

MONUMENTS, TOMBS AND HEADSTONES

A Brief Guide - maintenance responsibilities of the PCC

Overview

A tombstone is vested in the person who erected it and, after that person's death, in the heirs at law of the deceased. Those that erected the monument, and the heirs of the deceased, are responsible for the ongoing maintenance of the headstone. Situations will arise when it is not possible to discover who now has responsibility for a monument; perhaps because the inscription has worn away, there are no known contact details for relatives or there is legal uncertainty over the transmission of responsibility over time.

In any situation where it is discovered that a tombstone is unsafe, broken or generally requires maintenance the issue of ownership of the stone must be dealt with before decisions are made about repairs; the stone can't be treated simply as if it is without an owner or abandoned. Should a PCC wish to carry out works in the churchyard which include, or are solely in respect of memorial stones, the issue of ownership is covered via the legal powers and responsibilities provided by the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 (section 66) which allows for the consistory court of a diocese to grant a faculty to permit the moving, demolition, alteration or carrying out of work to a monument erected in the church or on consecrated ground if an owner withholds consent or cannot be found after reasonable efforts have been made to find him or her.

Liability for work

The occupier of a churchyard has a common duty of care to those visiting the churchyard pursuant to the Occupier's Liability Act 1975. The occupier is usually the Parochial Church Council unless the churchyard is closed and responsibility for maintenance has been handed to the local authority. In a closed churchyard in which the local authority carries out maintenance responsibilities then it may be considered the occupier, or the local authority and the PCC may be simultaneously liable depending on the precise circumstances.

Generally, in a churchyard the three most likely hazards are the condition of the paths; the condition of the monuments and the condition of trees. It is important to check that your Insurance Policy covers the churchyard. Any such policy will lay a duty on the insured to take all reasonable precautions, including temporary measures, to ensure the safety of visitors.

Although the Church Inspecting Architect will check the condition of the churchyard during the quinquennial inspection the PCC should carry out an annual visual survey of the churchyard to include the hazards previously mentioned.

Permissions required when dealing with trees and paths

Most maintenance works relating to trees and paths are dealt with under the List A and List B matters detailed in the Faculty Jurisdiction Rules. You should always check with the DAC before undertaking any works to ensure that the proper permissions are in place, as List A and List B cannot be granted retrospectively, and a full confirmatory faculty will then become necessary. Changes to materials for paths, or new paths require a faculty and the felling of healthy trees is also a faculty matter.

Permissions required when dealing with monuments

Given the ownership issue when dealing with monuments (both inside and outside) faculty permission will always be required for works relating to monuments and memorial stones unless repairs are being undertaken by the owners of the stone or family of the deceased in which case the Chancellor's Churchyard Regulations allow for the Vicar to give approval to them to remove, repair, clean or renovate a memorial stone.

If stones are discovered to be unstable then the following actions will be required:

1. If the stones are dangerously unsafe then they should be immediately roped off to stop access. You should consult your Insurers. Alternatively, if the Chancellor is satisfied that the matter is of such urgency that it would not be reasonable to require the consents of the owners, she may consider giving emergency permission to lay the stones flat whilst further discussions are undertaken.
2. A record of all stones of concern should be made detailing any inscriptions, and photographs taken.
3. Efforts should be made to contact the families concerned, as required under the Ecclesiastical Jurisdiction and Care of Church Measure. This could involve placing a notice within the churchyard and affixed to each stone of concern together with a notice on the parish church website and in any parish magazine in circulation. The parish records should also be carefully checked to see if contact details have been lodged. When notice is served on the families informing them that their gravestone is considered unsafe they should be asked to make their stone safe by repair, removal or replacement. The notice should include an appropriate time frame for a response and also contact details for the Vicar or churchwarden or other appropriate church officer.
4. The PCC should discuss its preferred method of dealing with the stones where no owners are located. The options include repairing the stones, laying flat the stones or removing the stones. The PCC must pass a resolution accordingly.
5. After a sensible period of consultation, say three months, the PCC should apply for faculty permission for any works to the stones. Generally permanent laying flat of stones is not acceptable as a long-term solution (as it creates a trip hazard as grass grows up around the stones) unless they are set down to become level with the ground. If stones are to be removed the application should include details of what is to happen to the stones once removed. A full and proper record of all stones should be kept as part of the parish records.