



BRIEFING PAPER

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Unsafe memorials in cemeteries

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Summary

This briefing paper deals with the position in England and Wales except where otherwise stated.

Memorials in cemeteries

Memorials, in this context, are sometimes referred to using a number of different terms including headstone, tombstone and gravestone.

Accidents in cemeteries

The issue of memorial safety was brought to a head following cases where memorials toppled over and caused injuries, sometimes fatal, to members of the public. In particular, the death of a child in Yorkshire in 2000 highlighted the problem of unstable memorials.

Responsibility for maintaining memorials

Responsibility for maintaining individual memorials generally remains primarily with those who erected them. Local authorities, acting as burial authorities, have general powers of management in relation to public cemeteries. This includes power to take any action necessary to remove a danger which arises because of the condition of a vault, tombstone or memorial. Burial authorities also have a duty of care under health and safety legislation and under the principles of occupier's liability.

Local authority testing of memorials

In the light of concerns about public safety, many local authorities started to carry out an inspection programme in order to identify unsafe memorials, and to ensure that they were made safe by whichever method they considered appropriate. In many cases this involved the use of a mechanical test instrument.

The inspections resulted in some memorials being laid flat or cordoned off, and relatives were notified that they must pay to make them safe. This sometimes caused distress to bereaved relatives who felt that the graves were being desecrated and some argued that the tests themselves were making the memorials unsafe.

In 2006, the Local Government Ombudsman and the Public Services Ombudsman for Wales expressed the view that "it should not be necessary for burial authorities to lay down grave memorials on any large scale". The Ministry of Justice reiterated the need for great sensitivity and careful planning in the way that work relating to memorials was undertaken.

Guidance on managing the safety of memorials in cemeteries

In January 2009, the Ministry of Justice published guidance, *Managing the safety of Burial Ground Memorials*. This sets out good practice on the standard expected in the risk management of memorials in all types of burial grounds, public or private. The guidance states that the risk of any injury is extremely low and that any precautions should be proportionate to the level of risk. The routine use of mechanical test instruments is not recommended.

The Institute of Cemetery and Crematorium Management (ICCM) has also published guidance. In 2009, following the publication of the Ministry of Justice guidance, the ICCM indicated two dilemmas for burial authorities that it considered would need careful consideration by those with a responsibility for health and safety matters.

A revised British Standard 8415, *Memorials within burial grounds and memorial sites*, specification, was published on 26 July 2018.

How to complain

The Local Government and Social Care Ombudsman has published a factsheet, [Safety testing in cemeteries and graveyards controlled by councils](#), together with details about how to complain for people who believe that there has been some fault in the way the council has acted.

Scotland

Legislation and policy for burial matters in Scotland are devolved to the Scottish Government. At present there are no general regulations in Scotland specifically governing the erection of headstones.

The [Burial and Cremation \(Scotland\) Act 2016](#) (the 2016 Act) gives Scottish Ministers power to make regulations for or in connection with the management, regulation and control of a burial ground by a burial authority.

In 2018, following a Fatal Accident Inquiry into the death of an eight-year-old boy who died after a headstone fell on him at a Glasgow cemetery, Sheriff Ruxton recommended that the Scottish Government should develop and publish national guidance on memorial safety in cemeteries, for use by local authorities in Scotland. This guidance is being developed in advance of the burial ground regulations to be made under the 2016 Act. It is expected that the guidance will be published early in 2019 (an indicative timescale only).

1. Memorial safety: the issue

1.1 Memorials in cemeteries

Memorials, in this context, are sometimes referred to using a number of different terms including headstone, tombstone and gravestone.

1.2 Accidents in cemeteries

The issue of memorial safety was brought to a head following cases where memorials toppled over and caused injuries, sometimes fatal, to members of the public. In particular, the death of a child in Yorkshire in 2000 highlighted the problem of unstable memorials.¹

It has sometimes been alleged that part of the problem might be due to lack of maintenance of cemeteries over the years.

