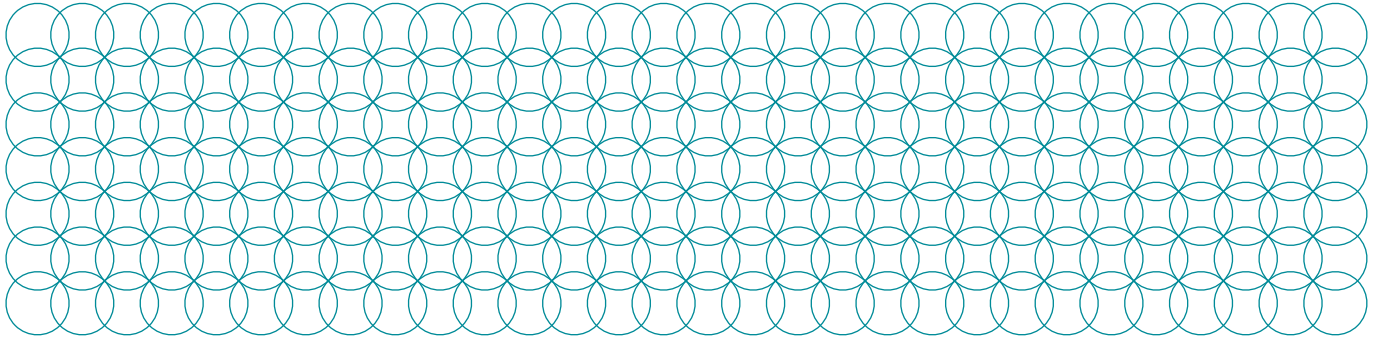




Ministry of
JUSTICE



Managing the safety of
Burial Ground Memorials
Practical advice for dealing with
unstable memorials


Preface

Over the past few years the issue of memorial safety has from time to time been the subject of adverse publicity and public distress – often because of over-zealous risk assessments or poor communication. In light of this burial ground operators have expressed concern about how to respond appropriately to the risks presented by unstable gravestones.

Significant risks should of course be properly managed – but the risk of injury from a gravestone or other memorial which has become loose and unstable is very low. That is why we issued a joint letter to burial authorities in March 2007 to make clear that any action to manage risks in burial grounds needed to be sensible, proportionate, and undertaken in a sensitive way.

The advice provided in this document is in response to the requests by burial ground managers for practical guidance to assist them in developing sensible, proportionate and sensitive arrangements for managing gravestones. It has been developed by relevant professional representative organisations¹ from the Burial and Cemeteries Advisory Group. We are grateful to them for this work.

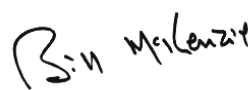
This guidance sets out a sensible approach to assist burial ground operators to meet their legal responsibilities. By following this good practice burial ground operators, can provide safe places to visit and work, and importantly make sure that remedial work to reduce any risk of serious injury does not cause unnecessary distress to bereaved families and others who value the great historical and environmental heritage of our cemeteries.



John Healey



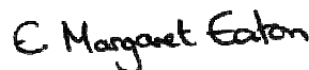
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Lord McKenzie of Luton



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Councillor Margaret Eaton

¹ Archbishop's Council of the Church of England
Association of Burial Authorities
Federation of Burial & Cremation Authorities
Health & Safety Executive
Institute of Cemetery & Crematorium Management
National Association for Local Councils
National Association of Memorial Masons
Society of Local Council Clerks

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Summary

This guidance has been developed by a sub-Group of the Burial and Cemeteries Advisory Group, which advises the Ministry of Justice on all aspects of burial law. The sub-Group represented burial ground operators, memorial masons and cemetery managers as well as the Health and Safety Executive. The insurance industry and the Local Government Employers were also consulted. This guidance represents good practice on the standard expected in the risk management of memorials in all types of burial grounds, public or private.

Burial ground operators ('operators')² should have systems in place to control the risks from memorials to their employees, contractors, friends' groups, volunteers and members of the public. They owe a general duty of care to visitors and other members of the public. Responsibilities are also set out in various legislation covering burial grounds, e.g. the Local Authorities' Cemeteries Order 1977 (LACO). Where the operator is an employer or self-employed person they also have duties under the Health and Safety at Work etc Act 1974 (HSWA74) and associated regulations such as the Management of Health and Safety at Work Regulations 1999. Operators should do all that is reasonably practicable to ensure that people are not exposed to risks to their health and safety.

