



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 9 December 2015

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LOCAL GOVERNMENT AND REGENERATION COMMITTEE
29th Meeting 2015, Session 4

CONVENER

*Kevin Stewart (Aberdeen Central) (SNP)

DEPUTY CONVENER

*John Wilson (Central Scotland) (Ind)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)

*Jayne Baxter (Mid Scotland and Fife) (Lab)

*Cameron Buchanan (Lothian) (Con)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

Cara Hilton (Dunfermline) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Andrew Brown (National Association of Funeral Directors)

Tim Morris (Institute of Cemetery and Crematorium Management)

Rick Powell (Federation of Burial and Cremation Authorities)

Robert Swanson (Her Majesty's Inspector of Crematoria for Scotland)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 9 December 2015

[The Convener opened the meeting at 10:00]

Burial and Cremation (Scotland) Bill: Stage 1

The Convener (Kevin Stewart): Good morning and welcome to the Local Government and Regeneration Committee's 29th meeting in 2015. Everyone present is asked to switch off mobile phones and other pieces of electronic equipment, as they affect the broadcasting system. Some committee members may consult tablets during the meeting, because we provide committee papers in digital format. We have received apologies from Cara Hilton.

Our first item is evidence on the Burial and Cremation (Scotland) Bill as part of our stage 1 consideration. I welcome Andrew Brown, who is representing the National Association of Funeral Directors; Tim Morris, who is representing the Institute of Cemetery and Crematorium Management; Rick Powell, who is representing the Federation of Burial and Cremation Authorities; and Robert Swanson, Her Majesty's inspector of crematoria for Scotland. I invite each witness to make an opening statement if they wish.

Andrew Brown (National Association of Funeral Directors): I am the north sector operations manager for Co-operative Funeralcare and I have responsibility for 124 funeral homes across Scotland and 20 in Northern Ireland. Today, I am representing the National Association of Funeral Directors, of which the Co-op is the largest member in Scotland. The NAFD has 85 members in Scotland, which operate 369 funeral homes. Across the United Kingdom, more than 80 per cent of all funerals are conducted by our members. The association ensures that its members set the highest standard of customer care in the industry through a robust code of practice, our code of professional standards and an independent arbitration scheme.

The NAFD welcomes the Burial and Cremation (Scotland) Bill, as it seeks to update and rationalise some outdated legislation. In responding to the questions that the committee asked, the NAFD took into consideration what we believe to be the best interests of bereaved families, as well as the implications for our members' businesses. The issues that relate to

the reuse of lairs and headstones and the proximity to crematoria of housing and highways do not directly affect funeral directors in the same way as they affect burial and cremation authorities, but the bill's proposals could impact on the clients whom we serve.

What will have the biggest impact on our members, and our primary concern on which the committee is seeking feedback, is the proposed inspection and licensing of funeral directors. If statutory regulation is to be introduced, the NAFD stands ready to advise and assist. However, we urge the Government to fully utilise the association's existing and well-established code and standards, instead of seeking to define and introduce a new, separate code and standards that would run parallel to our own. One concern is the potential cost implications for funeral businesses, which could lead to increases in funeral costs. That would exacerbate the issues of funeral poverty that the Scottish Government is already exploring.

Rick Powell (Federation of Burial and Cremation Authorities): Good morning. Thank you for inviting the Federation of Burial and Cremation Authorities to provide oral evidence on the bill. The FBCA represents the owners and operators of cemeteries and crematoria across the UK and represents 26 of the 28 operational crematoria in Scotland, plus a further crematorium that is under development.

The FBCA's executive and technical committees have discussed the bill at length, and a special meeting of representatives of the FBCA's Scottish sub-committee was convened on 16 November to facilitate detailed discussions prior to our views being submitted. The FBCA agrees that the existing legislation that relates to burial and cremation should be repealed and replaced by a new legislative framework that should apply to all cemeteries and crematoria.

The call for written evidence asked for particular consideration to be given to a series of points. As members will, no doubt, have had the opportunity to read our submission, I will not go through it again. However, I emphasise how uncomfortable our organisation is with the potential removal of the 200-yard minimum distance requirement that currently applies when crematoria are built in the vicinity of private dwellings. I stress that the FBCA disagrees strongly with that proposal. In addition, the FBCA strongly recommends the retention of the provision that ensures a minimum distance requirement for the location of new crematoria in relation to highways.

The FBCA firmly believes that the positioning of crematoria is vital in ensuring that bereaved families are not subjected to the day-to-day activities that take place in residential areas and

gardens. When attending a funeral service or visiting a crematorium, the bereaved are entitled to expect to be able to spend time in peaceful and meaningful contemplation. The routine of daily living, including parties in gardens, barbecues and accompanying music, in no way fits with the tranquil setting that we have come to expect in such a location.

