

DIOCESE OF LICHFIELD NOTES FOR THE GUIDANCE OF PETITIONERS

Christian burial assumes that the interment of the dead is permanent. The remains of the dead interred in consecrated ground are under the protection of the Chancellor of the Diocese.

Occasionally a request is made for exhumation. Only if the Chancellor is satisfied that there are compelling reasons for allowing an exhumation, either of a body or of cremated remains, will he grant a faculty for that purpose.

Anyone considering applying for permission (known as a faculty) for exhumation will need to think carefully about the seriousness of what is being requested. These notes are intended to explain what steps must be taken if it is decided to go ahead with the application.

Recent cases in the consistory courts of this and other dioceses have severely restricted the circumstances in which such a faculty can properly be granted, and applications for exhumation are not generally successful. **However each case is decided on its own merits**, and please be assured that your application will be considered by the Chancellor according to the information you provide.

Exceptions are made for example in cases (i) where it is shown that there had been a mistake over the consequences of burial; or (ii) where the deceased expressed particular views prior to his death which had not been carried out; or where (iii) the intention is of re-burial in a family grave; (v) some cases have been allowed where there was no link between the person buried and the community within which the burial took place at the time of the death; (vi) there has also been an indication that exhumation might be allowed where the petitioner suffers from serious psychiatric or psychological problems, and where medical evidence demonstrates a link between that condition and the location of the grave. It is not possible to give an exhaustive list of the circumstances that are regarded as sufficient, and it is for the petitioner to set out, carefully, the particular factors which are relevant in the case, noting that the presumption is against exhumation and that an exceptional justification would need to be shown.

In all cases, support from all known relatives may be relevant, as may be their opposition. Petitioners should also seek the support of the incumbent and other people connected with the parish or council where the burial was originally and of the parish or council where the reburial is to take place.

The lapse of time since the burial is also relevant, as in some cases the period of time was held to be simply too long to accept as an exceptional reason.

If the burial was in a coffin then the advice of a funeral director should be sought as to whether the coffin is likely to be able to be disinterred without serious damage. Similarly where an exhumation of cremated mortal remains is concerned, it is particularly important to know whether the ashes were buried within a casket, or were poured into the ground. If in a casket then the likely condition of the casket needs to be considered; where the remains were poured into the ground, exhumation is probably impossible. It is very unlikely that the Court would approve the exhumation of cremated remains that were first buried in a casket in order to allow them to be scattered.

You should also consider:

1. The Chancellor will need to know that all the close family of the deceased have been consulted and that they agree to the proposed exhumation. Please supply details of any parents, children or siblings of the deceased person and ask them to send confirmation, in writing, that they have been consulted about the proposed exhumation, and whether they agree, or not. This can be done jointly. If you are not the spouse, nearest relative or personal representative of the deceased, you must supply the written consent of such persons. If permission were granted, where would the remains be reburied? Normally it is expected that reburial is into ground consecrated by the Church of England but this is not always required
2. You should seek the written consent of the incumbent and PCC from whose churchyard the exhumation is requested (or the Burial Authority in the case of a civic cemetery). You should also have the written consent of the incumbent and PCC (or Burial Authority) of the place where the remains are to be reinterred.
3. You should have a written statement from the Funeral Director to be commissioned to conduct the exhumation, giving his opinion as to the likely state of the casket or coffin
4. in the case of a coffin burial, you should seek a written statement from the environmental health department of the Local Authority that exhumation is not considered in this instance to cause any public health concern

There are many issues which you, the relevant incumbent and the funeral director who is advising you, should consider. Some of them relate to the practicalities of exhumation. They may not all be relevant in every case, but thought should be given as to:

- What type of ground conditions, soil, water table, exist in the churchyard, what the material of the casket or coffin was, and what is the potential impact of those factors on the likely rate of decomposition of the casket/coffin/remains;
- Whether there is any potential for contaminations from certain particularly difficult diseases (this may be affected by the cause of death of the deceased, but also and more likely by the particular circumstances of the churchyard and its history);
- Whether the body was embalmed and if so what chemicals were used; whether this has any impact on the process of exhumation;
- Are there any other known burials in the vicinity which might be affected by the exhumation, and is there a risk of co-mingling of remains;
- Whether the process of exhumation means that other memorials might need shoring up during or after the work is carried out, especially if the memorials/church are listed;
- What equipment will be brought onto the churchyard for the exhumation, eg tent, mechanical excavator generator, fuel and power lines, toilets, water bowser for washing, disinfectants; will they afford appropriate privacy and decency (e.g. avoiding silhouetting);
- How will the exhumed body be transported away – for example it is recommended that a larger casket is available into which to place the remains.

Please complete and then return the completed Petition form together with the necessary consents and statements, to the Registry Assistant at our Telford Office with a cheque for the initial fee of £210 plus VAT (£252.00), payable to “FBC Manby Bowdler LLP”, and a second cheque for £50.00 (no VAT) payable to “Lichfield Diocesan Board of Finance”. This fee is non-refundable and is not a “payment” for the faculty; it is the statutory fee for the services of the Registry whether or not the faculty is granted.

When the petition is lodged, the Chancellor may (depending on circumstances) require a Public Notice stating the intention to exhume to be exhibited at the church or cemetery before a faculty is granted; but this may be dispensed with in some situation.

If a faculty is granted the Registry will also send you a form of Completion Certificate which is to be filled in by the undertaker and returned to the Registry as soon as the re-interment has taken place.

Please note in particular that if the Chancellor issues a formal Judgment in relation to your Petition, then, because the Consistory Court is a public, civil, Court, the Judgment will be published on the diocesan web site and that of the Ecclesiastical Law Association, and may well be published in law reports, and other places. Members of the public including the media have access to the Judgments of the Consistory Court, and are free to publish details which appear in the Judgment. The purpose of publication of Judgments is to explain to the public how decisions have been reached in particular cases and so as to assist the public in understanding the legal issues at stake; it also ensures transparency.

Correct as of 7th February 2020. These notes are issued on the authority of the Diocesan Registrar and may be up-dated from time to time.