

Churchyard management training 2023 – Q and A

Ownership and closure

Q What happens with ownership and management of a churchyard in a vacancy?

A Churchyards, like churches themselves, are benefice property. This means that the legal ownership of the churchyard is vested in the incumbent. Because the office of incumbent is corporate in nature, the incumbent as a legal entity continues even if there is a vacancy.

In terms of churchyard management, the Churchyard Regulations use the term “Parish Priest” and define this term to include priests in charge. Therefore, in a vacancy, if there is a priest in charge that person will take on the delegated powers under the Churchyard Regulations. Similarly, priests in charge have the statutory power to decide on whether a person who is not otherwise entitled to a burial space by law should nonetheless be allocated one (having had due regard to guidance issued by the PCC).

If there is neither an incumbent nor a priest in charge, then both of these powers are exercised by the Rural/Area Dean.

Q How do I know if a churchyard is closed?

A Check with the DAC Team. Churchyards are closed by an Order in Council, so there should be one if the churchyard has been closed. See the recording for more information about closed churchyards.

Q Do the same Regulations apply to a burial ground down the road?

A Yes, if it is within Church of England jurisdiction. It can be quite useful to put up notices in both instances to make it clear that the Regulations apply. A local authority burial ground will have its own regulations and management rules.

Q What happens if a churchyard is full but not closed formally?

A: There is a legal process to close a churchyard by Order in Council. The application form and process are dealt with by the Burials and Coroners’ team at the Ministry of Justice: <https://www.gov.uk/government/organisations/ministry-of-justice>. In a few cases it is not legally possible to close the churchyard and it may be necessary to develop a local partnership between the PCC and the local authority to manage the future maintenance of the churchyard.

Q What regulations do parish or local councils need to follow?

A If they are responsible for a closed churchyard, the Faculty Jurisdiction and the Churchyard Regulations still apply. In a local authority burial ground, the parish council or local authority will set its own regulations.

Burial and Record Keeping

Q If a person can show a connection to the church, does that give them a right of burial?

A: There is no concept of “qualifying connection” for burial as there is for marriage. The people who have a right of burial are

- People who lived in the parish at the time of their death
- People who died in the parish
- People who were on the Electoral Roll at the time of their death.

In other cases, there is no automatic right of burial. The parish priest has discretion to allow burial, recognising that this reduces the number of spaces for those with a right of burial. Former parishioners who have moved into a care home or to be nearer to family may wish to apply for a grave space reservation or an ashes plot reservation. [An individual should only hold one grave space reservation; holding several in different churchyards simply reduces the number of spaces available for parishioners.] Grave space reservations may be for a double-depth plot, but this depends on the location in relation to existing graves (the space may be too narrow to dig a double-depth grave) and the water table. Graves can only legally be reserved by faculty and an informal agreement by local clergy is not binding. A faculty will usually be for a term of years (with the possibility of renewal).

Q Should the PCC develop a policy for when the incumbent allows a burial e.g. someone who was a longstanding resident, but moved into a care home outside the parish?

A This can be very helpful, especially if it can be agreed generally rather than in response to a specific request. It is worth forwarding a copy of an agreed policy to the Diocesan Registry so that they have it available if a query arises.

Q Is it permitted to record and livestream burials?

A See the diocesan guidance on filming at weddings.

Q What should the parish do if someone starts using prayer in another faith at a burial?

A A burial can take place either with no service, or with a Christian service (which may be conducted by a minister of a denomination, with the approval of the parish priest). If the parish priest or churchwarden becomes aware that prayers of another faith are being used, they should if practicable ask the person leading the prayers to stop. In practice, it is better to give guidance on this in advance to avoid misunderstanding. It is perfectly permissible for a person to be buried with no religious service at the graveside having previously had a religious funeral service elsewhere.

Q Whose responsibility is it to turf over a grave? What happens if someone places artificial grass instead?

A Most grave diggers will do this and carry out a professional job but it is the PCC's responsibility to ensure that the grass and leftover mud is sorted once the ground has settled. If artificial grass is placed, it would be a good idea for the family to remove it and for the PCC to plant grass. It is important to keep communication open and consider taking it in stages.

Q If there is no churchwarden, who should update the burial register/plan?

A Ideally, find a willing volunteer! This can be difficult but it is a job that could appeal to someone, for example someone who is interested in local history and who isn't involved in the church.

Q Does a burial plan have to be online?