In 2007, the then Government stated that reliable data was not available, but that available data showed that 21 serious accidents, caused by falling gravestones and memorials, had been reported to the Health and Safety Executive over the previous seven years.²

Ministry of Justice guidance, published in 2009, states that, over the previous 30 years, eight people in the UK had been killed when a memorial fell on them. The guidance adds that, in view of the number of memorials and the number of visitors to burial grounds in any year, the risk of any injury is extremely low.³

In November 2016, when asked how many people had been killed or seriously injured by headstones in graveyards in the previous 10 years, the Government responded that “the information requested is not held centrally”.⁴

1.3 The Select Committee on Environment, Transport and Regional Affairs report

In 2001, the Select Committee on Environment, Transport and Regional Affairs report on cemeteries highlighted the issue of memorial safety as being, at that time, “perhaps the most urgent of all those which need to be addressed”.⁵

¹ See, for example, Martin Wainwright, “[Test case likely after boy dies in graveyard](#)”, Guardian, 19 April 2001 [accessed 30 January 2019]

² [HC Deb 11 June 2007 cc805-6W](#)

³ Ministry of Justice, [Managing the safety of Burial Ground Memorials Practical advice for dealing with unstable memorials](#), 2009, p3

⁴ [PO 52036 \[on Cemeteries: Safety\], 17 November 2016](#)

⁵ Environment, Transport and Regional Affairs Committee, [Cemeteries](#), 2 April 2001, HC 91, paragraphs 106-112

2. Responsibility for maintaining memorials

2.1 Responsibility of owners

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

In 2001, the Select Committee on Environment, Transport and Regional Affairs noted that, “As families cease visiting the grave and move away from the area, they cease to take responsibility for keeping them in an acceptable condition”.⁶

2.2 Local authority powers

Under the [Local Government Act 1972](#), burial authorities have the power to provide and maintain public cemeteries. Burial authorities are defined to include district councils, the councils of London boroughs, and parish councils.⁷

The specific powers and duties of burial authorities are set out in the [Local Authorities Cemeteries Order 1977](#),⁸ and include:

- A burial authority may grant the exclusive right of burial in any grave, and the accompanying right to place and maintain a tombstone on the grave space.⁹ No tombstone or memorial may be erected without permission.¹⁰ The burial authority has the power to agree with any person that the authority will maintain a grave, tombstone or memorial for a period not exceeding 100 years.¹¹
- Article 3 of the 1977 Order provides general powers of management. A burial authority may do whatever they consider necessary or desirable for the proper management, regulation and control of a cemetery. However, the general power does not authorise any action in relation to a vault, tombstone or other memorial other than action which is necessary to remove a danger which arises because of the condition of the vault, tombstone or memorial itself.¹²
- A burial authority may enclose, lay out and embellish a cemetery in such manner as they think fit, and from time to time improve it, and must keep the cemetery in good order and repair.¹³

⁶ Environment, Transport and Regional Affairs Committee, [Cemeteries](#), 2 April 2001, HC 91, paragraph 108

⁷ Section 214

⁸ 1977/204 (as amended)

⁹ Article 10

¹⁰ Schedule 2

¹¹ Article 10

¹² Article 3(2)

¹³ Article 4

- A burial authority may put and keep in order any grave, vault, tombstone or memorial. The authority may also level the surface of any earth and grass grave to that of the surrounding area.¹⁴
- A burial authority may remove and destroy any tombstone or memorial where the writing has become illegible, any kerbs surrounding a grave, any surface fittings, flowering or other plants, and any railings surrounding a grave. The authority may also alter the position on a grave, or re-erect, any tombstone or other memorial including railings.¹⁵ These powers may only be exercised in accordance with Schedule 3 of the Order (which includes publicity and notice provisions). A person who has been granted the right to place and maintain a tombstone, or the relative of a person buried in a grave, may object to the authority's proposals to remove, destroy or relocate a tombstone.

A churchyard which has been closed for burials by Order in Council must be maintained by the Parochial Church Council (PCC) by keeping it in decent order, and its walls and fences in good repair.¹⁶ However, the PCC may transfer this obligation to maintain to the local authority.¹⁷

2.3 Health and safety requirements

The Health and Safety Executive has set out the duties of employers:

It is an employer's duty to protect the health, safety and welfare of their employees and other people who might be affected by their business. Employers must do whatever is reasonably practicable to achieve this.

This means making sure that workers and others are protected from anything that may cause harm, effectively controlling any risks to injury or health that could arise in the workplace.

Employers have duties under health and safety law to assess risks in the workplace. Risk assessments should be carried out that address all risks that might cause harm in your workplace.¹⁸

Further information is provided on the [Health and Safety Executive website](#).

