

Special Report

Memorial safety in local authority cemeteries



Advice and guidance from

The Local Government Ombudsmen



Result of health and safety testing in cemeteries

Desecrated. 372 tombstones felled ... but not by louts ... this time it's council morons.
The Sun 8 September 2004 on testing by Camarthenshire County Council.

It was very upsetting, I thought there had been vandals and I was just so angry that this memorial to my wife had been treated in such a thoughtless way.
Comment by a Wirral widower on discovering that his wife's gravestone had been laid down by the council.

No stone unturned in the name of official vandalism.
The Times 24 January 2005.

But this course of action is completely and utterly disproportionate to the risk that the council is trying to guard against, and it shows no respect whatsoever for the graves.
Edinburgh Evening News 24 January 2003 reporting the laying down of memorials in safety checks.

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.
Eighth Report, *Cemeteries*, Select Committee on Environment, Transport and Regional Affairs.

We're damned if we do something and damned if we don't.
Comment by the Leader of Braintree Council about adverse comment on laying down memorials, **Today Programme** Radio 4, 8 October 2005.

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Foreword

In recent years, a number of local communities have been shocked and aggrieved by the actions of councils laying flat hundreds of grave memorials as a result of health and safety inspections. To people visiting after the event it has looked as though vandalism on a large scale has desecrated their cemeteries.

Numerous complaints have been made to us as a consequence. In our investigations we have identified a number of issues. We have found maladministration in the failure to ensure adequate publicity/notification before carrying out stability testing or laying down individual monuments which failed the test; not having in place a proper system for risk assessment and subsequent prioritisation of work; lack of proper training for those carrying out testing and the failure to seek advice from a suitably qualified person.

We have issued a number of reports against particular councils. However, it is clear that there is continuing public concern on this very sensitive issue. This is not limited to England. So we are publishing this Special Report as our first joint report with the Public Services Ombudsman for Wales setting out some general guidance on memorial safety testing so that burial authorities may better avoid causing widespread offence to the public.¹ We believe that it is possible to do so without compromising local authorities' important duties to protect the health and safety of the public.

Our main message is simple. *In our view it should not be necessary for burial authorities to lay down grave memorials on any large scale.*

Tony Redmond

Anne Seex

Jerry White

Adam Peat

Local Government Ombudsmen
March 2006

Public Services Ombudsman for Wales

¹ We do this pursuant to section 23 (12A) of the Local Government Act 1974. This provides that the Local Government Ombudsmen may, after consultation with the authorities concerned and other relevant organisations, provide such advice and guidance about good administrative practice that we consider appropriate, and arrange for it to be published for the information of the public.

Glossary

Abbreviations

ABA	Association of Burial Authorities
CBA	Confederation of Burial Authorities
BCAG	Burial and Cemeteries Advisory Group
BRAMM	British Register of Accredited Memorial Masons
HSC	Health and Safety Commission
HSE	Health and Safety Executive
IBCA	Institute of Burial and Cremation Administration (until Sept 2003)
ICCM	Institute of Cemeteries and Crematoria Management (from Sept 2003)
MSAG	Memorial Safety Advisory Group
MSG	Memorial Safety Subgroup (of BCAG)
NAMM	National Association of Memorial Masons

Burial authority

Authority responsible for managing a burial ground.

Burial right

The right to be buried in a specific plot in a burial ground, the length of the right depending on the terms of the grant. The right might have been granted in perpetuity or, more commonly today, for a specific number of years.

Calibrated testing device or topple tester

A hand-held instrument which indicates the load/force exerted on a memorial by the operator, and which can be set to a predetermined force.

Closed churchyard

A churchyard which is closed for burials by Order in Council. Responsibility for its maintenance may be transferred to the local council under the Local Government Act 1972.

Faculty

Formal written permission or licence from a Church of England bishop to carry out designated work in consecrated ground. The jurisdiction is normally exercised by the diocesan chancellor.

Lawn memorial

An upright slab or tablet of stone, commemorating the deceased and attached by dowels to a broader, wider plinth of stone which is dowelled and/or cemented to a foundation slab set in the ground. Typically these memorials are 500mm to 1m in height.

Memorial right

The right to erect and maintain a memorial in a specific plot in a cemetery. Modern rights of this type are granted for a limited period, which may be renewable.

Acknowledgements

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We also thank the following who responded during the consultation process and provided helpful suggestions and amendments:

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We also gratefully acknowledge the input of Commission staff, especially John Greenwood and Michelle Quinney in preparing this report.

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.
- 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.

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.
- Councils should notify the owner of the right of burial, if known, if a memorial fails the test.
- 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.
- Councils may offer demonstrations of their safety testing procedure to owners and interested members of the public.

Training

- Personnel carrying out testing must be properly trained.

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.

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.

Testing

- Councils should have a testing policy.

Making memorials safe

- Councils should have regard to alternatives to laying down if a memorial fails the test.
- A temporary support and warning notice is likely to cause less public outrage than laying large numbers of memorials flat.

- Laying down may be necessary but only to prevent a genuine hazard to health and safety that cannot be remedied by a temporary support.
- Temporary stabilisation for a reasonable period affords owners the opportunity to repair the 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.
- 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.

Part I – General context

The principal enduring responsibility for safety in public cemeteries rests with the burial authority. In England and Wales people do not buy graves. They buy the right to be buried in a specific place in a cemetery. The owner of the burial right may decide who is buried in a given plot. The length of the right depends on the terms of the grant. Although granted in perpetuity when cemeteries were first established, burial rights now may be more typically for 50 years or less. The right to burial usually carries an implied right to erect a memorial. Some burial authorities grant the right to erect a memorial as a separate right of more limited duration than the right to burial. Original maintenance liability will rest with the grave owner for the period of the grant of the right of burial, or the right to erect the memorial if separate. Constructional defects are the responsibility of the erecting memorial mason.

With the passage of time and changes of address, coupled with lack of adequate records, responsibility for maintenance has fallen mainly on the burial authority. Increasing awareness of memorial safety and its heavy cost implications may lead burial authorities to reduce the period for retention of the memorial to coincide with any warranty offered by the installing memorial mason and/or impose a requirement on the owner to obtain insurance. Many burial authorities now require fixing methods for new memorials which conform to National Association of Memorial Masons (NAMM) guidance or the new British Standard. They may impose a similar requirement for existing memorials which need to be re-fixed following testing.

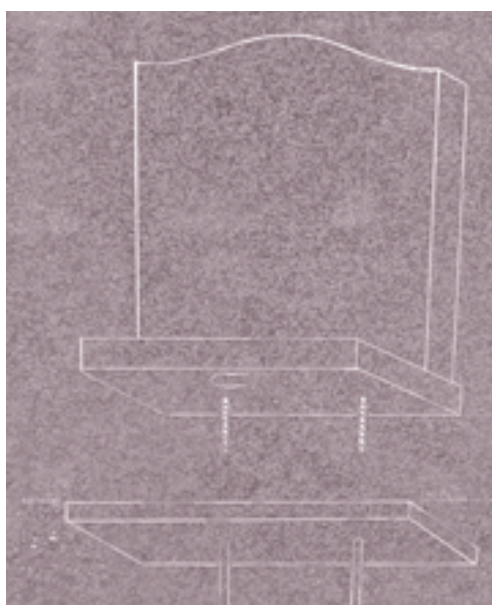
Although we consider in this report the role of those burial authorities which are local councils and therefore fall within our jurisdiction, there are many other such authorities which face the same problems. There are over 3,300 burial authorities in the UK.

Of the 600,000 people who die each year just over one third are buried. Of these about half have new graves, the rest being placed in existing graves. Since the mid-1950s the most common type of grave memorial has been the lawn memorial.



Cemetery with lawn memorials

A lawn memorial comprises an upright tablet or plate which is usually dowelled to a supporting plinth. The plinth is then fixed to a foundation. The foundation was often a small concrete base installed by the mason. More recently some burial authorities have installed pre-cast slabs or long strip rafts of concrete. Most recently a pre-cast concrete element with provision for a ground anchor to give a high degree of stability has been introduced.



Ground anchor

Instability may be caused by a number of factors, including uneven settlement of the foundation. However, a significant and common cause of failure with lawn memorials has been the absence of any effective dowel between the memorial itself and the foundation base. Often there is only a mortar joint. Sometimes mortar is applied at just one or two spots, not even covering the whole of the joint.

This makes for ease of removal for the addition of a further inscription, but undermines the memorial's stability. Inherently, lawn memorials erected in this way are prone to movement and instability even though they are of relatively recent construction.

There has been increasing concern over memorial safety. Following the intervention of the Health and Safety Executive (HSE) in a number of cases where injury or death had occurred, together with concern on the part of local authority insurers, burial authorities have instituted safety checks on memorials in cemeteries and graveyards for which they are responsible. HSE has used its enforcement powers, in some cases where death or serious injury have occurred, to issue an improvement notice to require a council to accelerate its testing programme or even a prohibition notice to close a cemetery while testing is carried out and dangerous memorials made safe.



