

Senior Inspector of Burial, Cremation and Funeral Directors

Annual Report

April 2020 – September 2021

October 2021

Introduction

1. This report has been compiled by Robert Swanson QPM, Senior Inspector of Burial, Cremation and Funeral Directors (Scotland) for the purpose of providing Scottish Ministers with a resume of duties undertaken.
2. In accordance with the requirement of Section 93 of the Burial and Cremation (Scotland) Act 2016, and in light of a change of role (as described below) from 1st October 2020, this report covers the period April 2020 to September 2021.
3. The report provides a brief background to the new appointment, a timeline relative to the introduction of new legislation, a resume of some of the challenges faced by the funeral industry in relation to the pandemic, and a summary of the enquiries / complaints reported to the Senior Inspector during this period.

Background / Timeline

4. Robert Swanson, QPM was first appointed to the post of Inspector of Crematoria in March 2015, following a recommendation in the Report of the Infant Commission headed by Lord Bony, into historical practices concerning the cremation of babies at Mortonhall Crematorium, Edinburgh.
5. The appointment was made under the Cremation (Scotland) Regulations 1935, which at that time was the most up-to-date legislation relating to cremation.
6. That legislation has since been updated by the Burial and Cremation (Scotland) Act 2016 which repealed and replaced previous Cremation Acts and came into force on 28th April 2016.
7. On 4th April 2019 the Cremation (Scotland) Regulations 2019 came into force introducing a number of significant changes, including new statutory forms, new NHS forms, provision for electronic transfer of documentation, revised retention of records, new instructions on handling and dispersal of ashes, and a requirement for Cremation Authorities to create and maintain a Crematorium Management Plan.
8. Also on 4th April 2019, the Inspector was re-appointed under the new legislation, as 'Inspector of Cremation', with a broader remit extending to the whole cremation process.
9. On 1st October 2020, as a consequence of Scottish Ministers' decision to regulate and licence funeral directors, the new post of Senior Inspector of Burial, Cremation and Funeral Directors was created, replacing the previous post held by Mr Swanson. While this report covers time periods during which Mr Swanson held the different roles discussed, he will be referred to as the 'Senior Inspector' throughout this report.

10. On 1st December 2020, Professor Gordon Findlater (current HM Inspector of Anatomy), was appointed to a parallel post as Inspector of Burial, Cremation and Funeral Directors on a part time basis.
11. Further appointments are expected to be made in the future, as part of the broader efforts to regulate the funeral sector – specifically the development of a small Scottish Government Inspectorate.

Duties Undertaken

12. Since the appointment of the Inspector of Crematoria in 2015, up to March 2020, every crematorium in Scotland (of which there are currently 31) has been the subject of an annual inspection, with a resume of the findings contained in previous annual reports.
13. However, due to the Covid-19 pandemic, all visits were suspended in March 2020, and remained so throughout most of the period subject of this report.
14. In the absence of physical visits, regular communication was maintained by telephone, Zoom, Microsoft Teams and other video conferencing, with staff from Burial Authorities, Cremation Authorities and Funeral Director businesses.
15. At the outset and throughout the reporting period for this report the Senior Inspector actively engaged in a number of regular (virtual) stakeholder group meetings including the Additional Deaths Oversight Group (ADOG), National Mass Fatalities Working Group (NMFG), and Scottish Bereavement Benchmarking Group (SBBG).
16. In addition, the Senior Inspector met (virtually) on a regular basis with members of the Scottish Government Burial and Cremation Team, the Federation of Burial and Cremation Authorities (FBCA), the Institute of Cemetery & Crematorium Management (ICCM), the National Association of Funeral Directors (NAFD) and the National Society of Allied and Independent Funeral Directors (SAIF Scotland).
17. These meetings ensured a two-way flow of information addressing all matters on a local and national level.
18. To ensure stakeholders were kept updated and informed of recent changes and developments, particularly during the Covid-19 pandemic, the Scottish Government Burial and Cremation Team created an online [Funeral Industry Blog](#). This blog was disseminated to all recipients who requested access.
19. As to be expected, the pandemic presented a significant number of challenges to the Funeral Industry in Scotland, however, and with great credit to those involved, there were very few delays to funerals beyond a two week period after booking, and all but one of the 31 crematoria have remained operational throughout the entire period of this report.

20. The one exception related to major works deemed necessary which prevented cremations from taking place.
21. Services were, however, still permitted.

