

## **Peterborough DAC**

### **Headstones and memorials in churchyards**

#### **Guidance notes**

#### **Policy regarding open and closed churchyards**

Memorials must not be tested, mended, re-set, relocated or altered in any way without permission. Such work will usually require a faculty and may require listed building consent too. In emergencies authorisation can be granted quickly but must still be sought. This applies to open and closed churchyards, whether in the care of the PCC or local authority.

At a meeting of Diocesan Registrars in November 2003, there was some discussion regarding unsafe memorials in churchyards. Reference was made to a statement which had been issued by the National Association of Local Councils ("NALC") to Parish Councils, many of which have a legal responsibility to maintain churchyards which have been closed for further burials by Order in Council. That statement included the following paragraph:

"6.4 ... A [parish] council has a duty to keep a closed churchyard "in decent order" and powers to make safe memorials in their own cemetery. In addition they have the overriding legal obligation to maintain public safety (see 2.0). If these duties have any meaning a council must have the right to ensure memorials are safe and to take minimum action to render safe those which prove to be dangerous. In NALC's view these responsibilities may be exercised without further consent."

The general view of the Registrars was that the NALC is wrong in relation to paragraph 6.4 of their statement as regards monuments erected on consecrated ground in closed churchyards, and that they have no authority to topple-test, dismantle or move memorials in consecrated ground without the authority of the Chancellor. The same would apply to Parochial Church Councils.

#### **Ownership of memorials**

A memorial does not belong to the PCC or the incumbent. A memorial belongs to the person who erected it, during that person's lifetime, and after that person's death the memorial is said to belong to the heirs of the person commemorated. Those people, if they can be traced, have a responsibility for their memorial. So in order to do work on a memorial, a PCC (or the Parish Council, in a case where responsibility has been passed on to it) needs to have, in addition to a Faculty, the permission of the heirs. Where the heirs cannot be traced, the Chancellor can, in granting the Faculty, dispense with the consent of the heirs.

#### **Legal framework**

Memorials, normally being within the curtilage of a listed church building, are subject to the same requirement of listed building control as the church would be, were it not for the fact that the Church of England has exemption from listed building control for churches in use, because it exercises control through the Faculty Jurisdiction. This means that memorials are subject to the Faculty Jurisdiction, unless they have their own separate listing, in which case they will be subject to the secular listed building control.

## **Responsibility for the churchyard and memorials**

The Occupiers Liability Acts 1957-1984 place a duty of care on the occupier of land to ensure that persons using the land are not injured. The 'occupier' of a churchyard is the person or authority who has a sufficient degree of control over the churchyard to give rise to a duty of care towards those using the churchyard. Depending on the precise situation, any of the following could be held to be an occupier:-

- (a) The Parochial Church Council (as successor to the Churchwardens - Section 4 of the Parochial Church Councils (Powers) Measure 1956).
- (b) The Incumbent (as owner of the freehold).
- (c) In relation to a memorial, the person who arranged for the memorial to be erected or, after his death, the heir at law of the person commemorated.

The duty of care extends to visitors, trespassers and persons exercising private or public rights of way. The extent of the duty of care to visitors is to take reasonable care to see that a visitor will be reasonably safe when using the churchyard.

Although the primary duty for maintaining a memorial is with the heirs at law of persons commemorated, this will be of little help if they cannot be traced. The Parochial Church Council (or the local authority, in a case where a churchyard has been closed by Order in Council and responsibility transferred to the local authority), could be held to be in breach of the duty of care if it failed to make memorials and tombs safe when it knew they were in need of attention.

## **Dangerous memorials**

From time to time, memorials become dangerous. This is usually a gradual process, and so there is time for a PCC or Parish Council to apply for a Faculty to authorise appropriate work. In a case where a memorial suddenly becomes dangerous, the PCC or Parish Council can, through the Registrar, seek the Chancellor's permission to do immediately whatever is necessary to make a memorial safe.

Apart from a case of emergency, the Chancellor will normally require that the PCC or Parish Council makes some attempt to trace the relatives and ask them to do the work themselves (subject to first obtaining the Chancellor's permission), or at least to agree to the PCC or Parish Council doing the work.

## **Action to take if a memorial is in imminent danger of collapse**

If there is any churchyard memorial which is in imminent danger of collapsing, the PCC or Parish Council should:

- (a) put some temporary stakes and tape around it, as a warning to people that the memorial is dangerous,
- (b) notify the church insurers and comply with any of their requirements
- (c) send the Registrar a photograph of the memorial with details of what the PCC or Parish Council wishes to do with it. The Registrar will then forward this information to the Chancellor and seek his permission for whatever is necessary. The Chancellor is often able to reply by return of post or telephone in an emergency.

### **Action if several memorials need attention**

If there are several memorials which need to be dealt with, the PCC or Parish Council should:

- (a) Prepare a list of them, including details of all legible inscriptions, and the proposals for dealing with each memorial.
- (b) Take a set of photographs should and key photographs to the list so that it is clear which memorial relates to which item on the list.
- (c) Send the list and the photographs to the Diocesan Advisory Committee with a statement as to what efforts have been made to trace the relatives of those persons commemorated by the memorials. Such efforts would normally include correspondence and advertising in a local newspaper.

After the DAC has considered the proposals, it will send the PCC or Parish Council all the Faculty paperwork that is needed for the faculty application and return the papers submitted to the DAC. These papers and the completed Faculty Petition should then been sent to the Registrar so that he may seek the Chancellor's directions.

### **Contact details**

#### **The Diocesan Registrar**

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