



***Faculty** — Parish Council burial ground — Exhumation of humans remains from consecrated ground — Remains of petitioner's son buried in May 2011, aged 16, after he was struck and killed by a drunken driver — Exhumation sought to enable the son's body to be cremated, and for the ashes to be retained at home with the mother (currently in her late 50s) pending their re-interment in an unidentified grave with her ashes when her time should come — Lack of informed consent to burial in consecrated ground — Whether exceptional circumstances established for granting a faculty for the exhumation of the son's remains — Effect of the mother's wish to retain cremated ashes for reburial with her ashes at some indeterminate future date and location — Whether faculty to be granted and, if so, on what terms — Faculty granted*

Petition No: 11101

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: Sunday, 25 May 2025

Before:

THE WORSHIPFUL DAVID HODGE KC,
CHANCELLOR

In the matter of:

KIDLINGTON PARISH BURIAL GROUND

THE PETITION OF:

Mrs LAURA CROSBY

This is an unopposed exhumation petition determined on the papers and without a hearing

There were no objections to the petition.

The following cases are referred to in the Judgment:

Anstey v Mundle [2016] EWHC 1073 (Ch), [2016] WTLR 931

Hartshorne v Gardner [2008] EWHC B3 (Ch), [2008] WTLR 837

Re St Andrew's Church, Ham [2019] ECC Swk 1, (2019) 21 Ecc LJ 383

Re Bognor Regis Town Cemetery [2024] ECC Chi 3, (2024) 26 Ecc LJ 351

Re Blagdon Cemetery [2002] Fam 299

Re Hither Green Cemetery [2018] ECC Swk 3, (2019) 21 Ecc LJ 249

JUDGMENT

1. This is an unopposed faculty petition, dated 24 April 2025, by Mrs Laura Crosby to exhume the remains of her late son, Edward Lynch, from the grave space numbered KBG/S/788 in Section S of the burial ground provided by the Parish Council in Kidlington. The deed granting the exclusive right of burial in this grave space was granted to Mrs Crosby on 10 May 2011. Mrs Crosby now applies for permission to exhume Edward's remains for direct cremation, in accordance with what she says were her original wishes. She now wishes to exhume Edward's body in order for it to be taken for direct cremation, and for his ashes to be kept at home with Mrs Crosby until her own death. Since Mrs Crosby is now in her late 50s, that may not happen for many years.

2. The reason why I am delivering my decision on this petition in the form of a formal, written judgment, rather than a short summary of my reasons, is because of Mrs Crosby's wish that her son's cremated remains should not be laid permanently to rest for what may be many years in the future.

Factual background

3. I take the factual background from Mrs Crosby's signed statement and the documents she has submitted in support of her faculty application.

4. Edward Lynch tragically lost his life on 15 April 2011, at the age of 16, after being struck and killed by a drunken driver. The death certificate, issued following the results of an adjourned inquest held on 21 September 2011, record that Edward died just ten days after his 16th birthday. The cause of death was “*blunt head injuries*”. At the time of his death, Edward was preparing to sit his GCSE exams. His death was witnessed by several of his school friends; and the family’s small, semi-rural community was deeply affected by the tragedy. Following his death, Edward was subjected to a Home Office post-mortem, which is standard in such cases. However, a second post-mortem was ordered by the defence. As a result, Edward’s body was held in a mortuary for six weeks. During that time, Mrs Crosby was not allowed to see, or to hold, her son. She was also under significant emotional distress, and also pressure from the school to expedite the funeral arrangements due to the upcoming GCSE exam period. Ultimately, Mrs Crosby agreed to a burial, even though her heartfelt wish — one she had always held — was for Edward to be cremated. Mrs Crosby considers that she was not emotionally capable, at the time, of considering the long-term consequences of that decision; and she now deeply regrets it. She states that “*this decision has haunted me ever since*”. Mrs Crosby relates that no other member of the family has been, or wishes to be, buried; and she herself intends to be cremated. It is unlikely that she will remain in the Kidlington area indefinitely, and she does not want Edward to remain in a cemetery with which their family has no long-term connection. Nor does Mrs Crosby want her surviving son to feel any obligation concerning his brother’s grave. Mrs Crosby’s wish is for Edward’s body to be exhumed so that it may be taken for direct cremation, and for his ashes to be kept at home with her until her own death.