Inadequately secured memorial

In July 2001 HSE and the Local Authorities Enforcement Liaison Committee issued guidance (LAC 23/18) to local authority enforcement officers on the exercise of their powers under the Health and Safety at Work etc Act. The HSE later said it was not intended to be taken as guidance to burial authorities on their responsibilities. The document was subsequently withdrawn to avoid confusion. The Chair of the Health and Safety Commission (HSC) wrote to his regional directors and councils' chief executives in June 2004 to make it clear that HSE had issued no guidance on memorial safety and that it was a matter for individual burial authorities to determine. He urged burial authorities to follow industry guidance so that the issue was handled with the utmost sensitivity, referring to the adverse publicity and public anger caused by the indiscriminate action of a small number of local authorities.

The method of testing and the consequent action taken by burial authorities have, in many cases, resulted in public concern and outcry when memorials have been laid down or safeguarded with highly visible tape and warning notices. Criticism has been made both of hand testing, on the grounds that operatives have not received proper training and in any event cannot exert a consistent or uniform pressure, and of using a calibrated testing device in that this may itself weaken an otherwise stable monument. Inevitably concern has been concentrated on lawn memorials since these constitute the great majority of modern memorials where family members still visit.

In addition to problems with testing and with the treatment of memorials considered unsafe, there has been a failure by some burial authorities not only to notify individual grave owners or their relatives but also to advise the public more generally of their intention to start memorial safety testing and the reasons for it. There is no general legal requirement for such notification. However, it may be required under the terms of a faculty granted for work in the consecrated part of a cemetery or for work carried out under Article 16 of the Local Authorities' Cemeteries Order 1977 to remove or alter the position of a memorial.

The whole issue of graveyard safety is currently under consideration by the Memorial Safety Subgroup of the Burials and Cemeteries Advisory Committee set up by the Government following a report from the Environment Committee of the House of Commons. The British Standards Institution has issued a British Standard for new

memorials which includes guidance on inspection and testing of existing memorials. But currently no central advice has been given to burial authorities designed to minimise public disquiet over the consequences of health and safety testing of lawn memorials in burial grounds. There is a multiplicity of advice from other bodies on technical aspects; but we have approached this report from the standpoint of the complaints made to us.

Over the years considerable guidance has become available for burial authorities about various aspects of cemetery safety. We thought it would be useful to summarise this in two appendices. The first summarises the legal content and industry guidance; the second gives more detail on the question of memorial testing.

Part II – Current position

A Introduction: the problem of burial ground safety

There has been an increasing awareness of the dangers which unstable memorials in burial grounds can pose both to those who work there and members of the public who may be there as mourners, relatives or friends visiting a grave, or those present for recreational purposes such as children playing. The Chair of the HSC reported in June 2004 that their figures revealed three deaths and 18 other serious accidents to members of the public from unstable memorials in the preceding five years. HSE also believes there to be significant under-reporting of accidents. Impelled by the media coverage and HSE concern, many local authorities, as burial authorities, began to carry out safety checks in their cemeteries. Unsurprisingly, many started work in the oldest sections of their cemeteries, often laid out in the Victorian age and containing the largest and grandest memorials.

Considerable alarm was generated when burial authorities turned their attention to the postwar sections of their cemeteries where lawn memorials predominate. Typically less than 10 per cent of the Victorian memorials failed safety checks, but a third or more of lawn memorials were found unstable. There is clearly a paramount duty on local authorities to take all reasonable measures to prevent injury or death from unstable memorials. Spurred on by concerns of public safety, many local authorities saw laying down as the immediate solution to the risk posed by unstable memorials. This work was often done without any consideration of degrees of risk or the effect on the public when scores or even hundreds of memorials were laid flat. The hurt was often compounded by failures of communication before and during the testing process.

The results of our investigations have revealed flaws at every stage of the process.



Picture courtesy of The Staffordshire Sentinel

Result of health and safety testing in cemeteries

B Information about burial ground safety inspections

We have found maladministration in burial authorities not taking reasonable steps to inform the public generally and, where possible, memorial owners individually, of the authority's intention to carry out safety testing.

We recognise that a burial authority's records may, over a number of years, become out of date when families move home, often to a different part of the country. However, family members do continue to visit the grave of a deceased relative, albeit perhaps only once a year on an anniversary.

Example 1

Complaint against Newcastle-under-Lyme Borough Council

(report 98/B/273)

In late 1994 the Council started a programme of memorial safety testing. A fourth area survey, the subject of the complaint, was undertaken in February 1998. As a result of the survey, 496 memorials (12 per cent of the 4,000 tested) were deemed affected and 426 were laid flat for safety. The complainant contended that, unlike previous surveys, no advance notice was given and that this represented a change in the Council's procedure. The Council said there was a problem in giving advance notice because, if the Council failed to make a memorial safe at the time of the survey, it might be held to be negligent if it failed to take immediate action and waited until the grave owner did so. We found that the publicity arrangements generally were not adequate. This was particularly so for the fourth survey, where the graves were more modern and there was a greater likelihood of a responsible owner being traced. We concluded that the Council should have given advance publicity before the survey by prominent site notices and press notices.

Example 2

Complaint against Bromsgrove District Council

(report 02/B/14696)

The Council began its safety testing programme in late November 2002. It laid down 299 memorials followed by a further 150 in February 2003. A local newspaper advertisement on 27 November warned of the proposed survey and that unsafe memorials would be laid down or made safe temporarily while the owners were contacted. No such notices were posted at the cemetery, nor were owners contacted. After the first testing letters were sent to about 50 owners of memorials which had been laid down at the end of 2002, and notices were placed in the cemetery and on each memorial laid down. We found that the Council had failed to give adequate publicity to its proposals before testing: press notice was too short and there was a failure to inform the public in any other way.

Example 3

Complaint against Harrogate Borough Council

(report 02/C/5799 and others)

Six individuals complained about the way the Council made safe headstones in various cemeteries and closed churchyards in its area. They were concerned about a lack of individual notification. Following the death of a child in a cemetery in the Council's area in July 2000, the HSE served an improvement notice on the Council to work within a significantly reduced timescale. It asked the Council to change its approach and give priority to making safe headstones which were at most risk of collapse. The reduced timescale imposed on the Council meant that it had to abandon its previous policy of trying to make contact with all memorial owners before any testing took place. The Council made the public aware by notices in the press and in the cemeteries themselves, and by a general media campaign. The Council's intention under its original programme was to attempt to make contact with all memorial owners before any testing of their headstones took place, although its trial survey showed this to be time consuming and difficult to achieve, with 90 per cent of letters sent out being returned. Once timescales were accelerated, however, it was felt that such prior notification by letter had to be abandoned. Instead, the Council concentrated on raising awareness by notices placed in cemeteries, by press advertisements and by a general media campaign, including press articles and radio/television interviews. We found that the Council properly considered the procedure which it should adopt to inform the public, given the legal duties imposed on it by the HSE.

Example 4

Complaint against Carmarthenshire County Council

(case 200500042)

The Council began a programme of memorial safety testing in late August 2004. The work was carried out by a specialist contractor using calibrated testing equipment. A man complained that the memorial headstone of his late mother's grave was laid flat without notifying him. He was also aggrieved by the lack of information given to him about the safety testing process. No advance notice of the works was given to owners, although notices were posted at the cemetery once work was underway warning that testing was in process, and that any headstone that failed the test would be removed and laid flat on the grave. The Ombudsman's view was that the Council should have given advance notice and, in arriving at a settlement in respect of this complaint, the Council acknowledged that the survey had been carried out without adequate publicity and that individual owners should have been contacted before the headstones were laid flat.

C Testing

There are three principal elements to a satisfactory testing regime:

- Staff training
- Risk assessment
- Test to be used

To fail to train staff to carry out safety testing to a reasonable and competent standard is maladministration. Such training is required whatever method of testing is used: whether a hand test, calibrated machine, or mixture of the two.



Hand testing



Force measuring instrument

Not all unstable memorials present the same danger to the public. We have criticised an oversimplified approach to memorial testing that fails to recognise the need to assess risk of injury and act in a proportionate manner. A suitable assessment of risk is needed whatever method of testing is used.

Example 5

Bromsgrove District Council

We mentioned this complaint earlier (Example 2).

Cemetery staff carried out manual testing of memorials. They had been given no training, nor was a calibrated testing instrument available. Modern lawn memorials were laid down if they moved on being tested, unless they were back to back and thus gave mutual support. We found that the Council gave no consideration to staff training, risk assessment, or viable alternatives to laying down before it started testing. Had this been done, at least some of the memorials would not have been displaced.