A No, it doesn't have to be electronic – it is better to have a paper version than no plan. However, if it is possible to get it online, it would be very helpful.

Q Do we have to keep cremation certificates and completed CR1 forms and, if so, for how long?

A Yes, they should be kept as per the guidance in [Keep or bin](#) (i.e. for two years since the last entry, after which they should be destroyed). Cremation certificates do not form part of the burial register and could be open to abuse in terms of burial elsewhere. Memorial forms (CR1 or CR2) should be kept for five years since the last action, then be deposited permanently in the archives. They can be kept for a while which can help to resolve issues of ownership of monuments, but this could be done electronically.

Ashes burials

Q Is there a restriction on the burial of ashes in an existing grave?

A Ashes may be buried in an existing grave, including in a closed churchyard, where a faculty may be needed if the right of burial in family graves is not specified in the Closure Order. If a family wishes to bury ashes, but provide for a future second full burial in a double-depth grave, this would only be possible if there is sufficient space to dig the grave without disturbing the buried ashes positioned e.g. right at the head of the grave. Ashes should only be buried in a biodegradable container or should be poured loose into the ground. As containers are sometimes elaborate and larger, this will mean there is less space for additional ashes burials in an existing grave. Whether in an existing grave, in a Garden of Remembrance, or elsewhere in a churchyard, there should be 12" soil above the ashes.

Q Should all of the person's ashes be buried or is partial burial of ashes possible?

A Partial burial would only be permitted in exceptional circumstances and advice should be sought from the Diocesan Registry.

Q May a burial (of ashes) be allowed with no memorial?

A Yes, but the burial (of ashes) still needs to be recorded in the Burial Register and on the churchyard plan, even if the ashes burial is not in a designated area.

Memorials

Q How can consistency be improved across the Diocese in terms of what memorials are permitted under the Regulations?

A We are trying to encourage all clergy to uphold the Regulations. There is an understandable desire, often borne out of compassion and to avoid conflict, to "let things through" but we would caution against this being the kind thing to do because it is often the opposite. It can lead to confusion where, for instance, grandparents are buried in one churchyard and parents in another and there are different rules on temporary items in one of the churchyards. This also makes it far more difficult for your successor to uphold the Regulations. For all sorts of reasons, existing graves should not be used as precedent because a headstone may be old and approved under previous regulations. If a memorial has a faculty that's even easier and could open the conversation to the family applying for their own if they wish. The difficulty is when neither applies. The Regulations set the limits of non-Chancellor discretion and a memorial shouldn't be approved if outside those.

Q Who owns headstones?

A Each memorial is initially owned by the person who paid for it to be erected. After that person's death, the ownership does not pass to their heirs, but to the heirs of the person who is commemorated on the memorial.

Q Can you carry out works to an existing memorial, e.g. for safety or because of building work, without notifying the family?

A Despite their ownership, the Consistory Court can authorise work to monuments, including demolition if needed, so the Chancellor has the power to authorise work even though you are doing something to somebody's property. There are provisions about trying to make contact/notify the owner and the Chancellor may issue directions for this, but a faculty can still authorise the works. This could be part of a larger scheme of work, such as a church extension.

Q Can stone colours be illustrated?

A Pictures can be difficult for colours, so we do have samples in the Diocesan Office. Or you can ask the stonemason to provide an example if you're not certain. Someone's summary of the Regulations had some photos of what will be allowed for families. We are actively trying to make the Regulations more available for families but, ultimately, they are the scope of what you're able to authorise, so you have to be careful about presenting it as a menu of choices. It is the limit of clergy discretion and it is important that families seek clergy authorisation before committing to a purchase because a colour that may work somewhere may not work everywhere. Usually the stonemasons and funeral directors are very helpful.

Q How to prevent people buying memorials online?

A It is not possible to prevent someone buying a memorial online, but it is important that memorials are installed safely by a professional memorial mason or funeral director, as well as complying with the Churchyard Regulations or being authorised by faculty.

Q Are churchyard memorials covered in the QI or how else can unstable memorials be identified?

A Generally the architect or surveyor will report on any unsafe memorials in the QI, but churchwardens are recommended to ensure that the stability of memorials is checked (by hand) once a year, either by a parishioner or a monumental mason. If any are unstable, steps should be taken to notify/warn people and to contact the family. As a last resort, a headstone may have to be laid flat temporarily or permanently with authority of a faculty. This may be appropriate even though horizontal ledgers are not now allowed for new memorials.