5. A section of Mrs Crosby’s statement is headed *Lack of Informed Consent to Burial in Consecrated Ground*. Mrs Crosby explains that at the time of Edward’s funeral, she was not informed that the burial plot in Kidlington was consecrated ground. Nor was she made aware of the legal and spiritual implications that such a burial would carry — particularly the Church of England’s presumption against exhumation. In fact, she says that she only discovered that this was the case at the start of the present process. The parish council were also unsure of the status of the grave, and they had to consult historical records to confirm that the grave space in which Edward is buried is indeed consecrated ground. At no point was Mrs Crosby informed by the funeral directors, or by any representatives of the parish, that Edward was to be buried in consecrated ground. Nor was Mrs Crosby made aware of the permanence of such a decision under ecclesiastical law. She believes that this represents a failure of the duty of care owed to her by those responsible for advising her at the time. Mrs Crosby now understand that the judgment in *Re Blagdon Cemetery* [2002] Fam 299 specifically addresses the importance of families being fully and properly informed before they commit to any burial within consecrated ground. Mrs Crosby purports to quote from the judgment as follows:

Those responsible for advising relatives should inform them at the time of burial of the consequences of interment in consecrated ground, in particular the difficulties associated with any subsequent application for exhumation.

Mrs Crosby believes that she was failed in this regard. Had she been properly advised of the implications, she “*may have insisted on cremation from the outset*”. This lack of informed consent “*has caused me additional distress and delayed my application by many weeks. I respectfully ask the court to consider this a significant and justifiable reason in support of my application for a faculty to exhume Edward for cremation.*”

6. Mrs Crosby explains that she has the full support of her surviving son, William Lynch, who has provided a letter of support for this application. She also has letters of support from the funeral directors who will carry out the exhumation and direct cremation, as well as from the parish council. Mrs Crosby has made careful and respectful arrangements for the exhumation and cremation process; and she intends to preserve Edward's ashes with her at home until her own death. Mrs Crosby concludes as follows:

This petition is not made lightly, but with deep and considered intention to honour Edward in the way I had originally wished, and to bring a measure of peace and resolution to a decision that has burdened me for over a decade.

7. Mrs Crosby also makes it clear that should the faculty be granted, she would also like to seek permission to remove Edward's headstone, and for it to be returned to her for safekeeping at her home. She would wish to preserve it as a personal, and meaningful, memorial to her son. The removal and transportation of the headstone will be arranged respectfully and professionally by the funeral directors and a qualified monumental mason. She will ensure that all the necessary works are conducted in accordance with diocesan guidelines.

8. In a separate document, querying the faculty application fee – an issue that has since been resolved – Mrs Crosby reiterates that she “*was unaware that my son was buried in consecrated ground until I applied for a Ministry of Justice licence which has no charge*”.

9. William Lynch has written a signed letter of support, dated 20 April 2025, and addressed ‘*To Whom It May Concern*’. This reads:

I am writing in full support of my mother, Laura Crosby, in her petition for a faculty to exhume the remains of my brother, Edward Lynch ... Edward was only 16 years old when he died in a road traffic collision caused by a drunk driver. His sudden and tragic death deeply affected our family. At the time, my mother was under great emotional distress and was not allowed to carry out her wish for Edward to be cremated. Instead, a burial took place under pressure and without proper understanding of the long-term consequences, including the fact that the burial took place in consecrated ground.

My mother has carried the regret of this decision for many years, and I have witnessed how it has continued to cause her deep emotional pain. I am therefore fully supportive of her desire to honour Edward's memory by having his remains cremated, and to take him home as was her original wish. I believe this step would bring peace and allow her to finally fulfil what she had always intended. I respectfully ask that the court gives her application full and compassionate consideration.

William is now 31 years of age and so would have been 17 at the time of his brother's death.

10. There is an unsigned letter of support from Mrs Crosby's mother, Kathleen (who is now 83 years of age) and three of her four sisters, Anne Crosby, Jane Child, and Sarah Lovell (all now said to be in their 60s). It is said that Laura Crosby's father, Samuel, had also supported his daughter's wishes before his death. This letter reads:

We all wish to express our full and heartfelt support for the petition by Laura Crosby, Eddie's mother, seeking to exhume his remains for cremation.

We have discussed this matter thoroughly as a family and are entirely in agreement with Laura's reasoning for making this difficult and emotional decision at this time. Laura was placed under tremendous pressure in the immediate aftermath of Eddie's death, which was caused by a drunk driver. The circumstances were devastating, and she was emotionally overwhelmed, particularly as Eddie had to undergo two post-mortems. We understand that she was told by the coroner that burial was the only option available to her at the time.

In our view, had she not been consumed by grief and pressured to proceed quickly, Laura would never have chosen burial, particularly in what we now know to be consecrated ground. Her decision at that time has caused her great distress for many years; we all believe that now is the right time to honour her original wishes and bring her some measure of peace.

Edward is the only member of our family to have been buried, and it is likely to remain that way. The thought of him being alone in a cemetery is something we all find difficult to accept. Cremation would allow Laura to be able to move if she so wished and not feel she would have to leave her son behind. No one in our close family has any connection to where Eddie is buried.

