



LEICESTER DIOCESAN REGISTRY

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LOCAL AUTHORITY RESPONSIBILITY FOR MAINTENANCE OF CLOSED CHURCHYARDS

A closed churchyard in this context is one which has been closed for burials by an Order in Council.

When the responsibility for a closed churchyard is taken over by a local authority, it succeeds to the functions and liabilities of the PCC, which are:

Canon F13:

- 2 ...care should be taken that churchyard be duly fenced, and the said fences maintained... and that the churchyards be kept in such orderly and decent manner as becomes consecrated ground.

Section 215 Local Government Act 1972

- (2) ...shall maintain it by keeping it in decent order and its walls and fences in good repair.

Generally, this means a local authority is obliged to:

- keep the churchyard in decent order, which is taken to mean clear of rubbish, muck, thorns, briars, shrubs and anything else that may annoy parishioners when they come into it; and
- do what is necessary to repair walls and fences.

Safety to the public is one necessary aspect of what, in the context of a place of burial, amounts to 'decency'.

Additionally, a local authority may have liabilities to its employees and contractors under legislation in relation to the provision of safe workplaces.

WALLS

The duty of a local authority to maintain a churchyard in decent order includes:

- walls and fences

and the standard of obligation is to keep them in good repair. This would ordinarily imply an obligation to put, as well as keep, the walls and fences in good repair.

Note that the obligation of a local authority should be no greater than that of the PCC before the transfer of responsibility, so there may be agreements in existence as to the shared ownership of boundary walls.

Works to walls are subject to faculty unless they come within Lists A or B, (or any alteration of the Lists approved by the Chancellor).

TREES

The duty of a local authority to maintain a churchyard in decent order includes:

- dealing with saplings and bushes, long grass, weeds and brambles.

If a tree has fallen by act of nature, the local authority should remove it, unless the incumbent (as freeholder) wishes to do so.

Works to trees are subject to faculty unless they come within Lists A or B, (or any alteration of the Lists approved by the Chancellor).

The Local Authority may also have to consult amongst its own and other governmental departments/consultative bodies, in relation to:

- Tree Preservation Orders
- Churchyard forming part of a registered park or garden
- Trees associated with a Scheduled Ancient Monument
- Sites of Special Scientific Interest (SSSIs) within churchyard
- Nesting birds
- Bats
- Trees forming parts of hedges more than 30years old
- Tree listed in:
 - Gazeteer of Ancient Yews
 - Ancient Tree Inventory.

The PCC retains no statutory powers or responsibilities in respect of trees in a closed churchyard maintained by a local authority. Note however, the incumbent retains ownership of the timber but can only spend the proceeds of sale on the maintenance of the church or churchyard.

As an occupier, the Local Authority's duty is to 'act as a prudent landowner to prevent trees from being a danger to persons

MEMORIALS

The prime responsibility for the upkeep of a monument falls on the owners i.e. the heirs of the people commemorated but they may not be traceable.

The duty of a local authority to maintain a churchyard in decent order includes:

- tombs, monuments, war memorials, church crosses.

A local authority can be found negligent under the Occupiers' Liability Acts 1957 and 1984 if it fails to make safe a memorial which it knew needed repair or was in an unsafe condition.

Works to memorials are subject to faculty unless they come within Lists A or B, (or any alteration of the Lists approved by the Chancellor), or Diocesan Churchyard Regulations. Chancellors can grant interim faculties at short notice in matters of Health & Safety.

The Local Authority may also have to consult amongst its own and other governmental departments/consultative bodies, in relation to:

- Scheduled Ancient Monuments
- Location within a Conservation Area
- SSSIs
- Commonwealth War Graves

PATHS

The duty of a local authority to maintain a churchyard in decent order includes the maintenance and repair of the paths and gates and also the renewal of a gate when, according to the ordinary rules of good management, it should be replaced.

Under the Occupiers' Liability Acts 1957 and 1984, and common law, the obligation is greater in that it is to ensure that paths are in a reasonably good condition e.g. if paved, regular inspection and maintenance to ensure there are no undue projections or holes; if gravel – keep it reasonably level so it is safe to walk on.

Works to paths are subject to faculty unless they come within Lists A or B, (or any alteration of the Lists approved by the Chancellor).

Limits (legislatively and spatially) of their responsibility?

The duty of a local authority to maintain a churchyard in decent order can be no greater than that of the PCC, were it not closed and the responsibility transferred.

Therefore, spatially, their responsibility includes the whole of the churchyard and boundary features so far as they were the responsibility of the PCC.

Consequences of failing to maintain?

- If the PCC considers that the local authority's standard of maintenance is too low, the incumbent and PCC may seek to enforce the local authority's duty by starting proceedings in the county court.
- Liability for personal injury accidents due to negligence and under occupiers' liability.
- Liability for breach of workplace safety requirements.

What can be used to oblige local authorities to undertake the maintenance that is required of them?

A court order would oblige a local authority to undertake its responsibilities. However, court proceedings can be both costly and lengthy and does not help with relationships going forward. Before matters reach that stage, there are local actions that may be taken.

- Complaint to local authority environmental health/green team/highways department
- Letters to local councillors/Mayor.
- Press articles.
- Local petitions.
- Threat of legal proceedings.

Sources:

Legal Advisory Commission Opinions - Churchyards: closed (Rev 2003); Churchyards: liability for personal injury accidents (Rev 2000); Churchyards: ownership of monuments and trees (July 2001, Rev 2003); The maintenance of monuments in closed churchyards (January 2007)

Heritage England and Church Building Council guidance.