



## Unsafe headstones in cemeteries

Standard Note: SN/HA/3634  
Last updated: 12 January 2012  
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Section: Home Affairs Section

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A number of constituents have raised concerns about the actions of local councils in relation to memorials (headstones) in cemeteries. In some cases memorials have been laid flat or cordoned off and relatives are notified that they must pay to make them safe. Local authorities, acting as burial authorities, have general powers of management in relation to public cemeteries, including power to take any action necessary to remove a danger which arises by reason of the condition of a vault, tombstone or memorial. They also have duties under health and safety legislation.

The subject of memorial safety has been under consideration for some time and burial authorities have been urged to handle the issue sensitively. In January 2009, the Ministry of Justice published guidance, *Managing the Safety of Burial Ground Memorials*. This sets out good practice on the standard expected in the risk management of memorials in all types of burial grounds, public or private. The guidance states that the risk of any injury is extremely low and that any precautions should be proportionate to the level of risk. The routine use of mechanical test instruments is not recommended.

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## Contents

<b>1</b>	<b>Local authority testing of memorials</b>	<b>3</b>
<b>2</b>	<b>Current legislation</b>	<b>3</b>
<b>3</b>	<b><i>Managing the safety of Burial Ground Memorials</i></b>	<b>4</b>
<b>4</b>	<b>Previous developments and concerns about safety</b>	<b>6</b>
4.1	The Select Committee on Environment, Transport and Regional Affairs report	6
4.2	Burial and Cemeteries Advisory Group	7
4.3	Consultation on burial law and practice by previous Government	7
4.4	Letter from Harriet Harman	7
4.5	2004 case: local authority testing upheld	8
4.6	Guide for Burial Ground Managers	8
4.7	The Local Government Ombudsman special report	8

## 1 Local authority testing of memorials

Responsibility for maintaining individual tombstones generally remains primarily with those who erected them.

Many local authorities, acting as burial authorities, have been carrying out an inspection programme in order to identify unsafe memorials and ensure that they are made safe by whichever method they consider appropriate. In some cases this has resulted in memorials being laid flat or cordoned off and relatives are notified that they must pay to make them safe. This has sometimes caused distress to bereaved relatives who feel that the graves are being desecrated and some argue that it is the tests themselves which are making the graves unsafe.

The issue of memorial safety was brought to a head following cases where memorials toppled over and caused injuries, sometimes fatal, to members of the public. In particular, the death of a child in Yorkshire in 2000 highlighted the problem of unstable memorials. It has been alleged that part of the problem may be due to a lack of maintenance of cemeteries over the years.

The Institute of Cemetery and Crematorium Management (ICCM) has published [guidance](#) on the management of memorials which includes information about inspection and testing procedures.<sup>1</sup>

## 2 Current legislation

Under the *Local Government Act 1972*, burial authorities have the power to provide and maintain public cemeteries. Burial authorities are defined to include district councils, the councils of London boroughs, and parish councils.<sup>2</sup>

The specific powers and duties of burial authorities are set out in the [Local Authorities Cemeteries Order 1977](#) (as amended).<sup>3</sup>

- Regulation 10 of the 1977 Order provides that a burial authority may grant the exclusive right of burial in any grave, and the accompanying right to place and maintain a tombstone on the grave space. No tombstone or memorial may be erected without permission.<sup>4</sup> The burial authority has the power to agree with any person that the authority will maintain a grave, tombstone or memorial for a period not exceeding 100 years.<sup>5</sup>
- Regulation 3 of the 1977 Order provides general powers of management. A burial authority may do all such things as they consider necessary or desirable for the proper management, regulation and control of a cemetery. However, the general power does not authorise any action in relation to a vault, tombstone or other memorial other than action which is necessary to remove a danger which arises by reason of the condition of the vault, tombstone or memorial itself.<sup>6</sup>

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<sup>1</sup> ICCM, [Management of Memorials](#), June 2011 (at 12 January 2012)

<sup>2</sup> Section 214(1)