Please accept this letter as a clear and unified expression of our strong support for Laura's petition.

11. There is an unsigned, and undated, letter from Edward's father, Mr Mike Lynch, again addressed 'To Whom It May Concern'. He remarried in 1996, and is now aged 60. It is said that Mike Lynch does not wish to be actively involved in this faculty petition. However, he does wish to clarify his position, and to acknowledge the circumstances surrounding his absence from involvement. This document reads:

Edward was tragically killed on my birthday, 15 April 2011. At the time I was a serving Police Chief Inspector with the Thames Valley Police. The emotional impact of this has been profound and long-lasting both at work and at home. Myself and my family have never been able to celebrate my birthday ever since that awful day and my work life was equally unbearable

While I was closely involved in Edward's life and we shared a strong bond, I found myself emotionally unable to participate in any of the original funeral arrangements at the time of his death. I trusted Laura to make all decisions relating to Edward, and she has done so with care, respect, and integrity.

I have never been able to visit his grave and it is unlikely I will ever feel able to. I understand Laura's reasons why she wishes for him to be cremated. I have always supported her with what she believed to have been right for Edward. While I have not visited Edward's grave, my absence does not reflect a lack of care or connection but rather a personal struggle with the trauma of his death.

12. A letter to the petitioner from the Clerk of Kidlington Parish Council, dated 8 April 2025, confirms that the council have no objection to her request for the exhumation of Edward Lynch from his grave if a licence is agreed and obtained from the Oxford Diocese office. This process will be under the supervision of Mrs Crosby's chosen funeral director, ensuring that the process is undertaken in a discreet and professional manner as part of the official exhumation

procedure. All relevant information, insurance, method statement, and other applicable documents should be in place, in advance of the chosen date, from the funeral director once Mrs Crosby has obtained a decision and authorisation.

13. A letter to the petitioner, dated 2 April 2025, from Mr Carl S. Boswell, a director of C. S. Boswell Independent Funeral Services, confirms that he would be satisfied to assist her with the exhumation of the human remains of her late son. Upon the grant of the faculty, Mr Boswell would discuss the process further and agree a date and a time for the exhumation to take place. The letter continues:

The process is one I am familiar [with] and have conducted recently and hereby explain the logistics below.

- We would arrange to have Edward's memorial stone removed and returned to our premises*
- We would visit the cemetery and erect a secure metal fence around the graveside*
- We would open Edward's grave and dig down to coffin level*
- After dark, we would exhume Edward's remains and return him to our Kidlington Funeral Home*
- The grave will be filled back to earth level*
- We would then place Edward into a new chosen casket for cremation.*

Details will be discussed prior to the exhumation for the requirements of casket and cremation process.

I have spoken to Kidlington Parish Council and to two gravedigging companies. I have placed a request with them for the preferred team to assist me and am awaiting confirmation of who this will be.

14. When I first received the petition and its supporting documentation, I invited the Registry Clerk to ask the petitioner for a copy of her will or, if she had not made one, details of her statutory next-of-kin (presumably her surviving son). I explained that if I should permit the exhumation requested, I would be likely to make it a condition that Mrs Crosby's personal representatives should undertake to have the cremated remains of her son buried with the petitioner when her time should come.

15. Mrs Crosby's email response was that she did not yet have any official will. Due to the uncertainty regarding Edward, she had not been able to make any formal will. Assuming she were to die before William, then Mrs Crosby's wishes would be that she should be cremated, and that both her ashes and Edward's cremated remains should go to William. He now has two very young children and he has not really thought about his wishes yet. Mrs Crosby would not want to assume that William would want to remain with Edward and herself. However, William is said to be certain that whatever he decides for himself, Edward should remain with his mother. Mrs Crosby has asked William to put this in writing; and she will send this on to the Registry as soon as she receives it.

16. William has written a signed letter to the Chancellor, dated 7 May, in response to my request for assurance regarding the long-term care and unity of the cremated remains of his brother, Edward Lynch, and his mother, Laura Crosby. This reads:

I confirm that it is my mother's clear and longstanding wish that, following the proposed exhumation and cremation of Edward, his ashes remain with her until her death. I further confirm that upon her passing, it is both her and my intention that their ashes remain together.

As their next of kin, I am willing to undertake the responsibility of ensuring that Edward's ashes remain with those of my mother following her death, in accordance with her wishes. While I have not yet made a final decision regarding my own arrangements, I understand the importance of this condition and am prepared to uphold it.

I trust this confirmation will assist you in your consideration of my mother's petition, which I continue to support fully.

