

**In the Consistory Court of the Diocese of Worcester**

**Archdeaconry of Worcester: Astwood Cemetery**

**Faculty petition 16-03 relating to the exhumation of the cremated remains of the late J P Gormley**

**Judgment**

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1. This petition seeks a faculty for the exhumation of the cremated remains of the late Mr Joseph Gormley, prior to their re-interment elsewhere in Astwood Cemetery along with those of his wife Mrs Brenda Gormley. I was originally given relatively little evidence in support of the proposal; but I have since been supplied with a number of more detailed letters from members of their family.

**Factual background**

2. Mr Gormley died on 12 January 2012, aged 60, eight years after being diagnosed with multiple sclerosis; his wife was his carer, particularly in his last years when he was a user of a wheelchair. His death due to the sudden onset of pneumonia. His body was cremated on 2 February 2012, and the ashes were interred on 3 December 2012 in the grave of his parents. That grave already contained three bodies and three sets of cremated ashes.
3. At the time of his death, the family had limited financial means, and were in no position to purchase a new burial plot – the cost of the funeral had to be borrowed from a family member. They accordingly buried the ashes in the family grave. His widow was also aged around 60 at the time of his death, and no-one at the time gave any thought to what would happen to her remains. The burial of his ashes was therefore in effect a temporary measure.
4. As it turned out, however, Mrs Gormley died shortly afterwards, also unexpectedly, on 10 October 2015, aged 64. They had been together for over forty years, and it had always been assumed that they would be buried in the same location, as was apparently reflected in the terms of her will (which I have not seen). But there was no further space in the family grave. The family therefore all feel strongly that their ashes should be buried together in a new plot, elsewhere in the same Cemetery, and to that end seek a faculty to move the ashes of Mr Gormley.

5. It is expected that Jason and Karl, the sons of Mr and Mrs Gormley, would also in due course be buried in the family grave thus created.

### **The law**

6. The ecclesiastical courts have long made it plain that the exhumation of human remains (either the remains of a body, or ashes following cremation) from consecrated ground can only take place with the authorisation of a faculty granted by the chancellor – which will only be forthcoming in very exceptional circumstances. This applies whether the proposal is to move the remains to be buried in another churchyard or cemetery or at a different location in the same churchyard, or even to rebury them at the same location in order to accommodate a further burial.
7. The law has been authoritatively set out by the Court of Arches in *Re Blagdon Cemetery*. Its approach can perhaps best be summarised in the following passage:

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"<sup>1</sup> 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."<sup>2</sup>

This makes it plain that the drawing up of guidelines can assist in identifying categories of exceptionality; but also that there is no necessity to show that a particular case falls within one or more of those categories.

8. One situation where a faculty may sometimes be granted for exhumation is where it is proposed to re-inter a body in an existing or proposed family grave. This may arise in three situations:
  - the transfer of a body to an existing family grave or group of adjacent graves containing the bodies of more than one family member;
  - the transfer to the existing grave of a single family member; and
  - the transfer to a newly created family grave.
9. Such multiple use of grave space is generally encouraged, as an expression of family unity and as an economical use of land for burials. This was indeed the principal justification for a faculty being granted in *Blagdon*; the Court held as follows:

“The concept of a family grave is, of course, of long standing. In a less mobile society in the past, when generations of a family continued to live in the same community, it was accepted practice for several members of a family to be buried in one grave. Headstones give a vivid picture of family relationships and there are frequent examples of one or more children predeceasing their parents due to childhood illnesses, which were incurable. Burials in double or treble depth graves continue to take place at the present time. They are to be

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<sup>1</sup> Concise Oxford Dictionary, 8th ed (1990).

<sup>2</sup> [2002] Fam 299, Court of Arches para 33.

encouraged. They express family unity and they are environmentally friendly in demonstrating an economical use of land for burials.”<sup>3</sup>

However, at the conclusion of its judgment in that case, the Court sounded a note of caution:

“... it should not be assumed that whenever the possibility of a family grave is raised a petition for a faculty for exhumation will automatically be granted. As in this case it is to be expected that a husband and wife will make provision in advance by way of acquisition of a double grave space if they wish to be buried together.”<sup>4</sup>

10. A number of chancellors have admitted in subsequent cases that this part of the judgment in *Blagdon* was “not very clear”.<sup>5</sup> Some twenty or so of the more recent judgments relating to family graves, of which roughly one third were in each of the above three categories, were analysed by this court in *Fairfield, St Mark*, showing that chancellors have not adhered to a particular or uniform approach.<sup>6</sup> The deputy chancellor in *Fairfield* also noted the comment in *Kenilworth* that faculties had been granted in the past for the bringing together, or accumulation, of family members in a single grave after many years, provided special reasons were put forward for any lapse of time since the date of burial.<sup>7</sup>
11. He concluded that exhumation and re-interment in a grave or graves containing more than one existing family member is capable of constituting an exceptional or special reason outweighing the presumption in favour of permanence of burial; whether it will do so in a particular case will depend on the strength of the reasons for any delay in seeking exhumation.<sup>8</sup>
12. Finally, it may be noted that the Court in *Blagdon* indicated that it considered that the views of close relatives of the deceased were very significant.<sup>9</sup>

### Conclusion

13. In the present case, it is clear that the close relatives are wholly in support of the proposed exhumation.
14. Further, it is likely that, had there been space, the ashes of Mrs Gormley would have been interred in the same location as those of her husband and six other family members. In fact, if the present petition were to be allowed, Mr and Mrs Gormley will be buried together in what is likely to become a new family grave – I have already noted that the present intention of their sons is that they too will be buried at the same location – although of course that will hopefully not occur for some years yet.

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<sup>3</sup> para 36(vi).

<sup>4</sup> para 40.

<sup>5</sup> *Mallinder* (2006) 25 CCCC 1, Sheffield CC; *Brown* (2008) 27 CCCC 11, Sheffield Consistory Court.

<sup>6</sup> *Fairfield, St Mark (Camp)* [2013] PTSR 953, Worcester Consistory Court, per Fookes Dep Ch at paras 50, 51.

<sup>7</sup> *Kenilworth Cemetery* (2012) unreported, Coventry Consistory Court.

<sup>8</sup> *Fairfield* at paras 82, 83.

<sup>9</sup> *Blagdon*, at para 36(iv).

15. I am thus satisfied that the circumstances of this case fall within one of the categories identified in *Blagdon*, such that they constitute an exception to the normal rule that remains are not disturbed.
16. A faculty should therefore issue for the proposed exhumation.

**CHARLES MYNORS**

Chancellor

11 May 2016