

## Churchyard Closures

L + G Good morning and a very warm welcome to the beautiful city of York. I hope that you have enjoyed your conference, and particularly the opportunity to visit York Minster.

As your programme says, my name is Angus Deas and I am the Pastoral and Closed Churches Officer at the Diocese of York. In that role I am responsible for helping to manage all the different types of pastoral reorganisation, from uniting benefices and parishes, to the alteration of boundaries, to closing churches. The other part of my role, Closed Churches Officer, kicks in once a church has closed and is vested in the Diocesan Board of Finance. I become the responsible officer within the diocese for the building during the use seeking period and work very closely with our local Church Commissioner colleague in looking for a suitable alternative use. If the church remains vested in the DBF then I retain responsibility for its long term care and maintenance.

It is through my role that I have had to learn about the law and management of churchyards, both open and closed, and I also get occasional calls from people who are upset about the condition of the churchyard where their relative is buried.

My intention over the next 30 minutes or so is to briefly outline the responsibilities for the care and management of open churchyards before talking through the process for closing a churchyard and then the continuing responsibilities for the management and maintenance of a churchyard once it is closed. There will be some time for questions at the end of my presentation but if it can't wait do put a hand up and I'll do my best to answer. I am very happy for others in the room to share their experience or thoughts if it will help. As with so many areas of life in the Church of England, there are some fuzzy grey edges.

Historically the churchyard was the burial place for every resident within the parish but of course nowadays the local authority has the legal duty to provide for the disposal of bodies. A churchyard is consecrated ground governed by Canon law. Canon F13(2) provides that "The churchyard shall be kept in such an orderly and decent manner as becomes

consecrated ground and it should be duly fenced” The phrase “orderly and decent” is of course open to interpretation, and “duly fenced” includes being “duly walled”.

A churchyard is vested in the incumbent of the benefice, just like the church buildings, and just like the church buildings the responsibility for the management, care and maintenance falls to the PCC, thanks to Section 4 of the Parochial Church Councils (Powers) Measure 1956. So the PCC is responsible for keeping the churchyard in an “orderly and decent” manner, and for the maintenance of the fence or wall, the paths and trees. And because the churchyard is consecrated ground, works within it fall under the jurisdiction of the Consistory Court, so the PCC needs to consider whether it needs permission for work and whether that permission falls under List A or List B or full faculty.

The Incumbent and PCC retain this responsibility even if the church that is sitting within or adjacent to the churchyard has been closed. This does come as a surprise to some incumbents and PCCs, particularly when one of the reasons that leads to the closure of a church is often because the tiny congregation can no longer afford to pay for the maintenance required on the building. In this Diocese we have an on-going case where a small village church was closed and subsequently sold to a Preservation Trust. A couple of years ago I got a phone call from a very upset lady who had been to visit her father’s grave and couldn’t find it in the wilderness. When I investigated, I found that the churchyard was still open and therefore still the responsibility of the local PCC, so I phoned the vicar. He hadn’t been in post for very long and was staggered to discover this particular churchyard on his patch. Sadly the matter still hasn’t been fully resolved because the PCC is short of funds and there is a perhaps understandable reluctance on their part to spend a lot of money on some remote gardening rather than on much needed mission in the community.

In addition to general maintenance the PCC is also responsible for ensuring the safety of people using or visiting the churchyard. This is owed to everyone, including trespassers and vandals, so it is vital that the PCC has completed a risk assessment and has adequate insurance in place, including third party liability. Usually this is an extension of the policy that covers any buildings they have insured. Even if the church that has traditionally ‘owned’ the churchyard closes, the churchyard can still be included on the parish insurance

policy. In my experience this is for a relatively nominal sum, if not actually being a simple addition to the policy for no extra premium.

Again in this Diocese we were in the early stages of looking at the possible closure of a parish church because of a virtually non-existent congregation with almost no money. The church is surrounded by an open churchyard and in this case the closure of the church would have resulted in having to unite two parishes. The receiving parish and PCC, which isn't wealthy either, would become responsible for taking over the running of the churchyard, including maintenance and insurance, and this was causing some understandable concern to them. When I spoke to the insurance provider (Ecclesiastical in this case, other providers are available) they assured me that the churchyard could be added to the gaining PCC's existing policy at no extra cost, which was some comfort to them, although they would of course still be responsible for maintaining the grounds. We will have to wait and see whether Ecclesiastical will still have that view if and when we close the church, but fortunately the congregation is undergoing a bit of a revival at the moment so further discussions about closure are on hold until next Spring.

