



 THE CHURCH
OF ENGLAND

OXFORD DIOCESAN
REGISTRY

To: All Clergy, Churchwardens and
Parochial Church Councils in the Diocese of Oxford

John Rees MA LLB M Phil
Registrar of the Diocese

Darren Oliver BA LLB
Deputy Registrar of the Diocese

Helen Lambourne
Registry Clerk

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Works Affecting Monuments in Churches and Churchyards

The Chancellor has recently issued guidance on works affecting monuments in churches and churchyards. The word ‘monument’ includes memorials of all types, whether the memorial in question is an upright stone, a horizontal ledger, a tomb, a mausoleum, a simple gravestone, marker or kerbing or some other memorial commemorating an individual.

As a matter of law, monuments are the property of the person who erected them, so long as that person is alive; and after that person has died, they become the property of the *heir at law* of the person commemorated. But the law is not simple. ‘Heirs at law’ is an ancient concept, and they are not always easy to trace. However, it is a requirement of section 3 of the Faculty Jurisdiction Measure 1964 that the relevant person should be contacted (or reasonable attempts made to contact/notify them) to seek their consent, as the owner of the object, to the proposed works.

Therefore, the Chancellor recommends the following steps in order to make reasonable efforts to comply with section 3 (since, depending on the nature of the works, almost always a faculty will also be needed for the works themselves, so there will have been some local discussion with the PCC and a Public Notice will have been put up in the usual way):

- In a few cases, it may be possible to trace the descendants of the person commemorated by the monument through local or other historical knowledge – for example, where the person commemorated was a peer and the peerage is still in existence, or where the same family continue to own the local manor or other large estate;
- In other cases, where the deceased died over 100 years ago and the number of monuments involved is small (say not more than 6), it will usually be enough if the original Public Notice displayed specifically identifies the proposals and the monument(s) in question and asks any descendant of the person commemorated by the monument(s), or any other person who is aware of the identity of a descendant, to contact the petitioners and the Diocesan Registry;

Once the 28 day display period has expired, you should complete the Certificate of Publication (on the reverse of the Public Notice) and return this to the Diocesan Registry together with a copy of the Notice which was displayed.

If a Petition is submitted to the Diocesan Registry without a certified Public Notice referring to the monuments and you have not been able to comply with the first bullet point above (after having made reasonable efforts), it will be necessary to display another, more specific Public Notice along the lines suggested in the second bullet point above.

You should ensure that this Notice contains specific details of the proposals and the monuments likely to be affected, the address where the further details of the proposals can be viewed, details of the Petitioners (as per the Faculty Petition) and the date by which all objections should be received at the Diocesan Registry (28 days after the first display date). Please ensure that the address given for the Diocesan Registry is that detailed at the bottom of the first page of this letter.

- In the case of more recent monuments, or where a large number of monuments is involved, it will normally be necessary for greater efforts to be made to trace descendants, including by making enquiries and by placing advertisements in a local or in some cases a national newspaper (in addition to the special notice on the Public Notice). The following form of Notice is suggested for this purpose:

Notice is hereby given that the Parochial Church Council of the parish of [insert parish name] propose to petition the Consistory Court of the Diocese of Oxford for a Faculty authorising [here set out briefly what is proposed, e.g. levelling mounds, moving tombstones, etc.] A plan of the churchyard showing the work proposed may be inspected at [insert address] from [start date] to [end date] between the hours of [] and []. (The memorials affected by the proposals have been suitably marked). Anyone wishing to object to the proposed work should send notice to the undersigned before [date]. Signed: [PCC secretary] Dated: [date signed]

Particular cases might involve taking different steps. In any case where there is uncertainty please contact the Diocesan Registry at an early stage for an indication of what steps are likely to amount to making reasonable efforts to find the owner for the purposes of section 3 of the 1964 legislation.

In addition to the general requirements referred to above, where any proposals would affect a grave or memorial maintained by the Commonwealth War Graves Commission the Chancellor is required by the Faculty Jurisdiction Rules to direct that the Commission be given special notice of the Petition for a faculty. But it is likely to make proceedings more straightforward for petitioners if they have already consulted the Commission on the proposals at an early stage with a view to securing the Commission's support for what is proposed.

While this process may be seen as an unnecessary burden, for the reasons explained above, it is legally necessary for steps of this nature to be taken and the Chancellor does not have the power to waive these requirements except in cases that are of such urgency that it would not be reasonable to require petitioners to take such steps.

It is better to attend to this procedure as early as possible in order to avoid delays (by the requirement to comply or unforeseen objections) at a later date.

Darren Oliver

Solicitor and Deputy Registrar of the Diocese