

# RESPONSE TO THE OMBUDSMAN'S SPECIAL REPORT ON MEMORIAL SAFETY

## General

Much of the advice given within the report is welcomed and reinforces the position the ICCM have taken with memorial inspection over many years. It also reinforces the need for one set of clear advice to local authorities. Unfortunately, due to the wide range of different examples used and the different guidance included much of the report serves only to further confuse practitioners. It is clear training is required, but as the guidance is often diametrically opposed, which training is suitable?

This leaves the reader looking at the foreword and the executive summary to identify the main issues raised by the Ombudsman. The foreword clearly states what the main message of the report is:

### **Main message:**

**The Ombudsman believes it should not be necessary for burial authorities to lay down grave memorials on any large scale**

### **Comment**

*If authorities follow a correct process as suggested in the ICCM guidance, then it is unlikely that any case could be brought against the authority for maladministration.*

*Authorities should consider:*

- *Pre-inspection notification – press, media, notices in cemeteries/churchyards, local newsletters, open cemetery inspection days etc. Decisions on whether to write to every owner of a right must be decided by the authority taking in to account the workload involved. Some guidance could be obtained from the statutory notice procedure specified in Schedule 3 of the Local Authorities Cemeteries Order 1977, as this is sufficient for the actual removal of memorials in certain circumstances.*
- *Training of staff and use of ICCM inspection techniques*
- *Site risk assessments and work programmes*
- *Consideration of a range of make safe methods, including temporary supports, how long they will remain in place, interim inspection of supports and action to be taken upon removal.*
- *When make safe action is appropriate and when to carry this out*
- *Post-inspection notification – letters to last known addresses, notices on memorials, response periods.*
- *Action to be taken if owners are not contacted*
- *Ongoing inspection programmes*
- *Memorial Safety Policy – identifying and making public all stages of the process*

*If the above is followed, risk assessed and properly considered there is no reason why an authority may not consider that the prime responsibility for the memorial lies with the owner and that it may be inappropriate to spend considerable amounts of public money simply to avoid the laying down of memorials. In fact authorities who have made the judgement not to individually contact right owners prior to the inspection AND who have then taken a balanced decision to lay reasonably large numbers of memorials down have been investigated by the Ombudsman and maladministration was not upheld.*

*The ICCM re-emphasise that everything should be done to minimise the effect this process has on the bereaved. However, this must be set against the availability of funding and authorities with limited funds should not be precluded from meeting their health and safety responsibilities simply because they cannot*

*afford to employ staff to write thousands of letters that will not be responded to and repair hundreds of memorials.*

Moving on to the executive summary:

### **General advice**

- Councils have an overriding duty to take, as far as reasonably practicable, measures to prevent injury or death from unstable memorials.

#### **Comment**

*ICCM fully agree with this statement*

- Councils must balance the (sometimes slight) risk of injury on the one hand and the certainty of distress and outrage if memorials are laid down on the other.

#### **Comment**

*ICCM agree with this statement, however, under the Health and Safety at Work Act 1974, burial authorities have an obligation to manage the risk, whilst there is a moral obligation to consider the response of the bereaved to any memorial safety programme.*

### **Information**

- Councils should give public notice in advance of carrying out a general testing programme.
- Councils should notify individual owners of rights of burial that testing is to be carried out, unless records are out of date, or urgent action is required in the interests of health and safety.

#### **Comment**

*ICCM agree that as much public notice should be given as possible, however, the notice should be reasonably practicable. Elements of Schedule 3 of the Local Authorities Cemeteries Order 1977 would be appropriate as minimum guidance as follows:*

*“4. Before exercising the said powers in respect of any grave on which there is a tombstone or other memorial the burial authority shall, in the circumstances in which this paragraph applies, subject to paragraph 6, serve copies of the said notice and of paragraphs 9, 10, 12, 15, 17 and 18 on the owner of the right to place and maintain it or (if they have a record of his name and address) on the person granted permission to place it.*

*The circumstances in which this paragraph applies are where-*

*a burial in the grave has taken place;*

*the right to place and maintain, or the permission to place, the tombstone or other memorial has been granted or renewed;*

*the right, or permission, to place any additional inscription on the tombstone or other memorial has been granted; or*

*notification of any assignment or transmission of the right to place and maintain the tombstone or other memorial, or of the address of the owner of such right or of the person granted permission to place it, has been given,*

within the 30 years preceding the first display of the notice under paragraph 3.”

*This appears to indicate that whilst writing to every right owner prior to the inspection might be commended by the Ombudsman, it may be financially restrictive and is certainly not a requirement where memorials are able to be removed under statutory notification. It is difficult to see what action could be taken by the Ombudsman if individual notification was not given for sound practical reasons. In particular, some closed churchyards have limited records and owners of rights are difficult to even identify. As mentioned earlier, this issue has already been tested and the authorities have not been charged with maladministration.*

- Councils should notify the owner of the right of burial, if known, if a memorial fails the test.