Analysis and conclusions

17. I am satisfied that all the surviving near relatives of the late Edward Lynch consent to the proposed faculty for the exhumation of his human remains being granted, with a view to their immediate cremation and eventual re-interment with the cremated remains of his late mother when her time comes. It is therefore appropriate to dispense with the giving of any public notice. Since I am satisfied that this is a clear case, I have not thought it necessary to call for any written representations, or to hear any oral evidence.

18. On any application for a faculty authorising the exhumation of human or cremated remains – and no distinction is to be made between them – essentially three matters fall for consideration:

- (1) The 'threshold' condition of whether the court has the necessary jurisdiction to order their exhumation.
- (2) Whether the court should exercise its discretion to make such an order.
- (3) The conditions subject to which any exhumation should be ordered.

19. The decision of the Court of Arches (the appeal court for the Southern Province of Canterbury) in *Re Blagdon Cemetery* [2002] Fam 299 authoritatively establishes that the interment of human or cremated remains in consecrated ground is intended to be permanent, and that such remains should not be treated as 'portable'. Before a faculty for exhumation may be granted, the circumstances must be truly exceptional. It is for the petitioner to satisfy the court, on the balance of probabilities, that there are special circumstances which constitute good and proper reason for making an exception to the norm that Christian burial is final. At paragraph 36 of their judgment, the Court considered a number of possible special factors that might constitute such good and sufficient reason. One such special factor (considered at paragraph 36 (vi)) is the creation of a family grave. This is something to be encouraged, both as an expression of family unity, and because such family graves are environmentally friendly in constituting an economical use of land for burials. Thus, the bringing together of the remains of family members in a single

grave may provide a special reason for permitting an exhumation, despite the lapse of a long period of time since the first burial.

20. Despite Mrs Crosby's wishes for her cremated remains ultimately to be laid to rest with those of her late son, Edward, I am satisfied that this threshold condition is not available to Mrs Crosby on the particular facts of the present case. That is because the Court of Arches made it clear that where no burial has yet occurred in a family grave, clear evidence as to the existence of a legal right to such a grave would be required to justify the exhumation of the remains of a child who had predeceased their parents. At paragraph 40, the Court expressly stated that in allowing the appeal in that case,

... 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. Where special circumstances are relied upon in respect of a child who has predeceased his or her parents, it will be insufficient if there is simply a possibility of establishing a family grave. As in this case there would have to be clear evidence as to the existence of the legal right to such a grave if no family member was already buried in it.

Here Mrs Crosby has not yet made any arrangements to acquire any grave space to hold the cremated remains of herself and her late son. But that does not mean that Mrs Crosby's wish, ultimately, for her cremated remains to be laid to rest with those of her late son is of no relevance at all to the outcome of this petition. Provided some other threshold condition is satisfied, and the necessary jurisdiction to order the exhumation of Edward's cremated remains is established, Mrs Crosby's desire to create a family grave may be relevant when the court moves on to consider whether it should exercise that jurisdiction in Mrs Crosby's favour.

21. I am satisfied, however, that there does exist another special factor in the present case which makes it an exception to the norm of permanence, and which founds the necessary jurisdiction to grant a faculty for exhumation. In *Re Blagdon*, the Court of Arches recognised that a mistake might amount to exceptional circumstances justifying a faculty for exhumation. One example of such a mistake is the interment of human remains in the wrong grave plot. The ensuing difficulties have to be sorted out as fairly and sensitively as possible; and this will usually involve permitting the exhumation of the human remains. But an operative mistake as to the legal significance, and effects, of the location of a grave is another of the recognised cases in which it may be appropriate for such an exception to be granted. At paragraph 36 (iii) of *Blagdon*, the Court stated:

*A mistake may also occur due to a lack of knowledge at the time of burial that it was taking place in consecrated ground with its significance as a Christian place of burial. For those without Christian beliefs it may be said that a fundamental mistake had been made in agreeing to a burial in consecrated ground. This could have been a sufficient ground for the grant of a faculty to a humanist in *In re Crawley Green Road Cemetery, Luton* [2001] Fam 308 and to orthodox Jews in *In re Durrington Cemetery* [2001] Fam 33, without the need for recourse to the Human Rights Act 1998. The need for greater clarity about the significance of consecrated ground in cemeteries, in particular, is demonstrated by these*

examples and we reiterate our plea for more readily available information so as to reduce the chances of such mistakes occurring again in the future.

