

In the matter of Crigglestone Cemetery
And in the matter of John Nicholas Dixon, deceased

Judgment

1. By a petition date-stamped 1 August 2016, Mrs Patricia Dixon sought a faculty for the exhumation of the cremated remains of her son, John Nicholas Dixon, from Crigglestone Cemetery so they might be placed in a niche or columbarium in the garden of her home.
2. The petition was referred to me on 17 November 2016 and on 21 November 2016 I made the following direction:

The petitioner has not indicated on the form whether she wishes this matter to be determined on written representations. On the information before me the application is most unlikely to succeed because the law requires an exceptional case to be made out. I will allow 28 days for further representations, in the absence of which the petition will be dismissed.

3. An attendance note suggests that the petitioner contacted the registry on 28 November 2016 and was advised by the registry clerk that “the Chancellor had given her a further 28 days to provide him with an exceptional case”. It is not clear when my directions were sent to the petitioner.
4. Nothing further was heard from the petitioner within the 28 day period and accordingly her petition stood dismissed. There was no determination on the merits.
5. However, by letter dated 23 May 2017, and forwarded to me by the registry under cover of letter dated 6 June 2017, the petitioner writes as follows:

I am writing to ask if you would please reconsider your decision not to allow the ashes of my son John Nicholas Dixon to be exhumed ...

6. As the foregoing chronology makes clear, the court has not made any decision. The petition was dismissed because the petitioner elected not to take up the opportunity of making further representations within the 28 days allowed.
7. In the circumstances, and notwithstanding the passage of several months, I am prepared to reinstate the petition and to consider it on the merits. I treat the petitioner’s letter of 23 May 2017 as indicative of her consent to this matter being determined on written representations.

8. The petitioner's letter speaks movingly of the suddenness of her son's death at the care home where he lived and her distress that he died alone without the presence of any staff member. She reproaches herself for not caring for him at home in his dying moments. Her anger with the management at the care home persists. Her letter speaks of medical negligence.
9. John was 42 when he died. He suffered from a number of genetic conditions, including cerebral palsy, epilepsy, and autism and was on the bi-polar spectrum. He underwent repeated surgery and never acquired the power of speech. Until John was taken into residential care, the petitioner was his principal carer: his father left the family home in 1982 and in due course his two siblings married and moved away. John could be violent and the petitioner often had to deal with frightening and violent outbursts of temper. He never showed any affection for the petitioner.
10. The petitioner believes her son would have wanted his final resting place to be beneath his beloved tree, in the garden, which she describes as "the most favourite place in his world". She considers the tree to have been therapeutic who had significant physical and mental disabilities.
11. The petitioner is now aged 82 and is no longer able to make the journey to John's grave in the cemetery, whereas previously she would visit daily to tend it. A letter from Howarth Funeral Services indicates that John's cremated remains were buried in a family grave at Crigglestone Cemetery on 7 October 2008. The petitioner asks me to let John come home. His absence is causing her heartache, disappointment and unhappiness.
12. It is impossible to read the petitioner's letter without an outpouring of compassion for her as she continues to grieve the loss of her son. Her raw emotion exhibits various expressions of grief – anger, blame, regret and guilt – together with a wish to do everything in her power to bring into effect what she believes John would have wanted.
13. However, the law on exhumation follows Christian doctrine on the permanence of burial in consecrated ground, consigned to God's safe keeping to await the resurrection. I remain of the view provisionally expressed in my earlier direction that this is not an appropriate case for authorising the disinterment of John's remains from the consecrated part of Crigglestone Cemetery for their introduction into an unconsecrated domestic setting in the garden of the petitioner's current home. I acknowledge her evident distress, and the impossibility of visiting John's grave, but these are not exceptional considerations. I note the support of Howarth's Funeral Services, the consent of the burial authority, and the signed consent of John's father and his siblings. The petitioner now regrets choosing, in haste and distress, the cemetery as the final resting place for John's ashes. However, such regret in hindsight is not indicative of a mistake at time as interpreted in *Blagdon* and subsequent cases.

14. The petitioner has done all she possibly can to carry out what she believes to be John's last wish. She can do no more. The court however is compelled to dismiss her petition. John's remains will not be moved from their final resting place. His ashes will not be transported to the garden of her home. John now rests in the nearer presence of God on another shore.

15. I hope and pray that Mrs Dixon may become reconciled to her loss and less consumed by her understandable grief.

The Worshipful Mark Hill QC
Chancellor

6 June 2017