



## **Report to Cabinet**

**Subject:** Memorial Headstone and Monument Safety within the Councils Cemeteries.

**Date:** 20<sup>TH</sup> July 2006

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### **1. Purpose of the Report**

To confirm the policy adopted in 2004 to make safe monuments and headstones, which have failed safety inspections within the Cemeteries belonging to Gedling Borough Council.

### **2. Background**

National concern about safety in cemeteries has grown in recent years following a number of accidents, some fatal and involving children.

Consequently, the Health and Safety Executive strongly advised that monuments and memorials in cemeteries and closed churchyards should be regularly tested for safety and stability.

This was detailed in the Health and Safety Executive Directive, Management of Unstable Memorials (Appendix 1) issued to all Local Authorities during August 2001, and reviewed in 2005. Safety issues were also highlighted in a report from a Select Committee of the House of Commons on the future management of cemeteries.

The latest guidance on this issue comes from the Local Government Ombudsmen issued in March 2006.

This document sets out advice and guidance on how local authorities should deal with this matter. It is reassuring to note that the procedures adopted by Gedling follow this advice fairly closely with only a few matters for slight improvement. The report does, however, state that they consider that it is maladministration for Councils not to have adopted a policy for testing and that there is clearly a paramount duty on local authorities to take all reasonable measures to prevent injury or death from unstable memorials.

Where burial authorities are employers, the duties under Health and Safety at Work act remain clear. The burial authorities retain Section Two responsibility towards its staff and Section Three responsibilities towards members of the public and other contractors who visit the cemetery.

The Management of Health and Safety at Work Regulations 1999 require all employers to assess the risks to employees and non-employees which arise out of the employer's undertaking. Burial Authorities have a legal duty to assess the risk from all cemetery structures (including memorials) and work activities in their cemeteries, and ensure that the risk is controlled.

Therefore under the Health and Safety at Work Act and the Local Authorities Cemeteries Order (1997) the Council has a duty to implement a checking regime for the cemeteries under its control.

Cemeteries, which the Council has direct responsibility for, are: -

- Carlton Cemetery,
- Gedling Cemetery, and
- Redhill Cemetery.

The Council also has responsibility for the following closed churchyards: -

- St Marys, Arnold
- All Hallows, Gedling
- Lambley Parish Church, Lambley
- Emmanuel Church, Bestwood
- St Helens, Burton Joyce

It was agreed that inspection of the cemetery memorials be given priority over memorials in the closed churchyards as a far greater number of people visit these facilities.

The Health and Safety Executive directive states that an ongoing inspection programme should be drawn up and implemented for large cemeteries, i.e. an inspection every 5 years or a rolling programme being a reasonable approach.

The frequency of inspection will depend upon the age, size and condition of the memorial, which the burial authorities will decide as part of their assessment and review procedures.

In cases of immediate danger from failed memorials, burial authorities in England and Wales are empowered under the provisions of the Local Authorities Cemeteries Order 1997 (LACO) Article 6(1) to take immediate action to make safe dangerous memorials. However, burial authorities are prohibited from taking direct action to remove an unstable memorial that presents no immediate risk without following the strict procedures laid down in the LACO. This involves posting public notices and seeking the permission of the owners (if they can be identified) before taking action.

Initial safety inspection highlighted those memorials that posed immediate danger within the Cemeteries belonging to Gedling Borough Council, and these were immediately made safe by either staking or laying down the headstones / monuments.

Inspection and testing of the monuments and headstones within the cemeteries that belong to the Council has commenced. The inspections were contracted out to 'Independent Memorial Inspectors', and they provide comprehensive records detailing the findings of the inspections. Inspection methods used were in accordance with those recommended through consultation with the HSE, other burial authorities, reputable inspectors and Zurich Municipal Insurance. This inspection process is detailed below.

- a. Visual inspection to ensure the memorial is in a safe and stable position. This will include a slight hand pressure test.
- b. Where the memorial passes the visual inspection, stability testing will be undertaken in accordance with the guidelines laid down by the National Association of Memorial Masons. Appropriate measuring equipment will be used to record the tolerances.
- c. Each memorial will be tested for pitch using appropriate equipment.