2.4 Occupier's liability

In relevant circumstances, a burial authority may also be liable under the principles of occupier's liability in the event of an accident caused by a memorial.

¹⁴ Article 16

¹⁵ Article 16(2)

¹⁶ [Local Government Act 1972](#) section 215.

¹⁷ Section 215(3)

¹⁸ Health and Safety Executive, [Employer's responsibilities](#) [accessed 31 January 2019]

3. Local authority testing of memorials

3.1 Background: concerns about testing

In the light of concerns about public safety, many local authorities, acting as burial authorities, started to carry out an inspection programme in order to identify unsafe memorials, and to ensure that they were made safe by whichever method they considered appropriate. In many cases this involved the use of a 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.¹⁹

The inspections resulted in some memorials being laid flat or cordoned off, and relatives were notified that they must pay to make them safe.

This sometimes caused distress to bereaved relatives who felt that the graves were being desecrated, and some argued that the tests themselves were making the memorials unsafe.

2004 case: local authority testing upheld

In 2004, a grave owner lost a legal action against a burial authority for the cost of having a headstone re-installed to current standards.²⁰ Among other things, the claimant questioned the Council’s authority to carry out inspections of memorials and to take immediate action (by laying flat) in order to eliminate risks to public safety. The complainant also challenged the validity of the force measuring device used by the authority.

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

The Local Government Ombudsman special report

In March 2006, the Local Government Ombudsman²¹ and the Public Services Ombudsman for Wales published a special report on [Memorial safety in local authority cemeteries](#).

The Ombudsmen said that they had received numerous complaints about the actions of councils laying flat grave memorials as a result of

¹⁹ As defined in the Local Government Ombudsman (LGO) and the Public Services Ombudsman for Wales, [Special Report Memorial safety in local authority cemeteries](#), p4

²⁰ [Memorial Inspections and Actions – ICCM Member Information](#), issued by The Institute of Cemetery & Crematorium Management and the Confederation of Burial Authorities [accessed 31 January 2019]

²¹ In 2017, the Local Government Ombudsman changed its name to the Local Government and Social Care Ombudsman

health and safety inspections. The Ombudsmen had identified several issues:

- 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.

The Report set out some general guidance on memorial safety testing so that burial authorities might better avoid causing widespread offence to the public. The Ombudsmen expressed the view that "it should not be necessary for burial authorities to lay down grave memorials on any large scale".²²

Letter from Ministry of Justice

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

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

3.2 Health and Safety Executive FAQ

The Health and Safety Executive has answered the following [Local Government FAQ](#):

I've just taken over as clerk of the parish council and I've heard that we need to topple-test all the gravestones - is this true?

The risk of injury from a gravestone or other memorial, which has become loose and unstable is very low and there is no requirement to routinely mechanically test memorials.

Burial authorities in England and Wales do have a general duty under the Local Authorities' Cemeteries Order 1977 (LACO) to maintain burial grounds in good order. Different legislation applies in Scotland. Many burial ground operators, if they employ people, will also have duties under the Health and Safety at Work etc Act 1974.

You need to do what is reasonably practicable to ensure that visitors and those working in burial grounds are not exposed to risks to their health and safety. You should ensure that any action you take to manage memorials or other aspects of the burial ground is proportionate to the level of risk, and undertaken in a sensitive way.

The [Ministry of Justice](#) takes the lead on burial ground matters in England and has produced guidance to help burial authorities

²² [Special Report Memorial safety in local authority cemeteries](#), p3

adopt sensible and proportionate approaches to manage the overall low risk presented by memorials. It has also published a number of FAQs to address queries about the guidance.

The sensible risk-based approach set out in the Ministry of Justice guidance is also relevant to burial authorities across Scotland and Wales. However, specific queries should be directed to the Scottish Government or the Welsh Government as appropriate.²³

3.3 Guidance, standards and information

British Standard

British Standard 8415:2018, [Memorials within burial grounds and memorial sites. Specification](#), was published on 26 July 2018. It is intended for use by those concerned with the manufacture, installation and reinstatement of memorials and the checking of existing memorials within burial grounds or memorial sites.

This British Standard supersedes BS8415:2005+A2:2012, which is withdrawn.

