

## **SAFETY INSPECTIONS OF GRAVEYARDS AND MEMORIALS (Finalised January 2020)**

**PRACTICE DIRECTION** to give effect to the Interim General Faculty dated 4<sup>th</sup> March 2020 relating to Churchyards and Burial Grounds

### **SCOPE**

- 1) The following guidance relates to Churchyards and Burial Grounds belonging to churches of the Church of England within the Diocese of Blackburn. It does not cover graveyards or cemeteries belonging to local authorities, or those closed churchyards and burial grounds where responsibility for maintenance has been passed to a local authority under the provision of legislation, or has voluntarily been assumed by them.
- 2) The guidance does not apply to individual graves, monuments or memorials that have been separately listed as of special historic, artistic or architectural importance.
- 3) Churchyards are set apart for ever in God's name ('consecrated'), for the burial of the mortal remains of the dead - bodies or cremated remains - and such remains are in the custody of the Church for permanent safekeeping. It is a mark of respect that churchyards are kept tidy and well-looked after, but there are also legal responsibilities that arise in connection with them.

### **GENERAL BACKGROUND**

4) It is usual for individual graves, to be marked with a headstone or other memorial, identifying the individual(s) whose remains are buried there. This custom has been observed for hundreds of years, (although many individuals have been buried with no permanent marker on their grave). Many of our older churchyards have such ancient memorials within them. Today, the vast majority of memorials are of modest size and shape (such matters being regulated by the Churchyard Regulations of the Diocese), but in times past they were often considerably larger and heavier, as many of those dating from the Victorian period or earlier in our local churchyards will bear witness. The historic or heritage importance of certain individual memorials, may have resulted in their being 'listed' in their own right, by which they are protected by statute from unauthorised interference.

5) Over the years, damage may have occurred to some memorials from the effects of weather, or from subsidence or other ground movement, arising from trees and shrubs, or burrowing by animals, and from accident or vandalism. General deterioration of internal fixings may also have occurred. For various reasons therefore, the safety of a headstone or memorial may have been compromised, and not always in ways that are plainly visible.

6) People come to our churchyards for a variety of reasons, perhaps on their way to worship, or to remember family members and friends who have died, or perhaps simply as a quiet place to sit and rest for a while. They can also become an attraction for children as a place to play, or older individuals who may want a place to meet their friends. Unsafe memorials can potentially cause injury or death, and damage or loss, to a large number of people therefore, to those who are simply passing by or through the churchyard, or those who are involved in other activities within its boundaries.

### **THE PCC AND THE CHURCHYARD**

7) The Parochial Church Council ('PCC') is in law an occupier not only of the church building, but also of the surrounding churchyard, or a burial ground not physically attached to

the church itself. As occupier, the PCC owes duties to visitors to see they are reasonably safe for the purposes for which they are allowed to be there. A slightly lower duty is owed to those whose presence or activities may be somewhat less regular, or even unauthorised, provided that the PCC is aware of the likelihood of their presence. Church insurers will provide cover against claims brought against PCCs for accidents in churchyards, and often in the case of major insurers in this field (such as the Ecclesiastical Insurance Group), will provide help and written advice to church bodies in relation to these responsibilities.

8) This is however not primarily a matter of legal liability. No one wants to see anyone exposed to risk of injury or death through dangers in a churchyard, with all the pain, distress, loss and worry that will follow after an accident of that type. Churchwardens and PCCs know of the potential for such dangers and need to know what steps they may and **should** take to minimise such risks. It is never acceptable simply to 'hope for the best'

9) The Archdeacons on behalf of all the parishes with churchyards and burial grounds, have applied to the Consistory Court of the Diocese for a Faculty (formal permission) to allow PCCs to **CARRY OUT INSPECTIONS of the memorials in those areas, AND TO TAKE REMEDIAL OR SAFEGUARDING ACTION WHERE POTENTIAL SOURCES OF DANGER ARE IDENTIFIED. THIS MAY INVOLVE THE USE OF WARNING TAPE, TEMPORARY SUPPORTS OR OTHER MEANS, AND IN EXTREME CASES, LAYING THE MEMORIAL FLAT.** The Court has granted the faculty for a limited period, and this Practice Direction sets out the basis on which it operates.

