

Under Part 15 of the Faculty Jurisdiction Rules 2015 (“the Rules”)

AN INTERIM FACULTY

1. In law the position is that the Chancellor may authorise urgent works to proceed on the authority of an Interim Faculty but that Archdeacons do not have such authority. In such instances Petitions should be lodged in the Registry and the Registrar will forward the papers to the Chancellor. This can be done if necessary before the DAC’s advice has been obtained. The Chancellor will then decide what to do. The Petition should be for all the work for which a faculty is sought and there should be a covering letter asking for an Interim Faculty. This should state for what part of the works the Interim Faculty is sought and why it is considered that the work is so urgent that it should proceed without public notice and/or without consideration at a DAC meeting and the DAC’s formal advice and/or without the support of a resolution of the PCC.

THE LIMITED NATURE OF A QUALIFYING “EMERGENCY”

2. An application for an Interim Faculty to proceed should usually be made only for emergency repair work. This includes an emergency which gives rise to a risk of personal injury (e.g. precarious brickwork or stonework, structural instability following fire), ingress or water penetration to a degree which is more than likely to cause serious damage to the fabric of the building or its contents (e.g. following storm or wind damage or theft of roof coverings or other criminal damage or vandalism), or subsidence which puts fabric (e.g. stained glass) in immediate danger, and dry rot or other wood infestation which is likely to spread rapidly. On occasions an Interim Faculty to proceed may be appropriate to enable

some preliminary investigative work to be done to expose/investigate fabric or land e.g. trial excavations/pits to assist the architect in the preparation of a full specification.

3. The procedure is not available to be used where there is some urgency but the fabric or members of the general public are not seriously and immediately at risk. Obviously an application for an Interim Faculty should not be used as a means of short circuiting proper faculty procedures i.e. bypassing public notice and before the DAC has been consulted and before the PCC has passed a resolution to support the prepared work.

NECESSARY PRELIMINARY ENQUIRIES

4. The incumbent/priest in charge and/or churchwarden(s) should contact the DAC Secretary or in their absence the Archdeacon informing them that an Interim Faculty is requested. The DAC Secretary (or Archdeacon) will need to ascertain the special reason for the application, and the nature of the proposed works to be done. It may be appropriate or necessary for them to make a visit to the parish so as to form an opinion for the Chancellor as to the necessity for the request for an Interim Faculty.

5. The DAC Secretary (or Archdeacon) should also ascertain who is the proposed contractor and consider whether a specification from the contractor needs to be obtained before either the request is considered by the Chancellor or the work is put in hand. Consultation with one of the DAC consultant experts (e.g. one of the architects) may be helpful and useful.

THE APPLICATION

6. The application itself should be made by either the incumbent/priest-in-charge or churchwardens, and must be supported by independent professional or expert advice. The nature of that advice will vary from case to case but will usually be the PCC's Inspecting Architect or an experienced builder who is familiar with the building. The advice must be in writing and may include a specification from either the architect or contractor.

7. Where there has been a theft of lead or copper roof covering and/or lead flashings, the Church building may be left vulnerable to further damage by wind or water ingress. The Chancellor issued Practice Direction 2007 No. 1 in November 2007 giving specific Directions for dealing with these circumstances and the information then required to support an application for a Licence to proceed in advance of faculty, and in particular where it is proposed to use materials other than the original lead or copper. That Practice Direction is now replaced by Practice Direction 2018 No. 5 in relation to applications for Interim Faculties.

8. The application and all the supporting information together with any advice or comment from the DAC Secretary should be passed immediately to the Registrar. This needs to be done in writing, by letter, email or fax setting out all the necessary information and facts. The Registrar will place the application for the Interim Faculty before the Chancellor.

THE CHANCELLOR'S DECISION MAKING PROCESS

9. The Chancellor's treatment will differ from case to case. It may be possible for the Chancellor to decide the matter on the papers the Registrar has supplied. On other occasions the Chancellor will speak to the applicants, Archdeacon or DAC secretary by telephone. Sometimes a report from an architect member of the DAC; sometimes the DAC's advice; and sometimes additional information will also be required. But the Chancellor will endeavour to grant an Interim Faculty speedily in a case of emergency where there are good grounds for doing so and where it is reasonably certain that the granting of an Interim Faculty will not lead to significant difficulties later.

10. It should be noted that if the Chancellor does grant an Interim Faculty it will usually authorise only those works which are necessary to meet the risk of personal injury, to stop

the ingress of water into the building, to treat dry rot or other wood infestations, and to shore up stone and brick work. The applicants will be required to lodge a Petition (if they have not already done so) and must of course proceed with their Petition in order to obtain the Faculty to confirm the work authorised by the Interim Faculty, and may only go ahead with works which fall strictly within the terms of the Interim Faculty. There may be various conditions which the applicants are required to comply with as part of the Interim Faculty.

