

Maintenance of Closed Churchyards

We have received a number of enquiries recently concerning closed churchyards and where the responsibility for maintenance lies.

1. Primary Liability

Parochial Church Councils are the bodies primarily responsible for churchyards, including churchyards around redundant church buildings (unless the redundancy extends to the churchyard, which is rare).

2. Transferring Liability

However, s.215 of the Local Government Act 1972 provides for notice to be given by a PCC to the local civil authority (typically the parish, town or district council). The effect of this is to transfer liability to the local civil authority, but such a notice can only be given when a churchyard is closed for further burials by an Order in Council.

3. Closing the Churchyard

If you want to take advantage of this procedure, you first need to establish whether your churchyard has been closed. You can use a number of sources to determine this:-

- a. Search the London Gazette website (<http://www.london-gazette.co.uk/>) to see whether they have a copy of a Closure Order.
- b. Contact the Oxford Diocesan Registry (Sara Leader on 01865 297211) to see whether the churchyard is on the list of closed churchyards which we hold (but our list may not include all cases of closure, since many have been closed by direct local application to Government departments over the years).
- c. Contact the Coroners and Burials Division of the Ministry of Justice who do hold a complete list of closed churchyards. Their contact details are:-

Ministry of Justice
Coroners and Burials Division
3rd Floor
102 Petty France
London SW1H 9AJ
Email: coroners@justice.gsi.gov.uk
Telephone: 0203 334 6390

4. *Making Decisions*

So, if you want to transfer liability to a local authority, you should ask the following questions:

- a. Was the churchyard closed *after* 1 April 1974?
 - i. If so, has a notice been served under s.215 of the Local Government Act 1972? or
 - ii. If no s.215 notice has been served, do you want to serve notice now (it will take effect three months later)?
- b. Was the churchyard closed *before* 1 April 1974?
 - i. If so, is there evidence of civil authority involvement in maintenance either before or after that date?
 - ii. If the answer is yes, you may be able to argue that liability had been accepted under s.18 of the Burial Act 1855 (now repealed) and so should continue notwithstanding the lack of any further notice under s.215.
 - iii. But if there is no evidence of prior involvement by the local authority, you should serve notice under s.215 now – and it may be sensible to do so even if there is evidence of prior involvement (but in that case, it should be served on a ‘without prejudice’ basis in relation to your main contention under (ii) above).

5. *Memorials*

You should bear in mind that individual memorials belong to, and are the responsibility of, the ‘heirs at law’ of the persons commemorated by them. These rights and liabilities remain unaffected by any transfer of maintenance to the local authority, and care must be taken to trace and respect their entitlement if any works are proposed which affect the memorials themselves.

These are complex areas of law and can result in difficult negotiations both with local authorities and with individual families. If in doubt, please do not hesitate to call Sara Leader on 01865 297211 or Darren Oliver on 01865 297210.

John Rees
Registrar of the Diocese Oxford
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