<sup>3</sup> 1977/204

<sup>4</sup> Schedule 2

<sup>5</sup> Regulation 10(7)

<sup>6</sup> Regulation 3(2)

- Regulation 4 empowers a burial authority to enclose, lay out and embellish a cemetery in such manner as they think fit, and from time to time improve it, and requires the burial authority to keep the cemetery in good order and repair.
- By Regulation 16(1), a burial authority may put and keep in order any grave, vault, tombstone or memorial. The authority may also level the surface of any earth and grass grave to that of the surrounding area.
- Regulation 16(2) enables a burial authority to remove and destroy any tombstone or memorial where the writing has become illegible, any kerbs surrounding a grave, any surface fittings, flowers or plants, and any railings surrounding a grave. The authority may also alter the position on a grave, or re-erect, any tombstone or other memorial including railings. The powers in regulation 16(2) may only be exercised in accordance with Schedule 3 of the Order (which includes publicity and notice provisions). A person who has been granted the right to place and maintain a tombstone, or the relative of a person buried in a grave, may object to the authority's proposals to remove, destroy or relocate a tombstone.

A churchyard which has been closed for burials by Order in Council must be maintained by the parochial church council by keeping it in decent order, and its walls and fences in good repair.<sup>7</sup> However, the parochial church council may transfer this obligation to maintain to the local authority.<sup>8</sup>

Under the *Health and Safety at Work etc Act 1974* every employer owes a duty of care to his employees, as well as to any contractors he employs, and anyone affected by his work, including members of the public. The *Management of Health and Safety at Work Regulations 1999* require all employers to make an assessment of the risks to the health and safety of their employees, and non-employees which arise out of the employer's undertaking.

A burial authority could potentially be liable in the event of an accident caused by a memorial under the principles of occupier's liability.

### **3 *Managing the safety of Burial Ground Memorials***

In January 2009, the Ministry of Justice published guidance, [\*Managing the safety of Burial Ground Memorials\*](#). The guidance was developed by a sub-group of the Burial and Cemeteries Advisory Group and sets out good practice on the standard expected in the risk management of memorials in all types of burial grounds, public or private.

The guidance states that, over the last 30 years, eight people in the UK have been killed when a memorial has fallen on them and that accordingly, in view of the number of memorials and the number of visitors to burial grounds in any year, the risk of any injury is extremely low.

The approach to managing memorial safety set out in the guidance involves the periodic assessment of memorials as part of a planned exercise or when anything has changed, for example a programme of major work or repair to the burial ground environment. Burial ground operators should decide on the frequency of this assessment. The guidance states that "Where action is necessary following this assessment, measures to control any risks should be proportionate to the level of risk".

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<sup>7</sup> Section 215 of the 1972 Act.

The guidance points out that ownership of memorials remains with the family of the deceased, and states that if memorials are found to require maintenance, every effort should be made to contact the family to effect repairs.

The guidance sets out a suggested approach to assessing and managing risks from memorials. It states that the routine use of mechanical test instruments is not recommended. It also includes a section about deciding on precautions:

19. Any precautions taken must be proportionate to the risk of people suffering harm. In most cases the actual level of risk from an unstable memorial will be very low such that a warning sign near to – or in some instances on – a memorial alerting visitors to the potential danger will suffice until repair has been arranged. If the circumstances make this impractical, for example there is the potential for confusion as to which memorial any warning refers, a memorial may need to be cordoned off until it is made safe.

20. A memorial may be so unstable there is an imminent risk of it toppling. In a very few cases where this could result in serious injury, immediate steps may be necessary to reduce the risk e.g. restricting access or laying the memorial flat. The routine staking of memorials is not recommended – not only is there a risk of harm in the staking itself, there is also the potential for damage to the memorial.

21. In all cases where temporary measures have been taken to make a memorial safe, steps to effect permanent repairs should be taken as soon as possible. Operators should be aware of the potential for upset and distress amongst mourners and the bereaved, as well as the potential for disfiguring the appearance of a burial ground.