In the case of *Re Hither Green Cemetery* [2018] ECC Swk 3, (2019) 21 Ecc LJ 249, in the diocese of Southwark, Chancellor Petchey (at paragraph 17) recognised

*... another category of mistake which arises when a person does not know that the ground in which the remains have been interred is consecrated. If he or she **had** known, the person concerned would not have organised the burial in the consecrated ground. In these circumstances there is an operative mistake, which the Court of Arches said would justify exhumation.*

22. Although I have been unable to locate Mrs Crosby's purported citation from the judgment in *Blagdon* which I have reproduced at paragraph 5 above, it would seem to me accurately to encapsulate what is said at paragraphs 26 and 27 of the judgment, as follows:

26. Many people choosing to have their relatives or friends buried in a churchyard or in the consecrated part of a local authority cemetery may have little or no understanding of the Christian theology of burial as outlined in the passages we have quoted above from the Bishop of Stafford. It is, therefore, very important that cemetery managers and funeral directors give a simple explanation to the bereaved about the difference between consecrated land, to which the theology of burial has application, and unconsecrated land. Members of the public do have choices nowadays in relation to burial and cremation and places of disposal of the dead, and they need to be informed in making their choices. We hope that the principles we have stated above will be noted and used for the purpose of providing such information.

27. It is important that any guidance issued by cemetery managers or funeral directors should make it clear that permanence of burial is the norm in relation to consecrated land, so that remains are not to be regarded as 'portable' at a later date, because relatives move elsewhere and have difficulty in visiting the grave.

23. In the instant case, the evidence of Mrs Crosby, and all the members of her family who have communicated with the court, speak with one voice in asserting that she was never informed of either the fact, or the consequences, of Edward's burial in a consecrated part of the parish council's cemetery. I note that there is no reference to the consecrated status of Edward's grave space in the deed which granted Mrs Crosby the exclusive right of burial in that space. The question then arises, what would the petitioner have done had she known the full facts, and the various alternative options available to her? I recognise that in her signed statement to this court, Mrs Crosby does not positively assert that had she known the true position, she would not have agreed to Edward's remains being buried in this particular grave space, but would have insisted upon them being cremated. What she says is that, had she been properly advised of the implications, she **"may have insisted on cremation from the outset"**. I recognise also that the burden rests on Mrs Crosby to establish the existence of an operative mistake. I have considered whether, in order to address this potential gap in her evidence, it would have been appropriate to convene a court hearing (albeit remotely by way of video-link) where Mrs Crosby might have been called to give evidence, enabling this point to be clarified with her, and tested. However, my conclusion was that putting Mrs Crosby to the ordeal of giving oral evidence, after an interval of

some 14 years, concerning an intensely distressing matter, on a hypothetical, and counter-factual, basis, would have been unlikely to elicit any reliable evidence of any true value. The reality is that the status of the grave space, and the spiritual, and legal, consequences of that status, were never raised with Mrs Crosby at the time. In those circumstances, I consider that the court should proceed on the footing that disclosure of the true facts would have caused her to pause, and reflect, on her decision to have Edward's remains buried, rather than cremated; and that this probably would have made a difference to Mrs Crosby's decision to proceed with Edward's burial in that part of the burial ground. Had she persisted in her original course, this would probably have been because (as her maternal relatives assert) "*she was told by the coroner that burial was the only option available to her at the time*". I also note that in the view of Mrs Crosby's maternal relatives, "*had she not been consumed by grief and pressured to proceed quickly*", Mrs Crosby "*would never have chosen burial, particularly in what we now know to be consecrated ground.*" In this context, I bear in mind the "*significant emotional distress and pressure*" which Mrs Crosby says that she was under at the time. I also bear in mind the observation of Chancellor Petchey (in the diocese of Southwark) at paragraph 8 of his judgment in *Re St Andrew's Church, Ham* [2019] ECC Swk 1, (2019) 21 Ecc LJ 383 that "... *whenever a child predeceases his or her parents, difficult issues may arise as to the appropriate arrangements in respect of his or her remains*". The fact that Edward was suddenly struck down and killed by a drunken driver, without any prior warning, and just as he was about to embark upon his GCSE examinations, must have caused even more grief and pain to both his parents over and above that which is naturally caused by the expected death of any loved one.

