

Funeral Arrangements and Family Wishes

Mark Pawlowski, Barrister and Professor Emeritus of Property Law, School of Law, University of Greenwich

A recent case has highlighted the difficulties in determining a deceased's funeral arrangements where the deceased's will contains no directions as to how the body is to be disposed of and the family members are in dispute as to how this should be best achieved. In *Patel v Patel* [2025] EWHC 560 (Ch), the High Court, where the two executors could not agree on disposal, exercised its inherent jurisdiction to direct that the deceased's body be cremated in accordance with Hindu rites and that his ashes be scattered in England. As HHJ Mathews sitting as a judge of the High Court, observed, at [14]:

"Disputes between surviving relatives of a deceased about the funeral arrangements are a tragedy for all concerned. They cause great sadness, even anguish, they prevent the relatives coming to terms with their grief and moving on with their lives, and they often cost a great deal of money. On top of all that, they need to be resolved as quickly as possible, because, whilst the body remains undisposed of, lives are on hold, and resources (usually public resources) are tied up which could be used to assist others."

Not surprisingly, the courts have been slow to entertain such proceedings. However, as was indicated by Hale J in *Buchanan v Milton* [1999] 2 FLR 844, modern methods of refrigeration may make them possible but "they are certainly unseemly" as they delay the proper disposal of the body and bring added distress to the grieving family.

Duty to arrange for the proper disposal of a body

Although there is no right of ownership in a dead body under English law, the common law imposes a duty upon the deceased's personal representatives to arrange for the proper disposal of the body: *Williams v Williams* (1881) 20 Ch 659; *Rees v Hughes* [1946] KB 517. An executor appointed by will is entitled to obtain possession of the body for this purpose even before there has been a grant of probate: *Dobson v North Tyneside Health Authority* [1997] 1 WLR 596, at 600. Where there is no executor that same duty falls upon the administrators of the estate, but they may not be able to obtain delivery of the body before the grant of letters of administration: see, *Buchanan*, above. Where there is more than one executor named in the deceased's will, the wishes of one has no automatic priority over those of the others.

The court's inherent jurisdiction

The court has an inherent jurisdiction to direct how the deceased's body should be disposed of in the event of a dispute. In *Oldham Metropolitan Borough Council v Makin* [2018] Ch 543, which was concerned with a question as to how the body of the Moors Murderer, Ian Brady, should be dealt with, Sir Geoffrey Vos stated, at [80]:

"The court will normally, as I have said, be deciding between the competing wishes of different sets of relatives, and will only need to decide who should be responsible for disposal rather than what method of disposal should be employed. I cannot see, however, why the court's inherent jurisdiction over estates is not sufficiently extensive to allow it, in a proper case, to give directions as to the method by which a deceased's body should be disposed of. In my view, it is."

In the exercise of its jurisdiction, the court must consider a number of factors including the deceased's wishes, the reasonable requirements and wishes of the family, and the location with which the deceased was most closely connected. Most importantly, it has to ensure that the body is disposed of with all proper respect and decency and, if possible, without further delay: *Hartshorne v Gardner* [2008] 2 FLR 1681; *Anstey v Mundle* [2016] EWHC 1073 (Ch); *JS (A Child) (Disposal of Body): Prospective Orders* [2016] EWHC 2859 (Fam); *Y v Z* [2018] EWHC 4026 (Ch); *Jakimaviciut v HM Coroner for Westminster* [2019] 10 WLUK 523; *Ganoun v Joshi* [2020] EWHC 2743 (Ch); *Barbus v Opritescu* [2026] 3 WLUK 395. When considering these factors, the court is unlikely to make any distinction between cases of intestacy and cases where there is a will appointing an executor or executors: *Patel*, at [25]-[26].

Cremation or burial?

In *Patel*, the claimant and the defendant were the deceased's son and daughter. They were also the executors and trustees of his will. The deceased was a widower and a devout Hindu. He had been born in India but moved to the UK when he was in his early 20s, shortly after he married. He lived in the UK for the remaining 70 years of his life. He had a British passport and most of his close relatives lived outside India.

The deceased's wife died in February 2024 and, pursuant to a direction in her will, her body was cremated and her ashes scattered in England. The deceased's will did not give any direction about funeral arrangements. He died in December 2024 and, since then his body had remained in a hospital mortuary because the claimant and defendant could not agree on what he would have wanted in terms of his funeral. The claimant asserted that the deceased wanted to be cremated in accordance with Hindu tradition, and that he wanted his ashes to be scattered in England. The defendant asserted that he wanted to be buried in India. So far as the family wishes were concerned, these favoured the view that the deceased's body should be cremated in accordance with Hindu funeral rites and his ashes scattered in England. The defendant was the only dissenter, and her dissent was based solely on what she thought the deceased wanted.