There are numerous examples of planning authorities having allowed private housing and highway developments to take place very close to crematoria facilities. That has detracted from the natural beauty of many of those locations and has had a negative impact on the ambience of the setting for those important facilities. Rather than have the 200-yard and 50-yard rules removed, the FBCA would like legislators to take action to protect these vital locations and prevent the siting of subsequent developments literally up to the curtilage of the crematoria grounds. Such action would protect the setting for the bereaved families whom we serve.

On behalf of the federation's members, I thank you for giving me the opportunity to give evidence.

Tim Morris (Institute of Cemetery and Crematorium Management): Good morning and thank you for inviting the institute to attend the meeting. The institute represents burial and cremation authorities throughout the UK and provides education and training opportunities to persons who work in those services. The institute welcomes the Scottish Government's actions in modernising burial and cremation and their associated legislation, and we commend its attempts to reduce the burden of funeral poverty. The institute wishes to positively assist the Scottish Government in achieving its objectives.

Robert Swanson (Her Majesty's Inspector of Crematoria for Scotland): Good morning and thanks for the invitation to be here. As members will be aware, my appointment as HM inspector of crematoria for Scotland came about as a direct result of the Lord Bonython report. I took up my post in March this year and, since then, I have visited all 28 crematoria in Scotland. My visits were an opportunity for the management and staff to demonstrate their working practices. I am now going round crematoria again to conduct more formal inspections.

Existing legislation made provision for my appointment, but there was no detail at all about what the role would entail and no powers were attached to it. The job description was decided in advance of my appointment; it is to ensure that the relevant legislation and best practice are being followed at all 28 crematoria and that the documents and records are being handled in accordance with the statutory provisions. I am a member of the national committee on cremation

and some other committees, and I deal with any complaints that come in either from members of the public or from professional bodies. In the short time for which I have been in post, I have dealt with a few of those complaints.

That is a brief résumé of my role. I can speak to the practical side from my knowledge and experience of what I have witnessed in going round all 28 crematoria.

The Convener: Why do you think that the bill is needed? What issues does the industry face that need to be addressed?

Andrew Brown: The bill is generally needed because the existing legislation is outdated. There is also a need for many things that arise from the recommendations of Lord Bonython's report, but I do not know whether the committee is interested in those. The NAFD definitely supports many of the changes that are being made through the bill as a result of that report.

The Convener: You will be aware that the Health and Sport Committee is looking at many of those aspects of the bill.

Tim Morris: I agree that the legislation needs to be modernised in order to set out the rights of the bereaved and the responsibilities of burial and cremation authorities for delivering modern services.

Rick Powell: I agree with Andrew Brown and Tim Morris. The legislation is—unfortunately—outdated. The regulations on cremation go back to 1935, although there have been amendments since then. The regulations on burial go back much further. It is important that the legislation that we work to is current and recognises the issues that the industry faces, such as the reuse of grave lairs and bringing the legislation to control and regulate crematoria into the current century.

Robert Swanson: Like the other witnesses, I would say that the legislation needs to be brought up to date. The opportunity now exists; the findings of Lord Bonython's review and the inquiry by Dame Elish Angiolini before that can be taken into account. The issues that their findings address would not have come to light without those investigations.

I have had some representations about the non-regulation of certain aspects of the funeral industry. It is felt that that needs to be addressed, too.

The Convener: The witnesses have all suggested that the bill is required because the existing legislation is outdated. To what extent is the bill future proofed?

Robert Swanson: My role as HM inspector of crematoria is new and presents an opportunity.

There is a void that could be filled by the role that I and any other inspectors might take on if that role were supported by legislation.

We have the Institute of Cemetery and Crematorium Management and the Federation of Burial and Cremation Authorities, but we have no organisation that is responsible for physically inspecting provision in detail. Expansion of the inspectors in each of the areas would provide that.

I have been welcomed by crematoria around Scotland. We are not seen as Big Brother coming in. They have welcomed the opportunity of the inspection and I get favourable feedback from them. It is also my understanding that there is support for a similar role in relation to burial authorities and funeral directors.

Rick Powell: I agree with Bert Swanson. Another issue that the bill covers is the reuse of lairs, given the shortage of burial land that may be facing burial authorities. The bill is also future proofed in relation to potential alternatives to cremation, whether that is promession or resomation. The bill has been written in such a way that there is the possibility of bringing those into legislation as and when necessary.