Maintenance and Wildlife**Q Is there a limit on the number of benches which can be installed in a churchyard?**

A There is no set limit on the number of benches but the DAC will consider appropriate size and space for the bench, its general location and its proximity to roads, paths, graves and other benches. Larger churchyards will be able to have far more benches than smaller ones where several benches would take up the whole space. Benches also have a best before date where they will need removal or replacement and, at that stage, the PCC may have to speak to the family or seek permission to remove the bench.

Q What about benches in closed churchyards?

A The process and permissions are the same for applications for benches in closed churchyards as open churchyards, and the same considerations apply.

Q Are there maintenance plan examples?

A Yes, there are some examples in the [Resource Centre](#)

Q What about volunteering in the churchyard? Are there insurance concerns and risk assessments to carry out?

A Look at Ecclesiastical's website (or your church insurer's website) for information about risk assessments. This should be similar to risk assessments for other church activities, considering things like numbers, size, signage and holding activities in flat and suitable location. Provision should be made to ensure that, if people are using equipment, they are trained and capable. Ecclesiastical Insurance would have come across most standard things but they do need to know about it and know that you have followed their advice. It is often helpful to allocate tasks to avoid people carrying out unnecessarily and possibly harmful tasks.

Q In a closed churchyard, can a local council with maintenance responsibilities do things like cut down trees without telling the parish?

A The Faculty Jurisdiction still applies so it may be that the Parish Council is making an application with support of the PCC – and a few council clerks are signed up to use our Portal system – but they do need a PCC resolution in the same way as for a PCC application. Some works can be authorised by List B. If someone is going to test the stability of all memorials and maybe lay them flat for safety, we recommend that they get a faculty first. This shows that you have given proper notice and that there is a process going on. The Parish Council should bear the cost of this work if it is for maintenance or safety, however if e.g. a yew tree is growing too close to the church preventing light or creating damp, so it is more for the life of the *church* than the tree, then it will be for the church to meet the cost. Some Councils treat churchyards like parks and open space so the only way to ensure they don't turn up with a chainsaw is to keep an eye on it, but this emphasises the need for good relationship and being aware of their plans. You don't want work to trees to happen during services!

Q What is the duty of the PCC in terms of maintenance where the churchyard is closed?

A The maintenance responsibility remains with the PCC unless the PCC serves notice on the local authority (3 months, plus 12 months for budgeting purposes) and transfers its responsibility to the local authority. Until such time as the transfer takes place, the PCC is under a continuing duty to keep the churchyard in decent order and its walls and fences in good repair. The local authority takes over the PCC's full responsibility, covering trees, paths, memorial safety and churchyard boundary walls and hedges, as well as mowing. The churchyard is to be "properly fenced" or enclosed to make sure that animals do not stray into the churchyard.

Q What permissions are required for contractors working in the churchyard, e.g. by/for a neighbour?

A If the tree is in the churchyard, even though the neighbour can cut back the tree to the boundary on their side, if they want to work on the tree on the churchyard side, then it will need

proper permission. It would be the same if a neighbour wants to do some work to their property which needs scaffolding on the church side of the boundary.

Q What is the good practice about rotavating? And planting wildflowers?

A If the churchyard is ancient, it is likely to be a provide a rare habitat of undisturbed grassland. If that is the case, then it will have a rich variety of wild flowers which can be encouraged by adopting a wildlife-friendly mowing regime (see Living Churchyard resources). This is better than introducing new wildflower seeds or plants. The ground should also not be rotavated (break up or till using a rotavator). In a newer area of land, enhancing the biodiversity by planting wildflowers may be appropriate, but do seek advice first from the Diocesan Living Churchyards lead and/or your local wildlife trust.

Q What advice can you give on unauthorised use of churchyards, such as running ghost tours?

A If you become aware of this sort of activity, please speak to the organiser if it is safe and reasonable. Do be mindful of the Canons and the fact this is consecrated ground. Contact the Registry for advice, especially if you have already asked the organiser to desist. Do not put yourself in danger. The church may itself want to use the churchyard to host bat evenings or other more appropriate tours.

A/D Janet's resources for making use of churchyards for worship

<https://www.gloucester.anglican.org/schools/jumping-fish-publications/> - including packs for use in outdoor worship

<https://grovebooks.co.uk/products/mev-127-forest-church-earthed-perspectives-on-the-gospel>