

IN THE CONSISTORY COURT OF THE DIOCESE OF SALISBURY

IN THE MATTER OF TROWBRIDGE St THOMAS, HOLY TRINITY

AND IN THE MATTER OF THE PETITION OF SUSAN DAWSON & CAROL DAWSON

JUDGMENT

Introduction & Background

1. This is a judgment arising from a petition dated 27th July 2025 lodged by Dr Susan Dawson and Carol Dawson (“the petitioners”) by way of an application for a faculty to exhume the cremated remains of their mother Margaret Louise Dawson (“the deceased”). I understand the petitioners sought “out of court” advice from the Chancellor in the latter half of 2019. It is due to that advice that the matter has come before me as deputy chancellor to consider the matter afresh with the evidence which has been provided with the petition and as a result of subsequent directions given by the chancellor. This application comes on the back of that 2019 request and has been dealt with on paper with no oral hearing. The petitioners were provided with the opportunity to seek an oral hearing by way of email dated 5th August 2025 setting out the first two directions made by the chancellor namely: 1) for the petitioners to identify any other living near relatives of the deceased; and 2) the petitioners shall provide in writing their views on whether the matter should be disposed of on the basis of written representations or at a hearing.
2. The directions were responded to by way of email dated 11th August 2025. In response to the first direction Dr Susan Dawson confirmed that the deceased’s husband died in 2019, she and her sister are the deceased’s only children. Carol Dawson has three children who are therefore grandchildren (Amy Cooper, Kate Coward and Jack Coward) and Dr Susan Dawson has no children. In the same email Dr Dawson confirmed “*We would like our case to be given full consideration. We agree to have a written representation or will attend a hearing if the*

chancellor thinks this is the most appropriate method to hear all the information of our case.” The chancellor having given the matter due consideration then gave further directions by email dated 26th August 2025 which confirmed that pursuant to rule 14.1 of the Faculty Jurisdiction Rules 2015 the matter shall be disposed of by way of written representations and provided 28 days for the petitioners to lodge any further written evidence or submissions. In addition, and very helpfully in my view, the chancellor provided, through the registry, a copy of the judgment in the case of *Re Blagdon Cemetery*¹, a decision of the Court of Arches which sets out a summary of the law and the approach that should be taken in deciding a petition in cases such as the one before me.

3. Dr Dawson responded to those directions by email dated 3rd September 2025 within which she stated that upon reading the *Re Blagdon* case the petitioners had sought and forwarded further information from Portchester Crematorium in support of the application. For completeness by email of 8th September 2025 Dr Dawson confirmed the information from Portchester Crematorium was the final submission.
4. I have duly read and considered in detail all the email correspondence and documentation/representations provided by the petitioners.

The Relevant Facts

5. The petitioners are the daughters of the deceased and seek to exhume her cremated remains from the churchyard of Holy Trinity Church in Trowbridge, Wiltshire and have them scattered at Porchester Crematorium, Fareham, Hampshire. The deceased's ashes were interred in 1977.
6. In support of their application the petitioners explain that their mother was born in Portsmouth and lived there for a significant part of her adult life, moving to Trowbridge in 1975 when their father changed employment. It appears that the whole family, and by that I assume the petitioners, relocated to the Trowbridge area. It was eighteen months after moving to Trowbridge that the deceased was diagnosed with and subsequently died from cancer. In representations I am told the petitioners were fifteen and seventeen and still at school. It goes without saying this would have been a distressing and upsetting time for the family and I am told the family was in shock, which is quite understandable. The late husband of the deceased

¹ [2002] Fam 299 (Court of Arches).

arranged the funeral, as would be the norm as the next of kin. The churchyard at Holy Trinity Church, Trowbridge provides a consecrated area within the churchyard with provision for a horizontal ground level ledger stone marking interred ashes. Upon receipt of the deceased's ashes following the cremation, her husband chose to have her ashes interred in the churchyard in an individual grave plot with a ledger stone.

7. In their written representations the petitioners explain that the ashes of their maternal grandparents and other relatives of their deceased mother (an uncle, aunt and cousin) were scattered in Portchester Crematorium. The petitioners explain that they regularly visit both locations but point to the fact it is in the middle of a busy roundabout on a major traffic route through the town. In addition, they raise concerns as to the future of the location with the church which they state no longer holds regular services on site.
8. The petitioner's father died six years ago and I take from the written representations that he was cremated; they explain there is no intention to have his ashes interred with their mother's in Trowbridge.