Challenges

22. Most if not all members of the Funeral Industry in Scotland faced dealing with a pandemic for the very first time in their lives.
23. Whilst the majority had contingencies for dealing with an unexpected demand, the reality was that the challenges faced were not only the number of excess deaths, but dealing with these during an ongoing pandemic with all the necessary precautions and restrictions imposed by legislation or guidelines.
24. The Coronavirus (Scotland) Act 2020 was given royal assent on 6th April 2020. The Act compliments and regulates the use of emergency powers given to Scottish Ministers under the UK Parliament's Coronavirus Act 2020.
25. The Coronavirus Act 2020 allowed Scottish Ministers to suspend the effect of certain provisions in the Burial and Cremation (Scotland) Act 2016 and the Cremation (Scotland) Regulations 2019, and on 8th April 2020, Scottish Ministers published determinations under the Act which had implications for applications for cremation (concerning hierarchy) and the handling of ashes.
26. Collectively, the introduction of these emergency measures necessitated significant changes to everyday life for everyone, and had a particular impact on the way in which the funeral industry operated.
27. The easing of most restrictions in Scotland did not occur until 9th August 2021, however, a few including the wearing of face coverings in certain circumstances remained mandatory.
28. Scotland recorded its first death caused by Covid-19 on 13th March 2020. As at 29th August 2021, there have been a total of 10,554 deaths registered in Scotland where COVID-19 was mentioned on the death certificate.¹
29. The Covid-19 vaccination programme in Scotland commenced on 8th December 2020.
30. The vaccination programme was particularly welcomed by operatives in the funeral industry because front-line funeral operatives, such as people who went into care homes or handled the deceased, were included as a priority group. However, not all members of the funeral industry were considered by the JCVI (Joint Committee on Vaccination and Immunisation) as being a member of this priority group.

¹ [Deaths involving coronavirus \(COVID-19\) in Scotland, Report \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/deaths-involving-coronavirus-covid-19-in-scotland-report)

31. That caused a great deal of debate within the industry and was raised at most of the aforementioned virtual meetings.
32. However, the vaccination programme has proved to be an outstanding success and almost all within the funeral industry in Scotland have now been vaccinated.
33. Understandably, the majority of enquiries and complaints directed to the Senior Inspector over the period of this report concerned Covid-19 matters.
34. The majority of these tended to be immediately after any media announcement on proposed or planned changes to levels or restrictions, and were answered without the need for referral to others.

Enquiries / Complaints

35. The following is a summary of the enquiries / complaints (Covid and non-Covid related) which were dealt with by the Inspectors during the period of this report:
 - A cremator manufacturer (ATI) went into liquidation in March 2020, which resulted in a User Group being established to assist those crematoria with maintenance, spare parts etc. This effected 4 crematoria in Scotland.
 - Body bags manufactured by one company as part of emergency supply, were found to be unsuitable for cremation and had to be withdrawn.
 - Staffing levels and working patterns in certain funeral director businesses and crematoriums were adjusted in response to the pandemic. Each carried out their own risk assessments to determine what changes would work best for them. Changes included alterations to shift patterns to ensure not all staff were deployed at the same location at the same time – with extra staff trained to be used if necessary – cleaning procedures between services, splitting duties, etc. What was seen as good practice was widely circulated within the industry.
 - Large attendances outside crematoria during funerals remained an issue, particularly when attendance inside was restricted to 20, and assistance was requested by some crematorium staff on a few occasions from Police Scotland. However, on Monday 9th August 2021, Scotland moved to 'beyond level 0', resulting in the removal of limits on gatherings of attendees at funeral services, meaning that from that date there was no longer a maximum cap on numbers inside (or outside).
 - Test and Protect recording of details worked well when numbers permitted inside was low, however, there were a number of practical issues when the permitted numbers inside increased. It was also considered difficult to obtain details from those who gathered outside crematoria or at burial grounds.

- Live streaming was achieved at almost all crematoria, despite a number of issues around signal strength in remote areas.
- Storage capacity in mortuaries was monitored by Regional Resilience Partnerships, who escalated any concerns to the Scottish Government. The Government provided extra units where necessary. Funeral directors were advised to collect deceased without delay (when authorised) from hospital mortuaries. Over the festive period capacity levels reached its highest at a number of hospitals.
- There were a number of enquiries and complaints directly related to Covid-19 restrictions at funerals. Whilst there was total compliance across the sector on restrictions which were mandatory, where these were not compulsory (guidelines, recommendations, advisory) there was understandably variation on matters such as the use of outside speakers, carrying the coffin etc. Concern was also raised by a number of cremation authorities over neighbouring crematoria having different levels of restrictions in place (including attendance numbers). Funeral Directors were often asked by families as to what was, and what was not, allowed at neighbouring crematoria. This did result in certain crematoria being much busier than others.
- Supplementary Forms were made available for funeral directors who were unable to obtain a signature from an applicant in certain circumstances. This was part of a relaxation of requirements in the Burial and Cremation (Scotland) Act 2016, as referred to earlier. There were however a number of allegations of misuse of the form by funeral directors, such as over utilisation of these forms, using Covid-19 as an excuse, thus enabling them to complete the entire application remotely.
- Family Dispute complaints included:
 - disagreement over legal entitlement to ashes,
 - disagreement over whether the funeral was to be a burial or cremation,
 - an issue related to providing incorrect details of deceased on paperwork,
 - family members not being informed of a funeral, and
 - disagreement on location of final resting place of ashes.

Whilst most family disputes were resolved quickly, some were referred (by complainer) to their Solicitor for considered court action.

