

FALKIRK COUNCIL

Subject: NATIONAL REPORT ON INFANT CREMATIONS
Meeting: EXECUTIVE COMMITTEE
Date: 19 AUGUST 2014
Author: DIRECTOR OF CORPORATE & NEIGHBOURHOOD SERVICES

1. INTRODUCTION

- 1.1 The purpose of this report is to summarise the impact of the Infant Cremation Commission (Lord Bonomy) report on the national picture and how it relates to current Falkirk Council Cremation practice. Lord Bonomy's report was published in mid June 2014.
- 1.2 The remit of the Infant Cremation Commission was "to review the current policies, guidance and practice in Scotland in relation to the handling of all recoverable remains (ashes) following the cremation of babies and infants, and to make recommendations for improvement to ensure that: parents and other bereaved relatives receive clear and consistent advice and information about the disposal of such remains and have their wishes adhered to; and that any such remains are treated sensitively and compassionately".
- 1.3 The national report published by the Commission, highlights a number of areas of inconsistency at some crematoria across Scotland. It does not however specifically identify any wrong doing at Falkirk Council's crematorium. Lord Bonomy's report does however highlight the lack of adequate legislation and regulation governing the cremation of infants and foetal remains. In particular there are differences in the interpretation of key terminology and limited guidance across a range of parties involved in arranging and undertaking cremations (including Health Boards, Councils and Undertakers). The Government has already committed to a new Burial and Cremations Bill. This new primary legislation will be a vehicle for all of the recommended legislative changes. The Government plans to issue a public consultation on the Bill by the end of 2014 and Falkirk Council should proactively participate in this consultation, as an organisation with significant direct practical experience of this issue. Further interpretation of the resultant new legislation will be required and a further review of Falkirk Council practices and procedures to ensure future compliance with that new legislation will be necessary prior to enactment.
- 1.4 The Commission has recommended that The Scottish Government should establish a National Committee with responsibility for baby and infant cremations. It recommends that the National Committee should be chaired by a senior Scottish Government official. In addition to parents its membership should be drawn from authorities, organisations, professions and other bodies with a role providing bereavement support. It is anticipated that the National Committee will be established by autumn 2014.

- 1.5 The National Committee should have power to establish working groups of its membership, with co-opted members where appropriate to consider specific recommendations from the Commission's report.
- 1.6 The Commission's report recommends that Scottish Ministers should appoint an independent Inspector to monitor working practices and standards at crematoria. The independent Inspector should have authority to investigate complaints from the public about working practices and standards at crematoria, to adjudicate upon these complaints and report findings to the Scottish Ministers. The role of the Inspector should be extended to the funeral industry where there is no current provision for Inspectors.

2 MAIN FINDINGS AS THEY RELATE TO FALKIRK COUNCIL'S HISTORIC & CURRENT PRACTICE

- 2.1 Lord Bonomy's report highlights the lack of clarity and general understanding of existing weak legislation and guidance, the lack of regulatory (or trade) body input into scrutiny of practices relating to infant cremations and mentions that the possibility of some local wrong doing and that criminal acts cannot be ruled out. At the core of the Report are Sections addressing the nature and definition of "ashes" and the means available to ensure the recovery of ashes in baby and infant cremations. Sections are then devoted to how baby and infant cremation is regulated and the attendant formalities, including the forms to be completed and registration of the outcome. In the current absence of national standards and approaches, two important legislative changes proposed are that there should be a statutory definition of "ashes" and statutory regulation of the cremation of babies of less than 24 weeks' gestation. The Commission have identified a widespread lack of appreciation of the impact of the cremation process on babies and infants, together with a failure to appreciate what the public expectation of cremation is.
- 2.2 Whilst this criticism is not directed to Falkirk Council and Falkirk Council's staff have been recently commended by local stakeholders for the professional manner in which bereavement services are conducted (during the 2014 policy development panel process), it would be prudent to follow the report's recommendations to enhance staff training and awareness through further training, education and to develop sensitive communication skills.
- 2.3 The Commission suggests that Councils may still wish to undertake specific independent investigations into the practices (as they relate to historical legislation and guidance) at their own Crematoria and offers guidance in the form of key principles as to how such investigations should be undertaken, as follows;
 - **Independent and objective:** Investigations should be objective and independent of that cremation authority. The authority should seek to appoint an individual to lead any investigation who is not directly employed by that cremation authority and who can be a credible chair for any such investigation. In considering specific incidents or allegations local investigations may also wish to undertake, or separately commission, a full audit of documentary records held by any individual crematorium or cremation authority.
 - **Respectful and Sensitive:** to bereaved families.
 - **Clarity of purpose:** Investigations should have a clearly defined remit.

