

## ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	<b>Meeting:</b>	<b>Cabinet Member for Cultural Services and Sport</b>
2.	<b>Date:</b>	<b>15<sup>th</sup> June 2010</b>
3.	<b>Title:</b>	<b>Closed Cemetery Memorial Management</b>  <b>Wards affected:</b> Wingfield, Rawmarsh, Swinton, Silverwood, Rotherham East, Rotherham West, Boston Castle, Rother Vale, Holderness, Wales Anston, Woodsetts, Dinnington.
4.	<b>Directorate:</b>	<b>Environment and Development Services</b>

### 5. Summary

To seek Member approval of the proposed new Closed Cemetery Memorial Safety Policy and the associated programme of safety inspections in Council maintained Closed Cemeteries.

### 6. Recommendations

- i) That the proposed new Closed Cemetery Memorial Safety Policy in **Appendix 1** of this report be approved for implementation by Culture and Leisure Services (C&L).
- ii) That officers in Culture and Leisure Services be instructed to proceed with the commissioning of memorial testing in Rotherham Council-maintained Closed Cemeteries.

## 7. Proposals and Details

'Closed' cemeteries or churchyards are those which have been closed by an Order in Council and are no longer used for burials. As a closed cemetery operator and manager, Culture and Leisure Services (C&L) is required to have systems in place to control the risks to their employees, contractors, volunteers and members of the public from cemetery memorials such as headstones and from other elements like trees, walls and paths. Responsibilities are set out in the Local Authorities Cemeteries Order 1977 (LACO), Health and Safety at Work Act 1974 (HSWA74), and Management of Health and Safety at Work Regulations 1999.

The main element in closed cemeteries which requires assessment and management is memorials such as headstones. Other cemetery buildings are not the Council's responsibility, but remain the responsibility of the churches. This report focuses on memorials because of the potential severity of the risk of unsafe headstones. Other assets that C&L are responsible for, including trees, boundary walls, footpaths and grass, will be considered in a separate policy.

### Risk

In the past 30 years nationally 8 people have been killed by falling headstones. No such fatalities or serious injuries have occurred in Rotherham. However, as there are 1328 headstones in closed cemeteries in Rotherham it is important to undertake a programme of inspection to minimise any such risk. The proposed new *Closed Cemetery Memorial Safety Policy and Specification for the Inspection of Memorials in Council Maintained Closed Cemeteries* which have been drafted by the Green Spaces team, detail how risks will be assessed and managed. The policy and testing specification take into account the recommendations made by the 2009 Ministry of Justice guidance, *Managing the Safety of Burial Ground Memorials*. This guidance advises against the use of mechanical 'topple testing' equipment.

C&L have consulted with neighbouring local authorities, including Doncaster and Barnsley, to examine how they manage their closed cemeteries. Poor execution of testing by some local authorities in the past has highlighted the need to ensure that memorial testing is done in a sensitive way and is well communicated.

### Communication

Ownership of memorials such as headstones remains with the family of the deceased and so there is a requirement to communicate with memorial owners and the community where memorials are found to require maintenance. Reasonable effort should be made to contact the family of the deceased. This may be difficult in the case of closed cemeteries, where monuments typically date from between 1750 and 1950. Only when there is an identified immediate risk of serious injury should action be taken without this step. The testing of headstones can be an emotive activity if not properly communicated and the rationale explained. To avoid this and to ensure the work is done in a sensitive way, C&L will adopt the protocols used by Dignity plc for communication and inspections in Rotherham's open cemeteries. These protocols were formulated by RMBC Cemeteries prior to out-sourcing, and were tested in 2005 by the Local Government Ombudsman, who deemed them to be fair and reasonable.

## Proposed timescales

Activity	Target date/start	Expected Duration
Cabinet member briefing and approval of policy	June 2010	
Briefing dioceses and churches	June/July 2010	4 weeks
Public notification of inspection and testing	August 2010	6 weeks
Memorial Inspection programme/testing	September/October	Up to a month
Audit and other liabilities (including trees, walls, footpaths) begins and proposed work programme drafted (timescales to be confirmed)	September 2010	9 months
Re-inspection of some memorials	September 2011	1 week
Memorial Inspection programme/testing	September 2015	2-3 weeks

## Proposed works

Because of the number of sites (13) and headstones (1328) and the lack of specialist skills and machinery/equipment in-house, it is proposed that contractors are employed to carry out the testing. It is proposed that Glendale Countryside, who maintain Rotherham's open cemeteries, operated by Dignity for Rotherham Council, will be appointed to do this. The estimated cost of this work is below the threshold set by Council Standing Orders requiring competitive quotations to be obtained. Glendale's operatives are experienced in all aspects of cemetery management and have particular experience in headstone testing in Rotherham. It is proposed that they will be contracted to test all headstones in the closed cemeteries, and also to make safe any headstone found to be 'immediately dangerous' (Priority 1) at the time of inspection, which will typically mean laying the headstone down.

