



## **THE DIOCESE OF ST EDMUNDSBURY AND IPSWICH**

### **MAINTENANCE AND SAFETY IN CHURCHYARDS – RESPONSIBILITIES OF PCC'S AND LOCAL AUTHORITIES**

#### **1. CHURCHYARDS OPEN FOR BURIALS**

Under the Burial Act 1855 the responsibility was expressed as follows: “The churchwardens shall maintain such churchyard in decent order and also do the necessary repair of the walls and the other fences thereof”. Under the Parochial Church Councils (Powers) Measure 1956 the powers, duties and liability of the churchwardens for the care and maintenance of churchyards were transferred to PCC. Section 6 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (as amended in 1995) says that these powers, duties and liabilities extend to trees. Canon F13 (para 2) states that the churchyard shall be kept “in such an orderly and decent manner as becomes consecrated ground”. It also requires that churchyards “be duly fenced” and that the fences “be maintained”.

So much for the legislation. Unfortunately there is no clear guidance anywhere as to what it means to “do the necessary repair” of the walls and fences. The standard of repair will depend on the age and the nature of the original structure. As a minimum, it must be safe, but it does not have to be perfect and as good as it was when new. Sometimes repair will necessitate renewal; sometimes not.

Nor is there any clear definition of what is involved in maintaining the churchyard “in decent order”. It has been expressed in the following way: “To see that the churchyard be kept in a decent and fitting manner, that it be cleared of all rubbish, muck, thorns, briars, shrubs and anything else that may annoy parishioners when they come into it”. (*A Churchwarden's Guide of 1895*).

It is generally accepted that the duty extends to the paths, gates, tombs, gravestones, memorials, trees and anything else attached to the land.

Problems of safety also arise. The Occupiers Liability Act 1957 applies to any owner or occupier of premises and imposes a duty to take reasonable care to keep visitors safe. What is reasonable will depend on individual circumstances, the nature of individual hazards and whether or not they are obvious, and the likelihood of someone injuring himself. In the words of the Burial Act 1855 it is generally accepted that orderly and decent include safe.

The primary responsibility for the upkeep of a monument falls on the personal representatives of the deceased or the descendants of those personal representatives, assuming they can be traced. However, PCC's and local authorities (in situations where the PCC's responsibility has been transferred) could also be liable for breach of the general duty of care under the Occupiers Liability Act.

Therefore they should test for and may need to carry out work to unsafe memorials, whether or not they can recover the cost from the deceased's descendants.

People who, with the consent of a faculty, plant trees in churchyards, are not liable for them afterwards. Nor are their descendants. Any remedial work necessary, either to keep the churchyard in decent order, or because a tree has become unsafe, will be the responsibility of the PCC or the local authority (if the PCC's responsibility has been transferred). Work to trees may also be necessary if their roots or branches are encroaching into neighbouring land or if they are causing a nuisance in the legal sense.

## 2. **CLOSED CHURCHYARDS**

A closed churchyard normally means a churchyard which has been closed for burials by an Order in Council from the Home Office. Once that order has been made, then under Section 215 of the Local Government Act 1972 the PCC can request the local authority on three months' notice to take over its responsibilities for maintenance.

The responsibility which a local authority then has is no greater or less than that previously imposed on the PCC – see section 1.

## 3. **GENERAL**

Whether or not they are closed and whether or not the responsibility for maintenance has been passed to a local authority all consecrated churchyards are subject to faculty jurisdiction. Any works that require a faculty where the PCC is the responsible authority will similarly require one where it is the local authority. Works of routine maintenance do not require a faculty but almost all other work in a churchyard will. Please contact the Diocesan Registrar (01473 232300) or the Secretary of the Diocesan Advisory Committee (01473 298500) for details of the procedures involved in obtaining a faculty. Please see the following directions published by the Diocesan Chancellor, which set out the circumstances in which testing and repair of certain memorials will not require a faculty.

March 2006

J. S. Hall  
Diocesan Registrar

# **THE DIOCESE OF ST EDMUNDSBURY AND IPSWICH**

## **CHANCELLOR'S DIRECTIONS ON**

### **UNSAFE MEMORIALS**

#### A. **OPEN CHURCHYARDS**

1. The PCC has a legal duty to ensure that there is a continuing audit monitoring the physical state of repair of all tombs, headstones and other memorials (hereinafter referred to as "memorials") in the churchyard, including any churchyard extension. The day to day responsibility for these duties shall be

delegated by the PCC in writing to one or more members of the PCC, who should check all memorials regularly, take appropriate action and report back to the PCC.