Another significant area of churchyard management is that of memorials, both the initial introduction of a memorial, and their subsequent management and maintenance, particularly when they become, or appear to become, unsafe and a potential danger to churchyard users (a good reason to have appropriate insurance).

In brief, there is no automatic right for a grave to be marked by a memorial – some form of permission is always needed because the churchyard is under the jurisdiction of the Consistory Court. In practice the Chancellor delegates authority to the local minister to grant permission for memorials, usually through a document called something like 'The Churchyard Memorial Regulations'. These are prescriptive and designed to maintain the dignity and tranquillity of the consecrated space (keeping it "orderly and decent"). The minister may not permit a memorial which does not comply with the regulations by choosing to relax the rules, and nor may they impose more restrictive rules. If a family asks for a memorial that is not covered by the Regulations, the minister should defer the matter to the Chancellor and the family will have to apply privately for a faculty. There is, of

course, no guarantee that a faculty will be granted (as in any other case): Churchyard Regulations usually require a “substantial reason” to be shown in the petition for departing from the Regulations.

Memorials are the property of the family of the deceased, not the minister or the PCC. So it is the next of kin, or heirs at law, who are primarily responsible for the upkeep, repair and safety of the memorial. However, the churchwardens and PCC have a secondary liability to ensure safety – the duty of care to churchyard users, and we know that many memorials are not maintained by the family. Whoever is responsible needs to be aware that a faculty has to be granted before any substantial work can be done, unless it is judged to be in an extremely dangerous condition. If immediate action is required the first thought should be to cordon the area but if it is judged to be so urgent then the stone should be laid face down and, if it is the PCC that arranges for that, the family needs to be informed, in addition to the Chancellor. The Chancellor would grant an interim faculty very quickly in an absolute emergency, with a proper application to follow once the memorial was safe.

That is a very brief overview of some of the responsibilities surrounding the management of open churchyards. I have mentioned them specifically because many of them continue to affect the management of a closed churchyard. I will now move on to cover the process that is gone through to close a churchyard.

A churchyard is declared closed by an Order in Council which is granted by the Privy Council. The PCC applies for the Order in Council through the Ministry of Justice, specifically the Coroners, Burials and Cremations Team which will scrutinise the application. In the application the PCC will need to explain the reason that closure is being sought, and also who will responsibility for the maintenance of the churchyard once it is closed.

The main reason for a PCC wanting to close a churchyard is simply because it is full and there is no further usable land where new graves could reasonably be provided because, for example, the land is too steep, or it is waterlogged, or there is insufficient depth, or where a new grave would be unreasonably close to an existing building, a path or some other structure.

Closure on these grounds does not prevent further burials in existing walled graves or vaults which have space available and where each coffin will be adequately enclosed by brickwork or stonework. Further burials can also take place in existing family earth graves which have space remaining, either side by side or on top; or where a grave space has been reserved by faculty. In these last two cases the top of the coffin must be at least one metre below the surface of the ground adjoining the grave. The application must contain details of these examples if they apply, which will then be included in the Order in Council. Once a churchyard is closed by Order in Council no further burials are permitted and in fact they are illegal if they do take place, so it is vital that these details are included in the application.

The other reasons that a PCC might apply for closure are that further burials would be contrary to public decency; that the discontinuance of burials would prevent or mitigate nuisance, or that any further burials would constitute a health risk. However these reasons are considered to be really quite rare, and if one or more of them did apply, and they were the main reason, then it would be likely that burials would have to cease entirely even if there was space for new graves or still space in existing graves.