- Non-Covid related enquiries included:
 - several instances where historic human remains resurfaced in graveyards,
 - ashes having been inadvertently delivered to a wrong address,
 - legal considerations regarding pregnancy loss in respect of funeral arrangements,
 - cremation certificates inadvertently placed in wrong ashes,

- uncertainty regarding dispersal of retained body parts following cremation or burial several years ago,
- change of instruction to ashes dispersal not conveyed to crematorium prior to cremation,
- ashes released by funeral director to wrong family member,
- alleged demands by funeral director for payment prior to release of deceased,
- alleged unauthorised action by funeral director in collecting deceased from hospital mortuary,
- queries regarding documentation required for deaths outside Scotland (burial or cremation in Scotland),
- ashes recovered during house clearances,
- items returned to family by funeral director which allegedly should have been left in situ on the deceased,
- allegation that a private burial was carried out on land without authority of owner,
- query regarding coffin type being approved for cremation,
- uncertainty by funeral director on procedures regarding repatriation of deceased,
- a lack of care of the deceased whilst in funeral director's premises, and
- three separate instances of soil from a newly opened grave being placed on top of adjoining graves.

36. All of these enquiries have been completed, with relevant parties informed of the result.

37. The issue regarding the opening of graves has been referred to the Cremation and Burial Team and the Scottish Bereavement Benchmarking Group for further consideration.

Additional Duties Performed

38. As to be expected, since being appointed to the role of Senior Inspector of Burial, Cremation and Funeral Directors on 1st October 2020, there has been a marked increase in enquiries / complaints concerning funeral directors, and in an effort to further awareness of the duties of the Inspectors, a number of introductory visits to funeral directors (as referred to below) have been carried out.

39. In addition, the Inspectors have participated in a number of other events.

40. During February 2021 the Inspectors took part in the production of a podcast by Golden Charter (Funeral Plan Provider) which was thereafter made available publicly on Golden Charter's website.

41. Since May 2021, introductory visits have been carried out to a number of funeral directors in Scotland (on occasions accompanied by trade representatives) during which the Inspectors have been given unrestricted access to the premises.

42. The Senior Inspector provided presentations at a number of meetings including SAIF (AGM), NAFD (AGM), and the Cremation & Burial Communication & Education (CBCE) Annual Conference.
43. The Senior Inspector performed the unveiling of a Covid-19 memorial at West Lothian Crematorium, in July 2021.
44. In June 2021, the Inspectors completed the Scottish Public Services Ombudsman (SPSO) complaints investigation skills course.
45. In January 2021, the Inspectors had an introductory (virtual) meeting with the previous Minister for Public Health and Sport (Mairi Gougeon MSP). In July 2021, following the Scottish elections, the Inspectors were also introduced (virtually) to the current Minister for Public Health, Women's Health and Sport (Maree Todd MSP).

Conclusion

46. The Funeral Industry in Scotland can be justly proud of the service they provided during this period of the pandemic.
47. Quite a number of the changes implemented as a consequence of Covid-19 have proven successful, and may well be retained beyond the pandemic.
48. On 17th August 2021, Scottish Government launched a 12 week consultation on Covid recovery, a consultation on public health, public services and justice system reforms which runs until 9th November 2021.
49. Of particular interest to the funeral industry are the provisions regarding remote registration of deaths and still-births.
50. Funeral Directors and crematoriums have recently been subject to a number of enforced statutory measures imposed on them by the [Funerals Market Investigation Order 2021](#) with further measures implemented on 16th September 2021, and beyond.
51. The Order covers a range of issues, including the requirements for funeral directors and crematorium operators to provide price and other commercial information to customers.
52. It also prohibits funeral directors from making payments to incentivise hospitals, palliative care services, hospices, care homes or similar institutions to refer customers to them, and soliciting for business from customers through their provision of services under certain contracts.

53. In addition, the Scottish Government Funeral Director: Code of Practice, currently in draft form, has had a [consultation report published](#) and is undergoing revision by Scottish Government officials.
54. The Code of Practice will require funeral directors to adhere to minimum standards of care of the deceased and to provide transparency in the goods and services offered to the bereaved.
55. The Code is organised into 6 sections covering all aspects from first engagement of the funeral director, care of the deceased, planning of the funeral service, delivery of the funeral, handling of complaints and business continuity and management risks.
56. It has been noted that a number of funeral directors have already implemented the draft Code of Practice in advance of it becoming mandatory.
57. The following year will undoubtedly be a challenging one for the funeral industry, given the uncertainty of the pandemic, and the implementation of the measures described above.
58. It is intention of the Inspectors, subject to pandemic restrictions remaining limited, to resume annual inspections of crematorium, to assist in the development of an inspection programme and licensing scheme for funeral directors, to assist in the development of an inspection programme for burial authorities and burial grounds, and to ensure that any queries or complaints which may be raised with the inspectors are dealt with timeously.
59. In closing the Senior Inspector would like to record his appreciation and thanks for the assistance and co-operation afforded to him throughout what has undoubtedly been the worst and saddest period for so many.

Respectfully Submitted

Robert Swanson QPM
Senior Inspector of Burial, Cremation and Funeral Directors

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