11. In particular there will always be attached to each Interim Faculty a condition that a petition for faculty must be lodged in the Registry (if it has not been lodged by the time of the application) by the incumbent and/or churchwarden(s) by a date specified in the Interim Faculty. This will usually not be more than 42 days after the date of the Interim Faculty.

12. Fees for Application: Generally the Chancellor will make an order in these terms: “The Registrar’s fee for this Interim Faculty shall be paid by the Diocesan Board of Finance because this is a matter that has arisen unexpectedly and I have no reason to believe that it should have been anticipated by the Petitioners.” However that will only be the case where there is a genuine emergency which has arisen without warning. If on the other hand the matter was one to which the Petitioners had been alerted, [e.g. in an earlier quinquennial report], but had not dealt with; and suddenly that which had been foreseen and should have been dealt with in the normal way but wasn’t has happened, then the Petitioners will normally be ordered to pay the additional costs of obtaining the Interim Faculty. The amount of the current fee can be obtained from Registry.

13. If the Chancellor is prepared to authorise emergency work then the Registrar shall prepare this in the form of an Interim Faculty. The Interim Faculty will be in the form of the appended precedent.

14. The Interim Faculty should be sent to the incumbent and/or churchwarden(s), the Secretary of the DAC and the Archdeacon. The Petitioners or the Registrar should also send a copy to the Inspecting Architect or the contractor.

15. This Practice Direction revokes and replaces Practice Direction 2014 No 1.

Dated the Feast of Peter the Apostle 2018

His Honour Canon Peter Collier QC
Chancellor

INTERIM FACULTY

IN THE CONSISTORY COURT OF THE DIOCESE OF YORK

IN THE MATTER OF

AND IN THE MATTER OF PART 15 OF THE FACULTY JURISDICTION RULES 2015

TO: (Incumbent)
(churchwarden)
(churchwarden)

Whereas you have requested that an Interim Faculty be granted for certain works set out in Part A of the Schedule hereto

I, Peter Neville Collier Q.C., now therefore grant an Interim Faculty authorising you to commence the said works or purposes subject to the conditions in Part B of the said Schedule

Dated

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Caroline Mockford
Registrar

To: The Petitioners
Catherine Copp, Secretary of the Diocesan Advisory Committee
The Ven***** the Archdeacon of

THE SCHEDULE

Part A

The works or purposes for which the Interim Faculty is requested.

At the Church of *****

Part B

GENERAL CONDITIONS

1. A Petition for Faculty for the works covered by this licence must be lodged in the Registry before the ****. A copy of this Interim Faculty together with any other correspondence relating to the emergency works must be submitted with the petition.
2. This Interim Faculty is granted on the understanding that it does not detract in any way from the legal rights of any person having an interest in the application for Faculty or from the Archdeacon's right to intervene or otherwise take part in the Faculty proceedings.
3. In the event of the Petition for Faculty being opposed, there is the possibility that work which has commenced may have to be suspended and even that any alteration brought about by such work might have to be reinstated if the Chancellor considered that the objection was of such substance as to make either or both of these courses necessary. The Interim Faculty is therefore granted on this understanding.
4. The Interim Faculty allows the Petitioners to proceed with the works or purposes stated in Part A of this Schedule only.
5. The Petition for Faculty will continue in the normal way and the Petitioners must act expeditiously in complying with any steps required of them by the Chancellor in furtherance of such proceedings. If the works are completed before faculty is granted the Chancellor will direct the faculty to be Confirmatory.
6. The Petitioners shall pay a fee of £**** (including VAT) to the Diocesan Registry in respect of the preparatory and ancillary work and correspondence in relation to the issue of the Interim Faculty. The fee is to be paid within 28 days of the issue of the Interim Faculty.

Or

The Petitioners shall pay a fee to be fixed by the Chancellor on the application of the Registrar in respect of the preparatory and ancillary work and correspondence in relation to this Interim Faculty.

Or

The Registrar's fee for this Interim Faculty shall be paid by the Diocesan Board of Finance because *****

Or

6. The Petitioners shall pay a fee of £*** (including VAT) to the Diocesan Registry in respect of the preparatory and ancillary work and correspondence in relation to the Interim Faculty. If the Petitioners wish to make any representation as to payment of this fee then they must write to the Registrar setting out the reasons within twenty one days of the date of the Interim Faculty and the Chancellor will consider their representation. After the period of twenty-one days has expired and if no representation has been made, then the fee of £*** in respect of the Interim Faculty shall be paid within twenty eight days of the date of the Interim Faculty.

SPECIAL CONDITIONS:-