Lack of funds or an inability to care for and maintain a churchyard are not valid reasons for a PCC to use to apply for closure. A PCC can apply to the local authority for help if it is really struggling: The Local Government Act does allow a local authority to support the care and maintenance of an open churchyard if a PCC asks, but in these cash-strapped times it is unlikely to want to do so: it will have other more urgent spending priorities. In the case of the overgrown churchyard that I mentioned earlier I spoke to the cemeteries officer at East Riding Council to see whether they could offer one-off support to at least get the vegetation to a more manageable state but he couldn't help. We also tried to engage with the parish council, who had also complained about the state of the place, and while they offered a bit of practical help for a while (a Councillor with a strimmer I think) they didn't have any money to engage a contractor to do a proper job.

In addition to deciding that they need to close a churchyard, the PCC has also got to decide who will be responsible for the ongoing care and maintenance once it has closed. There are

three possible options. The first is that the PCC itself retains the responsibility. This is the default position but it not an irreversible millstone and at a subsequent date the PCC can approach the local authority to take it on. Much more likely is that the PCC will ask the local parish or town council or parish meeting to take it on. If the local council decides that it doesn't want to, then within three months of being asked they have to approach the District Council. The District Council has a legal obligation to accept the request under Section 215 of the Local Government Act 1972. It is established convention that if a PCC is considering closing a churchyard and handing over responsibility for the maintenance to the local authority, then it gives a year's notice to both the local and district councils so that the future maintenance can be planned into their budgets. The PCC should also make sure the churchyard is in reasonable condition on handover, which of course it should be as it has been kept in an "orderly and decent manner".

The completion of the paperwork that needs to be sent to the Ministry of Justice does need to be carefully planned by the PCC. The paperwork includes notifying the local and district councils that closure is being sought and that the PCC intends to handover maintenance responsibility. Both local authority bodies have the right to satisfy themselves that the grounds for closure cited by the PCC are accurate (it is full, or whatever) and that it is in the condition stated by the PCC, Good, Fair or Poor. Either of the councils have the right to object to the proposed grounds of the closure application, which the PCC should then seek to resolve with the council. The councils have up to a month to respond to the PCC's notification and if site visits and discussions to resolve objections have to take place this is likely to take longer, so clearly applying to close a churchyard is not a quick process that can be done at the last minute. Whether or not the objections are ultimately resolved, the PCC can continue with its application for closure. The application paperwork it submits to the Ministry of Justice will include the comments and any unresolved objections from the local authorities.

The application form is fairly straightforward to complete, and in addition to asking for the contact details of the PCC, the Registry and the relevant local authorities, it obviously asks for details of the churchyard itself, including its location, the grounds for closure (full, contrary to public decency) date of the last burial and whether any future burials should be

included – the walled tombs, family graves, spaces reserved by faculty that I mentioned. In addition to the form the PCC will need to send in two copies of 1:1250 scale map of the area. One of them should have marked on it the outline the churchyard to be closed, and also identify any nearby burial grounds. The other should be a clean copy of the map for the Ministry to use.

Once the Ministry of Justice is satisfied that the application for the closure of the churchyard can properly proceed, it will ask the PCC to bring the proposals to the attention of local parishioners, inviting them to send any comments they may have to the Ministry. It is left to the PCC to decide how to publicise the consultation, but options include publicising on a website, in the Parish Magazine, a pew slip, noticeboards or the local paper. The Ministry will provide suitable wording for the notices however they are placed and should be sent a copy of any advert once it has been published. A minimum of a month should be allowed for the consultation.

The Ministry will consider any comments or objections that it receives. The only valid grounds for objections are any that relate to the reasons given for the closure – for example, it's not full, or that there is no nuisance to prevent. The PCC will be invited to respond to valid objections before the Ministry decides whether to progress the application. Objections regarding the condition of the churchyard or the financial implications of the transfer of maintenance are not considered to be valid.

If there are no valid objections the Ministry of Justice will inform the PCC that it intends to apply to the Privy Council for a closure order. The Privy Council Office will publish a notice in the London Gazette with the date on which the Her Majesty in Council has ordered the closure application to be considered. The Office will also send copies of the notice to the PCC and the local authorities. The PCC notices should be posted on the church door and other conspicuous places in the parish for at least one month before the date of the consideration.

Once the Privy Council has made the closure order, copies of it will be sent to the PCC and the local authorities. The Ministry of Justice will also send a copy of the Order to the

Diocesan Registry, where the Registry Clerks should enter it into the appropriate Register and onto an easily searchable database they have created to track matters such as this. The closure Order will also be published in the London Gazette.

