

Churchyard Management



Churchyards: the law

- Strictly speaking, churchyards are private property, owned by the **incumbent** as part of the benefice.
- But equally, they are important **community spaces**, and contribute much to the character of the local area. They are also **public facilities**, providing burial space to local residents whatever their connection with the Church or indeed their faith.
- They are **extensions of the Church's witness** to God's promise of eternal life.
- And yet many bereaved relatives understandably feel a strong sense of **personal ownership** of the graves of their loved ones.
- The need to balance all of the above has led to regulation at law.

The Incumbent

- A churchyard is usually part of the property of the benefice. The Incumbent is therefore the **owner** of the churchyard and should be registered as the proprietor at HM Land Registry.
 - Technically, the incumbent is entitled to the grass cuttings, the fruit from the trees, etc!
- As the owner of the churchyard, the incumbent has the power (subject to any reservations) to:
 - make decisions as to where in the churchyard each burial takes place; and
 - decide on whether those without a right to burial should nonetheless be permitted (having regard to any PCC policy).

The Parochial Church Council

- The PCC is not the owner of the churchyard but is responsible for the “**care and maintenance**” of the churchyard.
- The PCC also has a role as the ‘voice of the parish’ and:
 - as the churchyard starts to fill, should work with the incumbent to devise policies on accepting burials; and
 - is consulted when grave space reservations are sought.
 - should consider whether a closure order should be sought.

The Chancellor and Consistory Court

- Churchyards, together with other land within the curtilage of a church, are within the faculty jurisdiction. This means that they are under the ultimate control of the consistory court, presided over by the Diocesan Chancellor, **Lyndsey de Mestre KC**.
- A faculty from the court is required for all changes to churchyards other than:
 - routine maintenance and the digging of new graves;
 - matters permitted under **List A** and **List B**;
 - matters permitted under the **Churchyard Regulations**.
- Faculties are also required for all **exhumations** and **grave reservations**.



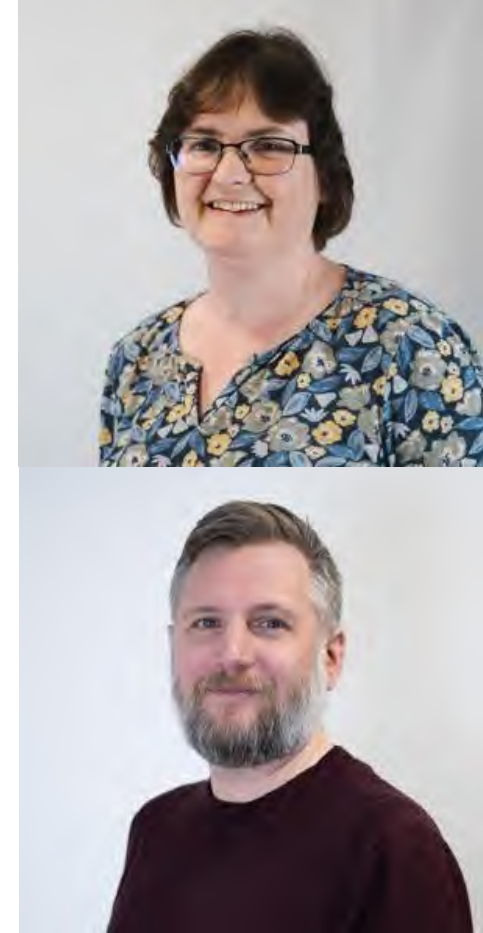
The Archdeacon

- A source of advice and support.
- Can authorise certain **List B** matters relating to churchyards (such as benches and noticeboards, wall repairs, planting and removal of trees)
- Can apply for a **restoration order** if works have been done without approval.



Diocesan officers

- A source of practical advice and support.
- Gateway to the **Diocesan Advisory Committee**, which advises the Chancellor on faculty applications.
- Communications advice in case of disputes or other controversial matters.



Diocesan registry

- Assistance with legal queries.
- Administers the consistory court on behalf of the Chancellor.
- Guidance on forms and processes.
- Tel: **020 7593 5015**
- Email: **stalbansregistry@wslaw.co.uk**



Rights to burial

- People have a right to burial in open churchyards if:
 - they **resided in the parish** (even if they die elsewhere);
 - they **die in the parish** (even if they resided elsewhere);
 - at the date of death, they were **on the electoral roll** of the parish.
- Rights to burial under the first two criteria do not depend on church attendance or Christian faith.

Rights to burial

- A person who has the right of burial also has the right to burial of his/her ashes.
- A person is not required to have a Church of England funeral or committal service. At the graveside they can elect for any Christian service (including services conducted by other denominations), or no service at all.
- The minister may, after consulting the PCC, give permission for a burial where the deceased does not otherwise have the right to burial.

