



CARE OF CHURCHYARDS

This paper inevitably provides simply a summary of the legal situation surrounding the issue of churchyards. More detail will be found in such publications as *Ecclesiastical Law Handbook (1997)* by Lynne Leeder; *The Law of the Parish Church (7th edition 1998)* by William Dale; *Legal Opinions Concerning the Church of England* (frequently updated). This paper therefore, while offering general guidance, does not reflect the detail of the law and of legal opinion.

Ownership

Usually the churchyard is vested in the freehold Incumbent of the parish, whether he be a Rector or a Vicar.

Responsibilities

Responsibility for the proper upkeep of churchyard memorials is in the hands of the heirs or successors of the individuals commemorated, where they can be traced, even though they do not own the land on which the memorial is placed.

Responsibility for all other care for the churchyard rests these days on the PCC – not the Incumbent, Priest-in-charge, Churchwardens, or other Church officials or dignitaries. This responsibility extends to:

- churchyard boundary fences, walls and hedges:
- trees (for which see the Diocesan Handbook):

- paths:
- general tidiness and good order:
- the safety of those using the churchyard (for which see below).

Everything in the churchyard (as in the Church building) is subject to Faculty jurisdiction. A Faculty must therefore be sought for any work in the churchyard, unless:

- it is on the list of *de minimis* items as listed in the Diocesan handbook, including such general maintenance items as cutting the grass and light trimming of hedges;
- it is for the erection of, or alteration to, a simple memorial, permission for which is given by the parish priest (or, in a vacancy, by the Rural Dean) under powers delegated by the Chancellor.

If an individual wishes to secure a space for his or her own burial, or that of a relative, this may be done only by Faculty. A private arrangement between an individual and an Incumbent or Churchwarden cannot in law be binding on any successors in office.

Safety in the Churchyard

Because the PCC has general responsibility for the maintenance of the churchyard, it is also responsible for the safety of people in the churchyard. Were anyone to suffer injury from (for example) a piece of falling masonry, a pothole in a path, or an unsafe churchyard memorial, the PCC could be held responsible in law.

It is wise therefore for every PCC to check that its insurance policy covers such eventualities as these; standard EIG policies usually do so, but policies from other companies should be carefully checked.

The PCC therefore has responsibility to maintain buildings, paths, walls and memorials to such a standard as to make visitors to the churchyard as safe from accident as possible.

If a memorial is found to be unsafe, the PCC should take action. Unless the matter is urgent, a Faculty should be applied for if it is intended (for example) to lay a headstone flat on the ground instead of remaining upright; re-setting the memorial in an upright position could however be regarded as *de minimis*. If the matter is urgent, a memorial should be carefully laid flat at once, and then either re-set in its upright position or a confirmatory Faculty applied for in order to leave it flat.

Closed Churchyards

A churchyard is 'closed' in the legal sense only if it has been closed by an Order in Council. A churchyard that is no longer used in practice is not 'closed' unless an Order in Council has been made.

Orders in Council closing a churchyard are normally made only on grounds of public health, but the fact that a churchyard is physically full is normally a sufficient ground. Orders in Council can close a churchyard subject to certain exceptions (for example, to permit further burials in family graves or vaults, or to permit burials where a grave space has been reserved by Faculty prior to the churchyard being closed).

If a PCC wishes to request that a churchyard be closed it should contact the Coroners' Section at the Home Office, 50

Queen Anne's Gate, London SW1H 9AT for further information.

Even if a churchyard is closed, a PCC may submit a Faculty to provide an area set aside for cremated remains.

Once a churchyard is closed by Order in Council, a PCC may pass its responsibility for the maintenance of the churchyard to the Parish Council, which is obliged in law to accept that responsibility. Parish Councils may also pass this responsibility on to the District Council. Where (as in the City of Cambridge) there is no Parish Council, the responsibility is passed directly to the District Council. The legal ownership of the churchyard remains as before in the hands of the Incumbent, and the churchyard remains wholly within Faculty Jurisdiction; but all the responsibilities which previously fell on the PCC now pass to the local authority.

This responsibility includes both the maintenance of the churchyard as indicated above, and the responsibility for the safety of people in the churchyard. However, there may still be circumstances in which the PCC or the incumbent has occupiers' or public liability in respect of the churchyard, and so it is important that insurance against these liabilities is maintained.

It must again be emphasised that this is no more than general guidance offered in what is a fairly complicated legal situation. More detail is available in the books listed at the beginning of this paper. Archdeacons or the Diocesan Registrar will also be able to offer more specific advice if necessary.