**Comment**

*ICCM fully agree that reasonable efforts should be made to contact the owner of the right, if known. Further to this, efforts should also be made to establish a new owner of the right if it is found the original owner is dead. This will involve a legal transfer of the rights.*

- A council should display, in the cemetery itself and on the council’s website, lists of memorials which failed the test. Individual notices should be placed on or near a memorial which fails the test, giving the council’s contact details and the period for making contact.

**Comment**

*ICCM agree that a list of failed memorials may be good practice and a useful means of advising the public, however, some burial authorities are not computerised and this could create substantial additional work that will need to be considered. It is hoped that missing this simple point would not render an authority liable to a charge of maladministration.*

*ICCM agree that individual notices should be placed on or near memorials giving reasons and contact details.*

- Councils may offer demonstrations of their safety testing procedure to owners and interested members of the public.

**Comment**

*ICCM fully support this as an additional means of raising public awareness of the memorial safety process.*

**Training**

- Personnel carrying out testing must be properly trained.

**Comment**

*ICCM fully support the need for suitable training to be provided to persons carrying out memorial inspections. We also support the stance that failure to train staff could result in a charge of maladministration, as poorly inspected memorials could remain in an unsafe condition, placing the public at risk or could be attract make safe precautions unnecessarily. The sooner one single set of guidance can be agreed to assist consistency of inspection the better and the ICCM continue to work to this end. Once an appropriate set of national guidance is agreed the ICCM guidance will be withdrawn.*

## **Risk assessment**

- Councils should have a system for assessing the risk posed by individual unstable memorials. Simply to lay down all memorials that move is inappropriate.

### **Comment**

*ICCM fully agree that appropriate risk assessments should be central to the memorial safety process and that a range of options for the treatment of unsafe memorials should be considered*

## **Survey**

- The maximum period between inspections should be five years.
- More frequent inspection may be required for individual memorials whose condition requires it, or generally where other factors dictate shorter periods.

### **Comment**

*ICCM fully agree with the above comments on the periods between inspections. Once again shorter periods of inspection should be driven by the risk assessment process.*

## **Testing**

- Councils should have a testing policy.

### **Comment**

*ICCM fully agree with the above comment on the memorial safety policy. This document is essential to inform the public, other key stakeholders and the authority's own staff.*

## **Making memorials safe**

- Councils should have regard to alternatives to laying down if a memorial fails the test.

### **Comment**

*ICCM fully agree with the above comment and agree that authorities should adopt a flexible approach to avoid unnecessary distress to the bereaved. All efforts should be made to seek appropriate funding from the authority.*

- A temporary support and warning notice is likely to cause less public outrage than laying large numbers of memorials flat.

### **Comment**

*Whilst there may be a lower number of complaints then this is not always the case and some larger memorials are not able to be adequately supported on a temporary basis. Major outrage was created when Cannock Chase arranged to have temporary make safes fitted to memorials that failed the testing procedure. This was a subject raised and discussed in Parliament. Cannock Chase still have a decision to make on how they will deal with memorials where owners cannot be traced, this could cause further upset to the public. They will have to lay large numbers of memorials down or provide a huge sum of public money to repair other people's property. The legal precedent to this could be challenged as spending large sums of public money on private property could be brought into question.*

- Laying down may be necessary but only to prevent a genuine hazard to health and safety that cannot be remedied by a temporary support.

**Comment**

*This cannot be used as a standard rule of thumb. Each authority will need to make its own decisions based on risk assessment, public opinion and availability of funding.*

- Temporary stabilisation for a reasonable period affords owners the opportunity to repair the memorials.

**Comment**

*ICCM fully agree with the above comment and where this is reasonably practicable. It should be remembered, however, that this is a **temporary** means of stabilising the memorial and the authority is wholly responsible for ensuring the support remains in place and effective throughout the temporary period. This will require regular assessments and a fixed period. At the end of the period the authority will also need to have decided on what action will then be taken. This could result in relatively large scale laying flat of memorials.*

**Action after a memorial has been made safe**

- The principal responsibility for maintaining a memorial in a safe condition is that of the owner.
- In the absence of maladministration in the testing process, there is no obligation on a council to meet the cost of remedial work.
- Re-fixing, where necessary, should be carried out to an approved standard.

**Comment**

*ICCM fully agree with the above comments on the action to be taken after a memorial has been made safe. Indirectly, it would appear that the Ombudsman is saying that when memorials are laid down **after** a temporary period of being made safe then this is acceptable as the authority has no responsibility for the cost of remedial work.*

- We commend the practice of councils that establish hardship funds to assist owners who cannot meet some or all of the repair costs, and councils that pay for all repairs themselves in the interests of preserving the amenity of their cemeteries or where no responsible person can be found.

**Comment**

*ICCM agree that the establishment of hardship funds or incremental methods of payment are laudable and should be encouraged, thus reducing the impact on the bereaved. Unfortunately, burial authorities who spend large sums of public money on other people's property do so at their own risk. Whilst this may avoid adverse press coverage, it could slow down the memorial inspection to the rate of repair, leaving many hundreds of memorials in a dangerous condition for longer than they need be and may also be ultra vires by spending public funding on personal property. ICCM suggest that authorities take their own legal advice on this matter.*