

FIVEHEAD AND SWELL PARISH COUNCIL – BURIAL AUTHORITY

A GUIDE TO THE TRANSFER OF BURIAL RIGHTS

Introduction

This information has been prepared by Fivehead Parish Council to assist with the understanding of holding an Exclusive Right to Burial in Fivehead Cemetery. It is based on guidance from the Institute of Cemetery and Crematorium Management (ICCM) and Society of Local Council Clerks (SLCC).

An Exclusive Right to Burial is purchased from the Parish Council and gives the holder the right to determine how the grave is used and to apply for a memorial to be installed. Holding the right to burial in a grave gives the holder the unchallengeable right to be interred in that grave (subject to there being sufficient space).

The rights holder, or holders if acting jointly, must give permission for any other person to be interred and for any memorial work to be undertaken. For example, if the rights to a grave are held in the name of two people, they both have the right to be interred in the grave. If another person was to be interred in the grave, they would both have to give consent. The rights holder also has responsibility for the safety of any memorial placed on the grave.

We advise all those who visit Fivehead Cemetery to be familiar with the Cemetery Conditions, available on the Parish Council website <http://fivehead-village.org.uk/>

Arranging a Transfer

There are five different (but similar) processes for transferring burial rights, and the correct process depends on the circumstance of the burial rights owner:

1. Living transfer by assignment
- 2a. Deceased will, probate obtained
- 2b. Deceased will, no probate
- 3a. Deceased no will, letters of administration obtained
- 3b. Deceased no will, no letters of administration obtained

The following pages outline the requirements for each of these situations. There is an administration fee for all transfers of ownership. Where the owner of burial rights has been interred into their grave, the council will endeavour to contact the next of kin to arrange the transfer of rights ownership.

Disputes

The holder of an Exclusive Right to Burial has a legal entitlement which we are obligated to facilitate. We will work with families to provide guidance to help resolve rights issues, but it is not our position to become involved in disputes or take what may be considered the morally correct course of action. At all times we will strictly adhere to burial law. Any queries in respect of the transfer of rights, please contact the Parish Clerk at fiveheadpc@gmail.com or 01460 281902.

1. Living Owner – Assignment of Right of Burial

If you wish to transfer the rights to a grave during your lifetime, you may do so by assignment. The council has prepared a Form of Assignment which ensures that all the correct information is provided to enable us to process the transfer. In accordance with contract law, the form requires that consideration is shown i.e. that the person to whom the rights are being transferred has 'paid' for the rights – this should be at least a nominal £1. The form requires that your signature is witnessed by an independent witness, this means someone who is not related or living at the same address as you and who is not involved in the transaction. Assignment can also be used to add a second rights holder, for example

your spouse. We will undertake sufficient checks to ensure that the assignment is genuine, we may ask you to provide a copy of the original deed of grant, or photographic ID to verify your identity.

2. Deceased Owner – Left A Will

2a. Burial rights are seldom referred to directly in a will and will usually form part of the residual estate of the deceased. The person to whom the rights have been left should provide the council with:

- The original deed of grant of rights
- The original grant of probate (this is the document issued by the Court after the will has been proved. It should bear the Court Seal). If the person is not also the executor of the will, an assent from the executor(s) giving the grant of right to that person is also required; the council has prepared a Form of Assent.

2b. If the will was of insufficient value to merit application for probate, the council will require:

- The original deed of grant of rights
 - The original death certificate
 - A Statutory Declaration detailing the relationship of the person claiming the rights
 - A Form of Renunciation from all other people who would be entitled to claim the rights
- The council has prepared a model Statutory Declaration and a Form of Renunciation. A Statutory Declaration must be witnessed by a Commissioner for Oaths (normally a practising solicitor) or a Magistrate.

3. Deceased Owner – No Will

3a. Where the deceased has not left a will we will require:

- The original deed of grant of rights
- The original grant of letters of administration (this is the document issued by the Court naming the administrator(s) and should bear the Court Seal).

If the person claiming the rights is not also the administrator, an assent from the administrator(s) giving the grant of right to that person is also required; the council has prepared a Form of Assent.

3b. If the estate is of insufficient value to merit application for letters of administration, the council will require:

- The original deed of grant of rights
- The original death certificate
- A Statutory Declaration detailing the relationship of the person claiming the rights
- A Form of Renunciation from all other people who would be entitled to claim the rights

The council has prepared a model Statutory Declaration and a Form of Renunciation. A Statutory Declaration must be witnessed by a Commissioner for Oaths (normally a practicing solicitor) or a Magistrate.