

Commentary

by Gromaticus

Whose body is it anyway?

Archaeologists were thrown into confusion in June by the announcement from the new Ministry of Justice (MoJ) of advice about the interpretation of the Burial Act 1857 and the the Disused Burial Grounds (Amendment) Act 1981, concerning the granting of licences for the excavation of burials. The MoJ had previously been working on the basis that the 1981 Act did not apply to burials more than about 500 years old, and that for older burial grounds, and in other circumstances, licences under the 1857 Burial Act could be issued. Their recent legal advice is that the 1981 Act applies to disused burial grounds irrespective of their age, provided that the ground in question is still, in effect, a burial ground, even if disused. However, if the burial ground has passed into other use, for example if it has already been built over, neither the 1857 nor the 1981 Acts apply. This may not apply to burial grounds which are not 'on the surface of the land' (i.e. not visible before excavation; those that are found unexpectedly). If so, these might come under neither Act but be subject only to the common law offence of 'offering indignities to human remains' (whatever that might mean). Where these Acts do apply, the MoJ has been advised that it does not have the powers to authorise (or prohibit) the study of excavated human remains or the removal of samples from them for analysis, and that the legislation expects the reburial of the excavated human remains to take place. English Heritage (EH) has drawn three conclusions from this advice:

* in probably a small additional number of cases where older disused burial grounds have not passed into other use, it may be necessary to comply with the more restrictive regime of the Disused Burial Grounds (Amendment) Act 1981 (which involves, amongst other things, giving six weeks' public notice)

* in cases where either Act does apply, the MoJ may have to require reburial, which may preclude longer-term retention for future study

* in many cases, archaeologists and developers may no longer be required to obtain licenses under the Burial Act 1857, and may be free to proceed, at least so far as burial legislation is concerned, without statutory constraints on the removal, study, sampling and retention of buried human remains.

As one might expect, this has caused great concern amongst both archaeologists and developers, who face great uncertainties about the legality of their actions on burial sites (particularly unexpected ones). The Institute of Field Archaeologists (IFA) has liaised with EH, the Church of England, DCMS and other bodies and has sent a letter to the (then) Minister of Justice, Harriet Harman, expressing the profession's serious and urgent concerns. The letter stresses the problems faced by archaeologists in knowing whether or not they are acting lawfully, and what advice they can give to developers and planning authorities. The state of confusion could potentially be a major obstacle to development in some areas. The IFA is also urging those who may be affected to write directly to

the MoJ to express their concerns, and detailing any specific issues as soon as they emerge. The address is:

Robert Clifford, Ministry of Justice, 5th Floor, Steel House, 11 Tothill Street, London, London SW1H 9LH

The advice currently offered by EH is that when archaeologists expect to encounter burials they would be well advised to apply to the MoJ in good time to clarify the status of the site they propose to work on and whether either Act applies. If human remains are encountered unexpectedly, it is unlikely that either Act applies; if in doubt, again MoJ are willing to advise.

Archaeologists are of course expected, both ethically and under common law, to treat human remains with respect.

The situation is obviously not satisfactory, and cannot continue for long without some sort of resolution. New primary legislation may well be needed, but this will be a long-term solution, and we hope a short-term 'fix' will allow development and archaeological investigation, and the study of human remains, to continue.

(This report has been compiled from information supplied by the MoJ, EH and IFA).

My personal thanks

On the occasion of Shiela Broomfield's retirement from the post of Treasurer/ Subscriptions Secretary, I would like to add my personal appreciation of her work to that expressed by the Publication Committee at the AGM. It was always a joy to work with Shiela, and her contribution cannot be overstated.

Annual Lecture and Meeting

The 38th AGM of the *London Archaeologist* was held on Tuesday 22 May at the Institute of Archaeology, 31–34 Gordon Square, London WC1. The following officers were elected: Managing Editor, David Gaimster; Editor, Clive Orton; Assistant Editor, Märit Gaimster; Treasurer; Alastair Ainsworth; Membership Secretary, Jo Udall; Secretary, Becky Wallower (she

also continues as acting Marketing Manager). Richard Lock was re-elected as Independent Examiner. Gary Brown and John Brown were elected as Ordinary Members of the Publication Committee, and John Costello, Odette Nelson and Robin Nielsen were re-elected. Standing down after 29 years' service as Treasurer / Subscriptions Secretary, Shiela Broomfield was

warmly thanked and presented with an honorary lifetime membership of the Association and a gift on behalf of the Publication Committee. After the close of business, Alistair Douglas of PCA spoke to a packed audience on 'Recent Excavations at Bermondsey Abbey', concentrating on the implications of excavating a Scheduled Ancient Monument and development site.