Ministry of Justice guidance

In January 2009, the Ministry of Justice published guidance, [Managing the safety of Burial Ground Memorials](#). The guidance is for burial ground managers and includes information on:

- assessing risks;
- inspecting memorials;
- deciding on precautions;
- keeping records; and
- communicating with the public.²⁴

The guidance sets out a risk-based approach “to help operators develop a proportionate approach to managing the risks associated with memorials that is based on good practice”. The routine use of mechanical test instruments as inspection tools is not recommended.

It advises what should be done in respect of memorials found to be unsafe:

Where memorials are found to require maintenance every effort should be made to contact the family to effect repairs. Only when the memorial poses a significant risk, such as imminent collapse in a way that could lead to serious injury, does immediate action need to be taken to control the risk.²⁵

The guidance concludes by setting out the benefit of following a “risk-based and sensible approach to managing the health and safety risks arising from memorials”:

By following the simple procedures for inspecting, assessing and where necessary making safe, operators will be demonstrating

²³ Health and Safety Executive, [Local Government FAQs](#) [accessed 31 January 2019]

²⁴ [Gov.UK, from the Ministry of Justice, Burial grounds: guidance on managing unstable gravestones, 20 November 2014](#) [accessed 31 January 2019]

²⁵ Ibid, p2

that they are doing what they can to minimise the risks to health and safety in a proportionate, sensible and sensitive way.²⁶

The Ministry of Justice also published some [FAQs](#) (now archived) on the guidance.

In December 2011, Jonathan Djanogly, who was then a junior Justice Minister, reiterated that responsibility for health and safety in local authority cemeteries lies with the relevant council. He said that burial authorities had been encouraged to take account of the 2009 guidance but that there were no plans to initiate individual assessments of compliance.²⁷

ICCM guidance

The [Institute of Cemetery and Crematorium Management \(ICCM\)](#) describes itself as follows:

The ICCM was founded in 1913 and since that time has provided policy and best practice guidance to Burial and Cremation authorities, its Corporate members. It represents its Corporate members at government level...²⁸

Following the publication of the Ministry of Justice's 2009 guidance, the ICCM issued a [Membership Newsletter](#) about it.²⁹ The ICCM said that "the newsletter indicates two dilemmas for burial authorities that will need careful consideration by those with a responsibility for health and safety matters".³⁰ At that time, ICCM said that it had no intention of amending its own guidance or training.

In September 2018, the ICCM published a revised version of its guidance, [Management of Memorials](#). This amended its previous 2012 guidance to take into account the revised British Standard 8415.

Other related documents are provided on the [ICCM website](#).

Further information

- National Association of Memorial Masons (NAMM), [NAMM's commitment to Burial Authorities](#);
- British Register of Accredited Memorial Masons (BRAMM), [The Blue Book, The Reference Guide for Memorial Masons & Cemetery Personnel complying with BS 8415:2018](#), 2018.

²⁶ Ibid, p14

²⁷ [HC Deb 13 December 2011 c 647](#)

²⁸ Accessed 4 February 2019

²⁹ 27 January 2009

³⁰ ICCM, [Management of memorials](#) [accessed 4 February 2019]

4. How to complain

The Local Government and Social Care Ombudsman has published a factsheet, [Safety testing in cemeteries and graveyards controlled by councils](#).³¹ This is stated to be aimed primarily at people who believe that there has been some fault in the way the council has gone about laying gravestones flat, and who may be considering making a complaint to the Ombudsman. The fact sheet sets out how to complain; what the Ombudsman will look for; and possible remedies if the Council is found to be at fault. It also gives examples of some of the complaints the Ombudsman has considered.

In most cases, the Ombudsman is unable to investigate complaints made against parish councils which have responsibility for burial grounds.³² Further information is provided by the Local Government and Social Care Ombudsman, [Town and parish councils](#).

³¹ Accessed 31 January 2019

³² Local Government and Social Care Ombudsman, [Town and parish councils](#), July 2018 [accessed 31 January 2019]

5. Scotland and Wales

5.1 Scotland

Legislation and policy for burial matters are devolved to the Scottish Government.

Scottish Government consultation

In 2005, the then Scottish Government Minister for Health set up a Burial and Cremation Review Group. A 2010 Scottish Government [Consultation Paper on Death Certification, Burial and Cremation](#) consulted on recommendations made by this group.

Among other things, the consultation paper covered memorials and headstones. It noted the lack of general regulations:

76. The Review Group recognised that there are no existing general regulations governing the erection of headstones and recommended that general regulations should be introduced in line with the provisions contained in the LACO 1977 for England and Wales.