This 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.

Ownership of memorials remains with the family of the deceased, and for this reason there is some advice for operators on communicating with memorial owners, the bereaved and the wider community as part of the arrangements for managing memorials. There is potential for much distress when this is overlooked. 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.

² The term 'operators' in this guidance covers Burial Authorities (for local authority operators of cemeteries); Parochial Church Councils (for graveyards run by the Church of England); and companies, charitable organisations, other faith groups or individuals (for privately-operated burial grounds).

Background

What is the risk?

1. Over the last 30 years, eight people in the UK have been killed when a memorial has fallen on them. Given the number of memorials and the number of visitors to burial grounds in any year, the risk of any injury is extremely low.
2. However, this general low level of risk may be called into question by the public following an incident or by operators when it comes to their assessment of the theoretical risk. There are simple steps which operators can take to assess and manage the risks posed by memorials installed in a burial ground to provide assurance that the risks are low and that they are properly managed.

What is required?

3. Burial authorities have a general duty under LACO to maintain the burial ground in good order. Parochial church councils are required to keep churchyards in good order if responsibility has not been transferred to the local authority³. Most burial ground operators will also have duties under HSWA74. Operators should do all that is reasonably practicable to ensure that visitors and those working in burial grounds are not exposed to risks to their health and safety.
4. The approach to managing memorial safety set out in this guidance involves the periodic assessment of memorials as part of a planned exercise or when anything has changed, for example a programme of major work or repair to the burial ground environment. It is for operators to decide on the frequency of this assessment. Where action is necessary following this assessment, measures to control any risks should be proportionate to the level of risk.

³ Maintenance of Church of England churchyards is otherwise the responsibility of the Parochial Church Council under the Parochial Church Councils (Powers) Measure 1956.

5. The enforcing authorities⁴ under HSWA74 do not consider the risks from memorials to warrant inclusion in their proactive inspection regimes because of the low risk of injury. However, in the unlikely event of a serious accident, their inspectors may undertake an investigation. They will want assurance that operators had followed this guidance, had taken the sort of sensible, risk-based precautions set out, and that they had done all that is reasonably practicable in the circumstances. Inspectors recognise that even when all reasonably practicable precautions have been taken, incidents may still occur.

⁴ The enforcing authorities under the HSWA74 are the Health and Safety Executive for local authority-run burial grounds and the local authorities for churchyards.

Suggested approach to managing risks from memorials

6. Operators should adopt a risk-based and proportionate approach to managing memorials. The approach should be integrated into the operator's overall burial ground management regime that applies a sensible approach to all risks associated with the operation of the burial environment. Memorials are one of a number of relatively low level risks in the site environment that need careful and sensitive management. Operators should recognise that it is not possible to control all risks in such an environment.
7. An effective, risk-based approach should include the following:
 - Knowledge of the different types of memorial currently installed in the burial ground. For example through a site survey that identifies the various designs and materials of individual memorials and groups of memorials, their historical and social importance, and the likelihood of members of the public visiting or walking past particular memorials.
 - An overall assessment of the risks associated with these types of memorials to assist prioritisation of the more detailed inspections.
 - An inspection methodology for assessing the risk of each memorial, which might include:
 - A visual check for obvious signs that a memorial is likely to be unstable.
 - Where a visual check suggests no stability defects, a hand test can help confirm that assessment or identify stability problems – this test involves no tools or equipment and is intended to provide support to the visual checks.
 - Arrangements for more detailed inspections of particular memorials where the initial inspection identifies significant risk, for example by a specialist structural engineer or memorial mason.

Occasionally there may be memorials that have serious structural faults but which the operator decides not to remove having regard to their aesthetic or heritage value. Specific assessments for each memorial and specific management measures may be required in these cases.

8. To ensure the arrangements are widely understood and properly communicated the operator should also have arrangements that:
- Set out the range of precautions likely to be necessary to manage risks where they are identified.
 - Maintain records of the inspection and results, noting in particular those memorials where action is necessary, or likely to be necessary in future.
 - Make clear the system for securing specialist assistance or remedial action when a visual check reveals defects outside the experience and knowledge of the person carrying out the check, or where a memorial has historical significance for example.
 - Ensure there is a system to enable people to report damage to memorials, such as vehicle collisions, and to trigger checks following potentially damaging activities, e.g. work by the utilities providers in the vicinity of memorials.
 - Set out the procedures and timescales used for contacting relatives or other memorial owners where this is necessary.