Data will be recorded by the successful company, to assist the Council with future monumental management and rectification of any memorials found to be unsafe. This information will include the following: -

- a. Cemetery name
- b. Location of memorial – cemetery section (these areas are marked on site)
- c. Date of inspection
- d. Type of memorial and size – first two names of interred
- e. Years of death
- f. Pitch of memorial – front to back and left to right
- g. Stability of memorial
- h. General condition
- i. Action required
- j. Action taken
- k. Photograph of each memorial

Where a memorial fails the tests applied a stake is driven into the ground and is strapped to the memorial to give it temporary support. A sticker is fixed to the stake asking the owner of the memorial to contact the Council for more information. The owner, wherever possible, is contacted by the Council to rectify the failed memorial or to have it removed from the cemetery. Contacting the owner is often a difficult process due to the following reasons:

- The owner is deceased
- The owner has moved residence without informing the Council

A three to six month time period is given to affect the repair dependant on the severity. A report from the inspectors categorises the severity into urgent and non-urgent and the timescale is based on this report.

- Memorials in need of urgent repair are given a three-month time period.

- Memorials in need of non-urgent repair are given a six-month time period.

At the elapse of this time limit, the Council will either make safe the memorial by laying it down, partial burial of the headstone or remove it to a safe storage area.

Temporary staking is recommended as opposed to laying flat of memorials or covering over using large yellow bags for the following reasons: -

- Continued ease of maintenance of grassed areas
- No trip hazard
- Less imposing on the visual aspect of the cemetery
- Less upsetting to owners and users of the cemetery

It may, however, be necessary for larger memorials to be cordoned off if deemed to be unsafe.

In accordance with the guidelines, an inspection of the monuments and headstones in Gedling Cemetery, the 'Original Section' of Redhill Cemetery and Section A and B of the Carlton Cemetery has been completed. The process of inspection at Redhill Cemetery, Carlton Cemetery will continue on a rolling programme.

It is acknowledged that this work is extremely sensitive and a publicity programme has been undertaken prior to and during this process, which includes: -

- Articles in the Contacts magazine
- Information on the Website
- Signage within the cemeteries
- Information distributed by the Gate Person
- Information supplied to the Stonemasons and Funeral Directors
- Press releases

Steps have been taken over recent years to try and minimise the risk of monument failure by defining the construction criteria more stringently. Officers are also investigating the options to insist on guarantees from stonemasons, to include a 5 yearly test of the monuments and tying in the length of time permission is given for a monument to be erected to the length of any such guarantee. These actions will help to limit the ongoing liability for action by the Council, but will have no effect on the liability for the many thousands of older monuments.

### **3. Proposal**

Whilst in theory the Council could decide not to continue with this testing such action would be putting Councillors and Officers at risk of accusations of negligence and or maladministration, should there be an accident. It is therefore proposed that funding for both the long term testing of monuments and the making safe of monuments is included as part of the base budget.

It is accepted that further work should be carried out to look at ways of minimising future liabilities through tighter control on the design of monuments, the possibilities of guarantees, and limiting the period of time a monument can be erected. Work on this has started and a further report will be produced shortly. This will not, however, affect the many thousands of stones that already exist.

The current inspection and making safe monuments policy detailed in section two above be continued.

#### 4. Resource Implications

There are approximately 18,112 memorials in the Boroughs three cemeteries. At present 14,000 remain untested.

These figures do not include memorials in closed Churchyards as it is still to be established if they are the authorities responsibility to test and make safe.

Costs for inspecting and making safe the memorials in the Borough Cemeteries are as follows: -

	£
Testing per memorial	3.00
Staking per memorial	5.50
Permanently making safe by partial burial	<u>10.00</u>
	<u>£18.50</u>

At present 47% of all monuments fail the safety test and have to be staked, therefore of the 14,000 inspected 6,580 will need to be staked.

Only 2% of those staked are being made safe by the owners, therefore 6,448 will need to be partially buried.

Estimated costs for inspection, staking and making safe are: -

	£
Testing	42,000
Staking	36,190
Making safe	<u>64,480</u>
	<u>£142,670</u>

It is anticipated that as more recent memorials are inspected owners will undertake repairs, therefore the cost of making safe can be reduced to £30,000, reducing the overall cost to £108,190.

A budget of £25,000 is available in the current year to continue the inspection process.

#### 5. Recommendation

To approve methods of making safe failed memorials and the publicity programme: -

- Memorials in the Traditional Sections of the Cemeteries to be made safe by laying flat all unsafe headstones / monuments face up on the grave.
- Memorials in the Lawn Section of the Cemeteries to be made safe by burying / emerging the headstone one-third into the ground immediately behind the grave.

#### **6. Wards Affected**

All.

## MANAGEMENT OF UNSTABLE MEMORIALS

Health and Safety Executive		Sector Information Minute  u SIM 7/2001/28	
Field Operations Directorate			
Services Sector			
Central & Local Government, Education and Research Unit			
Cancellation Date	02/07/2005	Open Government Status	Open
Version No & Date	1: 02/07/2001 LA	Author Unit/Section	Services Sector/LAU

### MANAGEMENT OF UNSTABLE MEMORIALS

This SIM provides background information on recent developments regarding memorials in cemeteries. It suggests a reasonably practicable approach to take for inspection of memorials for instability, and the maintenance of memorials to protect the safety of the cemetery users.

