

DIOCESE OF ST EDMUNDSBURY & IPSWICH

DANGEROUS UNSAFE AND UNSTABLE MEMORIALS IN CHURCHYARDS

Guidance Notes for the use of Incumbents, Churchwardens And Parochial Church Councils

1. **Scope**

The purpose of these notes is to give guidance to incumbents, churchwardens and parochial church councils as to how to deal with dangerous, unsafe or unstable memorials in churchyards.

2. **Legal Background**

- 2.1 The legal ownership of the churchyard of a parish church is generally vested in the incumbent and if the churchyard remains open responsibility for its maintenance rests with the parochial church council (the PCC).
- 2.2 If the churchyard has been legally closed by Order in Council responsibility for maintenance will generally have been passed to the local authority (the parish town or borough council) under provisions in the Local Government Acts. In these cases the ownership of the incumbent remains unaffected as does the Faculty Jurisdiction but liability for maintenance rests with the local authority. Subject to what is said below this extends to memorials.
- 2.3 Monuments in churchyards are the property of the legal heirs of the people commemorated. The legal heirs of the deceased have the primary responsibility for maintaining a memorial. Inevitably however as time passes it may become more and more difficult to identify or trace the legal heirs in a particular case.
- 2.4 Even though the primary responsibility for maintaining a memorial rests with the legal heirs of the person commemorated the PCC (or if the churchyard is legally closed, the local authority) has a general responsibility to maintain the churchyard in decent order. This may mean safe order also and the duty may extend to all churchyard memorials including tombs, war memorials and churchyard crosses. This obligation may extend to the incumbent as owner (whether or not the churchyard is closed) and also the PCC even though the churchyard is closed. For these reasons incumbent, churchwardens and PCCs should monitor on a continuing basis the state of their churchyards whether open or closed.

3. **Insurance**

Because of the duties that may exist to maintain a safe churchyard incumbents, churchwardens and PCCs must ensure that adequate public liability insurance cover is taken out and maintained to provide cover against claims in respect of damage to

or destruction of property, personal injury and death. It is strongly recommended that such cover should indemnify the incumbent and churchwardens as well as the PCC and that such cover should be in place irrespective of whether the churchyard is open or closed. Where the churchyard is closed PCCs should consult with their parish or town council to ensure that all parties are adequately covered.

4. Recommended procedure when the churchyard remains open

4.1 The PCC should ensure that there is a continuing audit monitoring the physical state of repair of all tombs, headstones and other memorials in the churchyard including any churchyard extension. The day to day responsibility for this should be delegated either to the churchwardens or to one or more specified PCC member whose duty it should be to report back to the PCC on a regular basis.

4.2 When a tomb, headstone or other memorial is found to be in a dangerous unsafe or unstable state immediate action must be taken in respect of it. If the family member or members likely to be responsible for its maintenance are identifiable they should be contact immediately and informed. Circumstances will vary but if those to whom the PCC has delegated the function of churchyard monitors consider the memorial to be dangerous unsafe or unstable immediate action should be taken by them in the case of the headstone to lay it flat or in the case of a tomb to cordon it off marking it with appropriate warning notices. At the same time the insurance company should be notified immediately and if it requires any specific steps to be taken those requirements should be implemented.

4.3 Where action such as is recommended in 4.2 above is taken the Archdeacon should be notified at the same time and given details in writing.

4.4 In appropriate circumstances incumbents, churchwardens and PCCs may petition for Faculty for the repair or removal of a dangerous unsafe or unstable memorial. In so doing they may cite the legal heirs of the person commemorated to pay the cost of repair or removal if such person or persons are identifiable. Otherwise the cost of repair or removal will fall upon the PCC.

4.5 If incumbents, churchwardens or PCCs are in any doubt as to what action they should taken in a particular case they should consult with the Archdeacon or with the Diocesan Registrar.

5. Recommended procedure where the churchyard is closed

5.1 Even though the churchyard is closed the PCC should still operate a procedure whereby the physical state of repair of all tombs, headstones or other memorials in the churchyard is monitored. If in so doing it finds that a memorial is in a dangerous, unsafe or unstable state it should notify the appropriate officer of the town or parish council immediately by giving full details by telephone, fax or e-mail and if by telephone confirming the content of the conversation by fax, e-mail or letter. The town or parish council should then take similar steps to those set out in paragraphs 4.2, 4.3 and 4.4 above.

5.2 Even though the churchyard is closed the churchyard monitors should ensure that the insurance company is notified.

6. Contact Details

For further advice in relation to dangerous unsafe or unstable monuments please contact your Archdeacon or:

Diocesan Registrar James Hall, Diocesan Registry, 20-32 Museum Street,
Ipswich, IP1 1HZ. (Tel. 01473 406 270)
E-mail: james-hall@birketts.co.uk

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