Example 6

Complaints by 16 owners of graves against Stoke-on-Trent City Council (report 03/B/5516 and others)

The Council started a revised testing programme for all its memorials in June 2002 and 11,542 memorials were classified as immediately unsafe. Once laying down commenced, complaints began. When some 2,000 memorials were laid down the Council commissioned an independent review. This identified the principal failure by the Council as not writing to owners to tell them of the intention to lay memorials down. Criticism was made of the testing method used and the failure to assess the likelihood of a memorial killing or injuring someone. An internal review of the testing concluded that only 60 memorials should have been classified as very high risk and laid flat immediately. Another 800 should have been cordoned off and the grave owners given 28 days' notice to repair the memorials, and the remaining owners notified that the Council intended to reinspect in six months. Risk assessments had not been carried out, findings were not logged, calibrated equipment was not used, and proper training was not given. We found that these failings of the earlier testing regime were maladministration. We concluded that local authorities had to be careful not to exaggerate the potential risk to safety posed by some dangerous memorials and so take disproportionate action. We said the wholesale laying flat of memorials at first thought to be dangerous was not justified by the facts. The Council's actions predictably caused a huge affront to grave owners. Their sense of outrage was entirely justified.

D Laying memorials down

The most vehement public outrage and anger has been expressed when faced with wholesale laying down of memorials that have failed the safety test. On occasions this has resulted in an abrupt suspension of the testing programme and its consequent revision. Councils have been compelled to consider whether there are appropriate alternative methods of addressing the risk of injury or, indeed, whether the risk itself has been properly assessed. The act of laying down a memorial may itself give rise to a tripping/slipping hazard, and in one case that has come to our attention the council felt it necessary to set laid-down memorials level with the ground. Faced with an unstable memorial that has failed the safety test, councils have tended to employ four options:

- lay down
- cordon off
- stabilise
- repair

But some councils have given inadequate consideration to the choices other than laying down, responding to memorials which fail their testing with wholesale laying down.

Example 7

Stoke-on-Trent City Council

We mentioned these complaints earlier (Example 6).

The Council laid down 2,000 memorials. Its own internal review recognised that only 60 should have been laid down immediately as very high risk.

Example 8

Bromsgrove District Council

We mentioned this complaint earlier (Example 2).

The Council gave no consideration to alternatives to laying down if a memorial moved on testing, unless it was supported because it was back to back with a stable monument.

Example 9

Carmarthenshire County Council

We mentioned this complaint earlier (Example 4).

As a result of the survey, 178 headstones, including that for the complainant's late mother, were said to have failed the test and were laid flat. The Council said that the work needed to be done immediately because otherwise it would have been liable if someone had been hurt. It suspended the exercise because of the public outcry.

The Council acknowledged that there was no proper specification in place for the erection of headstones. The Ombudsman took the view that, although the Council had employed a specialist company to undertake the testing of memorial headstones and provide test results, no assessment of the risk each unstable headstone posed had been carried out before the headstones were removed and laid flat.

The Council carried out the restoration work, including the installation of a new ground anchorage system, at its own cost. The Ombudsman regarded this as a satisfactory settlement of the complaint.

In addition, the Council also introduced a registration scheme for the excavation of graves, and incorporated a new specification to ensure the installation of headstones in the future to a proper standard.

To cordon off a memorial with brightly-coloured hazard tape or meshing and warning signs, or to shroud it with a bright yellow plastic warning cover does not remove the risk posed by an unstable memorial. At best these provide a short-term solution by warning the public that a hazard exists. At worst they have provoked public outrage by striking a discordant note in the cemetery's setting.



Method of support used by
Stoke-on-Trent City Council

Example 10

Complaints by 16 owners of graves against Stoke-on-Trent City Council (report 03/B/5516 and others)

We have mentioned above (Example 7) the very large number of memorials laid down in the Council's 2002 testing programme. Following an independent report into its safety testing programme and advice from Professor Knapton, the Council began a new safety testing programme in May 2003. The testing involved taping off with orange meshing areas containing memorials that were deemed unsafe, and laying flat any memorial stone that failed the 35kg test. In August 2004, following concerns about the appearance of the orange meshing and the continuing practice of laying down memorials, the Council adopted a temporary support mechanism. This avoids the need for meshing in the majority of cases. This support is applied to those memorials that have failed the calibrated push test and are deemed to be unstable. The Council has told us that it cannot envisage any normal circumstances where it would now lay standard lawn memorials down. This would only occur where no other option is available, for example if the memorial is split in two.

Example 11 – An example of current practice

Stockport Metropolitan Borough Council

Under its initial testing programme the Council carried out detailed visual checks and a manual test simulating 35kg. It stabilised memorials by setting them deeper into the ground. The Council received no complaints from relatives, although at this time it did not write to notify them. At the request of HSE the Council accelerated its testing programme, deciding to use only the manual push test. Memorials that failed the test were at first laid down but, 10 weeks into the testing programme, the Council changed its practice after many complaints. Memorials were then structurally supported using a variety of methods. Of 37,263 memorials tested, 3,189 failed and were either laid down or stabilised. Following detailed consideration by its Scrutiny Committee, the Council adopted the following policy for those memorials that had failed:

- Memorials to children would be re-erected free of charge.
- If no responsible living person could be contacted then any memorial already laid down should remain so, but placed on the correct grave plot with the inscription facing upwards; if the memorial had been stabilised it should be fixed permanently if possible, if not then laid down. The Council should meet the cost.
- Where a responsible living person was known, the Council should cover the cost of re-erection or reimburse the cost if the work had already been done.

Example 12 – An example of current practice

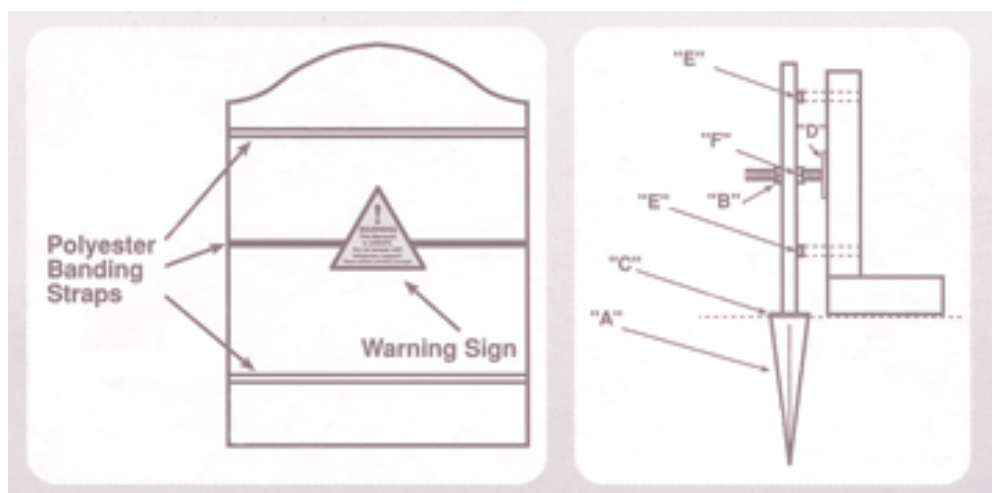
Corporation of London

All lawn memorials in the City of London Cemetery that failed the safety test were stabilised on a temporary basis so that they were held safe and upright prior to permanent re-erection. Owners were written to and given six weeks to arrange for a memorial mason to repair in accordance with the NAMM Recommended Code of Working Practice. Alternatively, the Corporation would do the work for a fee. If an owner could not be traced the work was carried out by the Corporation and charged against the grave. It took just over a year to make safe and re-erect some 820 lawn memorials out of the total of 25,000 tested for stability.

Pictures courtesy of Odlings MCR Ltd



Odlings Makesafe support used by the Corporation of London



Part III – Advice

A General

In devising memorial safety policy and carrying out safety testing, councils balance competing imperatives. We recognise their overriding duty to take, as far as reasonably practicable, measures to prevent injury or death from unstable memorials. However, councils have to take a proportionate view between the (sometimes slight) risk of injury on the one hand and, on the other, the absolute certainty of distress and outrage to grave owners and family and friends of the dead if memorials are laid down.

B Information

Experience has shown that relatives and members of the public generally will accept the need for testing and consequent repair of memorials if they are properly informed. A number of councils rushed headlong into their first testing programme, focusing principally or exclusively on safety issues. Little thought was given to appropriate methods of explaining the process to the public, or the need to do so; or of notifying grave owners. It is maladministration to fail to inform in advance of testing being carried out.

We consider it to be good practice to notify owners of burial rights individually before testing is carried out. But it may not be possible where records are not up to date or urgent action is needed in the interest of health and safety. This problem will diminish where councils grant only a limited new right to erect and maintain a memorial, typically for 30 years.

Councils may also check memorials in the vicinity of a grave which is to be dug and the adjacent areas where mourners may be expected to stand. If immediate action is required in the interests of health and safety, we recognise that prior notification may not be possible.

Councils should have a policy for prior public notification of the intention to carry out testing. It is a matter for individual councils to judge the appropriate methods in the particular situation. But it is essential that notices are on display at entrances to the cemetery concerned and in other prominent places within it, for instance where a tap is situated. But, given the likely infrequency of cemetery visits, other methods should also be considered such as local radio, the council's website, press advertisements and articles, free magazines and discussions with interest groups such as local councillors, memorial masons and undertakers.

