

Safety in Churchyards and Burial grounds - Memorial inspection 2007.

There have been a number of serious accidents 'some fatal' in cemeteries and churchyards which have been caused by dangerous memorials and other hazards. It is important therefore to restate the law regarding the responsibility of clergy and Parochial Church Councils in relation to the safety of churchyards and burials and to provide guidance as to the steps that should be taken.

The Law

A Parochial Church Council (PCC) is legally responsible for the care and maintenance of their churchyard and this obligation extends to the safety of the churchyard and of memorials. This obligation derives both from Common Law and also from statute law. A breach of this obligation will render the PCC liable to pay compensation to a person injured unless the PCC can show that it has taken reasonable care to maintain the churchyard in a safe condition ' and reasonable care includes the carrying out of regular safety inspections of memorials and of the churchyard generally including paths and other areas where there is public access,

If a PCC carries out, for example, a regular and fully documented safety inspection programme by trained persons, that obligation may well be fulfilled and the PCC would not be liable to compensate a person who was injured by a dangerous memorial and proceedings would not be taken against individual PCC members ' assuming of course that the safety inspection and check was carried out properly and the inspection is properly recorded.

Some local authorities have adopted a twice-yearly inspection programme. Such a frequency is likely to defeat any compensation claim if within the next six month period a person is injured by a memorial ' assuming that the inspection was properly carried out. EIG will accept a less frequent inspection programme as satisfying the obligations of the insured under its policy and will pay any compensation awarded by a Court ' but at the very least safety inspections should be carried out on a minimum five yearly cycle with safety inspections of new memorials being carried out within 12-18 months of their installation.

Do not wait to carry out the inspection every five years ' you will forget! Adopt a rolling programme of inspecting parts of the churchyard each year. The more frequent the inspections the better. Needless to say, the aim must be to achieve a safe churchyard.

The PCC should check that its insurance cover includes liability for the churchyard and memorials ' and If the PCC insures with a company other than EIG, the PCC should clarify with the insurance company its requirements regarding safety checks.

A PCC's insurance cover does not remove this legal responsibility nor transfer it to its insurance company. If a PCC ignores this obligation ' by not carrying out inspections or by carrying out the inspections too infrequently - its insurance company might disclaim liability under the insurance policy with the result that if the PCC is sued, the insurance company would not meet any damages awarded against the PCC. Indeed under Charity Law the PCC members might be held personally responsible ' for failing to carry out their own duties and obligations, as charity trustees, owed to the PCC.

A PCC is also bound by Health and Safety Law and Local Authority Health and Safety Officers may carry out inspections of churchyards ' indeed also of churches and church halls. If a PCC fails to adopt a satisfactory programme for the inspection of memorials, the Local Authority may issue an Order requiring all memorials in a Churchyard to be checked within a specified short period ' and for remedial action to be taken. During this period access to the churchyard ' including access for burials and interments ' may be prohibited.

If a person were to be injured as a result of an accident in a Churchyard and a proper inspection programme had not been adopted, a prosecution may well follow ' a prosecution of the PCC and perhaps even of the individual PCC members. Following a recent accident in a cemetery, the senior officers of a local authority in the Diocese were under direct threat of prosecution and indeed had been cautioned by the police.

This Guide concentrates mainly on the subject of dangerous memorials but the safety of other parts of the churchyard ' and indeed the Church, Church Hall, and other buildings, premises and land ' must not be ignored. It is important that PCCs adopt a regular programme of inspection to identify - and then remedy ' hazards wherever they may be ' in Churches Church Halls as well as

Churchyards.

In all cases proper records of the inspection and remedial work must be maintained and kept.

PCCs are referred to the series of 'Guidance Notes for Churches' published by Ecclesiastical Insurance and in particular Section 3 'Health & Safety'. PCCs are strongly advised to obtain these Guidance Notes ' see EIG address at the end ' and to follow the advice given.

Churchyards

Safety in Churchyards involves not only the safety of memorials but also of paths and grassed and other areas within a churchyard. Grass needs to be cut regularly, undergrowth needs to be cut away and brambles and the like removed. Paths need to be maintained in a safe condition. Paths need to be cleared of leaves on a regular basis during the autumn months.