The Review Group had recommended that a number of matters should be included in regulations.³³ The consultation paper asked whether respondents agreed with the recommendations about the erection of headstones and regulations on matters relating to memorial masons and memorials.³⁴

Burial and Cremation (Scotland) Act 2016

In March 2016, the Scottish Parliament passed the [Burial and Cremation \(Scotland\) Act 2016](#) (the 2016 Act).

[Section 6](#) gives Scottish Ministers power to make regulations for or in connection with the management, regulation and control of a burial ground by a burial authority. Regulations made under this section might make provision for or in connection with (among other things):

- the maintenance and repair of memorials, buildings and other structures on burial grounds (including for the purpose of making them safe);
- conditions relating to the erection of a memorial, building or other structure on burial grounds;
- the imposition by burial authorities of such restrictions and conditions as they think necessary or appropriate in relation to the right to erect a memorial, building or other structure on burial grounds (including in relation to materials, construction, size, maintenance and liability for costs in respect of work carried out by burial authorities).

Implementation of the 2016 Act

The 2016 Act is being implemented in stages.

³³ Scottish Government, [Consultation Paper on Death Certification, Burial and Cremation](#), January 2010, paragraph 77

³⁴ Question 22

In 2018, following a Fatal Accident Inquiry into the death of an eight-year-old boy who died after a headstone fell on him at a Glasgow cemetery, Sheriff Ruxton recommended that the Scottish Government should develop and publish national guidance on memorial safety in cemeteries, for use by local authorities in Scotland.³⁵ The [Summer 2018 newsletter](#) on implementation of the 2016 Act, from the Scottish Government Burial and Cremation Team, indicated that this guidance would be developed in advance of burial ground regulations:

Sheriff Ruxton recommended that this guidance should contain specific advice on inspection methods and standards for older, larger memorials and what should be done by local authority burial authorities if these memorials were leaning.

During a meeting attended earlier this year by bereavement leads from 30 of 32 local authorities, there was unanimous support for national guidance on memorial safety. There was also a desire for this guidance to be developed and implemented in advance of the Burial and Cremation (Scotland) Act 2016 Burial Ground Regulations coming into force.

Through the Scottish Bereavement Benchmarking Group (SBBG) a number of local authorities have been invited to contribute to the drafting of this guidance. Input and comment has also been sought from relevant stakeholders, such as Historic Environment Scotland and the National Association of Memorial Masons.

Over the summer the team, working with stakeholders, will collate and draft this guidance. The intention is that once published by the end of 2018, it will lead into the beginning and assist in the implementation of the burial sections of the 2016 Act.³⁶

The [Winter 2018 newsletter](#) on implementation indicated that memorial safety guidance would be published early in 2019 (an indicative timescale only), and that this would be followed by work on drafting regulations relating to burial grounds:

Memorial Safety Guidance

A meeting was held recently in Glasgow with a variety of representatives with an interest across the local authority burial sector in Scotland.

This meeting generated substantive comment and discussion on a draft of the guidance on memorial safety which is being developed, in response to a recommendation made following a Fatal Accident Inquiry earlier this year into a death due to a falling memorial in a burial ground.

Further drafting and revision will continue before the guidance is published early next year for use by local authority burial authorities.

Burial Regulations 2019

Upon publication of the above guidance, work will begin in earnest on consulting and the subsequent drafting of the

³⁵ See, for example, Martyn McLaughlin, "[Death of boy struck by headstone could have been prevented, sheriff rules](#)", The Scotsman, 25 January 2018 [accessed 5 February 2019]

³⁶ [Implementation of the Burial and Cremation \(Scotland\) Act 2016 Summer 2018 - Newsletter No. 3](#), p6

remainder of part 1 of the 2016 Act, covering burial. Full implementation of regulation in this area will encourage greater proactive management of both historic and in use burial grounds and provide a modern legislative framework for burial.³⁷

5.2 Wales

Local authority law is devolved to Wales.

The Local Authorities' Cemeteries Order 1977 extends to England and Wales.

The [Welsh Government website](#) has links to the 2009 guidance on managing the safety of burial ground memorials and FAQs published by the Ministry of Justice.³⁸

³⁷ [Implementation of the Burial and Cremation \(Scotland\) Act 2016 Winter 2018 - Newsletter No. 4](#), pp7-8

³⁸ Accessed 5 February 2019

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