Neutral Citation Number: [2025] ECC Car 5

IN THE CONSISTORY COURT OF THE DIOCESE OF CARLISLE

Re Kirby Enid Butcher

JUDGMENT

Delivered on 26 August 2025

A. Introduction

1. By a petition dated 25 July 2025, Mr. Joshua McLeod seeks a faculty to permit the exhumation of the remains of the late Kirby Enid Butcher from Grave 46, Section B, Ireleth Cemetery.

2. The petition arises from an unfortunate situation in which, through no fault of the family, the remains of Kirby Butcher were disturbed during a subsequent burial. This judgment explains why I have decided that a faculty should be granted.

B. Background

3. Kirby was still born on 3 February 2004 and buried on 16 February 2004 in the consecrated section of Ireleth Cemetery. Her remains were placed at the foot of Grave 46, Section B, so that they would not need to be disturbed by later burials.

4. Two other members of the family have buried in the same grave: Enid High on 22 February 1988, and more recently, Edgar David High on 20 June 2025.

5. It appears clear from the evidence that while preparing the grave for the interment of Mr. High, the gravediggers disturbed Kirby's remains. Some elements of her remains were left in the ground above Mr. High's coffin; others were placed into a plastic bag and reburied by the gravediggers.

6. It goes without saying that this is a most unfortunate and distressing situation for Kirby's family. They wish to see Kirby's remains reunited and reburied with dignity.

C. The Law

7. The principles governing applications for exhumation from consecrated ground are settled. The starting point is the presumption that Christian burial is permanent. This

principle, rooted in the theology of burial, was explained by the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299.

8. A faculty for exhumation will only be granted exceptionally. It is for the petitioner to establish on the balance of probabilities that there are special circumstances which justify a departure from the norm.

D. Analysis

9. The disturbance of Kirby's remains, and the most unsatisfactory way in which they were reinterred, was in no way sanctioned by her mother, or any of her other close relations. Exhumation is now proposed to see that Kirby is once more laid respectfully to rest.

10. In my judgment these circumstances plainly amount to exceptional circumstances justifying the grant of a faculty. The principle of permanence is not infringed by correcting an error such as this. On the contrary, the purpose of this exhumation is to restore dignity to Kirby's remains by enabling them to be reunited and reburied together in their proper resting place.

E. Decision

11. I am satisfied that there are special circumstances which rebut the presumption of permanence. I therefore direct that a faculty shall issue permitting the exhumation of Kirby's remains from Grave 46, Section B, Ireleth Cemetery.

F. Conditions and Directions

12. The following conditions and directions apply to this faculty:

(a) Exhumation is to be undertaken with reverence, and by hand;

(b) The remains of Enid High and/or Edgar David High are not to be disturbed, save under the authority of a separate faculty;

(c) The recovered remains of Kirby Enid Butcher are to be respectfully reunited and reburied together in Grave 46, Section B, in a manner consistent with the rites and practices of the Church of England; and

(d) Exhumation and reburial are to be undertaken as soon as reasonably practicable, consistent with due observation of the requirements of sub-paragraphs (a), (b) and (c).

13. The costs of this petition and of the exhumation are to be met in full by the Council.

James Fryer-Spedding
Chancellor of the Diocese of Carlisle

26 August 2025