Memorials identified as not an immediate danger to the public but not fully stable may need action to make them stable in the longer term (Priority 2). Notices will be fixed to such monuments and the grave owner requested to contact C&L to arrange repairs. A follow-up inspection will be made within 12 months. If no contact has been made or repairs carried out on re-inspection, then the headstone will be made safe by laying down or dismantling. Memorials found to be stable (Priority 3) will require no action. After initial testing and follow up inspections, all headstones will need to be tested again in five years time.

In addition to the headstone testing an audit will be carried out by C&L of other assets including trees, walls and footpaths within cemetery sites. A policy for the maintenance of these other assets /liabilities and a programme of inspections and remedial works will then be developed, informed by this audit.

Laying down or dismantling of headstones has been identified as the most affordable means of making memorials safe and mirrors management on Rotherham's open cemeteries, where grave owners (or other interested parties) do not present themselves to pay for repairs.

## 8. Finance

The initial inspection to be carried out by Glendale Countryside's qualified memorial masons and cemetery operatives will cost £4780.80, which includes the cost of making safe Priority 1 headstones. The initial testing programme will inform C&L of the cost of re-inspections and making safe of Priority 2 headstones; this is expected to be much less than the initial

inspection, based on contractor feedback on their experience of similar work. These works will be funded from Grounds Maintenance budget.

## **8. Risks and Uncertainties**

The proposed work is needed to minimise the risk of injury or death caused by unsafe memorials, walls, trees and footpaths and potential claims against the Council arising from this.

While the initial inspection and laying down of dangerous memorials is included in the £4780.80 sum, there will be another category of work, the exact extent of which is yet to be determined - which is the re-inspection of Priority 2 headstones. However based on contractor feedback from initial site visits this is not anticipated to be a major potential cost.

Until a full audit of the other features within cemeteries, (e.g. trees, wall and footpaths) is carried out the full cost of any inspection and remedial works for these other features is unknown.

## **9. Policy and Performance Agenda Implications**

This project will contribute to achievement of the Corporate theme Rotherham Safe: Rotherham will be a place where neighbourhoods are safe, clean, green and well maintained...A preventative approach will be taken to minimise...accidents and hazards.

## **10. Background Papers and Consultation**

Culture and Leisure Services Closed Cemetery Safety Policy. June 2010

Specification for the Inspection of Memorials in Culture and Leisure maintained Closed Cemeteries. June 2010

Ministry of Justice Report, '*Managing the safety of Burial Ground Memorials*'. January 2009

House of Commons Library, 'Unsafe Headstones in Cemeteries' March 2009  
Closed Cemetery Safety Policy

Local Government Ombudsman 'Memorial Safety in Local Authority Cemeteries' March 2006

Health and Safety Executive guidance:  
<http://www.hse.gov.uk/services/localgovernment/cemletterannex.htm>

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## Appendix 1. Culture and Leisure Services Closed Cemeteries Memorial Safety Policy

### 1.0 Background

- 1.1 In recent years there has been increasing attention on the safety of cemeteries and in particular the stability of memorials and the risks which these present to visitors and staff.

Culture and Leisure Services (C&L) is putting measures in place to deal with memorial safety and the overall health and safety in closed cemeteries. In 2009, the Ministry for Justice introduced revised guidance for managing the safety of headstones and other risks within cemeteries. This policy seeks to adopt the principles of that guidance, Health and Safety Executive requirements and recommendations of the Local Government Ombudsman.

- 1.2 This policy relates to all 'closed cemeteries and burial grounds' maintained by Culture and Leisure Services. 'Closed' cemeteries, or churchyards, are those which have been closed by an 'Order in Council' and are no longer used for burials.

- 1.3 There are 13 closed cemeteries/churchyards in the Borough. These are:

1. All Saints, Wath upon Dearne
2. All Saints (Minster), Rotherham Town Centre
3. All Saints, Aston
4. Cholera Burial Ground, East Dene
5. Cholera Burial Ground, Clough Rd
6. Greasborough Parish Church
7. Kilnhurst St Thomas, Kilnhurst
8. St Helen, Treeton
9. St James, Anston
10. St John the Baptist, Hooton Roberts
11. St John the Baptist, Wales
12. St Leonards, Dinnington
13. St Mary, Rawmarsh

- 1.4 Primary responsibility for health and safety in the above closed cemeteries currently lies with Rotherham Council's Culture and Leisure Services.

