

Information Pack 5: Richard III and the Judicial Review, 13th and 14th March 2014

During 2013 and 2014 the decision to rebury the remains of Richard III in Leicester Cathedral also faced a legal challenge when the Plantagenet Alliance, a group of Richard's collateral descendants, pursued a judicial review of the conditions of the exhumation licence awarded to the University of Leicester Archaeological Services, who had excavated the Greyfriars site and who had agreed that Leicester Cathedral would be the appropriate location to reinter the former monarch.

The Plantagenet Alliance's Case

On 4th February 2013, six months after the remains had been extracted from the Greyfriars dig site, they were finally confirmed as belonging to Richard III through a DNA match with two female-line descendants of his sister, Anne of York (d. 1476). The discovery sparked national and international interest, and added fuel to the debates about where the former monarch should be buried. The Ministry of Justice, however, was keen to point out that as the University of Leicester Archaeological Services was the legal holder of the exhumation licence, and that therefore as the legal custodian of the remains, the final decision as to where Richard would be reburied lay with them and it seemed that this would take place in Leicester Cathedral, as provisionally agreed.

On 26th March 2013, the Plantagenet Alliance therefore announced that it was seeking to challenge the decision to rebury Richard's remains in Leicester through a judicial review of the exhumation licence issued by the Ministry of Justice to the University of Leicester Archaeological Services. A judicial review is a type of court proceeding, in which a judge (or in this case three judges) "reviews the lawfulness of a decision or action made by a public body". Invoking Article 8 of the Human Rights Act, the right to respect for family and private life, the Plantagenet Alliance argued that as descendants of Richard III the authorities responsible for his reinterment had a duty to consult them as relatives whose concerns should be valued. The Plantagenet Alliance argued, on the basis of historical evidence, that Richard would have wished to be buried in York, and certainly not in Leicester. On 15th August 2013, Justice Haddon-Cave granted the judicial review permission to proceed, concluding that the discovery was "without precedent" and that there may have been a duty "to consult widely" as to where Richard III's remains should be reinterred.

The Plantagenet Alliance eventually pursued its case against the Secretary of State for Justice, the University of Leicester and Leicester City Council in a hearing on 13th and 14th March 2014. Principally, the Plantagenet Alliance proposed that a public consultation regarding the appropriate place for Richard's reinterment should take place "through the appointment of a panel of suitably qualified experts", or "through the solicitation of views from the public at large". Given the importance of the discovery, the Plantagenet Alliance argued that once the remains had been confirmed as belonging to Richard III, the Ministry of Justice had had a duty to revise its licence in order to allow public consultation regarding his reinterment. The Plantagenet Alliance, as the king's identifiable living relatives, claimed that their views should have been taken into account by the Ministry of Justice before an exhumation licence was issued.

The Court's Decision

The court ruled in favour of the defendants and against the Plantagenet Alliance. Assessing a wide variety of materials, the judges came to four conclusions:

1. The Secretary of State's decision not to revisit the exhumation licence to enable consultation on Richard III's reinterment following the identification of his remains was rational. The Ministry of Justice would have been aware of the potential reactions to the discovery of Richard's remains at the time of issuing the licence in September 2012, and no new evidence had emerged which could justify a need to retrospectively assess the decision to reinter in Leicester Cathedral. They also reacted to the historical arguments put forth by the Plantagenet Alliance, in particular the claim that Richard III's endowment of a chantry of one hundred priests at York Minster was indicative of where he wished to be buried. The judges disagreed, explaining that this fell "short of any definitive or overriding expression of where he wished to be buried".
2. No other guidelines for historic bodies demonstrated "a practice to consult" in circumstances like the discovery of Richard's remains. There was also no established rule that the Secretary of State should consult the "long lost" collateral descendants of a historical figure who had died over 500 years ago. The court agreed with the Alliance that the case was exceptional, but that this would not require consultation outside of "Sovereign, State and the Church". As shown by the preliminary

consultations undertaken by Philippa Langley, all of these had been considered in the run-up to the excavation.

