

DIOCESE OF YORK
NOTES OF GUIDANCE

CHURCHYARDS: BROKEN AND DANGEROUS GRAVESTONES

Introduction

1. Accidents in churchyards which cause injury do, unfortunately, occur from time to time. In recent years there have been cases of death as well as serious injury caused by headstones, box tombs, and table top tombs which have been in a dangerous condition and have fallen or collapsed. Clergy and PCCs in the parishes of the Diocese of York need to take care over their responsibilities in this matter.

In this Note “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 Positions

2. The Parochial Church Council is responsible for the maintenance and repair – and therefore generally for public safety – of a churchyard. This responsibility includes the safety of **gravestones**. It is true that the next of kin or heirs at law of the deceased own the **monument or memorial stone** and are the persons primarily responsible for its repair and safety. So in the first instance the safety of a stone is the responsibility of the family. This duty should be pointed out to them where they can be identified.
3. But 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. With others the PCC is an occupier for the purposes of the Occupiers Liability Acts. The PCC therefore has a responsibility for unsafe or dangerous memorial stones.
4. 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).
5. 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.

What to do with a Dangerous Stone?

6. Where a dangerous stone is found which has to be immediately attended to, then the churchwardens or PCC should take one or more of the following steps:

- secure the stone from falling over by the use of stakes, props and ropes to bind around the stone and stakes
- display water proof notices on or near the stone
- rope off the area and display water proof 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 authorising the re-ordering of the churchyard has been obtained).

Good Practice

7. Regular and routine attention to monuments should avoid dangerous problems arising unexpectedly.
8. 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 under lying 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.
9. 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 sheep, vandalism or a person tending a grave taking hold of the grave stone to help themselves to stand up for example.
10. 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

11. Every PCC should have a plan for its churchyard(s) – both those open for burials and closed churchyards. (Churchyard plans should include the information required by the Diocese of York's Churchyard Plans and Records Regulations 1992). Using the plan, a safety check can be made by:-

- (a) identifying those memorial stones which are already in a dangerous condition/state of repair, and
 - (b) identifying those memorial stones which will need some attention in the next 12-24 months.
12. 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.
 13. 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. However since the coming into force of the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (England) Order 2010 in October 2010 listed building consent is not required to do work on a separately listed memorial; faculty suffices.
 14. What is important is that the PCC should have a programme and plan 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.
 15. Prevention being better than cure, it is important that both a new memorial stone or a replacement is erected securely. New memorials 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. The local parish church or local stone mason may be able to supply these.
 16. Quinquennial Inspection Reports should include the churchyard, its walls and memorials

When is a Faculty Required?

17. The basic rule is that a faculty is required before any work is done to a headstone or other memorial.
18. 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.
19. 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 confirm what has been done, and either to authorise it remaining on top of the grave (with or without work being done to it) permanently, or for its repair and re-erection.

A precautionary approach is advisable: try to secure the memorial (see para 6), but as a last resort it can be laid down on top of the grave to which it belongs (see para 6).

20. A small amount of repair work not involving any moving of the memorial can be done without applying for a faculty if that work falls within Section G paragraph 2(b) of the Diocesan Chancellor's List of Matters Not Requiring a Faculty Revised 1 April 2011. Paragraph 2(c) is as follows:-

"Repairs to memorials so long as no part of a memorial is moved. Work in this category done under the authority of this Practice Direction shall not exceed a maximum sum of £500 excluding VAT in any one year in respect of all such repairs in the same burial ground. If more work than this is required a faculty needs to be sought.

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

For re-ordering the memorials in a churchyard a faculty is required: the advice of the Church Buildings Officer (DAC Secretary) should be sought."

If the memorial to be made safe is a recent one or there are members of the family of the person commemorated still living in the parish or neighbouring parishes a member of the family should be informed of the proposed work to the monument before the work is done unless to do so would so delay the work as to create an unacceptable risk of harm.

The owner of an individual stone which is damaged can replace it so long as the proposal is within the terms of Section G, paragraph 2(d) which is as follows:-

"Replacement of a memorial stone by its owner(s) where the memorial is damaged e.g. cracked or broken if the replacement stone is an exact like for like replacement (same stone, colour, dimensions, inscriptions etc), **providing that the minister in charge of the churchyard has been notified of the proposal and has given his 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 would need to be authorised either by the minister under the Churchyard Memorial Rules or by Faculty."

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

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

22. 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. If the work involves only a very small number of stones a faculty is not required.

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. However the Court gave 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.

These principles will no doubt be followed by local authorities who should in any event be implementing (1) Ministry of Justice advice on “managing the safety of Burial Ground Memorials” published in 2009¹ with an associated set of FAQs² and (2) the Ombudsman’s Special Report on “Memorial Safety in local authority cemeteries” published in March 2006³.

All these principles will apply to work in the consecrated areas of local authority cemeteries in the Diocese of York, and to how the Chancellor will deal with faculty petitions in relation to such work.

There is however a provision that minor works to make safe memorials at a cost of no more than £500.00 excluding VAT do not require a faculty (see the List of Matters Not Requiring a Faculty and paragraph 20 above).

Summary

23. 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 can be ameliorated by having a programme of works which can be phased (see para 11 above).

¹ <http://www.justice.gov.uk/downloads/burials-and-coroners/safety-burial-grounds.pdf>

² <http://www.justice.gov.uk/downloads/burials-and-coroners/memorial-safety-guidance-faqs.doc.pdf>

³ http://www.ombudsman-wales.org.uk/en/~media/Files/Documents_en/Memorial_safety_in_local_authority_cemeteries.ashx
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The PCC's inspecting architect should be able to advise and assist, and the architect or DAC Secretary may know of grant aid schemes for the repair of older memorials and for table tombs and box tombs.

24. **Legal Health Warning** - This 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. No legal responsibility can be accepted by the York Diocesan Board of Finance, the York Diocesan Advisory Committee for the Care of Churches or the York Diocesan Registrar.
25. Additional useful advice may be found in Managing the safety of Burial Ground Memorials – www.justice.gov.uk/guidance/docs/safety-burial-grounds.pdf and Historic Scotland also publishes useful material.
26. Documents referred to in these Notes of Guidance which apply in the Diocese of York are available on the York Diocesan Registry website www.yorkdiocesanregistry.com.

Churchyard Plans and Records Regulations 1992
List of Matters Not Requiring a Faculty
Churchyard Memorial Rules 2005

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