Guidance on a sensible and proportionate approach to assessing and managing the risks

Using risk assessment

9. A risk assessment provides for a focus on those risks with the potential to cause real harm. In most cases a suitable and sufficient assessment can be completed by an officer of the burial ground operator using experience of burial ground management and the associated risks, and a working knowledge of memorials. Operators may need to provide training to officers or volunteers so they can develop the necessary skills to complete these assessments – including ensuring they have an understanding of the need for a proportionate approach to the assessment.
10. Operators can use the simple Five Step approach suggested by the Health and Safety Executive for their risk assessment⁵:
 - Step 1: **Identify the hazard** – e.g. a potentially unstable memorial.
 - Step 2: **Identify who might be harmed and how** – these might be employees, contractors, volunteers or visiting members of the public who may be struck by a falling memorial.
 - Step 3: **Evaluate the risk** of a memorial falling and harming someone, and decide on the precautions needed to control this risk.
 - Step 4: **Record the significant findings** of the risk assessment and take steps to implement the precautions needed.
 - Step 5: **Review** the risk assessment periodically to see if anything has changed and update it if necessary.
11. Risk assessment is an on-going management process. Operators will need to decide for themselves, knowing their circumstances, when to review their risk assessment.

⁵ Five Steps to Risk Assessment INDG 163

Identifying the profile of risks from memorials in the burial ground

12. Operators should use their experience and local knowledge to focus on those memorials most likely to present the greatest risk. Operators should consider local factors, the design and style of memorial as well as environmental and historical factors. The following are some of the considerations operators should take into account to focus and prioritise the inspection and assessment process:

- Memorials alongside or within a short distance of paths, are more likely to present a risk to visitors than those which are less accessible. Memorials of well-known people, or memorials widely appreciated for their architecture or aesthetic qualities are also more likely to attract visitors. Less frequented areas may attract anti-social behaviour, or may need greater maintenance as relatives are no longer tending memorials. Memorials situated on sloping or uneven ground, may present an increased risk.
- Multi-part memorials, which depend on bonding of their parts for stability, can present a risk where the joint has failed. Some memorials might also be made of material which more readily erodes and becomes unsafe. It may therefore be appropriate to examine these memorials in advance of others. On the other hand the risk of joint failure is absent in monolithic monuments, and memorials with a broad base are less likely to fall than those with a relatively narrow base.
- More recent memorials should be designed to British Standard 8415, and the construction, dowels and fixings should be in accordance with the National Association of Memorial Masons (NAMM) Code of Working Practice. Memorials installed to these practices have greater assurance of good stability.
- Operators need to build up a profile of the memorials in their burial grounds. They are best placed to do this. It is an essential first step to enable prioritisation of and provide a focus for the inspection and assessment process.

Inspection of memorials

13. A visual inspection should be the next step in assessing the risk of a memorial falling. It takes little time, uses simple common sense and judgment, and yet acts as an effective early warning system to help operators prioritise memorials that need more detailed inspection. Problems to look out for include:

- Damaged or eroding bonding.
- Movement of parts of a memorial from its original position.

- Kerb stones breaking apart.
 - Undermined or unstable foundations.
 - Leaning memorials – particular if there is evidence of recent movement.
 - Evidence of structural damage or disturbance (e.g. cracks).
 - The presence of vegetation, which may cause cracks etc to widen.
14. The profile of memorial types in the burial ground, together with the visual inspection will help determine those memorials that require a hand test, and how to prioritise those hand tests:
- Some memorials will require specialist assessment, and the location and frequency of visitors to these locations will help determine the timing of that specialist inspection. It is not normally appropriate to use a hand test to confirm stability of these memorials.
 - Where memorials (that do not require a specialist assessment) have visible signs of damage or defects such as joint or component failure, a hand test should be used to determine stability of the memorial and can save on unnecessary work. The location and frequency of visitors to these memorials will help determine the timing of the hand test e.g. more frequently visited parts of the burial ground should be prioritised for an early hand test. This can often be done straight away at the time of the visual inspection.
 - Where memorials (that do not require a specialist assessment) have no sign of defects, a hand test may not be necessary but can still be used to confirm that the memorial is stable. These tests should be treated as a lower priority to the hand tests of memorials that have signs of instability – though they may, of course, be undertaken at the same time as the visual inspection. Once again it makes sense to do the hand test of memorials in locations that are more frequently visited as a higher priority than the memorial in less frequented locations.
15. The hand check can be carried out by standing to one side of the memorial and applying a firm but steady pressure in different directions to determine to what degree if any the headstone is loose.
16. If some instability is detected following the hand test, a judgment must be made as to whether this movement is limited, or whether there is sufficient movement for the memorial to present a high risk to people's health and safety. Operators should note that many memorials installed in recent years on independent foundations are fitted with a ground support system. These memorials may move, even rock if the base to foundation joint is

