

## LEGAL ADVISORY COMMISSION OF THE GENERAL SYNOD

### CHURCHYARDS: LIABILITY FOR PERSONAL INJURY ACCIDENTS

#### **General**

1 Liability for personal injury accidents in churchyards can arise both in negligence and under the Occupiers' Liability Acts 1957 and 1984. Except as regards "trespassers", the duty of care owed is similar.

#### **Who is liable?**

2 Liability rests on the "occupier" of the churchyard. "Occupier" denotes the person or authority that has a sufficient degree of control over the churchyard to give rise to a duty of care towards those who come lawfully into the churchyard. Depending upon the precise situation any of the following could be held to be an "occupier":

- (a) the PCC (as successor to the churchwardens - section 4(1)(ii)(c) of the Parochial Church Councils (Powers) Measure 1956);
- (b) the incumbent (as owner of the freehold);
- (c) in relation to a particular gravestone, the person who authorised the erection of the stone or, after his death, the heir at law of the person commemorated;
- (d) in a closed churchyard where liability for maintenance has passed to the local authority, the local authority.

#### **To whom is a duty of care owed?**

##### *Visitors*

3 The term "visitors" includes all who formerly under common law were invitees or licensees (Occupiers' Liability Act 1957, s1(2)).

##### *Others (persons other than visitors)*

4 Persons other than visitors embrace not only trespassers, but also persons using private rights of way and entrants under the Countryside and Rights of Way Act 2000.

## What is the duty of care?

### *Visitors*

5 The duty is to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which the visitor is invited or permitted to be there (1957 Act, s2(1), (2)). Interpreting this for churchyards, it seems that the three most likely hazards are:

- (a) the condition of the paths;
- (b) the condition of the gravestones/monuments;
- (c) stonework falling from the church building on to people in the churchyard.

The following guidelines might be helpful:

### *Paths*

6 The PCC is, under Canon F 13 and the Parochial Church Councils (Powers) Measure 1956, responsible to see that churchyards are fenced and kept in an orderly and decent manner. However, its liability to visitors under the Occupiers' Liability Acts and at common law for the state of the paths to and from the church is greater, in that it must ensure the paths are in a reasonably good condition. What this will mean will depend on the nature of the path. For instance, if there is a paved path, undue projections or holes must be avoided by regular inspection and maintenance. If it is a gravel path, it will need to be kept reasonably level so that it is safe to walk on.

### *Fences*

7 The PCC is responsible for maintenance of fences and walls (1956 Measure; Canon F 13, para 2, and Canon F 14); thus if a boundary wall were to collapse and injure someone there would be a prima facie liability on the PCC.

### *Trees*

8 By s6 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991, as amended by the Church of England (Miscellaneous Provisions) Measure 1995, s13, the PCC or local authority (in the case of a closed churchyard – *see* paragraph 2(d) above and *see also* **Churchyards: closed**) is responsible for the care and maintenance of churchyard trees. Such responsibility carries with it the potential liability, as occupier, for injury caused by trees. The duty of an occupier with regard to trees is to act as a prudent landowner to prevent the trees from being a

danger to persons. (*See also Churchyards: ownership of monuments and trees for obligations of care and maintenance.*)

### *Gravestones/monuments*

9 The PCC or (after the responsibility for a closed churchyard has been transferred to a local authority) the local authority is responsible for keeping the churchyard in decent order. Ensuring the safety of monuments is part of the general duty of keeping in decent order (re Hutton Churchyard [2009] PTSR 968, Court of Arches). The duty is likely to extend to all things attached to the realty, which include box tombs, war memorials and churchyard crosses. As regards monuments, however, the primary responsibility for their upkeep falls on the owners, who are the heirs of the persons commemorated (re Welford Road Cemetery, Leicester [2007] Fam 15, Court of Arches). This will be of little help where the heirs have died out or can no longer be traced. In those circumstances a secondary or default liability is borne by the PCC or local authority, on the footing that it has the power (albeit circumscribed by law) to intervene when a monument becomes dangerous.

10 The PCC or other authority charged with churchyard maintenance could be in breach of this secondary duty of care, and therefore negligent, if it failed to make safe monuments which it knew or ought to have known were in an unsafe condition.

11 In the event that a PCC or other authority finds that there are monuments which have become dangerous, it should act immediately to make them safe. The Diocesan Registrar should be consulted to ensure that the proposed safety measures are lawful. Sometimes a sufficient temporary response will be to display a written warning; or to place a cordon around the affected area; or to provide support, for instance with a stake. These steps will generally be viewed as minor works for which no faculty is required.

12 Consideration should be given, in appropriate cases, to the availability of the emergency faculty procedure under Rule 13(10) of the Faculty Jurisdiction Rules 2000 whereby the chancellor has power to grant an immediate faculty where there is “an emergency that involves interests of safety or health”. A restrictive interpretation of Section 3 of the Faculty Jurisdiction Measure 1964 suggests that the chancellor has no jurisdiction to grant an emergency faculty where remedial work to a monument is proposed but the owner of the monument withholds his or her consent but is willing and able to remove it within a reasonable time. Any doubts about the extent of the chancellor’s jurisdiction will, however be resolved if clause 5 of the draft Church of England (Miscellaneous Provisions) Measure, now (2013) before the General Synod, is enacted. Clause 5 will expressly empower the court to grant a faculty where urgent works to a monument are needed, without requiring the petitioner to seek the owner’s consent, or to attempt to trace an unidentified owner.

### *Church building*

13 If part of a church building falls and injures someone a prima facie case against the “occupier” will have been made for, in the normal course of events, pieces should not fall off buildings if they are properly maintained.

### *Others (persons other than visitors)*

14 For persons other than visitors, the “occupier” owes a duty in respect of any injury if the occupier:

- (a) is aware of the danger or has reasonable grounds to believe it exists;
- (b) knows or has reasonable grounds to believe that the other is in the vicinity of the danger or that that other may come into the vicinity of danger; and
- (c) the risk is one against which the occupier may reasonably be expected to offer the other some protection (Occupiers’ Liability Act 1984, s1(3)).

15 One needs to bear in mind that a churchyard is a public place and whilst some people may be put off by the nature of the place from visiting it, others will be attracted to it - albeit in some cases for the wrong purposes.

### **Warning notices**

16 Warning notices are of doubtful effectiveness at law, are aesthetically undesirable and would doubtless be subject to vandalism.

### **Insurance**

17 The standard “Churchyard” policy from the Ecclesiastical Insurance Group indemnifies (normally incumbent, churchwardens and PCC) against any claim for public liability. This would include claims under the Occupiers’ Liability Acts 1957 and 1984 or for negligence, but, of course, breach of duty of care must be proved. The policy, however, lays a duty on the insured to take all reasonable precautions, and in the event that any defect in the churchyard is discovered the insured must take immediate steps to remedy the same and cause such temporary precautions to be taken as the circumstances may require. It is important for those insured to make sure that the policy covers the churchyard. The Ecclesiastical Insurance Group states that it would automatically cover a churchyard surrounding a church, but not necessarily a detached churchyard.

(Revised 2013)