We consider the minimum period of notice should be four weeks.

As a matter of good practice, councils may wish to consider whether they can offer a memorial safety demonstration for owners and interested members of the public to witness the method of testing.

We think it is good practice for the results of testing, listing those memorials that have failed, to be posted in cemeteries and on the council's website, and a number of burial authorities do this now. Notices should be displayed on or near memorials that have failed the test, giving the council's contact details and the period within which contact should be made.

When a memorial fails a safety test, we consider it maladministration for individual notification not to be attempted, where records exist, in order to give the grave owner the opportunity to repair the memorial.

Councils are increasingly aware that much of the public disquiet that memorial safety testing has generated can be reduced or prevented by a carefully considered programme of public information before testing begins.



Notice of test in cemetery



Notice on unsafe memorial

Example 13 – An example of current practice

Coventry City Council

Under the Council's new draft memorial safety policy, notices are posted at the entrance to cemeteries and in other key locations six weeks before inspections are to begin. The details of the graves to be inspected are posted on the cemetery notice boards and on the Council's website. Grave owners are written to individually at the last known address informing them of the proposed inspection with an invitation to attend a memorial safety demonstration if they so wish. If a memorial fails the safety test, the owner is written to a second time with the result, unless the first letter has been returned 'not known at this address'. The work needed to make the memorial safe is described in the second letter with the option to attend with the Council's memorial safety officer to scrutinise the outcome of the inspection. Details of memorials found to be unsafe are published on the cemetery notice boards and the website. Notices are attached to memorials which have been laid down or temporarily stabilised.

Example 14 – An example of current practice

Test Valley Borough Council

The Council started its testing programme in June 2005. With no full and up-to-date ownership details of graves, the Council placed emphasis on widespread advance publicity. Following articles in the local press, notices were placed in the local press and posted in the cemeteries in March 2005. Details were also given in the Council's publication sent free to every household, on the Council's website and in parish magazines. Meetings were held with memorial masons, local ministers and undertakers. Further notices were posted in cemeteries in June before the work started, together with further articles in the local press. Individual owners were notified if a memorial failed the inspection, if records were available. Where a memorial could not be fixed on the date of inspection, a small sign was displayed giving details of whom to contact.

C Training

We consider it maladministration for testing to be done by untrained personnel. Short training programmes are provided by a number of organisations, including NAMM, ICCM and ABA. Councils may devise their own training programmes, drawing on internal or external expertise. And the manufacturers of calibrated testing devices provide instruction in their use.

D Risk assessment

We consider that to adopt a broad brush response which requires memorials that move on testing to be laid down is inappropriate. Councils must have a system for assessing the risk posed by individual unstable memorials and the appropriate choice of remedy to meet that category of risk. Councils may adopt or adapt industry guidance as their model. Examples are given in Appendix 1.

Regard must be had to individual circumstances as appropriate. So, for example, an unstable memorial adjacent to a regularly tended grave may merit different treatment from a similar memorial in an unfrequented part of the cemetery. The lawn memorial that's instability only raises the risk of tilting backwards and which is supported by a solid back-to-back neighbour does not pose the same threat as one which stands in isolation. Very low memorials may pose such negligible risk that no remedial action is reasonably necessary. However, this is a matter for individual assessment.

Example 15

Stoke-on-Trent City Council

We mentioned these 16 complaints earlier (Example 6).

The independent report recommended a new risk assessment with testing to a calibrated 35kg and further training. Retesting took place. This included a full assessment of the risk to public safety, taking account of the likelihood of an incident occurring and the likely severity of any injuries. Memorials were placed in four categories:

White – very dangerous, the memorial is cordoned off and laid down within 24 hours of identification.

Red – high risk, red warning notice attached and cordoned off within 24 hours. The memorial owner is contacted where possible and given a period of four weeks to take action.

Yellow – potentially dangerous but not an immediate risk, a yellow notice is attached. Re-fixing required within six months.

Green – no action, reinspect in five years.

We found no fault with the Council's new inspection system.

Example 16 – An example of good practice

Memorial Safety Policy approved by Powys County Council, December 2003

The management of memorial safety is based on a risk assessment approach. As a priority, this involves identifying those memorials which present an immediate and significant hazard and making them safe. Memorials are assigned to one of three categories:

Category 1 – requires immediate attention

Category 2 – unstable but unlikely to cause immediate danger

Category 3 – not dangerous

Category 1 memorials are cordoned off using staked hazard tape and, where practicable, laid down within three working days.

Category 2 memorials: a notice is displayed at the grave warning of its unstable condition. If the grave owner or next-of-kin is identified, a letter must be sent within five working days requesting repair within three months. At the end of three months the memorial is checked and, if no work has been done, a further letter requesting repair within one month is sent. If no repair is carried out, the Council will arrange for the memorial to be made safe, normally by laying down. Repair must be to NAMM standards.

Category 3 and repaired memorials are subject to reinspection as part of a five-year rolling programme.

Appropriately trained staff may inspect memorials less than two metres in height. The inspection will comprise a visual assessment and a hand test, if considered safe to do so. Use may be made of a calibrated testing device when testing memorials less than 1.5 metres in height. In the case of memorials less than two metres in height, priority will be given to those that are older, jointed or that appear unstable. The age of the memorial, ground conditions and local knowledge will be other factors used to guide inspecting staff in determining the priority of memorial inspections.

E Survey

The frequency of reinspection under a rolling programme will be a matter for each council to determine. However, the maximum period between inspections should be no more than five years. The council's inspection regime may prescribe shorter periods of inspection for memorials with a higher risk but that were not in need of immediate repair, or where ground conditions, climate, or other factors indicate a need for more frequent inspection.

We consider that it is maladministration for councils not to keep proper records of safety tests carried out and the condition of individual memorials where defects are discovered. Ideally, a photographic record should be made. At least two systems are available in which information can be fed into a hand-held device when testing is carried out and then downloaded to a central computer system in the office.

F Testing

We consider that it is maladministration for councils not to have an adopted testing policy. They may model such a code on British Standard 8415 or those published by the industry, such as those issued by MSAG or ICCM or ABA/Zurich Municipal, or devise their own after consultation with structural engineers and health and safety experts. Newcastle-under-Lyme Borough Council, following advice from a specialist structural engineer, has adopted a testing procedure using a calibrated instrument to a recommended test force of 30kg. A policy must make provision for frequency of testing and, where appropriate, consider different periods for memorials which are found to be unstable to a greater or lesser degree, but not immediately dangerous.

Many councils now use a calibrated testing device for lawn memorials and the test force of 35kg is approved by NAMM, ICCM, ABA and some diocesan chancellors when granting faculties for testing in consecrated ground. Its use is supported by Professor John Knapton (Appendix 2). It may be used following an initial visual inspection and hand test as part of an overall assessment.

G Making memorials safe

Experience demonstrates that the wholesale laying down of lawn memorials that fail the test is both unnecessary and wholly undesirable because of the public anguish to which it gives rise.

We consider that, as a matter of good administrative practice, councils should consider whether such memorials can be dealt with by a more frequent inspection regime if the risk of injury is small, or by stabilisation for a reasonable time to afford relatives the opportunity to have repairs carried out. We do, however, recognise that financial constraints may influence a council's actions.

Some councils have been astute in devising their own stabilisation devices and ensuring that they are as much in harmony with the cemetery use as possible. Metal stabilisation rods may be painted matt black and the tape used to secure the memorial to the rod may be of an unobtrusive colour to suit the individual memorial in question.

Where a lawn memorial needs re-fixing to make it safe, many councils require the work to be done by an approved memorial mason in accordance with a NAMM approved method or under the new British Standard. We consider such a requirement to be compatible with good administrative practice.

We conclude that, with a proper regime involving training, risk assessment, and due consideration of the alternatives, laying down large numbers of lawn memorials as a result of safety testing is unlikely to be appropriate. Doing so causes great offence to cemetery users and the public at large and in our view that offence is almost always avoidable. A failure to weigh all these factors in the balance, resulting in large-scale laying down of memorials without due need, will be maladministration. We accept, however, that in some individual cases laying down will be essential to prevent a genuine hazard to health and safety.

H Action after a memorial has been made safe

The responsibility for maintaining a memorial in a safe condition is principally that of the owner of the memorial. There is an increasing frequency for councils to require that its approved memorial masons guarantee their work for the period for which the right lasts, and similarly for repair work when a memorial is re-erected to those same standards. A typical period is 30 years, although NAMM and BRAMM require their members to provide a comprehensive guarantee for 10 years.

Where there has been no maladministration in the testing process, we do not consider that councils are required, as good administrative practice, to meet the cost of remedial works. Some councils may establish a hardship fund to assist those who cannot meet some or all of the cost of repair. We commend this practice.

In the interests of preserving the amenity of their cemeteries, some councils may pay for all repair work themselves or restore memorials where no responsible person can be found. But we recognise the financial burden this imposes on the burial authority and it must be a matter of policy as to whether a council chooses this way forward or another.

