
[26] 61564/00, No 82; (2006) 8 Ecc. LJ 496 and which post-dated the judgment of the Court of Arches in *Blagdon* in which the court held that article 8 of the ECHR was not engaged at all.

"exceptional circumstances" test which I have applied in accordance with the judgment in *Blagdon.*[26]

64. The ECtHR considered that the sanctity of the grave was such an important and sensitive issue that there was a wide margin of appreciation which justified an interference with human rights in this case. The court held that there had been no violation of the right to respect for private and family life under Article 8. In this case I consider that there are "special reasons" (in ECtHR terms) or as set out above "exceptional circumstances" or "good reasons" that justify the exhumation. That the order would protect the Petitioner and his children's article 8 rights (albeit in preference of those of the objectors) is a factor in favour of the grant albeit not determinative.

Conclusions

65. For the reasons set out above, I have come to the view that Mr Connolly's application for a faculty to exhume the remains of his wife Mrs Annie Connolly meets the test of exceptional circumstances envisaged in *Blagdon.* I am also of the opinion that it does amount to a sufficiently good reason by reference to a "right thinking" member of the church at large (*Alsager*).

66. I consider that this application for a faculty to exhume the remains of Mrs Annie Connolly should be granted subject to the following conditions (set out in the annex to this decision).

67. The remains of Mrs Annie Connolly having been laid to rest in accordance with her wish that she they been buried in consecrated ground. The mistake that I have found which occurred does not go to her desire for her remains to be buried in consecrated land. It is therefore necessary that following exhumation that her remains are reburied in consecrated land as soon as reasonably practicable thereafter in a dignified manner in accordance with Anglican rites.

68. Prior to determining this matter, I sought assurance from the Petitioner through the Registrar that if I were minded to grant the faculty, it would be necessary for me to be satisfied that prior to any exhumation a consecrated plot had been secured which could accommodate at least the remains of Mrs Annie Connolly and the Petitioner. I have been given that assurance.

69. The other conditions more generally have not been discussed with the Petitioner or the objectors. Accordingly, I have granted liberty to both the Petitioner and Mr Thomas Henry Cannon Snr. (as the principal objector) liberty to apply to vary any condition. I should say I do not anticipate any such

[27] And/or a sufficiently good reason by reference to a "right thinking" member of the church at large (*Alsager*).

applications. Any party applying may be liable to pay the costs of dealing with any such application.

70. The Registrar has conveyed to me a request from the daughter of Mr Thomas Henry Cannon Snr. on behalf of her father that should the faculty for exhumation be granted that a time limit be placed on the carrying out the exhumation and that the headstone be amended to remove the name of his sister Mrs Annie Connolly. He asks that he should not have to pay for the amendment to the headstone.

71. A time limit condition would be imposed in any event. As for the existing headstone, it must be amended to reflect what will have happened. The existence of objections has of course prolonged this process and made them more costly. The process has no doubt been deeply distressing for members of both the Connolly and Cannon families alike. Ordering Mr Thomas Henry Cannon Snr. to pay some of the costs for any additional costs arising out of the objections I fear it would only create another cause for argument and resentment between the parties. As for the head stone, absent any objection to this Petition, I would have required the Petitioner to pay the costs of amending or replacing the headstone in any event, so the existence of objections has not made any difference to what I would have ordered.

72. On 21 December 2023 I was provided by the Petitioner with a costs quotation and specifications dated 16 December 2023 from J Child & Sons for both refacing of the headstone and for replacement of the headstone. The former is only marginally less expensive than the latter. On balance, it seems to me that resurfacing is preferable since it would retain the existing headstone and is more sustainable having regard to the church's net zero policy. It also avoids the need to secure a replacement headstone which in all other material respect be the same as the original (as to which see the wording of the condition below). However, this is a matter I am content to leave to the Petitioner. I have therefore ordered that within three months of the exhumation the headstone is either to be re-faced or replaced in accordance with the specifications set out in the condition.

73. Accordingly, I make the following orders as set out below.

ORDERS OF THE COURT

1. **I HEREBY GRANT** the Faculty to exhume the remains of Mrs Annie Connolly subject to the conditions set out in the **Annex Containing Faculty Conditions** attached to this decision.

2. **PERMISSION** is given to either the Petitioner or Mr Thomas Henry Cannon Snr. (as the Principal Objector) to apply to this court in writing to seek to vary any condition.

3. **COSTS:** The faculty fees payable under the current Ecclesiastical Judges and Legal Officers (Fees) Order (for lodging, short directions, correspondence and decision) are to be paid by the Petitioner. I waive my own fees.

GREGORY JONES KC
Chancellor of the Diocese of Manchester

ANNEX CONTAINING FACULTY CONDITIONS

1.The grave shall be shielded from view by appropriate temporary screening during the exhumation

2. No prior publicity or notice shall be given

3. The exhumation and re-burial shall be done by a competent person e.g. the local authority grave digger, or a person who is under the supervision of an undertaker or funeral director or cemetery superintendent or manager

4. The exhumation and re-burial shall be carried out at a date and time set by the relevant cemetery superintendent or manager and under their supervision. If possible, the exhumation and re-burial shall be carried out at an early hour in the day (e.g. 6.00 am to 7.00 am in summer months or at first light in winter months).

5. All arrangements are to be made and undertaken with due care, with due respect for the human remains and the grave, and as expeditiously as possible

6. The Register of Burials in which the (first) burial is recorded shall be annotated with a note that the body was exhumed on (date) under the authority of a faculty granted (date). This shall be done by the person in charge of the cemetery within 7 days of the exhumation.

7. The re-burial shall be recorded in the Register of Burials of the receiving churchyard or cemetery. This shall be completed by the Minister or other person in charge of the churchyard or cemetery within 7 days of the re-burial.

8. The exhumation and re-burial shall be carried out within three months of the date of the faculty and the Petitioner shall inform the Registrar upon completion of the re-burial.

9. Within three months of the exhumation the Petitioner to procure an appropriately qualified expert to carry out either the refacing of the headstone or replacement of the headstone to be identical in all respects save only with the omission of the details of Mrs Annie Connolly in accordance with the specifications contained in the quotation dated 16 December 2023 from J Child & Sons (to be attached to this judgment).