

**IN THE CONSISTORY COURT**  
**DIOCESE OF LONDON**

**In the Matter of: A Petition for the Exhumation of the Mortal Remains of the late HS  
and the late RS – Faculty 4959 (HS) and 4958 (RS)**

***and***

**In the Matter of Lavender Hill Cemetery (LHC)**

***and***

**In the Matter of two Petitions of AA**

**Judgment of the Chancellor, July 22, 2026**

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Etherington Ch:

1. These are two petitions, both for faculties, to permit the exhumation of a husband (HS - 4959) and wife (RS - 4958) whose mortal remains are presently buried in Lavender Hill Cemetery, lying in consecrated ground. It is convenient and the fairest course to determine both of them together. As is my usual practice, because the application involves sensitive and personal issues for those concerned, I will refer to them by their initials, as this judgment may be published. The Petitioner will be titled AA, the daughter of HS and RS. She is supported by her brother, titled CS, in respect of both petitions. The two cemeteries concerned (both the place of burial and the place of the proposed re-burial) consent. This case should clearly be decided on the papers and does not require an oral hearing which would involve delay and further cost to the Petitioner.
2. Where a deceased person is laid to rest in consecrated ground the rule is that this is their final resting place and exhumation will only be permitted where there is an exceptional justification for it (subject to provisions covering urgent judicial or police investigations of suspicious death).
3. There are a number of cases which make this point and the leading authority remains the case of *In Re Blagdon Cemetery* (2002) 4 All ER 482.
4. Sometimes exhumation is permissible on a temporary basis: for medical research, to permit the introduction of another set of remains (e.g. a spouse) and other like reasons where the remains will be returned promptly to their original location.
5. There are other circumstances which *may* be sufficient to displace the presumption that burial is permanent and final, depending on the precise circumstances. One may be where a genuine mistake has been made in the burial, for instance someone being buried in the wrong grave or wrongly buried by error in consecrated ground, or cases where

the purpose of the exhumation is to reunite the remains of family members within a family vault. These are examples.

6. A number of factors will be considered. None are necessarily decisive, but they may bear on the court's decision. Amongst those features is the length of time which has elapsed between the burial and the application to exhume; the date when those seeking exhumation first knew of the circumstances giving rise to the application and whether, for instance, they acted quickly to correct a mistake. Naturally, the consent of the requisite authority which holds the remains as well as that which is to receive them and the consent of the closest family members should be sought, although none of these consents, by themselves or in combination, will generally be decisive.
7. Sometimes, the desire can be to have the remains buried near to where the Petitioner now lives. These applications are usually refused because, movement of human beings from one area to another is frequently encountered and the reburial of family remains in those circumstances would make a nonsense of burial being final and permanent. In very rare cases, and when supported by convincing psychiatric evidence, such relocation may be permitted where the present siting of the remains is causing a serious psychiatric disturbance for a principal mourner.
8. Sometimes families, or particular members of a family, may dwell over time on the circumstances of a burial and believe that they may have failed in a duty they believe they owe to a deceased by not honouring their wishes as to where the deceased sought to be buried. These feelings are very understandable and naturally may increase with age, but 'change of mind' or re-evaluation of earlier choices is not of itself a recognised exception to the principle that burial in consecrated ground is permanent and final.

### **The Facts of this Application**

**4959**

9. HS, born in 1916, died in 1996 and was buried in LHC, in consecrated ground. His wife died in 2014 and was also buried in LHC in consecrated ground. They are buried in a joint plot with a book shaped memorial stone – the left 'page' commemorating HS and the right 'page' commemorating RS. There is a moving and separate description of each in similar style. Theirs is a dignified and well-tended burial place.
10. AA says that she made a promise to her late father that he would be buried in *Noddfa Cemetery* in South Wales as he told her that he wished to be buried with *his* father who is also interred in that cemetery, as his childhood there had been one of the happiest times of his life.
11. When HS died, AA said that the family contacted *Noddfa Cemetery* but that her mother wanted HS buried in LHC in Enfield. AA maintains that her mother's memory loss

prevented her from remembering her late husband's wish. RS would have been 80 in 1996. I do not understand there to be any existing medical evidence as to the state of her memory loss at that time. AA wishes HS's mortal remains to be exhumed and re-buried in the Welsh cemetery.

#### **4958**

12. RS, who was born in Llanelli, also in 1916, and died in 2014 aged 97. She was married to HS at the church of St John the Baptist in Croydon on December 18, 1937 when both were aged 21. Her death certificate records the cause of death at 1(a) as Old Age. There is no entry at 1(b) on the death certificate of any other underlying cause of death, although, given her very advanced age, I do not consider this absence to be particularly significant. As far as this application is concerned, the facts surrounding the decision to bury HS in LHC are rehearsed by AA. She says that at the time RS died, she was not in a financial position to request that both HS and RS be buried in the Welsh cemetery. No evidence is submitted that RS ever expressed any wish herself to be buried in Wales, or in her father-in-law's grave plot, although I accept that it is highly likely that she would have wished to have been buried with her husband.

