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Damaged and Unsafe Memorials in a Churchyard

The following guidance document has been produced by the Chancellor of the Diocese to help parishes in dealing with unsafe memorials.

Peter Robinson and Mark Wroe
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Diocese of Newcastle

Guidance Notes

Damaged and unsafe memorials in a churchyard

Introduction

The terms 'gravestone', 'monument' and 'memorial' include headstones, ledger stones, table and altar tombs, kerbs, verges and railing, crosses, statues, urns and carved stones in a burial ground.

Legal Position

The Parochial Church Council (PCC) is responsible for the maintenance and repair – and therefore generally for public safety – of a churchyard. This responsibility includes the safety of **gravestones**. The safety of a stone in the first instance is the responsibility of the next of kin or heirs at law of the deceased as it is they who own the **monument or memorial stone** and who are primarily responsible for its repair and safety. This duty should be pointed out to them where they can be identified.

□ The PCC is also under a legal duty. If the next of kin or heirs at law are not known or decline to keep a memorial safe, the PCC will effectively be the only party responsible for public safety. The PCC therefore has a responsibility for unsafe or dangerous memorial stones.

□ This is the same even where the churchyard is closed for burials by Order in Council and routine maintenance has been assigned to the local authority under the appropriate legislation. Maintenance and routine repairs have been assigned – but the PCC has not been relieved of the liability. So, if the local authority fails in its duty, a person might still be able to claim damages for injuries from the PCC (as well as possibly from the local authority).

Care should be taken that the local authority does not act precipitately in a closed churchyard – by laying down headstones on the ground without any consultation. A faculty with a plan needs to be presented by them if they wish to carry out such work.

How should unsafe headstones be dealt with?

The churchwardens or PCC should take one or more of the following steps when an unsafe headstone is found:

- Secure the stone from falling over by the use of stakes, props and ropes to bind around the stone and stakes
- Display a waterproof notices on or near the stone
- Rope off the area and display waterproof notices informing the public that the roped off area of the churchyard is not available for public access at this time and that they should/must not cross the barrier.

The PCC then need to follow the steps elsewhere in these Notes for making the gravestone(s) safe; the steps described above can only be temporary and precautionary arrangements

If the stone cannot be secured safely in an upright position or temporary precautionary arrangements adequately made to reasonably secure the safety of the public in that part of the churchyard, then the churchwardens or PCC should carefully lower the stone and lay it on top of the grave with the inscription on the lower side (to protect it), and then petition for a confirmatory faculty. The next of kin of the deceased, where known, must be informed. The petition will need to clarify whether the stone is intended to be left permanently on the surface of the grave or to be repaired and re-erected in an upright position or the table or box tomb reconstructed. Headstones, which have to be lowered in an emergency, should never be moved away from the grave to which they relate (unless a faculty authorizing the re-ordering of the churchyard has been obtained).

Good Practice

Regular and routine attention to monuments should avoid dangerous problems arising unexpectedly.

The laying of an upright stone flat on a grave is generally not good practice and is only a temporary or intermediate measure. The surface of the stone may become slippery or

slimy and/or covered with lichen or vegetation with the risk of people slipping or tripping on it. The stone and particularly the inscription will deteriorate faster if the stone is laid flat on the ground than if it is in an upright position. Unless the underlying surface is carefully prepared the stone is likely to crack. If the stone breaks there will be 'missiles' available for vandals to use, more edges and hidden hazards to trip over, and the risk of parts of the memorial becoming detached from the grave to which they belong.

The PCC should take steps to find out how a particular stone can be made safe, or seek proper advice. The best plan is that they should be re-erected vertically in a way in which they cannot become dislodged easily – by animals, vandalism or a person tending a grave taking hold of the grave stone to help themselves to stand up for example.

The PCC should always ensure that it is fully and adequately insured. Public liability insurance will usually include this, but an individual clause may be required by the Insurers.

General Maintenance

Every PCC should have a plan for its churchyard(s) – both those open for burials and closed churchyards. Using the plan, a safety check can be made by:-

Identifying those memorial stones which are already in a dangerous condition/state of repair, and

Identifying those memorial stones which will need some attention in the next 12-24 months.

Neglected or dilapidated table top and box tombs are a particular hazard. Headstones do not necessarily have to be vertical to be safe. Some leaning stones may be safe.

In the case of a memorial which is separately listed under the Town and Country Planning Acts there is also a statutory obligation in secular law on the owner to repair it. Such memorials must be marked on the churchyard plan. The Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (England) Order 2010 now means that listed building consent is not required to do work on a separately listed memorial and a faculty will be sufficient permission.

It is important that a PCC has a programme for dealing with safety in the churchyard. This could cover several years, dealing with the most dangerous matters first. The plan needs faculty approval and photographs of the churchyard or the particular stones

should be included with the petition. Part of the faculty procedure includes Public Notice and may include notice being given to next of kin for particular graves.

A new memorial may not be erected for **at least** 6 months after the burial. Sufficient time should elapse to enable the ground to settle, and a longer period than 6 months is often desirable. A wooden marker may be used in the meantime.

Quinquennial Inspection Reports should include the churchyard, its walls and memorials.

When is a Faculty Required?