The Law

9. The law relating to the exhumation of a deceased person is well summarised in the judgment referred to above namely, *Re Blagdon Cemetery*, a decision of the Court of Arches. Within that judgment consideration is given to the issues which can arise when exhumation is from consecrated ground and the intention is to re-inter in unconsecrated ground. On the original application that was the case here, however, the petitioners have dealt with that issue by way of their final representations. The email of 3rd September 2025 explains that Portchester Crematorium has consecrated and unconsecrated areas for ashes to be interred/scattered and Dr Dawson confirms that it is in the consecrated area the petitioners seek to scatter the ashes should the application be successful.
10. The *Re Blagdon* judgment explains that the lawful disposal of a body has an aura of permanence about it and that permanence is reflected in the criminal offence which is committed if a dead body is disturbed without lawful permission. Permission can be given when exhumation is from consecrated ground by the consistory court, but such permission is the exception rather than the rule, acknowledging the general presumption of permanence which is explained in theological terms within the judgment.
11. The general approach is summarised at paragraph 33 where it is stated:

“...that a faculty for exhumation will only be exceptionally granted. Exceptionally means ‘forming an exception’ 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 exceptional is for the Chancellor to determine on the balance of probabilities”².

12. Paragraph 35 of that judgment provides further assistance:

“...we consider that it should always be made clear that it is for the petitioner to satisfy the Consistory Court that there are special circumstances in his/her case which justify the making of an exception from the norm that Christian burial (that is, burial of a body or cremated remains in a consecrated churchyard or consecrated part of a local authority cemetery) is final. It will then be for the Chancellor to decide whether the petitioner has so satisfied him/her.”³

13. It follows therefore that I need to find that the facts of this application as set out and argued by the petitioner have satisfied me that they establish special circumstances to justify the making of an exception to the presumption of finality. Such a finding can be reached if I consider it more likely than not that they do so.

Consideration

14. The raft of previous judgments which exist in this area of law helpfully set out some examples of factors which might give rise to a finding of an exceptional case. I shall address below those which are relevant to this application. I remind myself at this point that none of the factors are determinative either way and I should consider the merit or otherwise of each of the factors in reaching my decision.

Lapse of Time.

15. This is a factor which was considered in both *Re Christ Church, Alsager*⁴ and *Re Blagdon*, I agree with the chancellor in *Re Blagdon* that lapse of time alone is not necessarily determinative but a factor to take into account. In this case the deceased’s ashes were interred

² [2002] Fam 299 (Court of Arches).

³ *ibid*

⁴ [1999] Fam 142

in 1977, the petitioners contacted the registry for out of court advice in 2019, and then issued the petition in July 2025. Whilst I do not criticise lapse of time between each event, it does not appear as if this matter is something which has been at the forefront of the families' minds as a pressing matter. I note that the deceased's husband passed away in 2019 some 42 years after the interment and 6 years before this application. I note the out of court advice was sought in the same year as the death of the deceased's husband and it may be that it has since then become more of a concern for the family.

16. I take note of the petitioners in their supporting letter stating "*Our grandmother, a couple of years after our mother's death, expressed her unease and disappointment that her remains were not in Portsmouth with her father's ashes.*" This adds further weight to my view that whilst I accept that the deceased's daughters would now like their mother's ashes moved closer to her deceased relatives, it has not been a priority for the family.
17. The fact that it is now a matter for the family does not overrule the fact that the deceased remains have rested in their final resting place undisturbed for some 48 years.
18. As I set out above time is not determinative, but I do take note of the delay in coming to my decision.

Change of location.

19. The petitioners explain that the interment in Trowbridge is in a church yard of a church which is in the centre of a very busy roundabout on a major traffic route. They further add that the church no longer holds regular services on site. I have not had any independent evidence supplied to support these assertions. However, a cursory look at the website of the mission community of which the church is now part demonstrates that it is used for occasional services and as a hub for the local community. I note from the map the location and can see the how the church and graves are situated, the churchyard and environs appears from photographs to be planted with mature trees. I do not accept that the future of the church is in jeopardy. I find that the current evidence is to the contrary.
20. I do not agree that the location of the church, its current usage or the petitioners' concerns as to the future of the church and churchyard establish special circumstances to permit the exhumation.