Conclusions

Memorial stability has aroused widespread concern. A small number of tragic accidents and deaths, in particular to children, raised public awareness and in a number of cases required the intervention of HSE and its statutory enforcement powers. This alerted councils as burial authorities to their responsibilities for the safety of cemetery users. Many initiated testing programmes which resulted in considerable numbers of memorials being laid down. These have principally been lawn memorials of relatively recent installation. In many cases this action outraged the families of the deceased and other cemetery users and attracted adverse publicity.

There is a balance to be struck between public safety and public outrage. We recognise that certain memorials pose an immediate danger with a high risk of injury. Others may display a degree of instability without the same degree of risk, perhaps because of their size and/or location. We hope that, through our issuing this advice, councils will recognise that action other than laying down will almost always be the appropriate remedy.

Appendix 1 – The law and guidance

The law

Statute law

Health and Safety at Work etc Act 1974

The Health and Safety Executive has a duty to ensure that risks to people's health and safety from work activities are properly controlled. It has power to take enforcement action. In relation to burial grounds, HSE may use its enforcement powers to achieve the objectives of the legislation, for example by issuing an Improvement or Prohibition Notice.

Burial authorities, including councils, have duties under the 1974 Act to ensure, so far as is reasonably practicable, the health, safety and welfare at work of their employees and that persons not in their employment who may be affected by their undertaking are not thereby exposed to risks to their health or safety. Various Regulations made under the Act lay down detailed rules. In particular the Management of Health and Safety at Work Regulations 1999 impose an obligation on an employer to assess the risk to employees and non-employees which arise out of the employer's undertaking. This applies to burial authorities who are employers and includes a duty to assess the risk from all cemetery structures, including memorials.

Occupiers Liability Acts 1957 and 1984

Civil liability is imposed on 'the occupier' which could include not only the owner of the memorial but also the burial authority. The remedy is an action for damages by the injured party. In broad terms the obligation is to take reasonable care in all the circumstances.

Local Authorities' Cemeteries Order 1977

Article 3(2)b empowers a burial authority to take any action that is necessary to remove a danger that arises by means of the condition of a vault, tombstone or other memorial. The burial authority has an obligation to keep the cemetery in good order and repair (Article 4(1)).

The burial authority has various powers under Article 16. Under Article 16(1), it may put and keep in repair any memorial in a cemetery. The primary responsibility to maintain the memorial rests with the owner. However, in practice, in particular with older memorials, it may not be possible to trace the owner. The burial authority may, under Article 16(2), also remove from the cemetery and destroy any tombstone or other memorial on a grave which is dilapidated by reason of long neglect. It may alter the position on a grave of a memorial etc, or re-erect it at another place in the cemetery. It may level the surface of any grave to the level of the adjoining ground. These powers may only be exercised in accordance with Schedule 3 of the Order. This requires the authority to comply with publicity provisions on site and in the local press, and serve notification on the owner of the right to place and maintain the memorial or on the person granted permission to place it.

Planning legislation

Certain monuments may be subject to additional controls if listed as being of special architectural or historic interest or in a conservation area. Evidence given to the House of Commons Committee on Environment, Transport and Regional Affairs was that 2,286 buildings and monuments in cemeteries were listed and English Heritage's Register of Parks and Gardens included 26 cemetery landscapes.

Common law

A burial authority may be liable to an action in damages if someone is foreseeably injured by its acts or omissions. In general terms such an employer will be responsible for the actions of its employees both to third parties and to other employees.

In an action for damages against a council in the Staines County Court to recover the costs of reinstalling a headstone to current standards, including a NAMM approved ground anchor, the judge dismissed the claim. The claimant questioned the council's authority to carry out inspections and to take immediate action by laying down memorials. He acknowledged that he had seen notices in the local press and at the cemetery, but contended that he should have been contacted in advance and given an opportunity to witness the test. He challenged the validity of the force-testing machine used, arguing that the test procedure caused the foundation of the headstone to fail and that the council had neglected its duty by failing to control the installation of memorials over the previous years.

The council gave evidence of its working procedure for memorial inspections and associated documents that showed:

- a hand test as the primary test
- if hand test was passed then use of testing device to 35kg
- use of testing device on memorials which failed the hand test to record fail pressure
- evidence of calibration of testing device
- risk assessments
- safe system of work
- staff training and competence
- copies of various notices
- inspection records
- ICCM Code of Practice for the Management of Memorials

The judge held that testing had been carried out properly, that the reading had to be accepted, and that the council had the power to remove a danger and therefore the power to act as it did as a result of the test reading. The council had done no more than it was statutorily obliged to do.

Ecclesiastical law

Ecclesiastical law governs not only churchyards but also consecrated areas in public and privately-owned cemeteries. A memorial may not be removed from a consecrated part of a cemetery without notifying the rural dean in the Church of England and allowing three months to make representations which then have to be considered by the burial authority. In a churchyard the removal of, or work on, a memorial will or may require a faculty. Local councils may take on responsibility for closed churchyards, that is, those that are no longer open for burial, under section 215 of the Local Government Act 1972.

In *Re Keynsham Cemetery* [2003] 1 WLR 66, Chancellor Briden in the Bath and Wells Consistory Court decided that it was not necessary to apply to the court for minor works associated with maintaining the safety of monuments, including non-destructive testing, fencing or covering dangerous stones or affording temporary support. A faculty was needed if it was desired to lay stones flat. The judgement, as subsequently varied in 2003, approved testing with a mechanical device exerting force to a predetermined standard of 35kg.

On a subsequent petition by Sedgemoor District Council in January 2005, Chancellor Briden granted a faculty to lay flat on its appropriate grave any tombstone or other monument found on inspection to be unstable or dangerous in some other respect. The faculty was subject to a number of conditions including testing by hand or to a maximum standard of 35kg by a mechanical device. A further condition required the Council, whenever it was reasonably practicable to do so, to give notice to any person known to have an interest in a monument that was found unstable and to afford that person reasonable opportunity to remedy the defect.

In January 2006, Chancellor Behrens granted a faculty to Leicester City Council to permit the testing of the 10,000 memorials in the consecrated part of its Welford Road cemetery. The Council sought a confirmatory faculty for work it had already done in laying flat memorials and a faculty permitting it to carry out similar works in the future in the remainder of the cemetery. The Chancellor considered that events had moved on since the Keynsham decision in 2002. He commented that the Consistory Court "should not now readily grant a faculty which will result in the laying down of significant numbers of memorials unless this is clearly shown to be necessary. If councils are unwilling to pay for the cost of the necessary repairs to memorials, far more use should be made of the temporary protection afforded by a stake placed behind the memorial and attached to it with a strap, while efforts are made to contact the owner. Then, and only then, as a last resort, may gravestones be laid flat."

Chancellor Behrens having considered a number of matters including the failure of communication and the profound distress which the Council's actions caused, refused a confirmatory faculty for work already undertaken and ordered the Council to reinstate and re-stabilise all the gravestones that had been laid flat in the consecrated section of the cemetery as a condition of the grant of a faculty for future work. He commented that "a cemetery where a significant number of memorials have been laid

flat is disrespectful and an eyesore. It is in my judgement an overreaction to health and safety concerns, and should be allowed only if there was no sensible alternative.”

The faculty granted by Chancellor Behrens provided as follows:

1. The Council may secure and make safe memorials by repairing such memorials to a safe condition, if such memorials fail hand testing or testing to a 35kg standard by a topple tester or similar device.
2. The Council may, as an alternative to repairing memorials to a safe condition, secure and make safe temporarily memorials by means of a metal stake, if such memorials fail hand testing or testing to a 35kg standard by a topple tester or similar device.
3. If the Council takes the action set out in (2) above, the Council shall then give notice to any person known to be the current owner or known otherwise to be interested in a memorial that had been found to be unstable, and afford such persons reasonable opportunity to make the memorial permanently safe (ie better than just the temporary arrangement of a metal stake). At the expiry of such reasonable opportunity or, if no contact can be made with any such persons, at the expiry of one year, the Council may then lay such memorial flat.

The exercise of the faculty jurisdiction is one for each diocese and this may include the method of testing. In the Winchester Diocese, for example, the Chancellor was satisfied with the suitability of the hand-testing method for memorial stability demonstrated to him by the Test Valley Borough Council. The faculty authorised safety testing and (in respect of memorials found to be unsafe) remedial action, a safety procedure, or both. It was granted subject to conditions. The Chancellor ordered that the use of a calibrated machine is to be in support of the ‘push/pull’ method of ascertaining whether a headstone is unstable. The machine must not be used in the first instance and only used to quantify the precise extent if the manual method shows the headstone is unstable. A further condition required every reasonable effort to be made to stabilise there and then any headstone found to be unstable. Laying a headstone flat should only be regarded as a last resort. If a headstone had to be laid flat, every reasonable effort should be made to contact the next-of-kin of the deceased to obtain consent and support for re-stabilising the headstone. Laying a significant number of headstones flat in any part of any cemetery should be avoided. Any public outcry following such action could lead to the continuance of the faculty being reviewed.