Tim Morris: The bill will provide the opportunity to make regulations under it to ensure that the operation and management of cemeteries and crematoria are standardised across all local authorities. Bringing old, abandoned lairs back into use will help to some extent in reducing funeral poverty, as it will alleviate the need to build new cemeteries. The capital and maintenance costs of that will in effect reduce the pressure to increase fees. It should be remembered that most burial services are subsidised at present. Regulation of the whole industry would create a standard and provide reassurance to the British people.

Andrew Brown: I have nothing to add to what has already been said.

10:15

John Wilson (Central Scotland) (Ind): Good morning, Mr Swanson. You said in an earlier response that there should be more regulation. Will the bill take forward the level of regulation that you think is required to, as the convener said, future proof the situation? The last major amendments to the current legislation were made in 1935. Will the bill be future proof and encapsulate everything that we want for the future?

Robert Swanson: I believe so. A lot has gone on in the past few months as regards codes of practice and so on. All of that is giving the crematoria the opportunity to put things in place, and they are all whole-heartedly doing that. If only

guidelines are offered, compliance with them is optional.

I have seen differences as I have gone around and looked at the practices that have been put in place for a range of matters, including the identity card system for cremation and the ashes. Practices should not differ greatly, because in every crematorium a coffin arrives at one end and there are ashes at the other end, but for the bit that is in between, there is variance across the crematoria.

When I speak to some crematoria about their working practices, they say, for example, "We've done it for 20-odd years and there's never been an issue. Why should we change to somebody else's practice?" In general, crematoria are receptive to guidelines, but there is a strong difference between guidelines and legislation. Legislation gives teeth to back up guidelines by making it possible to say, "You will do it, and if you don't do it, there is potentially a penalty." However, in all honesty, it is not my experience that going that far would ever be needed.

John Wilson: Does any other panel member want to comment?

The Convener: Does anyone else wish to come in? No.

John Wilson: If what Mr Swanson said is the case, part of the problem might be the current legislation. However, the bill that is going through the Parliament might mean guidance being issued to operators. You have indicated, Mr Swanson, that you would rather see things in legislation than in guidance to get conformity throughout Scotland on what, in your role, you think should happen in crematoria and cemeteries. Does everything that is in the bill satisfy your concern about having legislation rather than just guidance?

Robert Swanson: Yes. In an ideal world, legislation would not be needed and everybody would comply with how things should be done, but we all know that that is not the case. It is the same in the world outside here, as I found in my previous occupation in the police service. People should not hit each other, but we have legislation that prohibits or forbids them from doing that. More important, we have the penalty of a criminal charge for such behaviour. In an ideal world, we would not need legislation. However, if guidance is produced and disseminated as a legislative requirement, that has to be a better option.

John Wilson: I direct my question to Mr Morris, too.

Tim Morris: I agree that guidance provides some reassurance on future proofing. It is much easier to review guidance should there be any change in circumstances or in the wants and

needs of bereaved people such that a change is warranted.

Rick Powell: I think that what Mr Swanson might have seen was adjustments of protocols, if you like, which are probably in reaction to events. As he said, the important point is that a body arrives at the crematorium and ashes are created at the other end of the process. All the issues in between, such as identification, proper handling of the body and the following of the code of cremation practice, are addressed by each crematorium. The recording of details on a card, for example, that follows the remains through the process might be slightly different from one crematorium to another. That might be because of a reaction to a problem that a crematorium has had in the past. Crematoria might not have identical practices in that regard, but that does not necessarily mean that their practices are faulty.

John Wilson: Mr Morris, in relation to Mr Powell's comments, what advice does the institute give its members on issues that have arisen and issues that we may face in future? The institute has some role in training and advising its members on good practice. Has the institute learned any lessons from the process?

Tim Morris: I agree with Rick Powell. The processes between the arrival of the coffin and the handing over of the ashes are standard among all UK crematoria. There are slight administrative differences, some of which have been adapted in light of any problems that have been identified.

The Convener: You have talked about the coffin coming in, the ashes at the end and the differences in between. I want to concentrate on the end of the process. The container that is used in the UK to contain ashes is almost standard at 3.2 litres. We have had a submission that suggests that that is not large enough to deal with a larger person or a person who has been cremated in an eco-coffin, and that the container should be increased to 5 litres, as is the case in America and most of Europe. Do you have a view on that?

Robert Swanson: I have been told that there have been a very few occasions when the ashes have exceeded the quantity that can be held in the urn. In such cases, the ashes have been put into a second urn.

The Convener: So they use two urns instead of one.

Robert Swanson: Yes. That is what I have been told; I have not witnessed it first hand. There are few occasions when that would appear to be the case. I accept the comments that more outsized coffins are coming in. It is my understanding that it is not the body that produces the extra ashes but the vessel in which the body is

contained. It has not come over as an issue on my travels, though. On the few occasions that it has been mentioned, they do not see anything wrong with putting the extra ashes into a second urn.