broken, but do so within designed tolerance limits and represent no danger as the memorial will lock on the ground anchor.

17. Visual and hand checks can be carried out by a person with a working knowledge of memorials and their defects, and/or good knowledge of the memorials in any burial ground, but those inspecting memorials need to be mindful of, and consider, the risks to their own health and safety. Hand testing is appropriate for many memorials, such as the modern, lawn type, as well as smaller stepped designs or tiered crosses. Much larger, heavier memorials, such as older columns or obelisk types, may require an assessment by a specialist engineer or competent memorial mason.
18. The routine use of mechanical test instruments as inspection tools is not recommended. Results from these instruments are liable to overestimate the actual risk. The approach suggested above will enable the operator to assess the memorials in their grounds as either secure and stable or insecure and requiring action, and a mechanical test will not add to this judgment. However, where this judgment is not so clear, the operator may need to consult a specialist engineer or memorial mason for advice.

Deciding on precautions

19. Any precautions taken must be proportionate to the risk of people suffering harm. In most cases the actual level of risk from an unstable memorial will be very low such that a warning sign near to – or in some instances on – a memorial alerting visitors to the potential danger will suffice until repair has been arranged. If the circumstances make this impractical, for example there is the potential for confusion as to which memorial any warning refers, a memorial may need to be cordoned off until it is made safe.
20. A memorial may be so unstable there is an imminent risk of it toppling. In a very few cases where this could result in serious injury, immediate steps may be necessary to reduce the risk e.g. restricting access or laying the memorial flat. The routine staking of memorials is not recommended – not only is there a risk of harm in the staking itself, there is also the potential for damage to the memorial.
21. In all cases where temporary measures have been taken to make a memorial safe, steps to effect permanent repairs should be taken as soon as possible. Operators should be aware of the potential for upset and distress amongst mourners and the bereaved, as well as the potential for disfiguring the appearance of a burial ground.

22. Arrangements can also be put in place to encourage employees such as gardeners and other maintenance workers, as well as volunteers and members of the public, to report any memorials which they believe may be unstable.
23. If a lot of improvements are needed, an action plan may be necessary. A good action plan will include, for example, prioritisation of improvements to manage the greatest risks, as well as longer term measures for those memorials with structural faults which may need more frequent monitoring than the rest of the burial ground.

Keeping records

24. The record of the risk assessment should be kept simple. For example, it should note any prioritisation; a record of those memorials that were judged at high risk of collapse and the precautions taken/planned; and the timescale for when the assessment/inspection process will be repeated.

25. Operators need to consider keeping records to show that:

- Proper checks were made.
- Those who might be affected were identified.
- Significant risks will be dealt with, taking account of the number of people who might be exposed, and the likelihood of the risk.
- Any precautions are reasonable, and the remaining risk is acceptable.

Communication

26. Good communication of the inspection and assessment process, and the results of this, is crucial to obtaining the support of the local community. The bereaved, memorial owners, friends' groups and members of the public generally accept the need for an inspection and assessment programme if they are properly informed. It is vital to avoid a programme that focuses solely on safety of memorials, without thought to obvious potential for distress the programme may cause - particularly where improvements are needed.
27. Individual operators will know the best means of communicating in their particular circumstances but, for example, notices may be displayed at entrances to the burial ground concerned and in other prominent places within it. Given the infrequency of individual visits other communication channels might include local radio, the council's website, advertisements in the press, articles, letter drops and so on. Listed building or scheduled monument consent will also be needed for memorials of special historic interest.
28. Where a memorial has been deemed at immediate risk and work needs to be undertaken clear information should be posted in burial grounds. Notice should be placed on or near to these memorials, giving contact details and the period within which contact can be made. Where the grave owner is known, it is good practice to notify them to give them the opportunity to repair the memorial.