Rights to burial

- A faculty is required to dedicate an area of the churchyard as a “**garden of remembrance**” or otherwise earmarked for ashes burials only.
- To extinguish rights to burials, it is necessary to apply for the churchyard to be **closed** by Order in Council. Once closed, burials may not take place except as permitted by the closure order. Ashes interments may take place in a garden of remembrance authorised by faculty, or as separately authorised by faculty.

Grave space reservations

- A person may apply for a grave space reservation by faculty. The main reasons for doing so are:
 - Eligibility concerns (people who may have to move out of the parish to adapted or more suitable accommodation as they age).
 - Seeking to be buried next to an existing family member in a specific plot within the churchyard.
 - Wishing to plan ahead and get their effects in order, tying a reservation into their will.
- A reservation is **NOT** a means to jump the queue if the churchyard is filling up. The privilege of a reservation can never outweigh the right to burial of those living or dying in the parish or on the church's electoral roll.

Grave space reservations

- Grave space reservations **must never** be made informally by agreement with the parish – such agreements are unenforceable and will not displace the rights of others to be buried in that space first.
- The Chancellor will enquire as to the capacity of the churchyard and the policy of the PCC prior to awarding a faculty.
- Grave reservation faculties are for a limited period only.

Burial registers

- It is vital to keep full records of all burials – both full body and ashes.
- The burial register is a statutory register held by the incumbent (or, in a vacancy, the churchwardens).
- A burial plan should show an accurate location of all burials (and their depth) and grave space reservations.
- In addition, the churchwardens should keep a *terrier* of all landholdings, which includes information about churchyards, rights of way, trees, etc.

Churchyard Regulations

Memorials and Inscriptions

Relevant Regs: 2.2-2.7; 3

- The **incumbent owns** the churchyard
- The **PCC manages** the churchyard
- The introduction, renewal, removal or alteration of memorials are entirely within the jurisdiction of the **Chancellor**.
- The **family** will own the memorial (but not the plot).
- The Regulations set out the parameters within which the Incumbent may authorise memorials: Materials, shapes, sizes, decorations, text (wording and lettering), etc.

Churchyard Regulations

Memorials and Inscriptions

Relevant Regs: 2.2-2.7; 3

- Proposal falls within regs → You **MAY allow** it but **CAN refuse** it. Faculty may be sought on refusal.
- Proposal falls outside regs → You **CANNOT allow** it. A faculty must be sought. Anything done outside the regs could be subject to a restoration order.

Churchyard Regulations

Memorials and Inscriptions – Forms CR1 and CR2

Relevant Regs: 2.2-2.7; 3

Which form?

- Application for memorial **introduction (within the regulations)** → CR1
 - No application should be made for the introduction, nor permission granted until at least six months after the date of burial.
- Application for minor **amendment or repair (within the regulations)** → CR2
- If request is either **outside the regulations or rejected** → faculty petition.

Churchyard Regulations

Memorials and Inscriptions – Forms CR1 and CR2

Relevant Regs: 2.2-2.7; 3

Contents:

- **Applicant** – Personal information and basic details; confirmation of understanding
- **Funeral Director/Monumental Mason** – Particulars of proposed memorial/proposed amendments.
- **Monumental Mason** – Certificate of Compliance
- **Incumbent/Rural Dean/Archdeacon** – Decision

Churchyard Regulations

Memorials and Inscriptions – New memorials

Relevant Regs: 2.2-2.7; 3

- Monuments and headstones:
 - ✓ Regulation Headstones
 - ✓ Regulation Crosses
 - ⊗ Horizontal slabs or plaques
 - ⊗ Columbaria, statues, sundials, bird baths, obelisks
- Other memorials:
 - ✓ Regulation Flower vases
 - ⊗ Kerbs, railings, fencing, chippings, artificial grass.

“Any memorial placed over a grave has to be carefully chosen in recognition that the churchyard is sacred ground...”

“Many churchyards are the settings of historic churches, which are listed as being of special architectural or historic interest...”

Churchyard Regulations

Inscriptions

Relevant Regs: 2.2-2.7; 3

- **Inscriptions:**

- ✓ Basic biographical information
- ✓ Regulation lettering
- ✓ Crests (with permission of regiment or organisation)
- ✓ Appropriate decorative motifs (e.g. Christian symbols, flowers etc.)
- ⊗ QR codes
- ⊗ Advertisement or trademark
- ⊗ Other decorative motifs
- ⊗ Photographs

Inscriptions commemorating someone not interred in the churchyard require a Faculty.

Epitaphs are there "to identify the resting place of the person's mortal remains, to honour the dead, to comfort the living and to inform posterity."

"Dedications should be simple, reverent and appropriate."

"The headstone is a public reminder that the person has lived on earth and has now entered eternal life."

