

GENERAL SYNOD

LEGAL ADVISORY COMMISSION

TREATMENT OF HUMAN REMAINS DISCOVERED DURING CHURCHYARD WORKS

1. Both articulated and disarticulated human remains are often inadvertently uncovered whilst works are being carried out in a churchyard. The question arises of how such remains should lawfully be dealt with.
2. The Burial Act 1857 states at section 25(1):

“It is an offence for a body or any human remains which have been interred in a place of burial to be removed unless one of the conditions listed in subsection (2) is complied with.”

The conditions in subsection (2) include:

“(a) the body or remains is or are removed in accordance with a faculty granted by the court;”.

3. The question arises as to whether the term “place of burial” refers to the particular grave in which the human remains are buried, or, more widely, to the churchyard itself. Two Consistory Court judgments that refer to the practise of “coffin sliding” assist in the interpretation of this phrase. Firstly, in the case of Fairmile Cemetery, Lower Assendon [2017] ECC Oxf 2, Chancellor McGregor considered the issue of “coffin sliding” at paragraphs 34 and 35 of his judgment:

“the then Town Clerk had said that he could arrange for Mr Miller’s body to be relocated informally. This would be achieved by what he referred to as “sliding” the body, i.e. excavating the ground so as to move the coffin sideways so that it no longer occupied plot 172, but without lifting it out of the ground...I pause at this point to observe that any interference with human remains that have been buried in consecrated ground would, unless authorised by faculty, be unlawful under ecclesiastical law...If such interference amounts to the remains being “removed” it is also a criminal offence: see section 25 of the Burial Act 1857...

Secondly, in the case of St Andrew, Horbling [2022] ECC Lin 2, Chancellor Bishop stated at paragraph 10:

“I am satisfied that such a procedure would not constitute exhumation of the body because at all times the remains would not be lifted from the ground but remain at the depth at which they were buried. A Faculty is required for this process because it interferes with human remains after burial which would be unlawful without lawful permission, but because it is not an exhumation the legal framework set out in In re Blagdon 2002 Court of Arches does not apply.”

Each case clearly interprets the Burial Act 1857 as applying to the removal of human remains from the particular grave in which they are buried, rather than from the churchyard or cemetery in which the grave is located.

4. It is clear from the legislation that there is no distinction between the removal of articulated and disarticulated remains. However, issues of propriety may be thought to affect the manner in which articulated remains ought to be treated as opposed to disarticulated remains.
5. The legal position is clear: removal of any human remains from their place of burial in consecrated ground requires a faculty, otherwise an offence will be committed.
6. It is suggested that Chancellors may wish to adopt standard conditions for use with all faculties involving groundworks in churchyards in order to avoid the need for additional faculty applications or applications for amendments to existing faculties. The Appendix provides guidance by means of a list of bullet points of issues to consider including. This draws a distinction between articulated and disarticulated remains for the reasons set out above.

APPENDIX

Sample faculty conditions which could be used in relation to the treatment of articulated and disarticulated remains disturbed during groundworks in burial grounds.

Generally:

- A copy of these directions/this faculty shall be supplied to the contractor or person undertaking the groundworks.
- Remains shall be treated with dignity and respect at all times.

In relation to articulated remains:

- Work in that area shall cease upon the discovery of articulated human remains.
- Remains shall be screened from public view and, where it is necessary to remove them from the ground, stored securely.
- The Registry shall be consulted immediately.
- Works shall be recommenced only upon further directions of the Chancellor.

OR

- Work in that area shall cease upon the discovery of articulated human remains.
- The advice of Diocesan Archaeological Advisor shall be sought and remains dealt with in accordance with that advice.

- Remains shall be screened from public view and, where it is necessary to remove them from the ground, stored securely.
- Where it is thought that the remains come from more than one burial, where reinterment is necessary, efforts shall be made to keep and reinter them separately.
- Any reinterment shall be marked on the churchyard plan
- The Petitioners or the Diocesan Advisory Committee may refer the matter to the Chancellor for further directions where there is controversy, disagreement or uncertainty.

In relation to disarticulated remains:

- Remains to be retained within the churchyard and, where it is necessary to remove them from the ground, stored securely.
- Remains to be reinterred as soon as possible in a location as close as is reasonably practicable to that from which they came under the direction of the incumbent.

The Petitioners and their contractors are reminded that it is an offence to remove human remains from their resting place in a churchyard other than under the authority of a faculty or other lawful permission (Burial Act 1857, section 25).

This opinion was agreed by the Legal Advisory Commission at its meeting on 2 October 2023.