## LEGAL SITUATION

10) Such formal permission is required because the legal situation in a churchyard can be complicated (see below), but also because families expect memorials to be kept undisturbed, and certainly not that the church authorities should interfere with the memorials on the graves of their loved ones, without their agreement or, at least, appropriate notice or warnings, and only where adequate reason exists.

11) The ground of the churchyard always belongs to the church, usually being formally vested in the parish priest, even after a burial or interment has been carried out in a particular place. (Any fees that are paid are not in relation to a sale or disposal of a piece of land, even if a particular plot is 'reserved' by faculty for a future burial of an identified individual.)

12) Permission is always required for the erection of a memorial within a churchyard. If the limits set out in the Churchyard Regulations are observed, permission in almost all cases may be obtained from the parish priest in a simple and straightforward way. If the proposed memorial falls outside those limits, permission may be sought from the Chancellor by seeking a faculty, which involves a longer and more formal (and more expensive) process, that may not ultimately be successful for a variety of reasons.

13) Ownership of a memorial vests in the first place in the person who erected it (ie commissioned and paid for it), and after his or her death, 'the heir or heirs at law' of the person in whose memory it was erected. This is a method of inheritance that has been generally obsolete for nearly 100 years, and the passage of time over several generations, has in most cases rendered tracing the relevant individuals very difficult, if not impossible. Nonetheless, the important point to note is that the memorial is not vested in the parish priest or PCC, so it is not 'theirs' to deal with as they see fit, even if they can identify possible problems or dangers

14) Primary responsibility for the upkeep and safety of the memorial remains with the owner(s). Because of the difficulty of identifying them (and possibly, of persuading them to

meet their responsibilities), the PCC in its duty, as occupier, to see that the churchyard is 'reasonably safe', may be obliged to act. (The PCC is also under an overlapping responsibility under Canon F13 to see the churchyard is fenced, and kept 'in such an orderly and decent manner as becomes consecrated land'.) It is not the PCC's responsibility to undertake programmes of repair and restoration of defective gravestones, as opposed to inspection and making reasonably safe.

15) Where occasionally the PCC nonetheless considers work to an individual grave needs to be undertaken by them, consent of the owner should be sought. If an owner withholds consent to necessary work, or cannot be found, a separate faculty may nonetheless be granted to the PCC in respect of moving, demolishing, alteration or execution of other work to the memorial (section 66(1) of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018), provided the statutory process set out there is followed. In case of emergency such action may be taken even if those steps have not been taken.

16) In the light of the above, a PCC contemplating inspection and remedial action to memorials in a churchyard or burial ground, will see that there are a number of potentially conflicting factors to consider: first, there is the need to take reasonable steps to keep the area free from danger; second, families and parishioners likely to be affected by such work, need to be kept aware such action is in contemplation, and have the opportunity to comment or object, in respect of 'their' family's grave(s); third, any action should be limited to what is **proportionate** and **realistically needed**, and not be undertaken on the basis that it will prevent possible but unproven danger ever arising.

17) Over-enthusiastic action is likely to cause all sorts of pastoral issues, and possibly claims that the PCC fund repairs or restoration to individual graves.

## **EXTENT OF PRACTICE DIRECTION**

**PCCs ARE EMPOWERED TO UNDERTAKE INSPECTIONS AND NECESSARY REMEDIAL ACTION UNDER THE AUTHORITY OF THE GENERAL FACULTY AND THIS PRACTICE DIRECTION ON THE FOLLOWING BASIS** (to go beyond which, is not to act by virtue of the faculty):

It will be assumed in any dispute or situation where the question arises, that

IV) the PCC, or the wardens or other members or individuals acting on its behalf, have read and understood this Practice Direction, and do not consider they need further explanation or clarification of what is allowed from the Registrar, and that they have read the guidance given by the MINISTRY OF JUSTICE in *Managing the Safety of Burial Ground Memorials* (January 2009 or any update). Although that publication does not relate to churchyards or burial grounds of the Church of England, it contains sensible and helpful advice and guidance

V) those involved in the work and anyone in a supervisory position, are aware of the potential danger to health and safety, of inspection and contact with large and heavy stones, and that any such work is only undertaken by responsible and careful individuals, who have available appropriate equipment, including personal protective equipment

VI) that where volunteers are undertaking the work, the church's insurers have been informed, and are covering them in undertaking the activity.