#### BACKGROUND

1 Historically, health and safety concerns in cemeteries have focused on the risks arising from grave digging. However, in recent years there has been increasing attention on the stability of memorials and the risks that these present to all cemetery users. This has been highlighted by 3 fatal accidents to children from falling memorials, the most recent being July 2000. HSE has enforcement responsibility for all cemeteries apart from those located in churchyards, for which the local authority (LA) has enforcement responsibility.

#### Accident data

2 To date, HSE is aware of 10 accidents to members of the public in cemeteries due to unstable memorials, 3 of which have been fatal. Most of these accidents have been to children and consequently some have led to high media interest and official correspondence.

#### WHO HAS DUTIES UNDER HSW ACT FOR CEMETERIES?

3 Primary responsibility for health and safety in cemeteries lies with the burial authority in control of the cemetery. This may be the LA, church or private company. There are over 3,300 burial authorities in the UK.

4 Burial authorities are required to control the risks associated with cemeteries for which they have responsibility. Whilst burial authorities have overall responsibility for the safety of the cemetery, including the risks arising from unstable memorials, they do not own the memorials. The owners of the memorial will be the grave owner - normally the family of the deceased. However, in many cases there may no longer be an identifiable owner.

### **Legal**

5 Where burial authorities are employers, the duties under HSW Act remain clear. The burial authorities retain s.2 duties towards its staff and s.3 responsibilities towards members of the public and other contractors who visit the cemetery.

6 The Management of Health and Safety at Work Regulations 1999 require all employers to assess the risks to employees and non employees which arise out of the employer' s undertaking. Therefore, burial authorities are under a legal duty to assess the risk from all cemetery structures (including memorials) and work activities in their cemeteries, and ensure that the risk is controlled.

### **Local Authorities Cemeteries Order**

7 In cases of immediate danger, burial authorities in England and Wales are empowered under the provisions of the Local Authorities Cemeteries Order 1977 (LACO) Article 6(1) to take immediate action to make safe dangerous memorials. However, burial authorities are prohibited from taking direct action to remove an unstable memorial, which presents no immediate risk without following the strict procedures laid down in the LACO. This involves posting public notices and seeking the permission of the owners (if they can be identified) before taking action. For work on consecrated areas, the burial authorities have to apply to the bishop of the diocese in which a cemetery is situated.

8 Under the provisions of LACO, the burial authority can remove any unauthorised memorials and charge a fee.

9 In Scotland, the burial authorities operate under the Burial Grounds (Scotland) Act 1855, but use the LACO as good practice guidance.



## **Ownership of memorials**

10 A member of the public has to apply for the right to erect a memorial and has to submit an application to the burial authority under LACO. The application must detail the proposed memorial's material, design, inscription and size and details about how it is to be fixed. Burial authorities are permitted to grant the right to place and maintain a memorial on such terms and conditions they think proper. They can enter into a maintenance agreement with the family as they see proper.

11 Over 50% of authorities grant exclusive right of burial for 99 years or more and most Scottish authorities grant perpetuity. Eighty-seven per cent of permissions to erect a memorial are then tied to the same period of time as the exclusive right. As a result, authorities lose touch with the grave owners either due to their relocation or death, and the authority ends up paying for the making safe and repair of memorials.

12 HSE accepts that burial authorities are not the owners of the memorials and the responsibility for ongoing maintenance of individual memorials rests with the grave owners or other person granted the right to place and maintain a memorial on a grave space. Burial authorities have the powers to take action where memorials constitute a risk to cemetery users, and reclaim costs. Therefore, it is in the burial authorities interest to set up procedures to avoid losing contact with the owners of the memorials.

13 Where contact has been lost, burial authorities still have the responsibility to manage their cemeteries to maintain safety, and this includes management of memorial areas to ensure the safety of cemetery users.

## **RESEARCH**

14 In 1998, two industry organisations, the Confederation of Burial Authorities (CBA) and the Institute of Burial and Cremation Administration (IBCA) carried out detailed research on the management of memorial stability by LAs. The research highlighted the following issues:

- (1) Many authorities are not dealing with the problem of potentially dangerous memorials. They do not have inspection procedures for memorials within their cemeteries, and the majority do not inspect memorials within closed churchyards. Many are simply taking a 'quick fix' approach.

(2) The research identified that many of the less serious accidents were caused by memorials that had been installed relatively recently, within the last 30 years.

