

DIOCESE OF YORK

GUIDANCE ON VARIOUS CHURCHYARD MATTERS FROM THE CHANCELLOR OF THE DIOCESE

This document contains brief guidance from the Chancellor of the Diocese on various legal matters arising in Churchyards. Inevitably the guidance is brief. More detailed guidance is available from the Registrar.

MEMORIALS, HEADSTONES AND THE FACULTY JURISDICTION

The churchyards and the curtilage of the church, like the church itself, are subject to faculty jurisdiction. This is exercised by the Chancellor of the Consistory Court of the Diocese in conjunction with the Archdeacons and the clergy. The erection of a memorial on the consecrated ground of a churchyard or within the curtilage of a church requires a faculty, but the Chancellor has by a general faculty delegated to ministers, priests in charge and team vicars (and during a vacancy in a benefice to the rural dean) his discretion to authorise the erection of certain types and sizes of memorial which comply with the Chancellor's Rules without further faculty from the Consistory Court. The current rules are the Churchyard Memorial Rules 2005. If the memorial does not conform to the Rules the application must be made to the Chancellor. A member of the clergy who falls within the category of those to whom delegation is made is referred to below as "the minister".

Ministers, churchwardens and others should encourage applicants to use imagination and care in the choice of design, material and inscription of memorials. It may be helpful to point out to applicants that stones such as Yorkshire stone, limestone, sandstone and slate may be preferable to imported granite. Local stone is often the most appropriate material in a rural setting as this will blend with the stone of the church building, churchyard walls and existing gravestones.

If local stone is chosen carefully it is possible to produce an inscription which is as long lasting as with harder stones.

The Rules restrict the colour of the stone which can be allowed by the minister. In particular granites darker in shade than those known as Rustenburg grey cannot be allowed. Ministers should advise next of kin at an early stage of these restrictions and that smoothing the surface may darken the shade of stone to a point at which it becomes too dark to comply. An example of the darkest shade of grey permitted can be seen at the DAC office.

MANAGEMENT AND MAINTENANCE OF THE CHURCHYARD

The parochial church council (the PCC) is responsible under the Parochial Church Councils (Powers) Measure 1956 for the care and maintenance of the churchyard. The PCC is encouraged to make its own rules (amplifying the Chancellor's Rules) to meet the needs of the local situation, but neither the minister nor the PCC has authority to make any rules which contain any provision which is contrary to the Diocesan Churchyard Memorial Rules without the express authority of the Chancellor. Any application by a PCC or a minister to apply rules in a particular churchyard which are different from those in the Diocesan Churchyard Memorial Rules must be made by petition to the Chancellor for a faculty to introduce and to operate such rule. The Minister or priest in charge must be the petitioner and the PCC must support the proposals. A petition for these purposes must not be submitted during a vacancy in a benefice except where a priest in charge has been appointed.

It is sometimes appropriate to seek leave for a scheme to remove monuments or parts of monuments (such as kerbstones) or to make other alterations in order to facilitate churchyard maintenance. However no scheme for the removal of monuments or other alterations to a churchyard may be undertaken (and no individual stone may be moved) without a faculty. Subject thereto it is desirable that churchyards be kept as level as possible so that grass may be cut by machine.

If a monument has a built-in flower container which has not been used for at least twelve months the PCC may insert a stopper of similar stone into the container socket.

A PCC may arrange for the removal of dead flowers from individual graves if this is not done in reasonable time by the relative(s) tending the grave.
(See also the rule 2 about flowers)

BURIAL IN THE CHURCHYARD

The right of burial of a body and the right of burial of cremated remains in a churchyard are of equal extent in law. Provided that space is available the following persons have such rights:

- (a) A parishioner i.e. a resident in the ecclesiastical parish at the time of death
- (b) A person whose name is on the electoral roll of the parish at the time of death
- (c) A person who dies in the parish.

No other person may be buried in the churchyard without the joint consent of the minister and the PCC (which must be given in writing) and it is usual to have the consent of the churchwardens. Normally this agreement will only arise when the deceased person has had a significant connection with the parish.