2. Where any memorial is found to be in an unstable, unsafe or damaged condition, appropriate action must be taken. Memorials should first be tested by hand. If a topple tester is also used it should have a maximum push-force of 35kg. Safety notices shall be placed on all memorials that are found to be unsafe or dangerous. In appropriate cases memorials should be cordoned off. Whenever possible, unsafe or dangerous memorials shall be made safe in their current position. Prior to laying any memorial flat, if that is considered necessary, the PCC shall make an appropriate written and/or photographic record of the memorial. No memorial shall be laid flat elsewhere or re-erected elsewhere other than immediately beside the grave without the written permission of the archdeacon or by faculty in appropriate cases.
3. If the family member or members likely to be responsible for the maintenance of the memorial are identifiable, they shall be contacted and informed immediately. Where the PCC or its representative consider that it is safe to do so relatives shall be given a reasonable time in which to make the memorial safe. That period of time shall be specified in writing by the PCC and the relative or relatives informed that if they do not take the necessary action during that period, then the PCC will do so, and will in certain circumstances be entitled to claim its expenses from the relative or relatives concerned. Where relatives do the work they shall inform the PCC of the work they intend to do and gain its approval before doing the work. If any dispute arises a faculty application may need to be made.
4. The archdeacon shall be informed of all unsafe or dangerous memorials, which have been cordoned off or laid flat.
5. If the above rules are observed a faculty is not required for testing only. Unless expressly stated, other work under 1 to 4 above shall not require a faculty (provided the rules are observed) save where the memorial dates from before 1850.
6. In appropriate circumstances, incumbents, churchwardens and PCCs may petition for a faculty for the removal or repair of all unsafe or dangerous memorials. In so doing they may ask the legal heir or heirs of the person commemorated to pay the costs. Otherwise costs fall upon the PCC.
7. Some memorials in churchyards may have a listed status in their own right under listed buildings legislation and these directions do not override any requirement for listed building consent in such cases.
8. If incumbents, churchwardens or PCCs are in doubt about what action to take they should consult with the archdeacon.

B. CLOSED CHURCHYARDS AND CONSECRATED CIVIC CEMETERIES

If local authorities state in writing that they will operate in accordance with the following rules, they will not be required to apply for a faculty before testing memorials and taking remedial action, unless the memorial dates from before 1850. The rules are set out below: -

1. The PCC of the parish shall be consulted well in advance and be given the opportunity to attend inspections and other operations.

2. Before testing each memorial shall be photographed and recorded. The records may be kept on a computer. A small microchip may be placed at the base of the memorial to aid computerised recording.
3. The memorial shall first be tested for security by hand. If the memorial does not move the topple-tester may be used to confirm that it is secure.
4. The maximum push-force of the topple-tester shall be 35 kg.
5. Safety notices shall be placed on all memorials found to be unsafe.
6. Wherever possible unsafe memorials shall be made safe in their current position. Laying-flat shall not be the automatic result of a memorial being unsafe.
7. Each local authority shall have its own method of making a memorial safe for a period of six months in order to give time to enquire for surviving relatives of the person commemorated and to give them an opportunity to make the memorial safe. A suitable method of temporarily making safe will be to place two steel rods into the ground next to the memorial and to strap the memorial to the rods.
8. As soon as the memorial has been temporarily made safe, the local authority shall make reasonable enquiries to find any surviving relatives. It shall record what enquiries were made and the result.
9. Relatives who are found shall be given in writing a reasonable time in which to make the memorial permanently safe.
10. If relatives have not made the memorial safe during the time provided, the local authority shall take appropriate steps for that purpose. It shall endeavour to make the memorial safe in the upright position. However if this is impracticable the memorial may be placed flat on the ground, after first ensuring that the ground is level and soft and that any surface of the memorial which will not touch the ground is supported (to avoid fracturing of the stone).
11. The method of making safe and details of the person doing the work shall be recorded.
12. A copy of the records for work done in a churchyard shall be given to the PCC and updated annually.

If the above rules are observed then a faculty is not required for testing. Subject to compliance with the rules, a faculty is not required for laying flat and/or remedial work to memorials, unless they date from before 1850.

March 2006  
Sir John Blofeld  
Chancellor

### Supplemental Notes

- a) Faculty application forms can be requested from:-  
James Halsall – Secretary to the Diocesan Advisory Committee – 01473 298500, Diocesan Offices, St Nicholas Centre, 4 Cutler Street, Ipswich, Suffolk IP1 1UQ  
James Hall – Diocesan Registrar – 01473 232300, Birketts Solicitors, 24-26 Museum Street, Ipswich, Suffolk, IP1 1HZ
- b) Normally the registrar will waive any faculty application fee where the applicant is the local church or has the local church's agreement. Fees may however be charged if the application becomes contentious.
- c) Applications may be made to cover more than one memorial and/or more than one churchyard. This is particularly relevant for a local authority programme but the disadvantage is that the whole faculty application may be delayed by a problem with one particular memorial.
- d) Any faculty application will require a detailed schedule of work for each memorial concerned.
- e) Proper and reasonable costs of repairing unsafe memorials can be charged to the descendants of the deceased, if they can be found. Otherwise, all costs are the responsibility of the PCC in an open churchyard and of the local authority in a closed churchyard where the PCC's responsibility has been transferred.