Neutral Citation Number: [2026] ECC Win 2

IN THE CONSISTORY COURT
OF THE DIOCESE OF WINCHESTER

RE ST MARY EXTRA CEMETERY, SOUTHAMPTON

AND

THE REMAINS OF SAMANTHA JANE MILLER

JUDGMENT

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1. I have received a Petition dated 20 August 2026 from Mr Andrew Miller seeking a faculty for the exhumation of the body of his late wife from grave C24-142 in the St Mary Extra Cemetery, Portsmouth Road, Scholing, Southampton and her reinterment in the same cemetery in grave J62-050. The current grave is in the consecrated part of the cemetery and the proposed new grave is in the unconsecrated part of the same cemetery.

2. Mrs Miller died on 16 June 2026, aged 49 and was buried on 9 July 2026 following her funeral service. The Petitioner submits that the arrangements for Mrs Miller's funeral were made through Jonathan Terry Independent Funeral Directors. They did not offer the Petitioner and his family the opportunity to choose the location of her burial within the cemetery. The Petitioner states that the location of Mrs Miller's grave has caused the family considerable distress as it is located in an older part of the cemetery and is beneath and surrounded by trees. The Petitioner would not have selected the location of the current grave, had he been given the opportunity to choose the location. He would have chosen a grave such as J62-050 which is close to where other relatives are buried. The Petitioner submits that Mrs Miller's reinterment would be presided over by the same priest who presided over her original interment.

3. The Petition is supported by a letter from Jonathan Terry dated 19 August 2026. He apologised for what had taken place. He explained that ordinarily a family would be

offered the opportunity to attend the cemetery and select the grave themselves and that this should have happened, but did not happen. Mr Terry explained that the company had reviewed its procedures to ensure that such an omission could not happen again.

4. The Petition is also accompanied by a letter from Bereavement Services at Southampton City Council dated 21 August 2026, which raised no objection to the Petition and would consent to the exhumation subject to the obtaining of a faculty.

5. I have had regard to the judgment of Re Blagdon Cemetery [2002] Fam 299, where the Court of Arches considered the principles underlying Christian burial and the circumstances that could be considered when considering a Petition seeking a faculty for exhumation. Of relevance to this Petition, the Court of Arches in Re Blagdon Cemetery[1] considered that a Consistory Court should not object to a Petition that sought to exhume from consecrated land and to reinter in unconsecrated land owned and managed by a Local Authority and protected by section 25 of the Burial Act 1857: *'Apart from this legal protection afforded to remains in the unconsecrated part of a cemetery, it can generally be assumed that local authorities carry out their legal responsibilities for care and maintenance of their cemeteries. Thus, if remains are to be removed from the consecrated ground of a churchyard, or the consecrated part of a cemetery, and to be re-interred in the unconsecrated part of the same or another cemetery it is reasonable for the Consistory Court to conclude (certainly in the absence of evidence to the contrary) that the new grave will be cared for in a seemly manner and will be protected in this sense.'*

6. The Court of Arches emphasised the general principle of permanence of Christian burial[2]: *'The disturbance of remains which have been placed at rest in consecrated land has only been allowed as an exception to the general presumption of permanence arising from the initial act of interment.'*

7. In considering whether an exception exists to the general presumption of permanence, I note that this Petition was lodged 40 days after the burial, which I consider does not amount to a delay or undermine the Petition.

[1] Re Blagdon Cemetery [2022] Fam 299 paragraph15;
[2] Re Blagdon Cemetery [2022] Fam 299 paragraph 20;

8. The Court of Arches in Re Blagdon Cemetery[3] considered that *'a mistake as to the location of a grave can be a ground upon which a faculty for exhumation may be granted. We also agree that a change of mind as to the place of burial on the part of relatives or others responsible in the first place for the interment should not be treated as an acceptable ground for authorising exhumation.'* In my view, the first part of this exception has been established by the Petitioner and the second part of this exception does not apply.

9. Taking all matters into consideration, I have determined that the Petitioner has established that a mistake occurred over the selection of Mrs Miller's current grave, which would not have occurred had the funeral directors consulted with the Petitioner. I consider that this mistake amounts to an exception to the permanence of burial. Accordingly, I grant the Petition for a faculty for the exhumation of the remains of Mrs Samantha Jane Miller from grave C24-142 in the St Mary Extra Cemetery, Portsmouth Road, Scholing, Southampton and her reinterment in the same cemetery in grave J62-050.

10. There is no order for costs, save that the Petitioner will be required to pay any expenses incurred by the Court.

MARK B. RUFFELL

CHANCELLOR OF THE DIOCESE OF WINCHESTER

Tuesday 6 October, 2026.

[3] Re Blagdon Cemetery [2022] Fam 299 at paragraph 36 (iii);