22. Arrangements can also be put in place to encourage employees such as gardeners and other maintenance workers, as well as volunteers and members of the public, to report any memorials which they believe may be unstable.

23. If a lot of improvements are needed, an action plan may be necessary. A good action plan will include, for example, prioritisation of improvements to manage the greatest risks, as well as longer term measures for those memorials with structural faults which may need more frequent monitoring than the rest of the burial ground.<sup>9</sup>

The guidance highlights the necessity for good communication of the inspection and assessment process, in order to obtain the support of the local community:

The bereaved, memorial owners, friends' groups and members of the public generally accept the need for an inspection and assessment programme if they are properly informed. It is vital to avoid a programme that focuses solely on safety of memorials, without thought to obvious potential for distress the programme may cause - particularly where improvements are needed.<sup>10</sup>

The Ministry of Justice has also published some [Frequently asked Questions and Answers](#) about the memorial safety guidance.

The Institute of Cemetery and Crematorium Management (ICCM) issued a [Membership Newsletter](#) on 27th January 2009 on the subject of the Ministry of Justice Guidance. The ICCM comments on what it considers to be dilemmas posed by the guidance in respect of inspections and actions.

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<sup>8</sup> Section 215(3)

<sup>9</sup> pp10-11

<sup>10</sup> p13

In December 2011, Jonathan Djanogly, Parliamentary Under-Secretary of State for Justice, reiterated that responsibility for health and safety in local authority cemeteries lies with the relevant council. He said that burial authorities had been encouraged to take account of the 2009 guidance but that there were no plans to initiate individual assessments of compliance.<sup>11</sup>

## **4 Previous developments and concerns about safety**

### **4.1 The Select Committee on Environment, Transport and Regional Affairs report**

The question of memorial safety has been under consideration for some time. The eighth report of the Select Committee on Environment, Transport and Regional Affairs, published in 2001, highlighted this issue as being “perhaps the most urgent of all those which need to be addressed”:

Cemeteries and closed churchyards contain very large numbers of ageing monuments, tombs and memorials, some of which have deteriorated to the point at which they present a significant risk to the safety of both visitors to cemeteries and those who work in them. In addition, we were told that even more recently erected memorials can present a danger, either where they have been inadequately fixed or where cemetery managers have destabilised the headstone by removing the kerbset from around the grave, or even by weedkilling around the base of the headstone - measures commonly undertaken by local authorities seeking to make savings on maintenance. According to data from the Health and Safety Executive (HSE), there have been ten accidents arising from unstable memorials since 1982, three of them fatal.

107. The risks to the public and to cemetery workers posed by unsafe memorials is reason enough in itself to ensure action is taken urgently. However, there are other reasons to be concerned about the state into which many of these monuments have fallen. Both taken together and in some cases individually memorials in cemeteries and churchyards make a considerable contribution to our national heritage.

(...)

Furthermore, the poor state of many of such memorials - and the measures which have to be taken to deal with them, such as cordoning off monuments or laying headstones flat - make a significant contribution to the poor condition of many of our cemeteries.

(...)

Cemeteries with decrepit memorials, rows of headstones laid flat, and areas cordoned off with red and white tape are not, in our view, fit places for the service of the bereaved.

108. Clearly lack of resources for repair and restoration is a very significant reason why such monuments have been left in this condition. The problem is, however, exacerbated by a combination of other complicating factors. Firstly, as noted in the quotation from Bristol City Council above, gravestones and other memorials are, for the most part, private property. As families cease visiting the grave and move away from the area, they cease to take responsibility for keeping them in an acceptable condition. Because monuments are private property, local authorities themselves, even were the resources available, are empowered to make repairs only where they pose an immediate risk to

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<sup>11</sup> [HC Deb 13 December 2011 c 647](#)

health and safety. The fact that memorials are usually in private ownership may also complicate the obtaining of grants for their restoration from the Heritage Lottery Fund.

