

# The Churchyard: Law and Practice

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# Churchyards



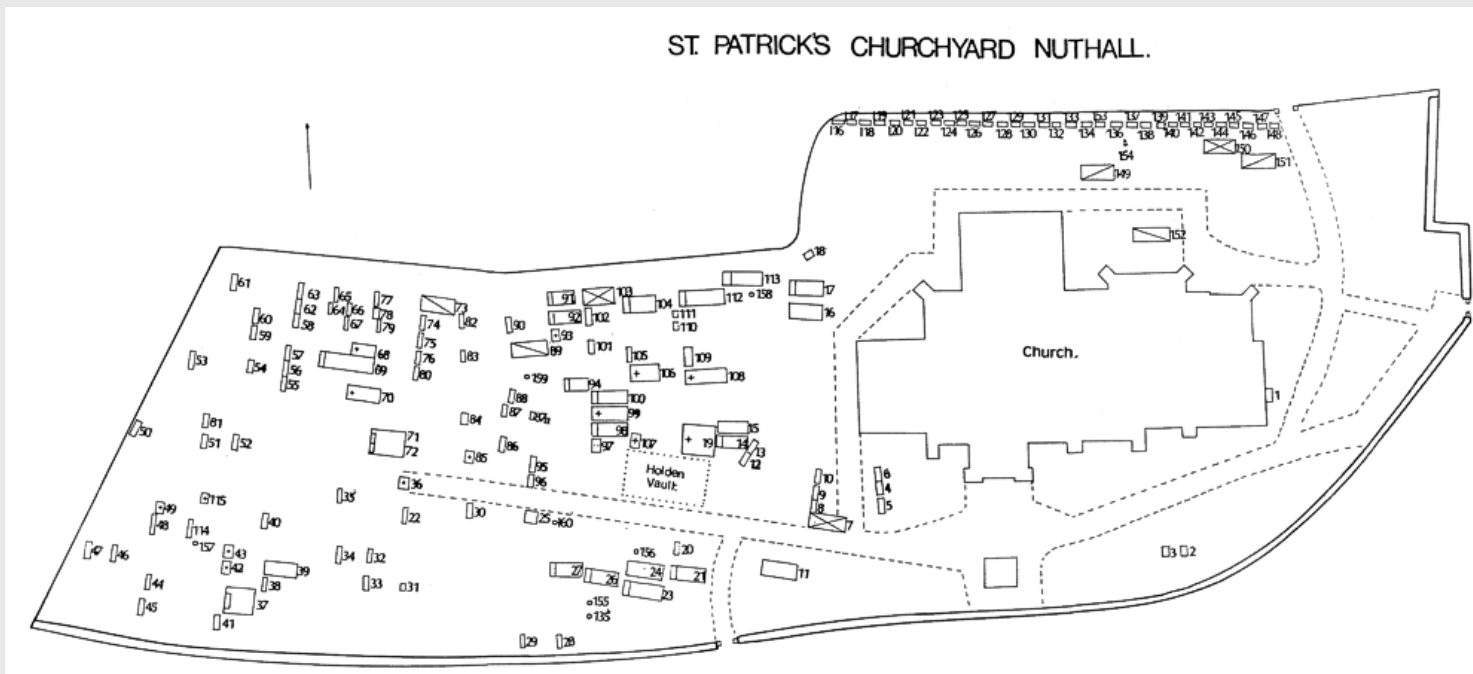
Churchyards have for centuries been used as the burial place for the dead of the parish. Burial, monuments and exhumation are, along with all other matters relating to churchyards, regulated by law.

Those having responsibility for the care of churchyards therefore need to know the law and practice in this area.

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# The Churchyard

- Identifying the churchyard
- Un-consecrated
- Consecrated land



# Open churchyards: Responsibilities

- Cannon F.13 (2)

“The churchyard shall be kept in such an orderly and decent manner as becomes consecrated ground and it should be duly fenced”.
- S4 Parochial Church Councils (Powers) Measure 1956

# Churchyard Responsibilities

- The Churchyard wall or fence
  - Identify who owns this?
  - Maintenance
- Paths
- Trees
- New List A and List B. (April 2020)

# Churchyard Responsibility

- The duty of care (“the standard of care”)
- Owed to everyone – even trespassers!
- The disclaimer notice
- Risk assessment
- Insurance!

# Memorials

- Churchyards are consecrated land
- Consistory court has jurisdiction
- No automatic right to introduce a memorial
  - permission is always needed
- Long-standing practice
  - Chancellor delegates authority to the minister to grant permission for memorials which meet the requirements.

# Memorials

- Minister may decline to exercise jurisdiction – faculty application required
- Where minister permits a memorial which does not comply or chooses to “relax” the rules – permission is a nullity
- Minister may not impose his/her own, more restrictive, rules
- Churchyard Regulations required “substantial reason” to be shown for departing from Regulations



# Inappropriate memorials



# Thomas the Tank Engine

- No precedent is set by other headstones introduced unlawfully
- Press coverage



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# Good practice in managing problem cases

- Pastoral requirements v enforcement of rules
- Manage expectations
  - publicise regulations
  - inform the bereaved
- Dealing with breaches
  - gentle but firm
  - faculty?

## The law (3)

- Removal of items unlawfully placed in churchyard
  - faculty required – Kerbs, lights, toys, ornaments.
- Duty of incumbent to enforce Churchyard Regulations
  - failure could give rise to a CDM
- Canon F13
  - duties of the minister & churchwardens

# Inappropriate Memorials



# Inappropriate Memorials



# Inappropriate Memorials





# Unsafe memorials

- Next of kin or heirs at law own the memorial
  - primarily responsible for repair & safety
- Churchwardens (Burial Authority) have secondary liability
- Insurance
- Faculty jurisdiction applies!

# Unsafe Memorials

- Memorials may only be lowered or moved with a faculty unless they are dangerous
- Full re-ordering – the plan should be submitted as part of a faculty application
- Is immediate action required?
  - Carefully lay stone
  - Face down
  - Inform next of kin/heir at law

# Graves and Reservation

- Right to a burial
- Allocation and digging the grave
- Private Faculty
  - £296.20
  - £150.00
- Reservation
  - 75 Years
  - Additional Conditions
- Churchyard plans

# Churchyards with limited space

- PCC policy – “first come first served”
- The Chancellor will give weight to the views of the PCC
- No obligation to acquire additional land

# Closing a Churchyard

- Closure by order in council
- Full and therefore no further burial
- An infringement to public decency
- Public health risk
- Procedure and transfer a maintenance responsibility to local authority
- Keep in decent order

# Closed Churchyard

- Handling the local authority
- Establishing of churchyard closed
  - Copy of Order: Council
  - London Gazette
  - Ministry of Justice
  - The Registry



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