24. I also have to bear in mind that, at its heart, this is a case where Mrs Crosby has changed her mind about the disposal of Edward's human remains. Ultimately, Mrs Crosby agreed to a burial, even though her heartfelt wish — one she had always held — was for Edward to be cremated. Some 14 years later, she now wishes to give retrospective effect to that heartfelt wish. At paragraph 36 (iii) of the judgment in *Blagdon*, the Court of Arches emphasised that a change of mind as to the place of burial on the part of relatives should not be treated as an acceptable ground for authorising exhumation. The same should apply to any change of mind as to the method of disposing of the deceased's remains, as where cremation is sought as an alternative to a full body burial. In the present case, it is the wish for Edward's body to be cremated that lies at the heart of Mrs Crosby's decision to seek to have his body exhumed. Indeed, she makes it clear she was unaware that Edward had been buried in consecrated ground until after she had already applied for a Ministry of Justice licence for the exhumation of his human remains. However, it has to be borne firmly in mind that Mrs Crosby should not be viewed as opportunistically seeking to take advantage of a mistake as to the status of the grave space in which her son was buried in order to found a case for exhumation based on permissible '*exceptional circumstances*' in a case where, in reality, she has simply changed her mind. The reality is that had Edward not been buried in consecrated ground, Mrs Crosby would not have needed to assert, and establish, the existence of '*exceptional circumstances*' in support of her application. I am satisfied that, notwithstanding Mrs Crosby's change of mind, exceptional circumstances do exist in the present case to justify the exhumation of Edward's remains.

25. However, I must go on to consider the appropriate way of disposing of Edward's remains. This is relevant both to the exercise of the court's discretion to order their exhumation, and also to the conditions to be imposed as part of any faculty. The normal principle is that human, or cremated, remains that have been exhumed from consecrated land should be re-

interred in consecrated land. This reflects the fact that a burial in consecrated ground is likely to have been accompanied by the rites of the Church, with the usual words commending the departed to God, and the committal of their remains to rest in peace as part of the process of bidding farewell to the deceased and entrusting their remains to God as a preliminary to the deceased's eventual resurrection. There is also the practical consideration that re-interment in consecrated ground will attract the continuing protection of the faculty jurisdiction, with its presumption of the finality of Christian burial. However, it is not inevitable that the consistory court will require the recommitment of exhumed remains in consecrated ground.

26. Thus, in *Re Bognor Regis Town Cemetery* [2024] ECC Chi 3, (2024) 26 Ecc LJ 351 (in the diocese of Chichester) a man had died in 2023. The whereabouts of any relatives being unknown at the time, those who had assumed the responsibility for his burial arranged for him to be buried in a consecrated part of the town cemetery. When the man's family became aware of the burial, they applied for a faculty to allow them to exhume the deceased's body, in order to have it cremated, and then to scatter the ashes elsewhere. The reason given by the family for their application was that the deceased had been a lifelong atheist, who would not have wished to be buried in a Christian burial ground. Chancellor Hill KC decided that the Christian burial had been a mistake. He therefore granted a faculty for the exhumation and the disposal of the deceased's ashes in due course as the family thought fit. At paragraph 20 of his judgment, the Chancellor added this:

For completeness I mention reburial. It is axiomatic that the requirement for reburial in consecrated ground is not applicable when the reason for the exhumation is that the Christian burial had been a mistake, incompatible with the important right to freedom of religion or belief. The family of Mr Reid are at liberty to have his body cremated and to deal with his ashes as they see fit. They may well need to take time for reflection before coming to a common mind.

That case is clearly distinguishable because the core reason for the exhumation was the deceased's reasoned objection to burial in consecrated ground on the grounds of his atheistic beliefs. I note that there is no suggestion in the evidence that Mrs Crosby has any violent objection to the tenets of the Christian faith in general, or the Anglican Church in particular. However, that authority does demonstrate that re-interment in consecrated ground is not an invariable concomitant of the grant of a faculty. A more pertinent illustration is the case of *Re Hither Green Cemetery* 2018 ECC Swk 3, (2019) 21 Ecc LJ 249, mentioned briefly above and considered in more detail in paragraphs 31-32 below. Thus, however uncomfortable it may feel to a Christian, as suggestive of a holding on to the body as the 'symbol' of human life, rather than giving it back to God, I do not consider that Mrs Crosby's wish to retain her late son's ashes with her until her eventual death constitutes a good and sufficient reason for denying her faculty petition.

27. It may be instructive to consider the approach of the secular courts to disputes concerning the disposal of human remains. I recognise that this is not an infallible guide because in the case of exhumation from consecrated land, the body will already have been committed to rest in the ground (with the consequences mentioned at paragraph 25 above). In *Anstey v Mundle* [2016] EWHC 1073 (Ch), [2016] WTLR 931, Mr Jonathan Klein (sitting as a deputy judge of the Chancery Division) identified the following, non-exhaustive, factors as relevant to the exercise of

the court's jurisdiction to resolve a dispute between the deceased's relatives as to the person to whom their body should be released for disposal:

- (1) any wishes expressed by the deceased;
- (2) the reasonable requirements and wishes of the family and friends who are left to grieve for the deceased;
- (3) the location with which the deceased was most closely connected; and, most importantly,
- (4) the desirability of disposing of the body with all proper respect and decency and, if possible, without any delay.