The Winchester Diocese has also issued general directions and guidance with regard to memorial safety. They not only refer to the need for a faculty for safety testing, but also to a further requirement to undertake widespread publicity in advance of such a scheme to ensure that local communities are not taken by surprise when they discover that extensive safety testing of memorials is going on, or has taken place, in a local churchyard or cemetery. This would involve:

1. large notices at the entrance(s) to the churchyard or cemetery, indicating, at least three months in advance, what is planned;
2. feature articles and notices explaining the proposed scheme in church or parish magazines, local newspapers and/or local authority newsletters;
3. notification of local funeral directors and monumental masons; and
4. notices on parochial church council or local authority websites.

Guidance

Health and Safety Executive

On 1 June 2004 the Chair of HSC wrote to HSE's regional directors and local authority chief executives about the safety of memorials in cemeteries. He referred to the rare occasions when injuries were caused by memorials toppling over and the public perception in a small minority of cases of communication failure and over-zealous local authorities acting indiscriminately. There had been adverse publicity and public anger. He also referred to a few concerns where authorities acted very late or in a very limited manner.

The letter annexed a question and answer summary which briefly addressed some of the issues concerning memorial safety. It makes clear that HSE has not published any guidance and that it is the responsibility of burial authorities to decide what criteria they use to test the structural safety of memorials. HSE expressed the opinion that most of the 3,000 burial authorities are dealing with the issue effectively and referred them to their industry guidance – *The Management of Memorials* – issued by the Institute of Burial and Cremation Administration (IBCA), now the Institute of Cemetery & Crematorium Management (ICCM).

The annex points out that the risk from unstable memorials is real and cannot be ignored. It recognises the social and emotional impact the laying down of headstones can have on the community. It urges burial authorities to follow their industry guidance so that the issue is handled with the utmost sensitivity.

In its Supplementary Memorandum to the Select Committee, HSE noted that the key duties under the Health and Safety at Work etc Act 1974 are qualified by the term "so far as reasonably practicable". HSE, as a Crown prosecutor, has to comply with the code for Crown prosecutors. In the case of memorial safety there are a number of 'public interest' opinions that must be balanced, for example:

1. concern of relatives who own graves;
2. concern about the risk posed by unstable memorials;
3. particular concerns from those injured or bereaved by falling memorials; and
4. public concern about the amenity and aesthetic value of cemeteries.

HSE also explained that it contributed to the CBA and IBCA guidance and considers the guidelines for the management of memorials to be reasonably practicable.

Home Office/Department of Constitutional Affairs

In 2001, following a recommendation from the House of Commons Committee on Environment, Transport and Regional Affairs, the Home Office set up an advisory group with representatives from burial authorities and other relevant organisations as well as from the Government: the BCAG. Its terms of reference are:

- to provide good practice advice on the provision, management, and maintenance of burial grounds; and
- to produce advice on good burial practice and procedures, and to make recommendations for any appropriate policy and legislative change.

It has set up a Memorial Safety Subgroup that held its first meeting in July 2002 but is yet to produce recommendations or guidance. It is currently working to review good practice in the following areas and to identify any gaps or need for change:

- design, construction and installation of memorials;
- maintenance of memorials;
- testing of memorials (in situ); and
- management of memorials.

The Home Office has issued a consultation paper on *Burial Law and Policy in the 21st Century: the need for a sensitive and sustainable approach*. In January 2004, it also published a research paper, *Cemeteries and their management*.

In 2005 responsibility was transferred to the Department of Constitutional Affairs.

English Heritage

In 2002, the Government's adviser on the historic environment published *Paradise Preserved* (a revised edition is due in March 2006), which is an introduction to the assessment, evaluation, conservation and management of historic cemeteries. A Technical Advice Note, *Caring for historic gravestones and monuments*, providing practical advice on the inspection and treatment of historic memorials, will be available in Autumn 2006. Both are free and can be downloaded from www.english-heritage.org.uk.

Local authorities

In August 2001 HSE/Local Authorities Liaison Committee issued LAC Number 23/18 giving advice to local authority enforcement officers. It refers to research carried out by CBA and IBCA and the guidance subsequently published. This circular has been

removed from the HSE website to avoid confusion. It was issued to local authorities for the information of inspectors and was not intended to be used as guidance to burial authorities.

The Circular referred to the IBCA guidance, *Management of memorials*, published in December 2000. It made a number of recommendations, including that:

1. Burial authorities have clear safety policies in place, that set out their standards for management of memorial stability.
2. Staff are trained to carry out inspection of unstable memorials.
3. If memorials are in immediate danger of falling, then cemetery management should take immediate action by either: laying them down; structurally supporting them; cordoning them off; or carrying out immediate repairs.

British Standards Institution

A draft British Standard – BS 8415 – was issued for consultation in 2001.

The British Standard, *Monuments within burial grounds and memorial sites – Specification*, was issued in 2005. Annex B sets out the requirements when there is a need to check the condition and stability of an existing monument. It lists six factors affecting the safety of monument stones and sets out procedures to follow when inspecting monuments. These include a visual inspection and other checks, including a hand test standing at one side of the monument. If there is no movement a 35kg test is applied. Four categories of risk assessment are laid down.

Death care industry

Memorial Safety Advisory Group/Association of Burial Authorities

The Guide to Memorial Safety in Burial Grounds

MSAG was set up in December 2001 with a membership of representatives from burial grounds, memorial masons, funeral directors, manufacturers and suppliers, architects, health and safety consultants, insurers and public relations.

The Guide makes recommendations for future design and stability standards and for loading resistance of new memorials and their testing.

The Guide also makes recommendations for testing the stability of existing memorials:

10. a) Lawn memorials/headstones and monuments now in place (up to a height of 1.5m) should withstand an applied force of 350N (35kg) at a height of one metre above ground level, or the top of the memorial if lower. *Note: The measure of 350N (35kg) is recommended for testing only existing memorials to assist in identifying and eliminating the most dangerous. Memorials erected in the future, and those reinstated, should withstand 500N (50kg).*

- b) The test should be applied using a calibrated instrument to ensure an objective result, by a competent operative trained in the proper use of the equipment. The memorial should first be assessed visually, and then with a gentle hand push test, before applying the instrument in a progressive controlled manner, and ensuring the set force is not overridden. This test should be applied one metre above ground level, or if the memorial is shorter, at the 'grab point' or top of the structure. An operative may be at unacceptable risk if pushing above shoulder height. Some form of remedial action should be taken on any memorials assessed as being a risk. (*See 12 below.*)
 - c) Detailed notes of a memorial's condition, assessment, and any actions taken, supported by photographs, should be maintained for evidence.
 - d) All memorials below 1.5 metres, irrespective of any minimum height, should be tested.
12. a) Memorials that are unstable, or show movement under an applied force test should be subjected to a further risk assessment. The structure may be assessed, for example, as an immediate danger, a potential danger, or not a danger. If an 'immediate danger', steps to remove that danger must be taken without delay. Regrettably this sometimes results in memorials having to be laid down, but this should only be as a last resort. Various alternatives should be considered: it may be possible to change conditions so that the 'immediate danger' improves to 'potential danger' category. This may be achieved for instance:
- by resetting the structure and consolidating the earth and/or fitting a temporary support stake;
 - by burying 25-30% of the entire plinth and plate structure while leaving all or most of the inscription visible;
 - by laying the plate at a steep angle against the plinth and burying 25-30% of the plate.
- b) With memorials assessed as a 'potential danger', temporary warning notices/cordons should be placed, efforts made to contact and warn the owner, and regular inspections carried out. If it is not practical to make the structure safe within a reasonably short time the area should be fenced off to the standards indicated in HSE: *HSG 151 – Protecting the public – your next move*.
- c) Laying memorials flat can be distressing to the public and spoil the memorial landscape. But if a memorial cannot be moved out of the 'immediate danger' category, then laying it down should not be discounted. Safety is an overriding factor and the memorial should not be left standing if it is assessed as an immediate danger. Notices and cordons should be placed when a memorial has been laid down.

- d) Immediate repair/reinstatement of each memorial found damaged or unstable can minimise disruption and is a solution adopted in some circumstances, subject to a satisfactory risk assessment. (See 13 below.)
13. Reinstatement of unstable memorials. If the owner or the burial authority is to reinstate memorials found to be unstable, it is unlikely that repetition of the previous installation methodology will provide adequate durable results.
- Re-fixing lawn memorials with a ground anchor (normally one or two spikes extending into the ground) is unlikely to provide a suitable long-term, safe solution as joints between the stone surfaces deteriorate. The 'spikes' contribute practically nothing towards resistance to overturning forces while involving a significant additional cost. The ground founding method – burying 25-30 per cent of the headstone in the ground and firmly tamping earth around it – is recommended. All such memorials should be required, when reinstated, to withstand a force of 500N (50kg).

National Association of Memorial Masons (NAMM)

NAMM has issued a Code of Working Practice incorporating guidelines to ensure that memorials are designed with safety and stability in mind.