#### **Both Petitions**

13. In a note to the Petitioner following the submission of both petitions, I stated that on the material placed before me I could not grant either one. I noted that the principal application was in respect of HS. Its importance was because if I were to grant that petition it would affect any decision in respect of RS. Similarly, if the petition in respect of HS were to be dismissed, there would clearly be no separate case that RS's petition alone should succeed. I am sure that AA would not want their remains to be geographically separated.
14. I made clear that I would not make a final decision as to either petition without giving AA an opportunity to provide further evidence as to whether her mother suffered from a diagnosed mental condition in 1996, such as dementia or Alzheimers, and to tell me (if she wished) if the proposal was to relocate the remains of her parents to her grandfather's plot or just the same cemetery. I also said, however, that I did not wish to raise hopes falsely and that there were still powerful reasons for leaving her parents' remains to lie where they are in LHC, given the ecclesiastical law that I was obliged to apply.

#### **Further Response**

15. AA availed herself of the opportunity to make further submissions on the first issue, that is her mother's mental state. She expressed great sadness at my initial response.

She stated that her mother was diagnosed with dementia by Chase Farm Hospital at some time, which hospital she says no longer retains the records. She did not say when this diagnosis was made or whether it had been made by 1996, but she does say that, after HS's death, RS would continue to lay a place for him at the table requiring a further explanation to her of his death which would cause RS yet further distress. In due course the dementia sadly, but inevitably, progressed to a more advanced state. She concluded her observations by saying: "I made a promise to my father all those years ago and I sincerely hope you allow me to at last keep that promise now I am in a financial position to do so."

16. I am also grateful to AA for the documentation she sent me and the touching school photograph in which HS appears aged around 13 years.
17. She confirmed that the proposed reburial would be inside her paternal grandfather's plot in South Wales.

### **Analysis and Decision**

18. Dementia is a very distressing condition which touches the lives of many: some as sufferers, others as the loved ones of sufferers and also carers of those who are afflicted with the condition. It is usually a progressive condition and often involves extremely difficult decisions by the sufferer's family. I fully understand that.
19. The first decision which AA and the family took following their father's death was to accede to their mother's wish to have her late husband buried in the cemetery at LHC. I accept from AA that RS was suffering from a degree of memory loss at that time. She was able to remember that her husband had died when it was explained to her, even though she would subsequently forget it again. The degree of knowledge that she ever had of her late husband's wish to be buried in South Wales is not clear. AA does not speak of her mother's presence at the conversation in Wales when her father requested, and she promised, to have his mortal remains buried in the same cemetery as his father, but I will assume that she was told of it.
20. Unless she was mentally incompetent, RS's wishes are likely to have been paramount in any event, but even if she was unable to make an informed decision, AA and the family decided in her interests to override the promise made to HS and bury his mortal remains at LHC. Many would think that this was entirely the correct decision and likely to have been one of which HS would have approved in those circumstances. No attempt was made to alter that decision (even if it could have been changed) during RS's lifetime, including when her dementia became more profound.
21. The next crucial point is the death of RS herself in 2014, 18 years after the death of her husband, when AA and the family decided to have her mortal remains interred in the same cemetery. It seems to me likely that this is where RS had wished to be buried as I

am not told of any expression of any wish by *her* to be buried in Wales and, in any event, she would doubtless have wished to be interred in a grave with or adjacent to that of her husband who was buried in LHC.

22. AA says that at that point (2014) she did not have the financial resources to have her father and mother buried in Wales. So, her mother was laid to rest in LHC and there both have lain ever since, marked by the memorial already described.
23. The Petitioner, supported by her brother, now seeks in 2026 to exhume the remains of both her parents and have them reinterred in the cemetery in South Wales in accordance with the promise she says she gave to her father that she would ensure that he was buried there. Her mother's remains have lain in LHC for about 12 years and her father's for around 30 years. These are very considerable periods of time.
24. Both HS and RS are buried in consecrated ground. Where the mortal remains of a deceased are buried in consecrated ground that burial is their final resting place and exhumation is only ever permitted in exceptional circumstances, as set out in paragraphs 2 – 8 of this judgment.
25. Although AA, CS and possibly other family members faced a difficult decision in 1996, it was one which they took to respect their mother's wishes. As AA says, attempting to deceive RS that the funeral was taking place in LHC when it was happening in Wales would have been wholly and obviously wrong. As to their mother's burial, a decision was taken to bury her mortal remains in the same cemetery where her late husband was buried. I find it difficult to accept that financial circumstances alone dictated RS remaining there for 12 years and HS for a *further* 12 years if the matter was such a priority as it is now said to be.
26. I accept that, as time passes, a desire to complete what family members view as unresolved family matters can become very dominant and there can be understandable feelings of guilt and unfulfilled responsibilities, however misplaced these feelings would be in this particular situation.
27. I accept the evidence of AA that it was HS's wish to be buried in the *Noddfa Cemetery* as his place of burial. That wish was not fulfilled for the reasons set out.
28. I do not accept, however, that either HS or RS would have wished their place of rest to be disturbed many, many years (30 and 12 respectively) after their original burials.
29. Whether or not I am correct about that, I am satisfied that in respect of both faculty petitions there are no circumstances which override the strong presumption that burial in consecrated ground is final and permanent or that would justify the disturbance of HS's and/or RS's mortal remains in 2026 by exhumation. I understand and regret that this will be disappointing for the Petitioner and her brother but, for the reasons given, I

dismiss both petitions and rule that the mortal remains of both HS and RS must rest undisturbed where they were buried.

30. I make no order as to costs.