In doing so, Mr Klein drew upon the earlier judgment of Miss Sonia Proudman QC (also sitting as a deputy High Court judge) in *Hartshorne v Gardner* [2008] EWHC B3 (Ch), [2008] WTLR 837. This may afford a useful check-list of factors to be considered when determining how exhumed remains should be disposed of.

28. Against this background, I set out my conclusions. First, as to jurisdiction, I consider that Mrs Crosby's ignorance of the fact that her son, Edward, was being laid to rest in consecrated ground, and the resulting legal presumption in favour of the permanence of burial as the norm where consecrated land is concerned, gave rise to a relevant mistake founding jurisdiction in the court to order the exhumation of Edward's human remains. From the outset, there was a fundamental mistake of fact on the part of the petitioner as to the nature of the grave plot in which she had agreed to have her son's body interred, and its legal consequences. Second, as to the exercise of the court's discretion, I consider that the following additional special factors are sufficient to make the present case an exception to the normal rule that the committal of Edward's body to consecrated ground should be treated as permanent:

- (1) The tragic circumstances of Edward's sudden, and unnatural, death at a time when he had had no reason to give any thought to, or express any views about, how he might wish his body to be disposed of after his death.
- (2) The consequent extreme grief, pain and anguish suffered by both his parents over and above that which is naturally caused by the expected death of any loved one.
- (3) The significant additional emotional distress and pressure from the school to expedite the funeral arrangements for Edward due to the upcoming GCSE period.
- (4) Mrs Crosby's emotional incapability at the time of considering the long-term consequences of her decision, her deep regrets about it, and the fact that it has haunted her ever since.
- (5) Mrs Crosby's wish to have her late son's remains cremated so that they may be laid to rest with her own cremated remains in the due course of time. Her evidence is that:

No other member of our family has been, or wishes to be, buried, and I myself intend to be cremated. It is unlikely that I will remain in this area indefinitely, and I do not want Edward to remain in a cemetery with which our family has no long-term connection, nor do I want my surviving son to feel any obligation.

(6) The agreement of all of Edward's close relatives — his father, his brother, his maternal grandmother, and three of his four maternal aunts — to the exhumation, and their support for this petition. At paragraph 36 (iv) of *Blagdon*, the Court of Arches considered that the views of close relatives were very significant, and fell into a different category from other expressions of local support.

(7) Whilst I am conscious of the objection that precedent does not operate in the realm of fact, as distinct from the area of law, it has long been recognised that a decision in one case may well act as a precedent in another case because of the desirability of securing equality of treatment as between petitioners (so far as the circumstances of the individual case permit). As will appear, I consider that there are similarities between this case and that of *Re Hither Green Cemetery* [2018] ECC Swk 3, (2019) 21 Ecc LJ 249 (mentioned above, and discussed further below).

(8) There is nothing, on the highly unusual facts of the instant case, that could possibly be said to suggest that any undesirable precedent is, or is at risk of, being created.

29. I am concerned about the lapse of time since Edward's burial, and the delay in making this application. I consider that no sufficient explanation has been offered for such delay. All that Mrs Crosby says about this is that:

This petition is not made lightly, but with deep and considered intention to honour Edward in the way I had originally wished, and to bring a measure of peace and resolution to a decision that has burdened me for over a decade.

I bear firmly in mind, however, that at paragraph 36 (ii) of their judgment in *Blagdon*, the Court made it clear that

... time alone will be determinative. It may well be a factor in relation to assessing the genuineness of the petitioner's case. Long delay with no credible explanation for it may well tip the balance against the grant of a faculty but lapse of time alone is not the test.

I do not consider that the lapse of time since Edward's burial should outweigh the various factors that I have identified as pointing in favour of ordering the exhumation of his body. I do not consider the delay to be decisive on the particular facts of the present case.

30. I must also bear in mind that the reason underlying Mrs Crosby's desire to exhume Edward's remains is so that they may be cremated, and that she may keep the cremated remains at home with her with a view to their future interment with her own remains in the due course of time. That wish to retain the cremated remains at home is the precise opposite of what has been considered appropriate by the Christian culture of this country over many hundreds of years. It is at odds with the Anglican theology of burial (as explained above). However, I recognise that Mrs Crosby is in her late 50s and so has many years of her life left to her. She says that it is unlikely that she will remain in the Kidlington area indefinitely. In such circumstances, it is unrealistic to expect her to make any concrete arrangements for the disposal of her own cremated remains at the present time. And it would defeat Mrs Crosby's whole object, in seeking the exhumation of her late son's remains, of ensuring that they can be laid to rest with her own cremated remains in due course to make it a condition of any faculty that she should do so. As appears from my recital of the background facts, I have already taken steps to obtain

confirmation from Mr William Lynch, Mrs Crosby's sole surviving son, and presumptive statutory next-of-kin, that he is

... willing to undertake the responsibility of ensuring that Edward's ashes remain with those of my mother following her death, in accordance with her wishes. While I have not yet made a final decision regarding my own arrangements, I understand the importance of this condition and am prepared to uphold it.