The basic rule is that a faculty is required before any work is done to a headstone or other memorial. A faculty is required for re-ordering a churchyard. Re-ordering includes moving headstones, kerbs, railings etc. A scheme for re-ordering a churchyard can be drawn up. DAC advice is desirable at an early stage.

Headstones and memorials may not be lowered or moved without faculty unless they are dangerous, when the following procedure should be followed. In an emergency situation a headstone or other memorial stone may be laid flat or dismantled and laid on top of the grave because it is sufficiently unstable that it may be at risk of falling or otherwise poses a danger. A confirmatory faculty is required to legalise either what has been done and to authorize it permanently remaining on top of the grave (with or without work being done to it), or for its repair and re-erection.

If an unsafe memorial is a **box or table top tomb** the DAC Secretary must be consulted before any work is commenced.

A faculty is required for re-ordering the memorials in a churchyard and the advice of the DAC should be sought.

If a recently added memorial needs to be made safe, every reasonable effort should be made to contact a member of a family to whom it belongs before work commences unless to do so would create an unacceptable risk of harm.

A memorial stone that has become cracked or broken may be replaced by its owner(s) on an exact like-for-like basis (same location, stone, colour, dimensions, inscriptions) providing that the minister in charge of the churchyard has been notified of the proposal and has given their approval in writing. If the proposed replacement is not an exact like-for-like replacement, or an additional or different inscription is required, then the replacement stone needs to be authorized either by the minister or by faculty.

Faculty fees: no faculty fees are payable by petitioners where a churchyard is open for burials and the petition is submitted by the incumbent or priest in charge and

churchwardens; unless the petitioners have obtained a faculty for other work concerning their church or churchyard within the previous twelve months or unless objections are received to the petition. In a closed churchyard or the consecrated areas of a municipal cemetery, the petitioners should be the local authority and the faculty fee should be paid on lodging the petition in the Diocesan Registry (current fee available on request from the Registry). If a headstone or other memorial does not comply with the Chancellor's Guidance, then the family will have to apply for a private petition as the incumbent, priest-in-charge and churchwardens will not be able to grant permission.

Legal Position in relation to (a) the consecrated areas in Local Authority cemeteries and (b) churchyards closed for future burials which Local Authorities have a responsibility to maintain and keep in decent order.

Local Burial Authority Cemeteries. In the case of *Re Keynsham Cemetery* (2002) *The Times* 14 October 2002 the Chancellor of the Diocese of Bath and Wells said "when exercising its powers under article 16(1) of the Local Authorities Cemeteries Orders (SI 1977 No 204), to put in order any tombstone or other memorial in a cemetery, it is not necessary for the local burial authority to apply to the Consistory Court for a faculty for minor works associated with maintaining the safety of monuments, including non-destructive testing. Where, however, pursuant to a policy of safety inspection, it was desired to lay flat a potentially large number of tombstones, it was necessary for the local burial authority to obtain a faculty."

The rationale of the decision is that the same general principles apply for work in the consecrated areas of local authority cemeteries as they do in churchyards. If pursuant to a safety inspection a local authority wishes to move or lay flat a significant number of gravestones on consecrated land, it is necessary for the burial authority to obtain a faculty. A faculty is not required if the work involves only a very small number of headstones.

In two cases, Chancellors were held to have exceeded their jurisdiction by imposing on local authorities significant requirements to reinstate headstones laid flat as a result of safety testing. *In Re Welford Road Cemetery, Leicester* [2007] 2WLR 506; *In Re Hutton Churchyard, Somerset* [2009] PTSR 968.

In the case of *Re Hutton Churchyard, Somerset*, the Court of Arches considered what exactly could be required of the local authority as a consequence of its responsibilities for the churchyard under section 215 of the Local Government Act 1972 to 'maintain it

by keeping it in decent order'. It was decided that that liability did not extend to a requirement to make good and repair memorials. The Court did give guidance as to what conditions a Consistory Court could and should impose on faculties granted to local authorities in relation to safety works in closed churchyards. Those include requirements for surveys; citation of relatives or advertisements of proposals; temporary staking or marking of danger; laying flat or repositioning, and finally requiring the local authority to provide a plan as to what they propose to do in relation to memorials laid flat so as to ensure the churchyard remains a safe place.

Summary

Clearly there will be financial expense for the PCC in complying with its responsibilities in the churchyard. This must be viewed in the context of the serious consequences if a person were to be injured by a memorial stone.

The cost of keeping your churchyard in good repair may be ameliorated by having a phased programme of works. The PCC's inspecting architect should be able to advise and grants may be available to assist with the repair of older memorials, table and box tombs.

Legal Health Warning

This guidance note does not purport to give definitive legal advice to any person or body that is responsible for the care and maintenance of monuments and memorials and/or for safety generally in burial grounds. Careful, experienced or professional advice should be taken concerning particular memorial stones and the arrangements for access by members of the public in churchyards and cemeteries. Additional advice may be found in *Managing the safety of Burial Ground Memorials* –

www.gov.uk/government/publications/burial-grounds-guidance-on-managing-unstable-gravestones.

The Churchyards Handbook, published by Church House Publishing also provides helpful advice and guidance and every PCC with responsibility for a churchyard should have a copy available.