Churchyard Regulations

Memorials and Inscriptions – Amending or removing memorials

Relevant Regs: 2.4, 3.4 & 3.5

- The monument belongs to the family.
- **Extensions to memorials:**
 - ✓ Additional inscriptions to the front of a headstone
 - ✓ Additional names and dates only may be added to reverse of a headstone
 - ✓ Regulation extension to base of a headstone
 - ⊗ Detailed inscriptions to the front of a headstone
- **Removal of memorials:** only permitted for repair, maintenance, inscription or like-for-like replacement. Otherwise a faculty is required.

Churchyard Regulations

Memorials and Inscriptions – Amending or removing memorials

Relevant Regs: 2.4,3.4 & 3.5

- The monument belongs to the family.
- Permanent removal, replacement of or significant changes to a memorial can be authorised by Faculty.
- Permanent removal of an unauthorised memorial can be permitted by faculty – with or without the consent of the family. Please contact the Registry if you need advice on this.

Churchyard Regulations

Burial of Ashes

Relevant Regs: 6

- **General Rules:** Ashes should be buried in part of churchyard set aside for burial of ashes or in an existing grave with the consent of Incumbent.
 - ✓ Burial in a suitable perishable or biodegradable container
 - ✓ Poured directly into the ground
 - ⊗ Scattered or strewn
- **Gardens of Remembrance:**
 - Establishment:
 - Small parishes (<600 persons on roll) → Incumbent and PCC agreement + average of less than 3 ashes burials per year + Archdeacon approval
 - Other parishes → Faculty
 - Memorial plaques: Flush with the turf and of a size specified in the regs OR as permitted by the faculty.

Churchyard Regulations

Temporary items

- **General Rule:** No loose items to be left in the area of the grave.
- **Exceptions:**
 - Immediately following burial?
 - Incumbent's discretion (reasonable period of up to 6 months).
 - No artificial flowers.
 - Incumbent's discretion (Rabbits; Christmas wreaths; remembrance poppies).

Relevant Regs: 3.3(i); 4

"Any memorial placed over a grave has to be carefully chosen in recognition that the churchyard is sacred ground and is the area that forms the setting for the church building"



Churchyard Regulations

Temporary items

Relevant Regs: 3.3(i); 4

- **General Rule:** No loose items to be left in the area of the grave.
- **Removals:**
 - Incumbent should request that the family members remove items;
 - PCC's maintenance responsibilities: PCC should take reasonable steps to notify family prior to removal of items likely to be sensitive.
 - Families will have signed the CR1 or CR2 form consenting to the removal of unauthorised items.
 - Families may petition for faculty to keep the items, but if the PCC opposes this the petition is less likely to be granted and more likely to run up additional costs, which the family would be liable for (and the application fee is non-refundable).

"Any memorial placed over a grave has to be carefully chosen in recognition that the churchyard is sacred ground and is the area that forms the setting for the church building"



Ownership and maintenance of monuments

- Monuments remain **private property**.
 - Owned initially by the **person who commissioned** and paid for it.
 - After that person's death, owned by the **heirs of the deceased person** commemorated by the monument.
- The **owner** is primarily **responsible for maintaining** in a safe condition.
- The **PCC likely has an obligation too**, as part of its general duty to maintain churchyards.

Maintenance of churchyards generally

- The maintenance of churchyards is a **duty belonging to the PCC**, and should be part of quinquennial inspections.
- Canon F13 requires churchyards to be *“duly fenced”* and *“kept in such an orderly and decent manner as becomes consecrated ground”*.
- PCCs are also required to **maintain trees** growing on churchyards.
- The maintenance duties of PCCs are likely to confer **liability for personal injury claims** under the Occupiers Liability Acts – check that insurance coverage is in place and terms are obeyed.

Maintenance of closed churchyards

- The PCC **remains liable** for the maintenance of churchyards after they have been **closed**.
- However, that maintenance responsibility **may** be handed over to the **local civil parish or district council**.
- Transferring maintenance responsibility does not affect the **ownership** of the churchyard or its **consecrated status**.
- Once the PCC has requested that the local civil parish or district council take over maintenance, that council can pass the responsibility up to the next level of local government, but **cannot refuse**.

Exhumation

- Exhumation from consecrated land **always requires a faculty** – this replaces the secular exhumation licence that would otherwise be needed.
- A faculty is required for all disturbance of human remains, including technical/temporary exhumation such as the re-digging of a grave, fixing an error or utility works.
- Exhumation faculties are awarded only in **exceptional circumstances** – the norm is that Christian burial is permanent.
- Family members seeking an exhumation faculty should be asked to speak directly to the registry.

Filming in churchyards

- Commercial filming may present a useful source of income.
- An '**additional matters order**' is available to reduce the need for faculties – filming is authorised if the archdeacon approves the script and the standard contract is used.
- If a company desires changes to the standard contract or use of a different contract, that may be permitted but please contact the Registry. The filming company will need to pay for the Registrar's time.
- A **faculty** is required if any **changes are made to the churchyard**, such as the mock digging of a 'grave'.



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Living God's Love