OWNERSHIP OF AND RESPONSIBILITY FOR MEMORIALS

The reservation of a grave space, the exercise of the right of burial or the erection of a memorial, do not confer upon the relatives of the deceased or upon any other person any right of ownership of the land in which the burial is (or is to be) made. However, a memorial remains the property of the person who commissioned its erection during his lifetime and after his death it is the property of the "heir at law" of the deceased. This person is responsible for maintaining the monument in good order. Once a monument has been introduced into a churchyard it can only be removed by faculty.

BURIAL OF CREMATED REMAINS

An application to bury cremated remains shall be made to the minister in writing and he shall respond in writing stating the place for burial. The application must be accompanied by the appropriate fee, the amount of which will be notified by the minister. The existence of a right, or a permission (as above), to bury cremated remains does not carry with it any automatic corresponding right (or permission) to introduce into the church or churchyard any form of commemoration of the deceased but separate permission is required from the minister.

The place for burial of cremated remains may be any of the following and the minister shall specify such place:-

- (a) the existing grave of a close relative or
- (b) an area set aside by faculty for the burial of cremated remains or
- (c) an otherwise unused and small area of the churchyard (if there is no area set aside for the burial of cremated remains) being an area not large enough (or not required) for use as a burial space.

Cremated remains shall not be buried in a plastic or other non bio-degradable container. Direct committal into the earth is, from the point of view of symbolism, theology and sound practical sense, the course to be preferred.

COMMEMORATION AFTER CREMATION

Where cremated remains are buried in an existing grave an additional inscription may be added to the headstone if one exists.

Where cremated remains are buried individually in an unused area of the churchyard the burial may be marked, if the minister so permits, by a small stone tablet laid flush with the ground, measuring not more than 18" by 18". However, if the church has a book of remembrance this is the preferred commemoration i.e. without a tablet at the site.

Where cremated remains are buried, with the minister's permission, in an area set aside by faculty specifically for the burial of cremated remains the marking of individual burials will not be allowed unless the faculty permits this. Such burials are best commemorated in a book of remembrance kept in the church or by an inscription on a single communal memorial.

The introduction into church of a book of remembrance (and of any furniture related to it) and the erection of a communal memorial require prior authorisation by faculty.

A minister who has granted permission for the burial of cremated remains may also grant permission for a tablet or other commemoration without reference to the Chancellor provided that in each case the application falls within the rules relating to the delegating of authority to ministers contained in the Diocesan Churchyard Memorial Rules.

BREACHES OF FACULTY JURISDICTION

Where a breach of the Rules or other aspect of the faculty jurisdiction has occurred the matter needs to be reported promptly to the Archdeacon.

Clergy have no discretion to permit a memorial which is not within the Rules. They should be mindful of the difficulties which an unauthorised memorial creates for the future. There have been contested proceedings both in this diocese and elsewhere which have arisen from the unlawful erection of a memorial not permitted by the Rules. Some of those cases involved the graves of persons who had died in tragic circumstances. The clergyman, in permitting the memorial, had not realised that he might be establishing a precedent which would create difficulties later. The clergyman remarked in one case "Perhaps I was naive and my head was ruled by my heart."

The Chancellor wishes it to be known that the existence of a similar memorial or memorials either in the same churchyard or elsewhere in the diocese is not of itself a reason for the giving of permission either by the minister or by the Chancellor.

CHURCHYARD PLANS AND LISTS

Every church which has a churchyard which is in use (or has been in use in the past) for burials of either bodies or cremated remains or both, must have a scale plan of the churchyard and a cross referenced list showing the names of the deceased persons buried. The requirements relating to these documents are set out in the Diocesan Churchyard Plans and Records Rules 1992.

RESERVATION OF GRAVESPACES

The Chancellor's instructions relating to the reservation of gravespaces can be obtained from the Diocesan Registrar.

The Feast of St Michael and All Angels 2009

**HIS HONOUR CANON PETER COLLIER QC
CHANCELLOR OF THE DIOCESE**

This Guidance was first published in 2005 and was adopted and re-issued on the 29 September 2009 by His Honour Canon Peter Collier QC, Chancellor of the Diocese