109. Secondly, the regulations pertaining to the erection of memorials are not adequately policed. As a result, the existing problem of old, crumbling monuments is in many places being exacerbated by the addition of new memorials which have been inadequately fixed. Part of the reason for this is the lack of properly trained cemetery staff on which we have already commented; but there is also the problem of the lack of resources available to local authorities to cover the staffing costs of having someone supervise the work of the mason.

110. The Health and Safety Executive (HSE) has an important role to play in ensuring the safety of monuments in cemeteries. HSE has responsibility for the enforcement of the duty on burial authorities under the Health and Safety at Work etc. Act to ensure, so far as is reasonably practical, the health and safety of their employees and of other persons working in or visiting cemeteries.

(...)

112. The biggest obstacle to the proper restoration of unsafe memorials, however, remains the lack of resources. Whatever action is taken regarding better training for cemetery workers and even HSE inspectors, if the funds are not available for restoration, the only option is likely to be the wholesale clearance or laying flat of memorials that may constitute a danger to the public.<sup>12</sup>

#### **4.2 Burial and Cemeteries Advisory Group**

The Burial and Cemeteries Advisory Group (BCAG) was established in December 2001 following the report on cemeteries by the Environment, Transport and Regional Affairs Committee. BCAG was set up “to use the collective expertise of the industry to provide advice and information for burial authorities, the public and government”.<sup>13</sup>

#### **4.3 Consultation on burial law and practice by previous Government**

In January 2004, the Home Office published a consultation paper, [Burial Law and Policy in the 21<sup>st</sup> Century: the need for a sensitive and sustainable approach](#). This addressed wide issues relating to burial and cemeteries and also referred to the issue of maintenance of graves and memorials.

The Ministry of Justice now has responsibility for burial law and policy and, on 7 June 2007, published the previous Government’s response to the consultation, [Burial Law and Policy in the 21<sup>st</sup> Century The Way Forward](#).

#### **4.4 Letter from Harriet Harman**

A joint letter from Harriet Harman, then Minister of State at the Ministry of Justice, and others, dated 8 March 2007, was sent to burial authorities. This reiterated the need for great sensitivity and careful planning in the way that work relating to memorials was undertaken.

This letter followed an earlier one sent on 1 June 2004 by Bill Callaghan, Chair of the Health and Safety Commission, to every local authority Chief Executive, asking them to take a personal interest in the handling of safety of memorials in cemeteries.

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<sup>12</sup> Environment, Transport and Regional Affairs Committee, [Cemeteries](#), 2 April 2001, HC 91, paragraphs 106-112 (footnotes omitted)

<sup>13</sup> [Ministry of Justice website](#) (at 12 January 2012)

#### **4.5 2004 case: local authority testing upheld**

In 2004, a grave owner took legal action against a burial authority for the cost of having a headstone re-installed to current standards. He questioned the Council's authority to carry out inspections of memorials and to take immediate action (by laying flat) in order to eliminate risks to public safety and also the validity of the force measuring device used by the authority. The claimant argued that:

- the test procedure had caused the foundation of the headstone to fail
- the Council had neglected its duty by not controlling the installation of memorials in the past
- even though he had seen the public notices in the local press and the cemetery, he should have been contacted in advance and been given the opportunity to witness the test.

The Judge at Staines County Court accepted that the testing had been carried out properly, that the reading from the force measuring device had to be accepted and that the Council had the power to remove a danger and therefore had the power to take the action it did as a result of the test reading. It was held that the Council had done no more than it was statutorily obliged to do.<sup>14</sup>

#### **4.6 Guide for Burial Ground Managers**

In November 2005, the then Department for Constitutional Affairs (now the Ministry of Justice), published a [Guide for Burial Ground Managers](#). This includes a section on maintenance of graves and memorials.<sup>15</sup>

#### **4.7 The Local Government Ombudsman special report**

In March 2006, the Local Government Ombudsman published a special report on [Memorial safety in local authority cemeteries](#).

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<sup>14</sup> [Memorial Inspections and Actions – ICCM Member Information](#), issued by The Institute of Cemetery & Crematorium Management and the Confederation of Burial Authorities (at 12 January 2012)

<sup>15</sup> p12