## **CONDITIONS**

## NOTICES

VII) Appropriate written notice (see Appendix) of not less than 28 days ('the notice period') is to be given of the PCC's intention (which is to be formally recorded in the minutes of one of their meetings) by exhibiting Notices setting out the proposed work of Inspection and possible remedial work, and identifying the area where it is to take place. **No work is to be started affecting graves or memorials, before the 28 days expires.**

VIII) **A NOTICE** must make clear Inspections are to be made of memorials, including kerbs and other parts, **TO BE FOLLOWED BY NECESSARY REMEDIAL OR SAFEGUARDING ACTION WHERE REQUIRED**, subject to any objection being made by the end of the notice period, to a specified church officer or identified individual, (the extent of **SUCH REMEDIAL OR SAFEGUARDING ACTION BEING SET OUT BELOW**).

IX) Such notices are to be exhibited at the principal points of entry into the churchyard or burial ground, and also on a notice board at the parish church, and at any other church where the churchyard or burial ground is situated. Other steps to inform parishioners or interested parties are to be encouraged, including notification in magazines or on church notice sheets, in local news publications, or newspapers circulating widely in the area, or on relevant websites.

## OBJECTIONS

X) Where objection in relation to a specified grave is made, then that is to be respected, unless a clear and present danger exists, when only the minimum action to remove the danger or provide temporary support, or steps to limit approach thereto, needs to be undertaken.

## TESTING AND RECORD KEEPING

XI) Where danger or insecurity is identified during inspection, such that immediate remedial action to the memorial is required, proper records of what is found, **TOGETHER WITH PHOTOGRAPHS OF RELEVANT DEFECTS**, should be made and securely retained.

XII) Memorials should initially be visually assessed, on an individual basis, with consideration given to surrounding ground, foundations and joints, followed by a physical test. This requires a hand test to identify any **SIGNIFICANT** looseness, and, second, the application of steady force or pressure with one hand to check for hidden instability. (Any sudden or violent blow may result in damage, and almost anything can be dislodged by enough pressure!) The height of a memorial, any obvious degree of lean or damage or defects or irregularities in the surrounding ground, may all be factors indicating potential dangers. The hand test should be carried out when standing to the side of the memorial, and not in a place of danger, and the firm pressure should be applied in various directions.

XIII) Any force measurement device should only be used by someone properly trained and conversant with its proper use.

XIV) **INSPECTIONS SHOULD BE CARRIED OUT EVERY 12 MONTHS.**

XV) It will be best to record any findings by reference to the specific memorial. They should be categorised as:

**Group1:** forming an immediate danger, requiring immediate attention.

**Group 2:** unstable, but unlikely to cause immediate danger.

XVI) **ACTION** will be needed in regard to Group 1. If a memorial is to be laid flat, the inscription should be kept legible, and the stone should be kept as near the relevant grave as possible. In Group 2 cases, warning or hazard tape round the memorial, or forming a barrier, together with a notice asking those interested in that memorial to contact the churchwardens or some responsible individual, should alert families to the fact some problem has been identified. If no contact is made by the family within 3 months, then consideration needs to be given as to whether further action is required.

**APPENDIX - TYPICAL NOTICE (to be adapted as necessary)**

**Churchyard /Burial Ground of St Andrew Thornhill in the Diocese of Blackburn**

**TAKE NOTICE** that the Parochial Church Council intends to carry out an inspection of the memorials and monuments in the whole /(parts A,B, and C) of the churchyard/burial ground on a date or dates not earlier than 1st day of May 2020.

The inspection is to identify defects or other possible sources of danger.

The responsibility to keep a grave safe lies with the owner of the grave, but the PCC has a duty to keep the churchyard/burial ground reasonably safe for those who visit it.

Where defects or possible dangers are found, the PCC will take steps to remedy or safeguard the same, where possible, by the use of hazard tape, supports or by other means.

If a danger is significant and steps are urgently required to make the area safe, in the last resort, the memorial may be laid flat.

Queries, or any objection to the proposed work in regard to a particular memorial or monument, should be notified urgently to (Mr George Dixon or Mrs Phyllis Holderness), Churchwardens, whose contact details are on the church notice board/below.

**AB. Secretary to PCC**

**Date 20th March 2020**