Despite her dissent, HHJ Paul Matthews was unable to identify the deceased's wishes since the only evidence came from the parties, neither of whom had established, on the balance of probabilities, that the deceased's wishes were as they stated them to be. Turning, therefore, to the other relevant factors, it was apparent that England was undoubtedly the place with which the deceased was most closely connected and taking his body to India for burial would take longer, involve more uncertainty, and be more costly than cremation in England. Significantly, burial was not generally the normal practice among Hindus. Weighing all the relevant factors, it was right to direct that the deceased's body be cremated and his ashes scattered in England. In the deputy judge's view, there was no sufficient justification for

directing a burial in India, and that was so even if the deceased had wanted to be buried there. On this point, the deputy judge stated, at [54]:

"Even if I had found that the deceased's wishes were in favour of burial in India, I would still have reached the same conclusion. This is not only because the body could not be buried in the part of Gujarat that the deceased came from. It is also because, in a case like this the wishes of the wider family have a great weight. Their needs are the needs of the living. It is they who attend the funeral, and must grieve and remember. The funeral gives them both comfort and closure. Added to that, the pull of the country to which there was the greatest connection is strong. The deceased was a citizen of the United Kingdom. This was not his birthplace, but it was his chosen home. The deceased's views, as to how his body be disposed of, as I have said, are not legally enforceable. They are simply a factor to be taken into account."

In *Barbus v Opritescu* [2026] 3 WLUK 395, the court ordered that the body of a 17-year-old boy should be cremated and his ashes scattered in line with his mother's wishes, despite his father's wish that he be buried following a religious service. The evidence suggested that the mother's views were more in line with what the boy would have wanted.

Earlier case law

In the course of his judgment, the deputy judge referred to several earlier cases where the court was required to intervene where two persons with equal priority in making decisions regarding the disposal of the deceased's body were not able to agree. In *Calma v Sesar* [1992] NTSC 17, a decision of the Supreme Court of the Northern Territory of Australia, the deceased was born in Port Hedland, Western Australia, but died in Darwin, Northern Territory. His mother lived in Alice Springs, but wanted to bury her son in Darwin, where she used to live and still had relatives. The father, on the other hand, wished his son's body to be buried in Port Hedland, where his own family was based. The distance between the two places was about 2,400 km by road. Martin J stated, at [14]-[15]:

"The conscience of the community would regard fights over the disposal of human remains such as this as unseemly. It requires that the Court resolve the argument in a practical way paying due regard to the need to have a dead body disposed of without unreasonable delay, but with all proper respect and decency . . . The body of the deceased was in Darwin and proper arrangements had been made for burial here. There was no good reason in law why that should not be done and no good reason in law why the removal of the body from the Territory and burial in Western Australia was to be preferred."

In *Fessi v Whitmore* [1999] 1 FLR 767, the deceased was a 12 year old boy who died in an accident at the new home recently moved into with his father near Aberystwyth. Previously, he had lived in the Nuneaton area, where the family had lived while the parents were together (and for two years after their separation). The body of the child was cremated and the dispute was over the resting place of his ashes. The father wanted the ashes to be interred near Aberystwyth. The mother wanted them to be interred in Nuneaton where they would be near those of the parental grandfather to whom the boy had been very close. HHJ Boggis QC held that the ashes should be scattered at Nuneaton where the entire family, including the father, had a focus. The judge also concluded that it would not be appropriate to divide the ashes.

In *Hartshorne*, mentioned earlier, the deceased died in a road traffic accident at the age of 44. His long-divorced parents both lived in Worcester. The father wanted a burial in Kington, some 40 miles away, because that was where the deceased had lived for several years before his death, having fallen out with his mother, and moved away. The deputy judge stated, at [9]:

"The most important consideration is that the body be disposed of with all proper respect and decency and, if possible, without further delay. Subject to that overriding consideration, it seems to me that there are two types of factor that are relevant in the present case. First, those that do or might be expected to reflect the wishes of the deceased himself. Secondly, those that reflect the reasonable wishes and requirements of family and friends who are left."

