



# NATIONAL ASSOCIATION OF MEMORIAL MASONS

FOUNDED 1907 INCORPORATED 1987

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## 30-Year Guarantees on New Memorial Installations Advice for Burial Authorities and Memorial Masons

The National Association of Memorial Masons ("NAMM") has become increasingly concerned at the increase in Burial Authorities unilaterally seeking to impose 30-Year Guarantee demands for new memorial installations on its membership.

NAMM wishes to make it very clear that (for reasons it shall go on to detail below) it considers these demands to be unreasonable, unfair, undeliverable and completely unacceptable.

By the means of this document, NAMM seeks to communicate its stance on this issue and to clearly outline the reasons for adopting this position.

Prior to preparing this document, NAMM sought the advice of specialist leading Counsel and his views are reflected in it.

The comments made by NAMM, predicated upon the advice of leading Counsel are as follows: -

1. It is believed that, initially, Burial Authorities were incorrectly advised and given misleading information that there is a strong case for demanding a 30-Year Guarantee based upon the comments made by Lawrence J in the case of *Brown -v- Cotterill* [1934]. Burial Authorities have been seeking to rely upon one passage in the Judgment of Lawrence J where he observes "*There is no question in this case as to lapse of time or of repair, it being agreed that a tombstone properly erected ought to stand for at least thirty years without repair.*" The passage relied on is merely a reflection of the evidence put before the Judge by the parties. However, the case itself turned on the negligent method of fixing chosen by the particular mason who was the subject matter of the proceedings and not on the Judge's observation, which is strictly irrelevant to the central holding in the case. This was that a mason owes a duty of care to those who may lawfully visit the cemetery to use that degree of care and skill that may reasonably be required of a professional memorial mason to fix memorials so as to take all reasonable steps to avoid causing personal injury to those who lawfully visit cemeteries.

NAMM and its membership all subscribe to the view that they should take reasonable care and skill and this is more than adequately reflected in NAMM's Code of Working Practice.

2. The Burial Authorities seeking to rely upon the comment highlighted above in the case of *Brown -v- Cotterill* merely misread the case by using it as a proposition that a memorial mason ought to be able to give a warranty where a memorial will not require repair within the first thirty years of its life. For the avoidance of any doubt, the case is strictly only authority for the existence of the duty of care we have referred to above.
3. As NAMM's Code of Working Practice does follow best practice, it delivers and should be accepted as the strongest form of guarantee available to the bereaved family.

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4. By way of analogy, service, maintenance clauses and exclusions in contracts accompany products and may incorporate a guarantee of two, four or five years. However, where a guarantee is reliant on others (suppliers of parts and materials) they too must guarantee their product for a matching period of time. When dealing with the installation of memorials similar matching guarantees would be required against the potential failure of pre-installed concrete foundations, subsidence, erosion etc. from the Burial Authority. There would also need to be a guaranteed undertaking to backfill the excavation (grave) to current building construction standards. In reality, the suppliers of natural stone, adhesives and other components will not provide a 30-Year Guarantee and Burial Authorities will not guarantee the quality of their work and materials or the land for such a period. In such circumstances, our membership cannot be expected to provide a guarantee for a period of time for which no one else will.
5. In order to indemnify himself against financial risk for thirty years, the memorial mason would need to obtain insurance. A thorough investigation of both the UK and European insurance market by a leading broker on behalf of NAMM has revealed that not one single insurer or underwriting is prepared to provide this cover.

In view of the above, the memorial mason is left entirely on his own to bear all the risk, his material suppliers will not provide him with a guarantee and he cannot obtain insurance. This is simply unfair. Having carefully considered the rights of the Local Authorities to make such demands as a 30-Year Guarantee on the memorial installations under the terms of the Local Authority Cemetery Order 1977, leading Counsel is of the opinion that in view of the points outlined above the demands would be considered unreasonable and therefore capable of being challenged.

In summary, NAMM's preferred solution would be as follows:

- 1) Burial Authorities insist that **all** memorials – including those re-fixed and those requiring additional letterings be reinstated to NAMM's current Code of Working Practice (in support of the current BS8415) – in reality this would provide the best guarantee of long term stability.
- 2) All Burial Authorities insist on a 10-Year Stability Guarantee in line with NAMM's Code of Working Practice.
- 3) Memorial insurance is recommended on all cemetery application forms as the memorial is the responsibility of the customer.

NAMM is of the opinion that discussion is undoubtedly preferable to confrontation and would therefore invite comment on the 30-Year Guarantee issue from any Burial Authority wishing to contribute. NAMM would also be pleased to visit any authority currently contemplating the inclusion of a 30-Year Guarantee within its rules with a view to debating such a proposal ahead of any final decision having been taken.

We look forward to hearing from you.

Yours faithfully



Philip Potts  
National Executive Officer

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