- **Timely:** Investigations should seek to proceed without undue delay and should include timescales for reporting.
- **Inclusive and comprehensive:** Investigations should seek to take account of all relevant evidence, including documentary evidence on local practice and policies, the experience of affected parents and the experience and perspective of staff involved.
- **Transparent:** Investigations should seek to communicate regularly with all affected or bereaved parents to ensure there is transparency about the work of the investigation and its progress
- **Primacy of criminal justice investigations:** Investigations should engage with Police Scotland and/or Procurator Fiscal in circumstances where there is any suggestion of criminal activity.
- **Reporting:** Investigation reports should be shared with the commissioning cremation authority, but should also be published and made available to all interested parties.

2.4 When considering the appropriateness for Falkirk Council of undertaking an independent investigation, the following should be taken into account;

- a) The Parliamentary response to Lord Bonyon's report included the establishment of a National Investigations unit, to investigate individual family's issues in relation to baby ashes. This unit is expected to have powers.
- b) Much of the national issues revolve around the definition of ashes (i.e. whether or not they originated from the corpse or from caskets, soft toys etc.). In all of the cases reported to Falkirk Council, there was retrieval of an audit trail which was able to conclude that in all cases ashes were recovered and the final whereabouts of ashes is known and it married with the intended destination as stated on the cremation application form. In all Falkirk Council cases, the more favourable (from the perspective of the parents) of the two definitions of ashes debated in the Commission's report was used when researching cases (i.e. Falkirk Council staff researched the whereabouts of all material remaining from the cremation process, whether it originated from the remains of the deceased or otherwise).
- c) The main difference between Falkirk Council's circumstances and City of Edinburgh Council (CEC), was that CEC's practice led to the non-recovery of some ashes and in some cases, no record of the final whereabouts of disposal. Ashes have been traced in all reported Falkirk Council cases, although only reported cases have been examined and not all historic cremations.

2.5 A number of interim improvements relating to infant cremations have been made in Bereavement Services since the first Falkirk Council cases of parental concern were reported. These were intended to be interim measures to address potential weaknesses in documentation and processes identified, pending publication of the Lord Bonyon report and include;

- a) A new management structure for Estates; including the increase of Estates Manager hours from part time to full time and the creation of a new Coordinator level post responsible for the day to day operation of Bereavement Services.
- b) Greater participation & Falkirk Council representation at Federation of Bereavement network/inter authority staff liaison meetings.

- c) Identification of procedural improvements which were possible pending the Lord Bonomy report and expected new legislation to follow.
 - d) New ISO 9000 quality accreditation and associated compliance audits (however, these are general and not specifically of infant cremation processes).
 - e) Introduction of an interim receipt system/Cremation certificate to eliminate historic reliance upon undertakers to communicate the final destination of ashes (to the family).
 - f) Formal instruction to staff to treat all applications for cremation (and associated evidence) with the diligence and accuracy expected of a passport application, to eliminate corrections to paperwork during or after cremation.
- 2.6 Lord Bonomy's report makes 64 clear recommendations to improve and standardise practice across Scotland with the aspiration to ensure that there is no repetition of the situation. Whilst many of these recommendations are aimed at other parties involved in the cremation of infant remains, the Cremation Authority is potentially implicated in nearly all recommendations and so the attached Appendix provides a summary of proposed Falkirk Council actions where they have relevance to the Council as Cremation Authority. It has been a regular feature in the cases researched by Falkirk Council that the Council has been associated with the actions and communications of medical staff and/or Undertakers. The Council therefore has a stake in all recommendations to reduce the probability of being potentially implicated or otherwise adversely affected by the actions/communications by other parties involved in the bereavement process. The table attached as Appendix 1, summarises the actions necessary by Falkirk Council going forward having reflected upon Lord Bonomy's report and how his findings could impact upon current practice in Bereavement Services.

3. CONCLUSIONS

- 3.1 The national report published by the Infant Cremation Commission in June this year seeks through legislation and guidance a consistent approach across Scotland to infant cremation.
- 3.2 Central to the implementation of the recommendations in the Commission's report will be the establishment of a National Committee. This is expected to be established in the autumn of 2014.
- 3.3 The Council will contribute to any request for information from the National Committee in formulating responses to the Commission's recommendations.
- 3.4 Officers will keep Members updated on the work of the National Committee and any implications there are for the Council as a Cremation Authority.

4. RECOMMENDATIONS

Members are invited to:

- 4.1 Consider the recommendations set out in the report from the Infant Cremation Commission and how these relate to Falkirk Council at this time.
- 4.2 Agree to consider further reports on this matter as the work of the National Committee develops.

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DIRECTOR OF CORPORATE & NEIGHBOURHOOD

Date: 9 July 2014

Ref: AAP0814-Infant Cremations

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LIST OF BACKGROUND PAPERS

1. Appendix 1 – Infant Cremation Commission Report

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 501107 and ask for David Crighton.