Concluding comments

29. This guidance sets out 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 that they are doing what they can to minimise the risks to health and safety in a proportionate, sensible and sensitive way.

For further information telephone 0203 3346386

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MINISTRY OF JUSTICE

MEMORIAL SAFETY GUIDANCE¹: FREQUENTLY ASKED QUESTIONS AND ANSWERS

Do I have to follow this guidance?

The guidance has no specific legal status, but sets out minimum standards of good practice that will help burial ground operators meet their legal obligations and duty of care. It was drafted with the assistance of burial professionals and has been widely endorsed by Ministers, the HSE and the LGA. Burial ground operators would be expected to give the guidance very careful consideration.

Can I undertake a more detailed assessment of memorials and implement additional safety measures, if I wish?

If, as a result of a risk assessment, you believe further precautions to be necessary in any particular case, they should be carried out. However, health and safety law does not require burial authorities to do more than is reasonably practicable to manage the low risk of memorials causing serious injury. In deciding to do more than the guidance recommends, a burial authority would need to consider whether this could be justified, especially if additional costs were to be imposed on families or local taxpayers as a result.

Doesn't any memorial that is loose present an imminent risk of causing serious injury?

No. It may be possible to cause a memorial to move, but that does not mean that it is liable to fall, or, if it does, to cause serious injury. Some memorials will be held upright by ground anchors. Other memorials may be loose, but by virtue of their size, location or lack of nearby traffic they may be unlikely to cause serious injury if they were to fall or to give way under pressure.

Burial authorities may find it helpful to maintain a system for recording the installation of ground anchors. These are not readily identifiable by visual inspection, but knowledge of their presence in relation to specific memorials could be helpful during any periodic inspection process.

How do I assess the likelihood that a loose memorial will cause serious injury?

Local health and safety advisers should be able to assist with such assessments. It is, however, important to distinguish between the hazard and the risk. A hazard is anything that may cause harm; the risk is the chance, high or low, that somebody could be harmed by a hazard, together with an indication of how serious the harm could be.

Whereas an unstable memorial could present a hazard with potential to cause injury, the risk assessment would consider all relevant local factors and balance the probability of imminent failure or collapse of the memorial against the likelihood of someone being in close vicinity at the time, and the likely severity of any injury that may be caused. This should not be over-complicated and in a public place such as a burial ground a subjective but balanced judgement will need to be made about the people likely to be at risk of injury. The mere fact that a passer-by may be present in a burial ground does not mean necessarily that they are at risk of harm from an unstable memorial in that burial ground.

¹ *Managing the Safety of Burial Ground Memorials*, Ministry of Justice, January 2009

How can I ensure that hand tests are applied consistently?

The purpose of the hand test is to ascertain whether there is any movement in a memorial which otherwise seems to be secure, not whether the memorial, or its fixings, can withstand any particular level of pressure.

Where movement is detected, sufficient pressure may, with care, be applied to ascertain whether the memorial locks on any ground anchor.

The hand test should only be used as part of the overall assessment of risk.

Why should I not use a pressure testing device to measure the pressure applied to a memorial?

The guidance recommends that pressure measuring devices should not be used routinely. This is because such devices will not usually add anything to an assessment made by a hand test that a memorial is not fixed securely. There are also doubts about the reliability of the results when used with the wide range of memorials that exist, with a consequent tendency to overestimate the risk. Use of such equipment can also divert attention away from the risk assessment which considers not only the whether a memorial is at risk of falling but other factors that contribute to the significant risk of serious injury including size, location, visitor traffic etc.

What does “not routinely” mean in this context?

This means that there is no need to use pressure testing devices on every memorial and that they should not be seen as the starting point in the risk assessment process. There may, however, be specific circumstances on a case by case basis where a test with such equipment may be appropriate in order to obtain information essential to the assessment of the memorial in that case.

How frequently should memorials be assessed?

It is for burial ground operators to decide how often they should assess their memorials. In doing so, they will need to take account of the findings of their risk assessments and local factors which may suggest that an assessment should be made more or less frequently. The frequency might vary between burial grounds or areas of burial grounds and might even be specific to some complex individual memorials of high public interest.

Has the 35kg pressure test in BS 8415 been rejected?

BS 8415 is understood to provide an installation standard with associated checks for construction and stability, which is considered unnecessary for general monitoring purposes across the wide range of memorials. Whether 35kg is the appropriate level of pressure has also been questioned by some practitioners and specialists.