Care needs to be taken in the lay-out of burial grounds ' see the separate Guidance on Churchyards and the Churchyard Regulations. For example memorials should always be placed on virgin ground ' ground that has not been disturbed by the digging out of the grave.

The layout of burial areas needs to take account of the need for safety. If grave plots are too close, and pathways too narrow, there is a risk of persons being tripped. Remember that many of the persons who visit graves are elderly and infirm ' they may well be using walking sticks or frames. Indeed the layout of new sections of burial grounds must take account of the need for disabled access. The disabled and the elderly must not be denied the right to visit their family's graves.

Churchyard Regulations

Many of the provisions contained in the Diocesan Churchyard Regulations reflect the need to maintain safety in Churchyards. For example kerbstones, pebbles, stones, edging, railings and the like may create a trip hazard ' as well as impede mowers - and are prohibited.

Make sure that when funerals are arranged, the immediate family members are made aware of the contents of the Churchyard Regulations. Please see the separate Guidance regarding the Churchyard Regulations and the form of the Application for Permission to introduce a memorial.

Memorial Safety

This Guidance does not aim to be a manual setting out how to carry out a safety inspection. It is important that the persons who carry out the safety inspections are properly trained and Parishes should arrange training for volunteers who will undertake this work as part of their ministry and service to the Church. Parishes should group together to arrange training sessions. Ecclesiastical Insurance will arrange training for its insured Parishes or alternatively particulars of an independent expert can be provided. Training must be on an on-going basis ' particularly for new team members. It is envisaged that Parishes will group together to organise safety inspections by trained persons.

Communication

It is most important that the planning process prior to the commencement of a memorial safety inspection takes account of the need to warn the public ' persons visiting family graves ' that the safety inspection is to be carried out. The families of the deceased own the memorial and their memorial may only be laid down with legal authority to do so. That legal authority is either the written permission of the family of the deceased or a Faculty. The Diocesan Chancellor has issued a Faculty, on the application of the Archdeacons, which sets out the procedure to be followed by Church Councils. Details of the Faculty Conditions are set out at the end of this Guidance. The laying down of memorials is permitted only after reasonable steps have been taken to contact family members ' in the meantime they must be supported by stakes.

At an early stage in the planning process, notices referring to the safety inspection should be displayed on the Church and Churchyard Notice Boards ' Parishes are encouraged to erect Notice Boards in the Churchyard for the display of the Churchyard Regulations and of Safety Inspection Notices. Contact your Archdeacon to obtain his approval to the sitting of churchyard notice boards. In addition articles explaining the need for the safety inspection should be included in Church Newsletters and Magazines. Letters should be sent to the ministers of other Christian denominations, to local authority and Parish councillors and to community bodies. Feed a news story to the local newspaper ' ask the Diocesan Communications Officer for advice. Also put an item on your Church website ' and keep the information up to date.

It must be remembered that as the memorial is owned by the family of the deceased, the family members are primarily responsible for an unsafe memorial and it is their obligation to remedy

the problem ' and therefore reasonable, and urgent, steps need to be taken to contact them. Indeed the statutory provisions relating to faculties require that family members must be given a reasonable opportunity to make their family memorial safe and this means that a reasonable attempt must be made to trace the deceased's family.

In the past, few parishes have maintained any form of record of the names and addresses of the deceased's family for the purposes of future contact, but parishes should now do so. Indeed the family of the deceased should be asked to provide the name and address of a contact person and that person must be asked to notify the Parish ' inevitable the minister of the Parish - of any change of address.

If a memorial is found to be unsafe ' and for other purposes relating to the memorial or the churchyard ' that person should be contacted.

If the contact person has moved and not notified the change of their address, and other reasonable attempts by the Parish to trace them are unsuccessful, and then remedial work is carried out ' including the laying down of an unsafe memorial - the family cannot properly complain that they were not contacted.