The NAMM guidelines for lawn-type memorials require that all memorials can sustain a load of 70kg and that memorials should be tested to a load of either 100kg or 150kg. Those memorials which are designed to fail progressively by, for example, the gradual plastic failure of steel dowels, are tested to 100kg and those which are designed to fail suddenly by, for example, the breaking of masonry are tested to 150kg. Such memorials are required to be fitted with an accredited ground anchor.

ICCM – The Installation, Inspection, Management and Maintenance of Memorials

On 29 September 2003 IBCA became ICCM. It began life in 1913 as the United Kingdom Association of Cemetery Superintendents. Its primary objectives, stated then, remain fundamentally the same:

- to further the interests of cemetery superintendents and to promote the efficiency of cemeteries in the UK;
- to promote a knowledge of work appertaining to the management of cemeteries; and
- to provide facilities and foster exchange of ideas and thoughts amongst its members, and to safeguard, maintain and improve the status and promote advancement of the cemetery superintendent, assistant superintendent, curator, registrar, secretary and manager of any burial authority.

The ICCM issued a revised guide on memorials in October 2005. It makes detailed recommendations on the inspection and making safe of memorials and the management and administration of memorial safety. It is available in summary and full versions. The summary version advice on *Inspection and making safe*, *The inspection process*, and *Management and administration of memorial safety* is given below:

3.0 Inspection and making safe

13. It is extremely important that managers of burial grounds consider the advice contained within this document when deciding what their policy will be with regard to memorial safety. Agreement on a particular inspection regime by an enforcement agency will not necessarily mean approval, so compliance with the advice given in this document will provide some protection for the burial authority.
14. **Training** – In addition to using this guidance it is highly recommended that training is provided for persons responsible for the inspection and make-safe work. Cost effective training and advice is available from the ICCM and a number of other national organisations.
15. **Risk assessment** – Risk assessment is central to the whole inspection and make-safe process. A number of decisions need to be made based on sound risk assessment:
 - *Where the inspection process will start and how it will proceed* – Considering age and size of memorials, number of visitors, vicinity of roads and footpaths, ground conditions etc.
 - *What is the most suitable means of making safe?* – Considering the extent of the risk and the most appropriate way to remove the risk or significantly reduce it. A range of different methods are available such as setting memorials into the ground, installing temporary support systems, laying flat or full repair.
 - *What is the risk to employees carrying out any inspection or making-safe work?* – Considering the range of memorials, types of hazard and type of work undertaken. These risks be managed and there will be a need for documented risk assessments and safe methods of work for all who work in the burial ground, including employees, memorial masons and funeral directors.

The above risk assessment information is for guidance purposes only, lists are not to be considered all-inclusive but indicative of the types of risks that should be considered. Further guidance should be sought from officers/consultants that normally provide health and safety advice to the burial authority.

16. **Awareness and notification** – Good publicity prior to starting any work is essential to ensure a wide a range of public are suitably informed about the inspection and make-safe process. Publicity should then be ongoing whenever inspections take place. Publicity will include:
 - a) *press releases and notices* – advising the public of the inspection and make-safe process;

- b) *warning notices* – prominent warning notices should be placed at the entrances of and throughout the burial ground. Notices should indicate the potential danger posed by unsafe memorials; and
 - c) *notification of grave owners* – burial authorities should notify grave owners when memorials are found to be unsafe by writing to the last known address of the owner.
17. ***Inspection and reduction of risk*** – Inspection work should be co-ordinated with the making-safe of memorials. Where an unsafe memorial has been identified, immediate action should be taken to significantly reduce the danger. This should be taken account of when drawing up a memorial safety policy.
18. ***Other considerations*** – Prior to the start of an inspection programme a number of other issues should be considered:
- *Inspections on consecrated ground* – faculties must be obtained through the relevant diocese, prior to the inspection.
 - *Heritage value* – consideration must be given to listed and scheduled buildings/memorials. Check with the local planning authority.
 - *Aesthetics* – the effect on the burial ground should be considered.
 - *Environmental and ecological value* – consider the effects on flora and fauna and particularly Sites of Special Scientific Interest.
 - *Maintenance* – laying memorials down may increase grounds maintenance costs and add a significant number of trip hazards.
19. Only when all the above have been properly assessed can consideration be given to starting an inspection and make-safe programme.

4.0 The inspection process

20. The inspection process is carried out in two distinct phases:
- *Initial inspection process* – aimed at obtaining the necessary information critical to identifying the safety of the memorial. A memorial poses an immediate danger if it fails to withstand a force of 350 Newtons (circa 35kg). Burial authorities should seek to complete the initial inspection within 12 to 18 months from the date of this document.
 - *Ongoing inspection programme* – aimed at inspecting memorials on a minimum of a five-yearly basis.
21. Burial authorities with limited funding should consider partnership working with larger authorities or with groups of small burial authorities. This will spread the costs of the process and allow burial authorities to comply with health and safety legislation.

22. Force-testing equipment should not be used on listed memorials or memorials considered to be of historic value without first contacting English Heritage/Historic Scotland.
23. Due to the huge range of memorials within burial grounds there is no definitive method of inspection, however, there is a methodology that adds a large degree of consistency into the process:
24. *All memorials* – All memorials in the burial ground should be visually assessed as part of the overall risk assessment process. Visual assessment forms part of the individual risk assessment for each memorial. *Memorials in excess of 2.5m will require inspection from a structural engineer.*
25. *Memorials up to 2.5m* – The physical hand test is the gradual build up of a force at the apex of the memorial or as high up the memorial as can comfortably be reached by the operative, to a force of approximately 350 Newtons (circa 35kg). Training in this method is essential and should include the use of force-measuring equipment to ensure the operative builds a ‘muscle memory’ of the effort it takes to exert a force of 350 Newtons (circa 35kg). The physical hand test shall only take place following a visual inspection.
26. *Memorials up to 1.5m* – It is recommended that, following the visual and the hand test, force-measuring equipment be used as a final test on memorials up to 1.5m. The failure force can then be recorded, providing evidence to any potential complainant. Do not use equipment on memorials taller than 1.5m as this could result in a failure to identify a dangerous memorial.
27. *Memorials below 500mm* – These are difficult to test using force-measuring equipment and are less likely to cause injury. A risk assessment should be carried out on memorials below 500mm to assess whether there would be any real benefit in applying a force of 350 Newtons (35kg) to the memorial. (Force-measuring equipment should always be used in accordance with manufacturer’s instructions.)

Inspection records

28. Every memorial must be inspected and a record made of the inspection. Records should include information that will assist in locating memorials in future inspections, information on the visual, hand and mechanical tests, an assessment of the priority and action to be taken to make the memorial safe.
29. The maintenance of electronic records is recommended to simplify the maintenance of the reinspection programme.

5.0 Management and administration of memorial safety

30. Along with the right of burial in a grave is an inferred right to erect a memorial. Burial authorities should consider only allowing a right to erect a memorial for a maximum of 30 years. Where documents are issued for the exclusive right of burial for a period longer than 30 years then consideration should be given to splitting the existing right into two: one deed for the exclusive right of burial and another deed for the right to erect a memorial, with the latter being for a maximum of 30 years.
31. Burial authorities should not permit a memorial to be erected without a stability guarantee being issued by the memorial mason. This should only cover the memorial stability and the integrity of any joints. Guarantees should be for a minimum of 10 years and a maximum of 30 years, with the right to erect a memorial matching the guarantee. Burial authorities should provide details of lengths of guarantees that their registered memorial masons will supply.
32. The right to erect a memorial should contain advice that the memorial will be inspected every five years. Insurance should also be provided for the memorial.

Association of Burial Authorities (ABA)

In association with Zurich Municipal Insurance, the ABA issued a *Guide to the management of safety in burial grounds* in 2001. This is a substantial document covering not only safety testing procedures, but also public relations and health and safety aspects. The preface warns that it is for general guidance only.

Safety audits and inspections

A regular system of formal inspection should be implemented as soon as possible. Prioritisation of the inspection programme is recommended, directing attention to:

1. areas likely to contain significant numbers of unstable structures;
2. larger structures which can be expected to cause most injury or damage; and
3. areas where there is most human traffic.

Lawn memorials, which represent a lower risk, could go towards the end of the inspection programme.

The Guide recommends classifying memorials into three:

Type 1 – Those which are large either because of their bulk or height (3m or more above ground level).

Type 2 – Mainly in lawn sections and erected since 1970 and generally less than 1m high. Significant numbers likely to be unstable.

Type 3 – The remainder.

It recommends classifying according to risk:

- Cat A1 – Hazards are real and immediate and the danger will be removed during the Inspection.
- Cat A2 – Hazards are real and immediate but the danger will not be removed during the inspection; warnings will be erected.
- Cat B – Hazards are where there is obvious displacement of alignment but application of a substantial push test has not induced further movement.
- Cat C – Hazards are where a visual inspection indicates a likely problem due to deterioration of internal structure/fixings. Inspection by an expert to take place as soon as possible.
- Cat D – Hazards are where it has been impossible to carry out either a visual inspection or a push test and where any of the above hazards may exist. Warning signs should be posted.