### 2.0 Legal and Statutory Framework

- 2.1 Local Government Act 1972: Section 215 of the Act requires Local Authorities to take responsibility for the maintenance of 'closed churchyards' if asked to do so by the Church. Ownership of the church yard/cemetery does not transfer to the Council. Under the Act, maintenance is described as '*keeping it in decent order and its walls and fences in good repair.*'
- 2.2 Health and Safety at Work Act 1974 and Occupiers Liability Act 1957: under the Acts, overall responsibility for health and safety at these sites lies with Culture and Leisure Services as they have a duty to make sure sites are maintained in such a way that risks are properly managed. Culture and Leisure Services has a responsibility to staff

(Section 2 Health and Safety at Work Act 1974) and a responsibility to visitors (Section 3 Health and Safety at Work Act 1974)

2.3 Local Authorities' Cemeteries Order 1977:: Article 3(2)b empowers a burial authority to take any action that is necessary to remove a danger that arises by means of the condition of a vault, tombstone or other memorial. The burial authority has an obligation to keep the cemetery in good order and repair (Article 4(1)). The burial authority has various powers under Article 16. Under Article 16(1), it may put and keep in repair any memorial in a cemetery. The primary responsibility to maintain the memorial rests with the owner. However, in practice, in particular with older memorials, it may not be possible to trace the owner. The burial authority may, under Article 16(2), also remove from the cemetery and destroy any tombstone or other memorial on a grave which is dilapidated by reason of long neglect. It may alter the position on a grave of a memorial etc, or re-erect it at another place in the cemetery. It may level the surface of any grave to the level of the adjoining ground. These powers may only be exercised in accordance with Schedule 3 of the Order. This requires the authority to comply with publicity provisions on site and in the local press, and serve notification on the owner of the right to place and maintain the memorial or on the person granted permission to place it.

2.4 Faculty: Formal written permission or licence from a Church of England bishop to carry out designated work in consecrated ground. The jurisdiction is normally exercised by the diocesan chancellor. For work on consecrated areas Culture and Leisure Services have to apply to the Diocese of Sheffield. L&GS currently has this permission through a 'Faculty'. This Faculty gives permission to carry out maintenance work including the safety testing of memorials. The current Faculty is valid from May 2010 until April 2115

### **3.0 Headstones and Memorials**

3.1 C&L will carry out a programme of inspections on all memorials in closed churchyards to ensure they remain safe places for visitors and staff.

3.2 Nationally, in the past, a number of local communities have been shocked and aggrieved by the actions of councils laying flat hundreds of grave memorials as a result of health and safety inspections. To people visiting after such events it has looked as though vandalism on a large scale has desecrated their cemeteries. The Local Government Ombudsman has found:

- Maladministration in the failure to ensure adequate publicity/notification before carrying out stability testing or laying down individual monuments which 'fail' the testing;
- Not having in place a proper system for risk assessment and subsequent prioritisation of work;
- Lack of proper training for those carrying out testing and the failure to seek advice from a suitably qualified person.

3.3 Ministry of Justice guidance (2009) outlines the sensible and measured approach to managing the safety of memorials. As there is continuing public concern on this very sensitive issue it is important to have a written policy and protocols..