(3) A majority of authorities do not carry out any basic competency checks on memorial masons, and many do not check that the installation of memorials is to a recognised standard, e.g. National Association of Memorial Masons Code of Working Practice.

(4) Over 50% of authorities experienced problems with unauthorised memorials.

## **GUIDANCE**

15 The guidance, *Management of memorials* was published in the IBCA journal December 2000 edition. HSE contributed in developing the guidance and it is in line with HSE's practices. The guidance recommends that:

(1) Burial authorities have clear safety policies in place, which set out their standards for management of memorial stability.

(2) Staff are trained to carry out inspection of unstable memorials.

(3) An initial inspection is carried out to identify any memorials posing an immediate danger to the public. Memorials identified as falling into this category must be dealt with. A fuller inspection is then carried out to ensure that memorials in cemeteries are safe and that actions taken are properly recorded and maintained.

(4) An ongoing inspection programme is drawn up and implemented for large cemeteries, i.e. an inspection every 5 years or a rolling programme seems to be a reasonable approach. The frequency of inspection will depend upon the age, size and condition of the memorial, and this is for the burial authorities to decide as part of their assessment and review procedures.

(5) 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. In addition, warning signs should be considered throughout the cemetery.

(6) Burial authorities can specify that all memorials be dowelled to the foundation of the memorial to enhance stability, or require specific designs to enhance stability.

(7) The right to erect and maintain a memorial is granted for a shorter period for new memorials (30 years). The right is issued on condition that the memorial is inspected once every 5 years, and renewed only when any repairs found necessary are carried out. If the owners of the memorial fail to make the necessary repairs, the right is deemed to be terminated

## **TESTING OF MEMORIALS**

16 Responsibility rests with the burial authorities to decide what criteria they use to test the structural safety of memorials in their cemeteries. It may be appropriate for burial authorities to seek advice from structural engineers, other competent persons, such as the Confederation of Burial Authorities, Institute of Burial Authorities and National Association of Memorial Masons, before deciding what safety methodology needs to be adopted.

17 There are currently proprietary tools available to test the memorial stability, such as a topple tester which tests for unstable memorials with a force of 50 kg. The German standards recommend the use of a topple tester, but memorials in Germany are more suitable for this kind of testing. Burial authorities may consider using a topple tester, but the topple tester is not suitable for war memorials, crosses, angels etc. It is only suitable for memorials, which are above one metre high and are tablet form. Burial authorities need to consider the suitability of testing methods to their local conditions.

## **CONSERVATION**

18 Burial authorities have to be aware of any conservation orders, which apply to their cemeteries. A conservation order may apply to structures within the cemetery, including memorials. Cemetery management could be in breach of the

conservation order by laying flat an old memorial, without subsequently repairing it and returning it to its original condition.

19 In April 2001, the Select Committee on Environment, Transport and Regional Affairs published a report on cemeteries, in which it was recommended that HSE needs to act with greater sensitivity towards the historical and cultural aspects of cemeteries.

20 HSE' s view is that heritage and amenity considerations need not be in conflict with health and safety. HSE has discussed issues relating to safety of listed structures and buildings with English Heritage, but there have been no discussions on the issue of memorial safety. However, HSE has discussed the impact of conservation orders on memorials with individual LAs, and has advised that if a listed memorial is unsafe then it must be securely cordoned off until it can be repaired safely. This may temporarily affect the overall aesthetics of the cemetery, but the risk of serious injury or death cannot be left unattended just because a conservation order exists.

21 However, in light of the Select Committee' s report, the Services Sector will be liaising with English Heritage, Cadw Welsh Historic Monuments and Historic Scotland, to ensure that a clearer understanding is established.

## **CONSECRATION**

22 Any maintenance work within consecrated areas requires a faculty, i.e. an application to the bishop of the diocese in which a cemetery is situated.

## **ADVICE FOR INSPECTORS**

23 Burial authorities must carry out the necessary assessment of the cemeteries, which they manage. The method used to secure the safety of memorials is a matter for the burial authority. When enforcement action relating to memorial safety is considered, inspectors are encouraged to take into account the:

- (1) interests of the relatives who own graves;
- (2) concern about the risk posed by unstable memorials;
- (3) interests of those already injured or bereaved by falling memorials; and
- (4) public concern about the amenity and aesthetic value of cemeteries.

24 To be effective in its central coordinating function, the Services Sector (via ELOs in LA enforced sector) should be informed about all INs which take place, particularly those which deal with sensitive issues, such as conservation.

### **FUTURE WORK**

25 The Institute of Burial and Cremation Administration (IBCA) are working on training standards pack. The IBCA is also looking to develop a memorial masons registration scheme, and HSE will be contributing to these.