On the first point, there was some evidence that the deceased expressed a revulsion to burial. On the other hand, there was evidence that the deceased expressed revulsion to both the idea of cremation and of burial, referring to "fire" and "worms". In both cases, however, the conversations arose in relation to the deaths of other people. Ultimately, it was apparent that the deceased had no reason to and did not contemplate his own death or what arrangements he would want. Turning to the second factor, it was significant that the deceased's life had been focused around Kington because that was where his work, his home, his brother, his fiancée and all his friends were based. It was also the place where his fiancée, father and brother wished him to be buried. Although his mother would have difficulty visiting her son's grave, the other factors outweighed her personal wishes and difficulties. Significantly, on her own evidence, her contact with the deceased had been very limited compared with his fiancée and other members of his family. The deputy judge concluded that it was appropriate for the deceased's body to be released to his father to be buried in Kington.

In *Anstey*, referred to earlier, a father died leaving three daughters and a niece. He was born in 1935 in Jamaica, but came to the UK in the 1960s and worked as a transport engineer. He last visited Jamaica in 1998, and died in January 2016. Two of the daughters said that the deceased should be buried in England. The third daughter and the niece said that his body should be returned to Jamaica for burial. Henderson J held that it was appropriate for the deceased's body to be released to his niece to be buried in Jamaica next to his mother in line with the deceased's wishes and the reasonable wishes of much of his extended family.

Finally, reference may be made to *Read v Hoarean* [2024] EWHC 3274 (Ch), where the deceased was aged 18 when he took his own life. He died unmarried, without children, and without a will. The (estranged) parents were, therefore, equally entitled to a grant of letters of administration to his estate. Although the parents agreed that their son's body should be cremated and where the cremation should take place, there was a dispute as to what should happen to the ashes. The father wished the ashes to be scattered on Dartmoor, on the basis that the deceased had had a close affinity to that place. This was supported by other relatives and friends of the deceased. The mother, on the other hand, wanted the ashes to be divided into two halves, so that she could inter her half in her family's grave, with the other half going to the father. Chief Master Shuman directed that the son's ashes be scattered on Dartmoor rather than divided between his parents.

Conclusion

Although, as we have seen, each case will be very different and highly fact-sensitive, the emerging case law in this area has produced a number of relevant factors which should be taken into account by the court in the exercise of its inherent jurisdiction. The overarching principle is that there should be a decent and respectful disposal of the body without undue delay. In addition, the court should consider the deceased's wishes, the reasonable requirements and wishes of the deceased's family and friends and the location with which the deceased was mostly connected.

The court is not, however, constrained to consider only these factors as it will look at all the material circumstances in deciding how the deceased's body should be disposed of. Significantly, the deceased's views on how their body should be disposed of will not be conclusive as this may be outweighed by other factors, in particular, the wishes and needs of the family who would be attending the funeral. That said, however, the court will not be restricted to what was stated in a valid will. As HHJ Paul Matthews pointed out in *Patel*, "even an invalid will could still be evidence of the deceased's wishes": at [38]. In *Anstey*, the validity of the deceased's will was challenged and so could not be a factor in deciding the deceased's wishes; instead, Henderson J relied on the evidence of witnesses in concluding that the deceased's wish was to be buried in Jamaica next to his mother.

Practical considerations may also ultimately determine the means of disposal of the deceased's body. Thus, in the Australian case of *Calma*, referred to earlier, the dispute was resolved in a practical way. There was no good reason why the body should be flown thousands of miles away for a funeral and Martin J, therefore, decided that the funeral should be in Darwin where the body lay. Issues of practicality for the surviving family members may also need to be weighed in the balance in some cases. In *Hartshorne*, the mother was in her 70s and did not drive and the evidence was that the journey to Kington would take up to two and a half hours by public transport. Whilst not underestimating the difficulty faced by her visiting her son's grave, the deputy judge concluded that other factors outweighed these considerations. The courts have also shown a reluctance to accede to a request to have the ashes of the deceased divided between the relevant parties. This was evident in *Fessi*, where there was a dispute between the deceased's parents as to where the ashes were to be laid to rest. HHJ Boggis QC ordered that the ashes should be scattered at Nuneaton as it was "wholly appropriate" to divide the ashes between the claimants. Similarly, in *Read*, the court directed that the son's ashes be scattered on Dartmoor rather than divided between his parents.

The Law Commission has announced that it will be looking at the issues concerning the rights and obligations relating to funerary methods, funerals and remains, including whether a person's wishes about their body after death should be legally binding and who should have the right to make decisions about bodies and how those decisions could be challenged and resolved. The project is expected to run from early 2026 to the end of 2027 and will include a consultation paper leading to the publication of a report containing recommendations to government and a draft bill which will also incorporate reforms to burial and cremation law.