So that's the paperwork and process for closing a churchyard. Now it's closed, so what?

The PCC needs to serve a written request to the relevant local authority to take over maintenance responsibility, if that's what's been decided. In practice a church warden or another member or members of the PCC should arrange to meet the cemeteries officer to conduct a proper handover of responsibility and to talk them through, and show them, the grounds and any little quirks that exist if that wasn't done during the application phase. If they are handing over to a parish or town council they may well need to discuss the faculty system as well. District councils tend to have a better understanding as they usually have a number of closed churchyards on their books, so it's not a novelty.

The local authority will notify the PCC within three months of the written request being served that it has taken over responsibility for the maintenance. The maintenance is exactly what the PCC has to complete for an open churchyard as I discussed earlier, so trees, the fences or walls, paths, and the grass. It also includes responsibility for the safety of the churchyard, including the memorials. Going back to the East Riding Council, the cemeteries officer has a five yearly inspection routine for the monuments and memorials in the closed churchyards under his responsibility. He is well aware that they remain in the ownership of the family and responsibility for them should be the families, but as is the case of many open churchyards when they become unsafe it is his team that has to deal with them. Mind you, laying a gravestone down can sometimes be a very good way of flushing out relatives of the deceased.

Despite being closed to new burials, the churchyard is still consecrated and therefore remains under faculty jurisdiction. The PCC needs to ensure that the local authority maintains the churchyard in an "orderly and decent" manner and keeps it adequately fenced. The PCC also needs to keep in close contact with the local authority to ensure any planned works have the appropriate level of permission. The PCC should also continue to

hold public liability insurance cover on a closed churchyard so that it is covered in the event that an incident occurs.

Finally, one of the questions that I am occasionally asked, and I know is asked of Registries, is whether a churchyard is open or closed. It is particularly helpful to know this when trying to persuade a recalcitrant PCC that it really does still have maintenance responsibility for the patch of scrub with some forlorn headstones sticking out. There are a number of ways of finding out.

In my case I will first have a look at an excel spreadsheet that I inherited but that originates from the Coroners, Burials and Cremation team at the Ministry of Justice. I usually also ask the Registry if they have a record. I know the York Registry staff will search the London Gazette. I tried it recently and the search engine is very good and with a bit of practise you can get quite confident with it. If you search online for “how to search the London Gazette” the first hit on Google took me straight to the Gazette’s own guidance page “A guide to searching the Gazette”. From there follow the instructions for the phrases to enter. You use quotation marks and AND, OR or NOT and brackets, but it is all fairly simple to follow and I recommend that you try it out. If all else fails and you are still unsure you can always call the team at the Ministry of Justice

Ladies and Gentlemen, I shall draw to a close now. A closed churchyard remains consecrated ground. The care and management of a closed churchyard is the same as that for an open one, but responsibility can be transferred to the local authority, under the watchful eye of the PCC. To close a churchyard the PCC applies through the Ministry of Justice to the Privy Council for an Order in Council. Closure should probably take at least twelve months if the PCC gives the local authority proper notice that it intends to hand over maintenance responsibility. The churchyard needs to be full if the application is to succeed. Once a churchyard is closed it remains closed and any further attempts at burial within it are actually illegal, unless provision for exceptions was made in the Order in Council. If you search online for “Ministry of Justice close a churchyard” the first hit should take you to the correct page on their website. I can also recommend The Churchyards Handbook, edited by Thomas Cocke and published by Church House Publishing, which has a wealth of advice for

managing open churchyards and a little bit about closed churchyards, much of it referenced back to the governing statutes.

I hope that this has been useful to you and I'm happy to try and answer any questions that you may have.

References:

The Churchyards handbook, 4<sup>th</sup> edition, ed Thomas Cocke FSA, Church House Publishing, 2001

The Churchyard: Law and Practice. Lecture 6 Sep 19 by Peter Foskett, Registrar Diocese of Leeds

[Diocese of York Churchyard Memorial Regulations 2018 as amended August 2019](#), His Honour Canon Peter Collier QC, Chancellor of the Diocese

Apply to close a churchyard – application form and guidance notes, [Ministry of Justice](#)