Put yourself in the position of a person visiting a churchyard and finding their family memorial has been laid flat. The Archdeacons and the Registrar receive many telephone reports of 'vandalism' in Churchyards ' following the laying down of unsafe memorials.

If a memorial is found to be unsafe, it should be rendered safe by supporting it with a metal or other stake. The memorial should not be laid down immediately. Steps should be taken to contact the family ' by affixing explanatory letters to the family to the memorial, by notices on the Churchyard Notice Boards requesting that the members of the deceased contact a designated person, by articles or notes in Newsletters and Magazines stating the names of deceased persons whose memorials were found to be unsafe and asking family members or persons knowing them to contact a designated person ' by contact with other ministers, councillors and community bodies. With the electoral roll now being accessible on the internet, tracing people is much more straightforward. See the Faculty conditions at the end of this Guidance.

Closed Churchyards

In the case of a churchyard that has been closed by an Order in Council and the appropriate notice transferring the PCC's obligations to the local authority has been given, the local authority takes over the PCC's obligations for the care and maintenance ' and safety ' of the churchyard ' but even in that case the incumbent and PCC cannot stand by and ignore hazards. Any concerns must be reported to the local authority.

Remember that churchyards become full when all the grave plots contain at least one full burial ' even though there may be space for further burials in the grave. Grave plots that have been reserved by faculty may also be disregarded. A Closure Order will not prevent future burial in reserved grave plots and family burials in 'used' graves. Likewise parts of a churchyard that have been set aside by Faculty for the interment of cremated remains may be disregarded and may continue to be so used after formal Closure.

Safety Checks of Memorials - Some General Points

- Appoint a responsible person to be in overall charge of the Safety Inspection Programme. That person must be a trained inspector.
- Appoint a public relations contact person ' to be responsible for the necessary notices and communications.
- Remember that not only memorials but also other items in the churchyard may be a hazard. Seats, sundials and such items need to be checked ' and in the remainder of this Guidance, references to 'memorials' must be taken to include other items of this nature.
- Remember that a memorial is not dangerous merely because it is askew.
- The Safety check will involve not only teams of persons assessing and recording the safety of memorials but also teams of persons to carry out immediate precautionary action in respect of memorials found to be unsafe ' with the necessary equipment to provide stakes to support unsafe memorials.
- A hand test can be used but a force measuring device such as a toppletester is better ' because it provides objective evidence of the safety ' or otherwise ' of the memorial.

- The age of a memorial is not relevant in deciding where to start the safety check ' both very old and very new memorials may be unsafe.
- Memorials not exceeding 500 mm in height should be checked by hand.
- Memorials in excess of 2 metres in height must be checked by a structural surveyor only. Count the number and record the location of such tall memorials and make arrangements for a competent firm to carry out the safety inspection of such memorials ' ask your local authority cemetery registrar or other officer for details of firms that carry out such inspections for them.
- Contact your local authority cemetery registrar and seek to make arrangements for the loan of equipment to be used to lay down memorials that are found to be such an immediate danger and also 'hire' their staff to operate the equipment. This may involve paying a fee to the local authority but it will avoid a liability to pay the cost of a new memorial if the old memorial is damaged when being laid down.
- Contact the memorial masons who frequently work in the churchyard ' if the memorial is less than 6 years old, they will be responsible for making good memorials found to be unsafe provided that the memorial has not been interfered with by someone else ' for example at the time of a later burial or interment or by an untrained memorial safety inspector. A memorial mason may be liable to compensate a person injured by a defective memorial for a much longer period. In a Court case some years ago a Judge decided that the memorial mason remained liable after a period of 30 years.
- Check with your Local Authority Conservation Officer whether any memorials ' and at the same any other features such as sundials ' in the Churchyard have been listed as 'buildings' of special architectural or historic interest. If any such memorials are found to be unsafe, you must report this to the Conservation Officer before any further steps are taken. In the meantime the memorial should be cordoned off. Also contact the Diocesan Registrar.
- Check with the Commonwealth War Graves Commission ' see contact details at the end - whether any memorials in the Churchyard relate to war graves. War graves are protected under the Geneva Convention. If you have concerns regarding the safety of a war grave, contact the Commission immediately and they will take urgent action.
- On the days when safety checks are being carried out, tell visitors to the churchyard what is happening ' and why.
- Memorials that have been staked must be checked at least on a monthly basis to make sure that the stake has not been removed unofficially.
- If a memorial is assessed as being unsafe, any family contact must be notified and if necessary met on site to explain matters.
- Memorials that have been laid down ' if attempts to contact the family have failed - must be checked on a weekly basis to make sure that they have not been re-erected unofficially
- Memorials that have been laid down may themselves be a trip hazard ' particularly to the disabled and elderly ' and arrangements will need to be made for the memorial to be repaired and re-erected by a memorial mason in accordance with the Recommended Code of Working Practice of the National Association of Memorial Masons ('NAMM') and the new British Standard ' or sunk into the ground. The memorial even if broken must not be disposed of ' without the written approval of the deceased family or a faculty.