21. The petitioners wisely and to their credit took note of the *Re Blagdon* judgment forwarded to them in considering the nature of the proposed new location. In doing so they supplied information that should the petition be granted there was a consecrated area into which the ashes could be interred in the new location. This obviates me considering whether this would have been an impediment to the exhumation.
22. When location is a factor other cases have considered the ease or otherwise of the petitioners visiting the grave. The petitioners in this case state that they do visit their mother's grave albeit they are not happy with the location and do not argue that the current location is an impediment to them visiting. Whatever the journey, they are making it to visit the grave.

Local/Family Support

23. I note that there are short supportive emails/notes from the deceased's grandchildren which were obtained in response to the request from the chancellor. Whilst I do not seek to criticise the length or their content, they are only indications that the authors do not object to the exhumation rather than offering any substantive argument as to why the petition should be granted. I find that there is support within the deceased's family for the exhumation, should I grant the petition.

Family Grave/Method of re-interment

24. One factor which has often been determinative is where the exhumation is to reunite a relative with others in a family grave. In this matter the family seek to exhume the box in which the ashes were interred and scatter them in the new location. I take note of the fact that the ashes of the deceased's father and mother were scattered at the Portchester location, along with other relatives.
25. This leads me to consider the nature of the current interment and proposed reinterment. I am told the deceased's ashes were interred in a box under a ledger stone, thereby a marked grave in consecrated ground. This was the decision of the petitioner's father who has sadly passed away since that time and is therefore unable to provide any view as to the rationale for his decision-making or indeed the possible exhumation and reinterment. I have already noted that the petitioners state they were not consulted as to what should happen to the ashes and indeed, they were young at the time. The petitioners suggest that had the family been

consulted “...it is very likely that it would not have been Trowbridge but with her relatives in Portchester.” I cannot find without contemporaneous evidence what might or might not have been in the minds of the deceased’s then family. The petitioners in their supporting letter accept that they are not aware of any specific instructions left by their mother prior to her death.

26. It is quite usual for the spouse of a deceased to determine the nature of any funeral or cremation and the final resting place. There will be occasions when family disagree as to what should and/or did happen. However, I do not accept that establishes a special circumstance to permit the interference with the finality of burial. If I did, I would be reversing the decision of her then next of kin with no evidence as to the rationale for the burial or to suggest it was against the deceased’s wishes upon which to make that determination.
27. The reinterment is to be a scattering of ashes rather than a reburial. The scattering of ashes is not in itself determinative in my view. I do note the law in this regard as it is helpfully set out in the recent case of *Re Lambeth Cemetery*⁵ in which Petchey Ch. was called upon to consider the exhumation and subsequent cremation of remains with a scattering of the ashes. In his judgment the chancellor sets out the law under Canon 38 and the advice which has been provided by the Convocation of York and more recently Legal Advisory Commission namely:
*“It is unlawful for an Anglican minister to scatter (as opposed to strewing) cremated remains **as to do so is irreverent** (emphasis supplied).”*
28. Petchey Ch. goes on to opine that scattering as opposed to strewing is not always irreverent and is a matter of fact. Whilst I acknowledge my brother chancellor’s opinion which ultimately led him to grant the faculty, I cannot apply the argument to this case. It is evident from the Lambeth case that amongst other factors, the remains of the exhumed body were to be united with other members of his family to be scattered together. This is probably the closest one can get to a ‘family grave’ scenario when the deceased are cremated. As I have set out above, this is not the case in the matter before me and I distinguish the *Re Lambeth* case on the facts.
29. The petitioners explain that the ashes of their mother’s parents were scattered at the Portchester location. However, this case would see the ‘scattering’ of further family ashes at

⁵ [2025] ECC Swk 2

the same site but many years later. I note that there is no intention for the ashes of their mother to be interred/scattered with those of her husband, nor for his ashes to be interred in Trowbridge. Whilst not stated explicitly it appears from the representations of the petitioners that this situation may have arisen following their father's remarriage. I have considered if this has a bearing on my decision, but I cannot find that this assists in establishing a special circumstance for the exception to finality.

30. It will no doubt have become apparent as this judgment is read that I am unable to find that the facts of this petition have satisfied me that they establish special circumstances to justify the making of an exception to the presumption of finality. I therefore refuse the petition and do not give permission to interfere with the finality of the burial of ashes of Mrs Dawson. I appreciate this is not the outcome the petitioners had hoped for and will no doubt cause upset. I hope that they will understand my reasoning and that whilst they may not agree with the decision which was taken by their father at the time of their mother's passing, Trowbridge was at the time considered to be her final resting place and should so remain.

JEREMY RAWLINGS

Deputy Chancellor

30th October 2025