Assess by visual inspection from an appropriate distance, looking for any obvious movement from the original vertical alignment, and other signs of wear or instability such as decay of masonry. Most Type 2 lawn memorials will not offer much evidence to a visual inspection.

Visual inspection will not always reveal unsafe condition. If there remains any doubt a push test should be applied. A common sense approach has to be applied. Very gentle, fingertip pressure will in some cases induce movement. It makes sense to start very gently and gradually increase the force applied. The intention is to apply the test in such a way as to avoid damage to the memorial or recklessly loosen its fixings. This test should not be applied to Type 1 memorials. In the case of Type 2 lawn memorials, gentle pressure should be enough to determine any instability. The application of a careful amount of additional pressure should identify whether the instability is within the structure or comprises the whole unit including the foundation/sub-base. The degree of force to be applied is subjective and difficult to quantify. Care must be taken not to use undue force, and arguably thereby render a stable memorial unsafe. The test is not to establish whether the memorial would withstand a determined attack by vandals. But it should be safe under normal conditions of use, and it should be expected children may play among the monuments and people tending graves may lean on them for support.

The Guide emphasises the importance of proper recording of inspection results and classification of the degree of urgency. It advises warning notices in four circumstances:

1. When a memorial has been laid flat, warnings should be displayed explaining what has been done and why, that the owners should not re-erect it themselves and that there is a trip hazard on the ground.

2. Because the memorial is too large to be dealt with without further assistance or equipment.
3. When a temporary securing device has been fitted.
4. The degree of instability is not a sufficient danger to warrant immediate lowering, and relatives are being contacted.

If the memorial is only of modest size and located some distance from a path or walkway, it may be sufficient to wrap it with hazard warning tape and place a warning notice in a conspicuous position.

If the memorial is large or located close to a path or walkway, the area should be cordoned off with warning tape strung from stakes, and warning signs placed in prominent positions.

Once the primary safety inspection has been carried out a system of regular inspection should be instituted. The advice of a suitably qualified structural engineer should be taken before setting times for reinspections. It suggests five categories of condition:

Good – stable condition not representing any obvious safety hazard and ideally having passed a measured push test. Reinspection as suggested by structural engineer.

Average – no immediate danger to health and safety but showing some signs of instability. Condition to be monitored and reinspection in one year.

Poor – memorial considered unstable but not an immediate threat to public safety. Condition to be remedied within six months.

Very poor – prompt action required to make the memorial safe or prevent access to the area. Warning signs/barrier tape should be erected at the time of inspection. Repairs to be completed within one month.

Dangerous – memorial is in an immediately dangerous condition. Remedial action to be taken at the time of inspection by either cordoning it off, fitting a stabilising device or laying down the memorial. Warning signs to be placed.

Public relations

All duties in burial grounds have to be undertaken with respect for public and owners' sensitivities. The overriding consideration is the safety of the living. The prevention of serious injury or death must take precedence over any distress incurred by relatives of the dead, or other interested parties.

Keeping people informed of what is being done, whenever possible in advance of action being taken, can go a long way to avoiding distress. But prior notification to a grant owner may be overridden by the need to remove an immediate danger by laying down a memorial at once. Notices should be displayed and advertised in the local press before inspections begin and news information released to the media. Regular updates about progress should be given.

Prior notification procedures are laid down in schedule 3 of the Local Authorities' Cemeteries Order 1977 if the authority is acting other than to remove a danger arising from the condition of the memorial itself. Notices must be placed at cemetery entrances and in the local press for two successive weeks and served on the owner of the right to place and maintain the memorial.

Foundations and fixings

Although instability of memorials may be attributable to a number of causes, the problem with the typical lawn memorial is its inherently unstable design. Cement between the component parts may deteriorate.

The Guide recommends either the traditional monolith set straight into the ground or the adoption of the Commonwealth War Graves Commission device of inserting the memorial plate into a concrete shoe about a foot below the surface set on a reinforced concrete beam.

Appendix 2 – Testing

1. **Professor John Knapton** held the Chair of Structural Engineering at Newcastle University from 1991 to 2002.

In expressing support for the adoption by one council of a mechanical test of 35kg for memorials taller than 500mm, Professor Knapton gave as his reasons:

Firstly, it is in line with the test method in the draft BS 8415. This draft standard contains a scope clause stating that the standard specifies the minimum structural design criteria and performance requirements for new and reinstated monolithic and multi-component monuments in burial grounds and memorial sites. It also specifies requirements for checking the condition of existing memorials (ie what to do but not when).

Secondly, the force of 35kg used in the testing of memorials represents a surprisingly low value which even the most lightly built adult would have no difficulty in applying. The value was reduced from the former figure of 50kg, which has been in use in Germany for a number of years, following concern expressed by proprietors elsewhere that 50kg led to a high proportion of memorials failing. Effectively 35kg is a compromise between the structurally preferable 50kg and an unmeasured light touch which some would prefer. I say that 50kg is structurally preferable because the one in 50 years return period wind gust can attain a value of 50kg, sometimes more, on lawn memorials. It would be my recommendation that, during the first round of testing, typically lasting five years, a burial authority should apply 35kg but in subsequent rounds the figure should be enhanced to 50kg. In the case of memorials higher than 1,000mm, it is appropriate to test at 1,000mm since to push at a higher location would apply a larger bending moment to the foundation which would render the test particularly and inappropriately onerous.

In the case of memorials shorter than 500mm, I recommend that they should be treated in the same way as taller memorials. All short memorials should be inspected visually and in appropriate cases gently pressed by hand, and the proprietor should be required to rectify any defects. Such memorials could cause injury to someone using them as a support whilst, for example, tending a grave. It would be inappropriate to apply the 35kg test to such memorials.

The test load of 70kg for new memorials has evolved through discussions involving members of ABA and NAMM which were informed by my research at Newcastle University and in particular by NAMM's trials at Parkside Cemetery, Kendal. It is based upon the usual assumption in structural engineering that an average person weighs 70kg. (The term kg should correctly be used to represent mass not weight but is commonly misused in the way that I am misusing it to represent weight which is a force not a mass. This makes no difference to the arguments here being developed but an engineer might comment adversely on the matter.) Typically, a 70kg person leaning on a memorial can mobilise a coefficient of friction of up to 1.0 which means the horizontal force which that person can sustain is 70kg.

Experience at several cemeteries has shown that to apply a force of 70kg would lead to most lawn memorials failing in UK cemeteries. Also, it is questionable whether it is necessary to guard against someone determined to overturn a memorial. Indeed, even higher forces have been postulated since it could be argued that a memorial should be able to withstand the force which two or more people might apply. However, it is recognised that this is a particularly sensitive issue, so the 70kg figure was lowered initially to the 50kg German figure then to 35kg when even 50kg was found to lead to many apparently secure memorials failing.

A further factor which has been considered in arriving at 35kg is wind load. The 50 years return period three-second wind gust would apply a force of 72kg/m² at ground level in Stoke. This means that any memorial with a projected area exceeding 0.5m² would be subjected to a wind force exceeding 35kg in very windy conditions. This is why I feel that 35kg is very much a compromise and why a memorial which cannot sustain 35kg really is dangerous.

Professor Knapton believes that a mechanical testing device should be used as it exerts a uniform pressure and most hand testing will be to a force greater than 35kg. He considers that using this figure for existing memorials is a reasonable compromise between either not testing or applying insufficient force and the 50kg force which a 100kg vandal would exert. It is less than someone clutching at a memorial to raise him/herself up would exert.

2. **Mr T Bedford**, structural engineer: Report on Safety of Memorials for Lewes District Council.

Mr Bedford was asked:

- a) to investigate and comment on the validity of testing methods; and
- b) to investigate and comment on appropriate loadings that should be used with testing equipment.

He concluded that the topple tester, a mechanical device, seemed to be a satisfactory means of testing modern lawn memorials which behave as a complete constructional unit and are unlikely to be damaged by falling over. However, older and larger memorials may need different testing methods to take account of different types of failure. Larger memorials should be subjected to higher test loads to take account of wind forces.

A standard test may be appropriate for modern, standard memorials only. With older memorials and those of different sizes from standard, it would be better that they are evaluated with a risk assessment and by individual inspection at regular intervals.

On loadings to use with test equipment, Mr Bedford concluded that, for standard lawn memorials in situ, a topple tester applied load should be 25kg, but this should be confirmed as acceptable by other authorities such as NAMM, who may require a minimum 35kg.

Mr Bedford considered a single test to suit all applications was impossible. It was for modern standard memorials, but for everything else a process of regular evaluation or risk assessment is more satisfactory. Such an assessment will take account of likely frequency and ease of access as well as the condition of memorials. This would identify as high risk, vulnerable memorials near to paths and as low risk, stable memorials in more remote positions. Such an approach should be documented and updated/confirmed at regular intervals (say five years).

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