The Cause of the Problem and Remedial Action

Modern memorials of the 'lawn cemetery' type may be dangerous for a number of reasons ' the memorial plate, the plinth and the base may not have been properly dowelled. Cement or similar material used as an adhesive is liable to fail. Alternatively the memorial may not be properly anchored into the ground ' a concrete sub-surface base is not adequate on its own.

If the family of the deceased indicate that they will remedy the problem, the remedial work must be done properly ' in accordance with the NAMM Code and the British Standard. DIY must NOT be permitted. Proper dowelling and a ground anchor are essential.

Kerbstones

Although kerbstones may be a trip hazard, they should not be altered or removed as part of a safety check. A Faculty is necessary to alter or remove and dispose of kerbs ' normally inscribed kerbs will need to be left in situ but sunk into the ground so that the inscription remains visible. Remember that the kerbs may be integral with and support the headstone ' detaching the kerb from the memorial may render the memorial unsafe.

Before any work to kerbs is carried out seek the advice of the Secretary to the Diocesan

Advisory Committee or the Diocesan Registrar ' see below.

Safety Awareness

An inspection of memorials neighbouring a new grave or a grave where there is to be a subsequent burial should be carried out prior to the grave being dug out.

Memorials in the vicinity of the main Church entrance or of a lawned area may need to be inspected on a more regular basis. Photographs of persons attending special church services such as marriages are frequently taken in such parts of churchyards.

Safety of Gravediggers

Gravediggers need to be warned of any memorials that are causing concern and they should be asked to warn the minister or churchwardens if they become aware of memorials showing signs of instability.

Gravediggers must adopt a safe system of work ' for their own safety as well as for the safety of others - and if the gravedigger is employed or contracted by the parish to dig out a grave it is the PCC's responsibility to ensure that a safe system of work is used ' for example the sides of the grave must be properly shored to prevent a collapse of the sides of the grave.

SCHOOL VISITS TO CHURCHYARDS

One Local Authority has raised with the Registrar an anxiety regarding children making rubbings of inscriptions, designs, motifs or other parts of memorials. Such activities must be closely supervised and children should be allowed to use only those memorials that have been inspected and properly assessed as being safe ' following the procedures in this Guidance.

If PCCs are aware of this type of activity ' whether as an 'organised' school activity or as a hobby of a few children ' contact should be made with local schools. It is not a matter of children being

CONTACT PERSONS & ORGANISATIONS

Ecclesiastical Insurance Company – Montpellier House, Montpellier, Gloucester GL1 1LF - Church Department Telephone No. 0845 7773322 Commonwealth War Graves Commission - 2 Marlow Road Maidenhead Berkshire SL6 7DX (contact – Graham C Reddie Legal Adviser and Solicitor) tele: 01628 634221 fax 01628 771208 email legal@cwgc.org

National Association of Memorial Masons - 27a Albert Street Rugby Warwickshire CV21 2SG Tel: 01788 542264 • Fax: 01788 542276 Website: www.namm.org.uk

The Institute of Cemetery and Crematorium Management - ICCM National Office, City of London Cemetery, Aldersbrook Road, Manor Park, London, E12 5DQ. www.iccm-uk.com

The Secretary of the Chester Diocesan Advisory Committee – Paul Broadhurst, Church House, 5500 Daresbury Park, Daresbury, Cheshire WA4 4GE. Telephone 01928 718 834 ext. 243 Email paul.broadhurst@chester.anglican.org

The Diocesan Registrar – Helen McFall. Diocesan Registry, Friars, White Friars, Chester CH1 1XS. Telephone 01244 356789.