- 3.4 In order to assess the risk of individual headstones and memorials, each will need to be 'inspected and tested'. Following guidance from Ministry of Justice, Local Government Ombudsman, Health and Safety Executive, comparing practice in neighbouring authorities and current headstone safety policy in Rotherham's 'open cemeteries' operated by Dignity, C&L have devised a policy and methodology to ensure headstones are inspected and assessed fairly, with good communications with interested parties prior to and following testing.
- 3.5 This policy concerns itself specifically with memorial and headstones. At a later date, policy and methodology for other liabilities such as trees, walls, paths and steps will be added.
- 3.6 Whilst C&L has overall responsibility for the safety and risks from unstable memorials, it does not own the memorials. The owner of the memorial is the grave owner. In many cases there is no identifiable owner due to the age of the memorials, some of which date back to the Victorian era or earlier.
- 3.7 The responsibility for buildings in the closed churchyards and cemeteries remains entirely with the church and is outside the maintenance obligation of C&L.
- 4.0 **Training/Competency**
- 4.3 Testing will be carried out by trained operatives. All staff involved in inspections of memorials should be fully trained in testing methods, consistency, record keeping, manual handling and personal protective equipment. Trained staff will ensure consistency and safety during the inspection process.
- 4.2 Because of the limited number of sites and headstones and the lack of specialist skills and machinery/equipment in-house, it is proposed that the skills necessary to carry out the specific area of headstone testing be 'bought in'. Contractors with regular experience in this specialist area will be able to carry out the testing work far more quickly and consistently than inexperienced trained Council officers. Should contractors come across memorials that present an 'immediate danger', they will have the tools, plant and safe methodology to deal with the structures.
- 4.3 External contractors will therefore be appointed to carry out inspections and recording, to the specification detailed in 'SPECIFICATION FOR THE INSPECTIONS OF MEMORIALS IN CLOSED CEMETERIES in ROTHERHAM'.
- 5.0 **Initial Inspection Programme**
- 5.1 An initial inspection will be carried out to identify any memorials posing an 'immediate danger' to the public. The inspection will be carried out by trained operatives appointed by Culture and Leisure Services, in September 2010, following consultation and notification of all interested parties. After initial testing and follow up work, headstones will be tested every five years.
- 5.2 The programme will comprise of a visual inspection of each headstone and the use of a 'hand push test'. Each test will be recorded in writing and held on an electronic database.

5.3 Within the programme, although all headstones will be tested, areas will be prioritised for headstone testing using the following criteria:

1. Areas likely to contain significant numbers of unstable structures;
2. Larger structures which can be expected to cause most injury or damage;
3. Areas where there is most human traffic.

These areas have been identified through mapping of each site and mapping compartments created, which contractors will use to guide the inspection.

Culture and Leisure Services will not test memorials that have already been laid down or which have fallen down prior to inspection.

5.4 Operatives working on behalf of C&L will test existing installed memorials for condition and stability in accordance with Annex B of British Standard BS 8415:2005 'Monuments within burial grounds and memorial sites – Specification', with the exception of Section B.11.

5.6 Where ground is consecrated C&L will ensure notification protocol has been followed before inspections/works begin.

## 6.0 **Hand Push Testing**

6.1 In addition to a thorough visual inspection of a headstone and the recording of these observations the headstone will be tested for stability using a 'hand push test'. In line with Ministry of Justice guidance mechanical testing equipment will not be used.

6.2 The hand push test is the careful application of pressure to a headstone, with a gradual build up of force to the value of 35kg. Experienced testers are able to apply this pressure through the development of 'muscle memory'. The monument will either:

- i) Not move and be stable (this is low risk);
- ii) Moves to some extent, not fully stable (this is not an immediate risk);
- iii) Fail (this is immediately dangerous). Failure equates to anticipation by the tester that the headstone will continue to move and fall if full 35kg force applied. Full details and specification for the hand test and visual inspection can be found in the Specification.

## 7.0 **'Immediate Danger'**

7.1 In cases of 'immediate danger', C&L is empowered under the provision of the Local Authorities Cemeteries Order 1977 (LACO) Article 6 (1) to take immediate action to make safe dangerous structures and memorials.

7.2 C&L are prohibited from taking direct action to remove an unstable memorial which presents 'no immediate risk', without following the strict protocols laid down in LACO, attempting to seek the permission of owners ( through the posting of public notices etc) before action is taken.

## 8.0 Options following inspection

Following a headstone being inspected and found to be unstable several options can be considered, as follows:

### 8.1 Laying Down Memorials

This is the most effective way to quickly reduce the risk of falling. It is however not without potential risks which include damage to memorials and the creation of possible tripping/slipping hazards. This option will be employed in instances where immediate danger is identified.

### 8.2 Structurally Supporting Memorials

This is a time consuming and expensive option. Many memorials cannot be supported without presenting tripping hazards from supporting structures. This option will not be adopted except as a temporary emergency measure.

### 8.3 Cordoning Memorials

This is considered to be the cheapest and quickest option, but it is the least effective. Visitors are prevented from accessing graves and the integrity of the cordon can be easily breached. This option does not remove the risk and therefore will only be used as a temporary emergency measure.

### 8.4 Repairs

This option is not appropriate in the first instance. It is time consuming and very expensive. C&L will not carry out repairs. However relatives or interested parties may elect to fund a repair.

