

Closure of Churchyards and Handing Over Responsibility to the Local Authority: Some Guidance Notes

The following factors arise for consideration as a Churchyard becomes full.

First, it is important to consider the definition of "full" as far as the Churchyard is concerned. It is not enough for the Churchyard to have been completely buried over its whole area to a depth of 6 or 8 feet: The Ministry of Justice will certainly press for evidence or confirmation that it has also been the subject of reburial, producing the result that there is no place in the Churchyard where it is possible to bury human remains leaving a space of three feet above the top of the new coffin. It is difficult to know how to advise on ways and means of discovering exactly how "full" a Churchyard is. Unless there is a completely detailed plan of the Churchyard showing burials, or the evidence of a Sexton or grave digger with a photographic memory, there is little alternative to the discreet testing of depth with a crowbar or similar instrument.

It may be that a churchyard is so full that it is impossible to dig more than 1 or 2 feet beneath the surface without disturbing human remains. There are two points on this: first, any human remains disturbed must be reburied in a seemly manner, and secondly even though the Churchyard is this full parishioners and others dying in the parish cannot be refused burial. The only sure bar to that entitlement is a Closure Order.

The application for a Closure Order under Section 1 of the Burial Act 1853 should be made to the Coroners and Burials Division, Ministry of Justice, Area 4.38, 102 Petty France, London SW1H 9AJ. The telephone number for enquiries is 0203 334 2813. Email: Michael.Johnstone@justice.gsi.gov.uk (*This address and telephone details correct as at February 2014*). An Order may require the discontinuance of burials in a particular churchyard, either entirely or with exceptions (see below). In the view of the Ministry, an Order does not, however, prohibit the interment of cremated remains provided this can be done without disturbing human remains.

The application should be made by the Incumbent or by the PCC Secretary and should set out in full the grounds on which an Order is sought. The Ministry is not normally prepared to consider applications relating to parts only of churchyards. It may well follow from this that if there is an extension to a Churchyard which adjoins the area which is full, the extension itself (if consecrated) needs to be filled with burials before any application can be made in respect of the whole. It may well be impossible to close an old Churchyard if there is a new one next door which is open and operating.

The Ministry will wish to be satisfied that an Order can be sought on at least one of the following grounds:-

1. further burials would constitute a health risk (in this connection it is worth warning the local Chief Medical Officer of Health before making the application because the Ministry will certainly canvass his opinion as part of the procedure)

2. further burials would be contrary to decency
3. discontinuance of burials would prevent or mitigate nuisance
4. there is no proper room for new graves.

The Ministry state that a wish to transfer responsibility for maintenance to the local authority is *not* in itself a ground for seeking an Order.

If the Ministry considers there is a *prima facie* case for making an Order it will ask applicants whether they want the Order to provide for further burials to take place:-

1. in existing walled graves or vaults which have room for further interments, provided each coffin is adequately enclosed by brickwork or stonework , or
2. in existing family earthen graves which have sufficient space for further interments, provided the top of every coffin is at least one metre below the level of the ground adjoining the grave, or
3. in any unused earthen grave space which has been reserved, provided the top of every coffin is at least one metre below the level of the ground adjoining the grave

If it is intended to hand over responsibility to the local authority once the Closure Order has been made, then it is well worthwhile in terms of local goodwill to give the Parish Council a good 12 months' notice of the intention in order that they may put their financial house in order and ensure that the point is reflected in next year's budget. This is a particularly important point where extensive repairs are required to the Churchyard: and indeed there is an agreement between the Legal Advisory Commission of the General Synod and the Local Authorities Association that this practice will normally be followed.

Once the Closure Order is made by the Privy Council, it is open for the PCC to pass a simple resolution transferring the responsibility for maintenance to the Parish Council. Once that resolution is served upon the Parish Council it is mandatory, and the responsibility must be accepted by the PC within three months of the date of service. The PC may transfer the responsibility onwards to the District Council if they think fit, but once again there is a time limit upon them and if they do not act within three months then the liability remains with the PC.

There is no responsibility on the PCC to put the Churchyard into perfect condition before the maintenance liability is handed over; but in terms of community it is important that the PCC should be seen to have acted reasonably in all the circumstances.

Although Section 215 of the Local Government Act 1972, which covers this transfer procedure, refers only to the Churchyard and its walls and fences it is the opinion of the Legal Advisory Commission that the responsibility includes that for maintenance and repair of the paths and gates. It does not, logically, include services or items which benefit the Church to the exclusion of the Churchyard; for example a drain under the Church the sole function of which is to carry off water from the downspouts and guttering of the Church building.

The transfer of responsibility is just that: it gives the Local Authority the burdens without any benefits. Thus, for example, if the District Council wishes to clear the tombstones out of the Churchyard in order to make maintenance easier they will need a faculty, which involves a resolution by the Parochial Church Council, in just the same way as if they had not taken over the work. Similarly, the fees for a fresh inscription on a tombstone go to the Incumbent under the Parochial Fees Order and not to the Local Authority. The only reservation is where there is a Trust for the maintenance of the Churchyard, with particular reference to a specific grave: although the PCC or Incumbent and Churchwardens have no authority to pass over the capital of the Trust Fund to the Local Authority it is probable (subject to the exact terms of the original Trust) that the income can be passed over to the Local Authority for Churchyard maintenance purposes.

The transfer of maintenance liability does not, of course, prevent the PCC doing work within the Churchyard, provided it does not jeopardise the work carried out by the Local Authority. Thus, for example, the PCC may decide to tarmac the paths, despite the fact that they are in reasonable condition. The Registry is sure a move like this would be welcomed by the Local Authority.

Finally, perhaps it is worth saying that Section 215 is not the only way of getting money out of a Local Authority for help with the maintenance of a Churchyard. The Parish and District Councils have powers under the Local Government Act to make contributions to the cost of running a Churchyard, even if the liability has not been transferred: but Section 215 is the only compulsory arrangement, which does not leave it in the discretion of the Local Authority from year to year.

The Registry is aware that there is often a feeling of resentment in the Local Authority about a transfer arrangement of this kind; but it is believe this is misplaced. The Parish and District Councils are (under S.214 of the 1972 Act) the proper burial authority for the parish and district, and not the PCC. The PCC has by calling upon the congregation alone for its finance provided a burial place for the whole of the community regardless of denomination for many years, often many centuries; and Parliament has found it right in the 1972 Act and its predecessors for some time before to say, "the Established Church has carried this particular responsibility throughout the time that the Churchyard has been open for burial and it is now right and proper that the elected representatives of the community should fulfil their duty in respect of the burial ground for the community once it is closed". It is difficult to see why on that argument it is not possible to hand over the responsibility to the District Council while the Churchyard is open, rather than waiting until it is closed: but unfortunately, that is not what the law says!