IMPORTANT GUIDANCE AND DOCUMENTS

The Guidance issued by the [Institute of Cemetery and Crematorium Management](#) under the title "The Installation Inspection Management and Maintenance of Memorials" (including the summary version) – downloadable from the ICCM website

The Code of Recommended Working Practice issued by the [National Association of Memorial Masons](#) - downloadable from the NAMM website

The Guidance issued by the [Association of Burial Authorities](#) under the title "the Guide to Management of Safety in Burial Grounds"

The Local Government Ombudsman's Special Report – [Memorial Safety in local authority cemeteries](#)

Ministry of Justice: [Managing the Safety of Burial Ground Memorials](#)

THE FACULTY CONDITIONS

- 1: Before commencing any safety testing the Church Council must conduct a public awareness campaign to include placing a notice at the entrances to the churchyard and in one or more conspicuous positions within or adjoining the area where the testing is to take place giving the date (which shall be no sooner than 6 weeks from the date of the notice) when safety testing is to commence and supplying contact details of the Church Council
- 2: Before commencing testing the Church Council must give written notice of the date of the proposed testing to the person named in any record maintained by the Church Council as the person with responsibility for the memorial
- 3: Memorials may be tested by hand or to a 35 kilogram standard by a force measuring device used strictly in accordance with the manufacturer's directions
- 4: If any memorial fails a test under (3) the Church Council may secure it and make it safe temporarily by a metal or other appropriate stake with a warning notice placed on it identifying it as dangerous and giving contact details of the Church Council
- 5: If any memorial fails a test and has been made safe temporarily under (4) the Church Council must notify in writing the person referred to in (2) above that the memorial should be made safe so as to conform with the then current Recommended Code of Working Practice of the National Association of Memorial Masons, or the British Standard, within a period of 4 months from the date of the letter to that person
- 6: Where there is no response from the person referred to in (2), or the owner of the burial right and/or the memorial is unknown the Church Council must display a list of the names of the memorials required to be made safe in two or more conspicuous places in or adjoining the relevant part of the consecrated area(s) and should publish the list on any website of the Church Council
- 7: Failing any response under (5) or (6) above the Church Council may, if it considers it necessary or desirable to do so, lay the memorial in question flat after the expiry of the period of 4 months specified in (5) above, or may leave the stake in place for such further period as it deems fit pending implementation of a plan for improvement of the area.
- 8: Within a period no later than 18 months from the date of this Faculty, the Church Council must prepare and lodge with the Consistory Court a plan for the following 5 year period setting out the actions which the Church Council is proposing to take in respect of memorials which have been laid down in the consecrated areas and in respect of which the owners are untraced. The plan should be prepared after consultation with all relevant bodies.
- 9: All notices and communications regarding unstable or unsafe memorials must include a reference to the right of the Owner to object and details of the address of the Diocesan Registrar for the purposes of lodging an objection.
- 10: The Owner or other person having an interest in a memorial so affected may make application to the Registry by letter for directions under this Faculty
- 11: The Council shall abide by any further directions which the Court may give in relation to any memorial affected by the Faculty
- 12: A full record (including photographs) shall be made of each memorial found to be unstable prior to being displaced under this Faculty and such records shall be preserved for a period of not less than five years
- 13: In the event of the laying flat of a memorial care shall be taken to ensure that the memorial remains in as close association as is practicable with the grave it marks and is positioned so far as practicable to avoid a trip hazard
- 14: Any repairs or works of restoration to any memorial affected by this Faculty must be carried out in accordance with the Recommended Code of Working Practice of the National Association of Memorial Masons