## 9.0 Risk assessment categories for headstones

9.1 For the purposes of the C&L programme, the following risk assessment categories will be used to determine action taken following inspections of headstones:

Priority 1:

The memorial is in an immediately dangerous condition. Remedial action must be taken at the time of inspection, in most cases by being 'laid down';

Priority 2:

The memorial is not an immediate danger to the public, but is not fully stable and therefore, may need action to make it stable. Notices to be fixed to the memorial requesting the grave owner to contact C&L within 10 months. Headstone to be re-inspected in 12 months and if necessary laid down, dismantled or, if grave owner or interested parties elect to fund, repaired;

Priority 3:

The memorial is perfectly stable. No action required. Memorial to be inspected again in 5 years time.

Laid down/fell down in the past: No attention required, no inspection needed.

- 9.2 When a memorial is assessed as Priority 2, the owner of the 'Right of Burial' will be sought (through the placement of notices) and requested to repair the memorial at their expense. Due to the difficulty in making contact with the owners of graves within closed cemeteries, the high visibility sticker will be applied to the grave, informing the owner of the condition of the headstone (as identified by the inspection) and a telephone number to contact to arrange for the headstones repair, if they wish to fund this work.
- 9.3 C&L will not be "staking" any Headstones. Instead, the owners are given notice to rectify any problems encountered and provide a long term solution to any potential health and safety risks to the public and operatives alike. The safety of individual headstones and ultimate liability remains with the grave owner, however efforts will be made to inform them through notices, so they have an opportunity to repair the headstone if necessary.
- 9.4 If the owner has not made themselves known within a period of 10 months the Council will make safe the memorial by laying down or dismantling.

#### 10.0 **Communication and Testing Protocol**

The communication and testing protocol used in Rotherham's open cemeteries, currently managed by 'Dignity', will be adopted, with selected amendments, to reflect the age of the memorials typically found in closed cemeteries. This protocol was 'tested' and *acknowledged to be fair* by the Local Government Ombudsman in 2005.

##### **Closed Cemetery Memorials Testing Protocol**

- i. Notify Local Councillors and Vicars, by phone and letter 8 weeks prior to testing.
- ii. Notify media of the intention to carry out testing (e.g. advert in local newspaper) 6 weeks in advance.
- iii. Notify resident communities nearby 6 weeks in advance, through notices.
- iv. Notices placed on all entrances to the cemetery at least 6 weeks prior to commencement of test programme
- v. Commence headstone testing 6 weeks after notices placed. Inspections to be carried out in accordance with procedures outlined in 'SPECIFICATION FOR THE INSPECTIONS OF MEMORIALS IN CLOSED CEMETERIES in ROTHERHAM'
- vi. Headstones identified as Priority 1 to be made safe immediately by laying down.
- vii. Headstones identified as Priority 2, to have high visibility sticker attached requesting grave owner to make contact with C&LS within 10 months.
- viii. Headstones identified as Priority 3 will be perfectly stable and will only need to be inspected in 5 years time.

- ix. 'Notice of intention to dismantle/lay down headstones' to be displayed on all entrances to the cemetery and released to the media 10 months after high visibility sticker placed (on Priority 2 headstones).
- x. Dismantle/lay down headstone one month after 'Notice of intention to dismantle/lay down headstones' (approx 12 months after initial inspection if repairs have not been carried out).

## 11.0 **Longer Term Headstone Inspection and Frequency**

### 11.1 Frequency

Year 1 (2010/11): Visual inspection and 'push test' every memorial headstone.

12 months later: Revisit/re-test Priority 2 headstones if repaired. Lay down unrepaired memorials.

Year 5 (2015/16) Re-inspect all headstones and thereafter every five years.

### 11.2 Actions

Memorials will be categorised as Priority 1, 2 or 3 at each inspection and managed according to risk assessment categories detailed in 8.1.

### 11.3 Records

Electronic records shall be kept of any action taken in relation to memorial safety and inspection. A copy of these records is to be kept by Culture and Leisure Services. Full details of recording information can be found in SPECIFICATION FOR THE INSPECTIONS OF MEMORIALS IN CLOSED CEMETERIES IN ROTHERHAM. A digital photograph record will be kept of any memorial which needs to be dismantled to capture the memorial condition prior to dismantling. Records from headstone testing programmes will be linked to MapInfo base mapping carried out for all closed cemeteries.