3. The licence had to be “construed in light of the circumstances known at the time” it was granted. The discovery had required a licence in the first place before exhumation could legally go ahead, and this licence would not have been granted unless they had contained a provision for “the respectful and decent deposition of the remains” in Leicester Cathedral. Consultation was unnecessary at this early stage since it was thought that his rediscovery was incredibly unlikely. Moreover, if the court now decided to revoke the licence because of the Ministry of Justice’s failure to consult beforehand, then the excavation would have been undertaken illegally, and this would raise more difficult questions about who was responsible for Richard III’s remains.
4. Finally, the judges found it hard to see how the “public consultation” that the Plantagenet Alliance desired could be undertaken. It would be impossible to consult all of Richard’s collateral descendants, which may number in the millions, and likewise online petitions and other mediums of public involvement could only complicate matters, when clearly the argument was centred on a choice between York and Leicester. In granting the licence, the judges said, the Secretary of State had been aware of the case of each city.

As a result of these considerations, the court could find no legal basis for interfering with the conditions of the exhumation licence granted to the University of Leicester Archaeological Services, and the decision concerning where Richard’s remains should be reburied therefore rested with the University of Leicester (which it defined as the licence holder). The University subsequently confirmed its intention to organise a reinterment in Leicester Cathedral.

Background

Throughout 2011 and early 2012, as Philippa Langley and the Looking for Richard team developed their plans to excavate the site where they believed Richard III had been buried, negotiations with Leicester City Council and the University of Leicester Archaeological Services were undertaken on the Council’s insistence that, if Richard’s remains were found, they would be reinterred in Leicester Cathedral. In January 2011, when Philippa Langley first

approached the Ministry of Justice Burials Team over the question of exhumation licences for the planned excavation, she provided a “Reburial Document”, which explicitly stated that “once identification is complete... Richard’s remains [are] to be taken directly to the cathedral, church, or other secure holy place in Leicester, to await burial”. Philippa Langley undertook consultations with relevant individuals and institutions, none of whom voiced any objections to the plans to excavate Richard’s remains, and who accepted that if Richard were rediscovered he would be reburied in Leicester Cathedral.

In April 2011, a meeting between representatives of Leicester City Council, the University of Leicester and the Richard III Society agreed that Leicester Cathedral would be the most appropriate place to reinter Richard’s remains. This followed existing archaeological practice, with the reinterment of excavated remains at the nearest church, and also made sense in ecclesiastical terms as the Greyfriars site formed part of the parish over which the church that is now Leicester Cathedral had jurisdiction in the Middle Ages. Leicester Cathedral’s medieval parish as St Martin’s church. The ‘Written Scheme of Investigation’ agreed by Philippa Langley as the client of the University of Leicester Archaeological Services in July 2012 stated clearly that, in the eventuality that Richard’s remains be discovered, they would have a “private burial in Leicester Cathedral”.

The remains that are now understood to be those of Richard III were discovered on the very first day of digging at the Greyfriars site in Leicester, 24th August 2012. Before these could be excavated, an exhumation licence was required from the Ministry of Justice, and the University of Leicester Archaeological Services’ lead archaeologist, Richard Buckley, applied for such a licence on 31st August, again stating that:

“in the unlikely event that the remains of Richard III are located, the intention is for these to be reinterred at St Martins Cathedral, Leicester, within 4 weeks of exhumation”.

Based on the information provided in the “Reburial Document” initially submitted by Philippa Langley and this request, the Secretary of State for Justice decided to grant a licence permitting the University of Leicester Archaeological Services to exhume “persons unknown”, who were then to be “reinterred at St Martins Cathedral [sic] or in a burial ground in which interments may legally take place”. As this shows, the decision to rebury Richard’s remains in Leicester was the result of a series of ongoing discussions between key parties before any digging had even begun, and the eventual extraction of Richard’s remains from the Greyfriars site was closely tied, in legal terms, to the belief that they would then be buried in Leicester Cathedral.

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