Specific queries about BS8415, which is understood to be subject to review, should be directed to the British Standards Institute (<http://www.bsigroup.com/en/Contact-Us/>).

Compliance with the risk assessment process advocated in the guidance is likely to identify far fewer dangerous memorials. Surely that can't be right.

The guidance recommends a risk assessment process that is proportionate to the risk of serious injury occurring. Records show that the number of incidents involving a loose memorial is very low. Burial ground operators should therefore expect to identify only very few memorials which need to be made safe at a particular time.

Irrespective of any imminent risk of causing serious injury, many of our memorials have been found to be poorly installed. Surely we should be taking action to ensure that memorials are installed properly and will last a life time.

If memorials do not present a significant risk of causing serious injury, there is no need, for health and safety purposes, for immediate action to be taken to make them safe. If they have not been installed in accordance with relevant industry standards that may be an entirely separate contractual matter for the owner, the memorial mason, and/or the burial ground operator. It should not be confused with safety responsibilities.

What am I supposed to do to protect the public? Warning signs and cordons have been criticised just as much as staking memorials and laying them down.

The guidance provides some suggestions for temporary precautionary measures, but they are not exhaustive. Operators may wish to consider alternative measures, or ways to implement precautions which are more publicly acceptable. Signs and cordons do not necessarily need to be in high visibility colours, although they can be if deemed appropriate, and cordons do not need to constitute a physical barrier to prevent access, as long as the reason and purpose for their use is clear and the level of risk does not warrant more. Where signs or tapes need to be affixed to a memorial, they are more likely to be tolerated if they do not obscure any inscriptions. Any such measures should of course only be temporary pending permanent repairs.

Why should I not use a stake to support a loose memorial?

The guidance recommends that stakes should not be used routinely. This is because they can be unsightly, and the process of staking can present a risk of harm and can damage the memorial if installed without proper care. Routine use of stakes can also divert attention away from the need to consider the risk presented by a memorial. In some cases, stakes have come to be seen as a cheap, permanent or semi-permanent, solution rather than a temporary measure pending repair or restoration, and stakes themselves can be a hazard with their own risks.

Many of our memorials have already been supported with stakes. Should I now remove them?

Burial ground operators are encouraged to review the measures they may have already taken in the light of the MoJ guidance. Stakes, or any other temporary precautionary measures, can be removed where a review of the assessment shows the risks are not significant, also taking into account any residual adverse effects that might have arisen from the staking process. If the risk remains, prioritisation should be given to the repair of the memorial.

Who is responsible for repairing a dangerous memorial?

Much will depend on the facts and of course this applies only to memorials that are truly dangerous. Many memorials may have been installed before the introduction of modern standards, which should not normally be applied retrospectively. Burial ground operators will need to take this into account and ensure their assessment is suitable and appropriate to the age, design and construction of these memorials and does not overestimate the danger present.

In the rare circumstances where a memorial is considered truly dangerous there might be a number of causes. The memorial may have been poorly installed, it may have been neglected by the owner and deteriorated over time, or it may have been damaged by the cemetery staff or contractors.

Whoever may be responsible, burial ground operators are encouraged to ensure that dangerous memorials are repaired promptly and this will need to be weighed against the time it may take to contact or establish the identity of memorial owners.

Won't my authority or I be liable if an accident happens?

If an accident occurs (and accidents that cause serious injury involving memorials are very rare), depending on the apparent circumstances and severity of injury the HSE or local authority regulator may carry out an investigation. They will consider whether a significant risk was foreseeable and whether reasonable and practicable measures were taken to control such risks. These considerations are part of the risk assessment process. There is no requirement to remove all risk. A criminal law prosecution will not automatically follow just because an injury or death has occurred.

A person might pursue under the civil law a claim against you or your organisation for harm caused to them or their property. This would be settled between the parties or by the civil courts.

Advice on what may be "reasonable and practicable" can be found on the HSE website at www.hse.gov.uk/risk/theory/alarpglance.htm.

What about memorials in churchyards or consecrated parts of a cemetery?

Any work to be undertaken on consecrated land which is subject to the faculty jurisdiction needs to be authorised by a faculty in the normal way. The MoJ guidance does not supersede the terms or conditions under which a faculty may have been granted to allow memorials to be assessed and repaired. However, it may be appropriate to consider whether an application should be made to vary such terms and conditions if they appear to conflict with the principles set out in the guidance.