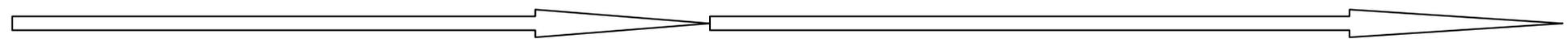
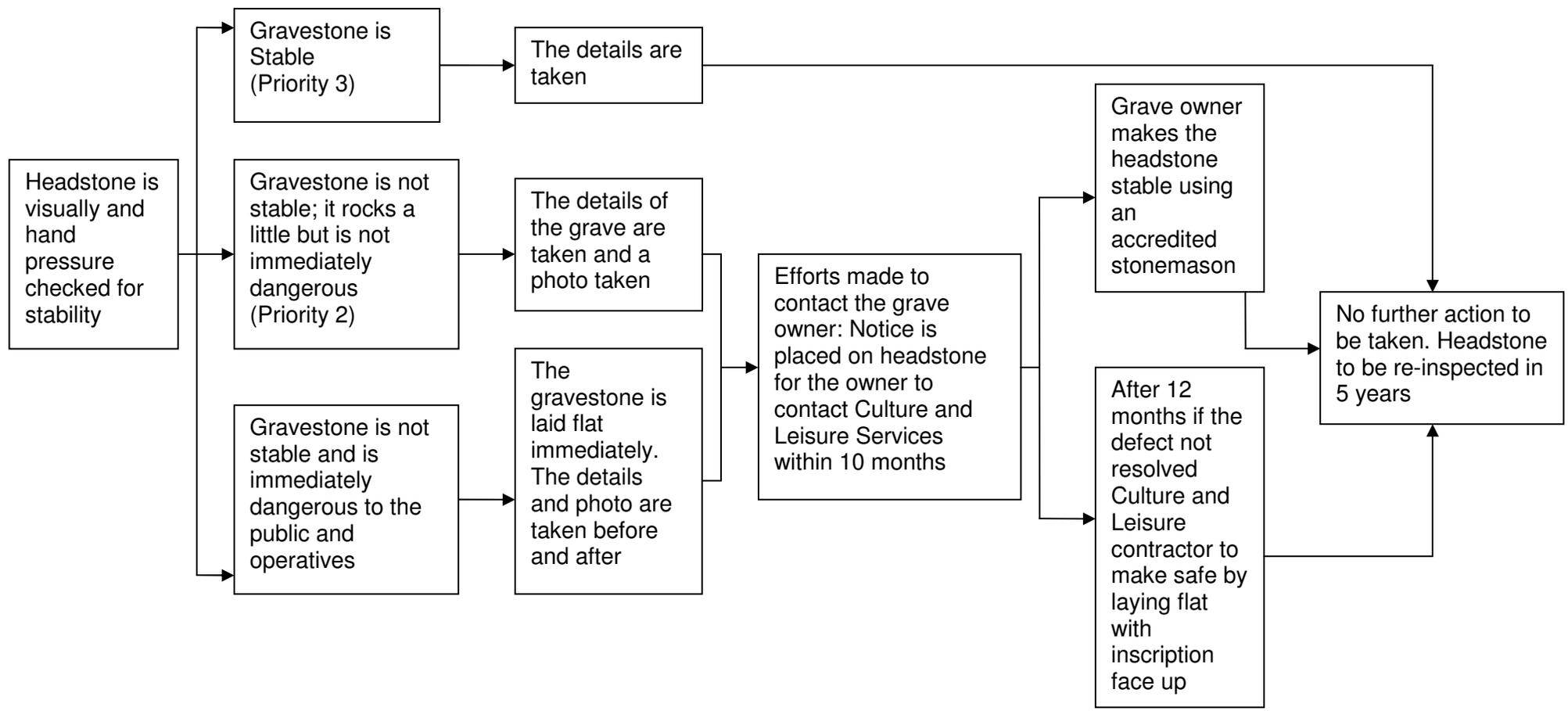
### 11.4 Notification

Notification of any action in relation to an individual memorial will be posted on the memorial and all entrances to cemeteries timescales listed in Communication and Testing Protocol 9.0.

## 12. **Funding**

Monies allocated to closed cemetery management through the Grounds Maintenance budget (£20,000 per annum) will be used to fund the initial testing programme in September 2010 (Year 1). A programme of re-inspection and making safe of Priority 2 memorials in September 2011 (Year 2.) will be funded from grounds maintenance budget. Following the initial testing and follow up inspections in Year 2, and informed by the audit of other assets, L&GS will be able to make a clear estimate of further expenditure necessary to maintain the cemeteries in safe order on an annual basis.

**Flow Chart Procedure for Headstone Testing in Closed**



One day

Up to 12 months