Having accepted that there exist exceptional circumstances, I do not consider that it would be appropriate for me to refuse a faculty for exhumation on the basis of what is to happen to Edward's remains thereafter. It seems to me that the important point is that, if I grant a faculty, it is evident that Mrs Crosby will treat her son's remains with all due respect.

31. The instant case seems to me to bear certain similarities to the case of *Re Hither Green Cemetery* 2018 ECC Swk 3, (2019) 21 Ecc LJ 249 (mentioned above). There a mother sought permission to exhume the remains of her child (who had died, aged five, from a brain tumour) in order to have the remains cremated. She then wished to keep the cremated remains with her at the parents' home. The funeral had involved a humanist ceremony; but the remains had been buried in a consecrated part of the cemetery. The child's parents were unaware that the grave was in consecrated ground. At the time of the funeral, the parents had thought that burial in the local cemetery was the appropriate course of action. However, as time passed, and after the petitioner had moved house, so the journey to the cemetery was much longer, she wished that her son had been cremated, so that she could keep his ashes at her home. The father supported her wishes. The petitioner was not a Christian, and she did not share the Christian view that burial was permanent. Chancellor Petchey found that there were exceptional circumstances to justify the grant of a faculty.

32. Having considered *Re Blagdon* and the norm that Christian burial is permanent, the Chancellor took the view that the difference between a mistaken understanding about the nature of the burial ground which was operative at the time of the funeral and a change of mind at a later date about the place of burial was very slim. He noted that the grounds for exhumation should be exceptional; but he found that exceptional grounds existed based on the petitioner not having known the nature of the ground at the time of burial, the stress that she was under at the time of the funeral, and the continued stress that the burial was causing her. Having decided that exceptional grounds justifying exhumation existed, the Chancellor also had to consider the issue of the appropriate disposal of the exhumed remains. He found that the petitioner did not share a belief in the permanence of Christian burial, and that to insist on re-burial would impose that belief upon her in contravention of her right to freedom of religion and belief. Accordingly, he granted the faculty to exhume the son's remains with a view to their cremation and retention at the parents' home, subject to the condition that they should be treated with respect. In foot-note 23 to his judgment, Chancellor Petchey acknowledged that:

It does not require much imagination to see that there are practical complications to retaining the ashes of someone who has died at home, of which loss and damage are the most obvious. However these practical complications would arise in any case in which the executors of someone who has died made these arrangements. Before interment in consecrated ground there exists a free choice to deal with remains in this way.

33. I find it difficult to distinguish the facts and circumstances of that case from those of the present.

34. For all these reasons, I will grant the exhumation faculty sought by the petitioner. The faculty will be granted subject to the following conditions:

- (1) The exhumation will be undertaken within three months after the grant of the faculty.
- (2) The exhumation will be conducted by C. S. Boswell Independent Funeral Services (or some other appropriately qualified funeral director) in accordance with the terms of their letter to Mrs Crosby dated 2 April 2025, and at her expense, and under the supervision of appropriate representatives of the Clerk to Kidlington Parish Council.
- (3) The exhumed remains of Edward Lynch will be taken immediately after the exhumation to a suitable funeral home, and then on to a crematorium for cremation as soon as reasonably practicable.
- (4) Edward Lynch's close relatives will be given appropriate and sufficient notice of the date, time, and venue of his cremation and permitted to attend if they so wish.
- (5) At all times, Edward's human and cremated remains will be treated with all due respect and dignity. They will be retained within a suitable durable container in the possession of the petitioner until her death or further directions of this court (for which purpose there will be general permission to any close relative of Edward to apply by letter to the Registry). After the death of the petitioner, the container will be interred with the human or cremated remains of the petitioner in accordance with her wishes.
- (6) At or about the same time as the exhumation, the existing memorial stone commemorating Edward Lynch will be safely removed from his grave and returned to the petitioner for safekeeping at her home, and preserved by her as a memorial to Edward Lynch.
- (7) Within 14 days after the exhumation, the petitioner is to release and assign Edward's grave space back to Kidlington Parish Council and renounce any and all rights thereto so that it may be available for re-use.
- (8) The petitioner is to inform the Registrar upon completion of the exhumation.

35. The petitioner must pay the costs of this application; but, in the usual way, I charge no fee for this written judgment.

David R. Hodge

The Worshipful Chancellor Hodge KC

The Fifth Sunday after Easter

25 May 2025