The Convener: The Funeral Furnishing Manufacturers Association has said:

"If a cremation uses an alternative or eco coffin the ash is increased by a factor, following the research by Intertek the FFMA has commissioned these factors can now be clearly understood; the effects and amount of ash vary by the height of the person, the weight of the person and the type of coffin."

The FFMA has supplied an Excel file to illustrate that. Would it not be easier to move to a 5-litre urn than continue to use a 3.2-litre urn? It would mean that all the ashes from a cremation could be kept in one container and there would be no dubiety about anything.

Robert Swanson: I would agree with anything that is less disturbing to the family and I accept that it is probably not good to hand over two urns of ashes. Size and weight are sometimes an issue. There is an element of discomfort in handling an outsize coffin. The same applies on the health and safety side. It is about asking the funeral directors to give the weight of the coffin because of how we handle it at the other side. That is in the case of cremation; I appreciate that burial is different.

There is an element of embarrassment, and people try to lessen the impact on the bereaved. In other words, rather than have six or eight people struggle to bring in a big coffin during the service, it is recommended that the coffin be in place before people arrive, so that they do not see the physical side of things.

We support anything that helps to reduce the problem. I accept that a lot of cost would be incurred if we changed from 3.2-litre containers to 5-litre containers. Perhaps rather than change the system altogether, it would suffice for people to have a few 5-litre containers in store for the few occasions that they would be required.

Rick Powell: The guidance is that 3.2 litres is the minimum size. It is not an absolute, and it is not the case that no other container can be used. I think that the two main suppliers of poly urns—the polythene plastic urns that are used for the delivery of ashes to funeral directors or families after cremation—currently supply 4.2 and 4.5-litre containers.

It is very rare that more than one container is used. In a lot of cases in which remains or ashes are to be buried or whatever else, the funeral director will supply a casket directly to the crematorium, rather than use the container that the crematorium supplied.

Mr Morris's organisation and my organisation are working closely with the Funeral Furnishing Manufacturers Association to draw up guidelines, a testing protocol and acceptable results, so that we can move forward on the suitability of coffins for cremation and ensure that coffins are fit for purpose.

Tim Morris: I echo what Rick Powell said. There are instances—although they are very few—in which more than one container might be required. We have found that that generally happens when an eco-coffin has been used. For example, a cardboard coffin is available that has a high china clay content, which gives it strength and rigidity. When that coffin is cremated, two or more standard urns of ashes are produced.

The FFMA's research into ash residue from all types of coffin perhaps means that cremation authorities and funeral directors could be alerted about coffins that produce more than the normal amount of ash, so that on occasions when such coffins are used the funeral director or crematorium can supply a larger container. That will not be necessary in all cases; it is just about having a separate stock of larger urns, which would be acceptable to the bereaved families who choose coffins that produce more ash.

Andrew Brown: I reiterate what Rick Powell said. Funeral directors often supply an alternative to the urn or other receptacle that the crematorium supplied. A vast array of sizes is available to us. It would not be correct automatically to increase the size of container for every set of ashes that is returned to a family, just as it would not be correct for funeral directors to supply everyone with a large coffin for their loved one because a large coffin is sometimes required. Families have a variety of options when ashes are returned to them, so it would not be appropriate to supply a large container to everyone just because there is an occasional issue with smaller containers.

Cameron Buchanan (Lothian) (Con): Mr Brown, in your submission you said:

"The NAFD does not support the reuse of lairs but does support the reclaiming of unused lairs".

How do you define "unused lair" for the purpose of reclaiming a lair? Is there a time limit for using a lair? How would you work that out?

10:30

Andrew Brown: We support the reuse, as set out in the bill, of unused lairs—lair that were sold to a family but where no interment ever took place. We are opposed to the reuse of lairs that would involve exhumation, deepening the lair and reintering the exhumed remains.

Cameron Buchanan: Does that happen very often?

Andrew Brown: It does not happen currently, but it is one of the proposals in the bill.

Cameron Buchanan: How would you define an unused lair? Is it one that has not been used for a long period of time?

Andrew Brown: It is one that has not been used at all. In some cases a family will purchase four or five lairs in a cemetery, but they might not use them all. If a lair had gone unused for 75 years, which I think is the period set out in the bill, we would certainly support it being used by being sold to another family to allow them to utilise the cemetery.

Cameron Buchanan: Should we legislate for that?

Andrew Brown: That is in the bill. What we are opposed to is the reuse of lairs where there have been interments.

Cameron Buchanan: I see that. Thank you very much.

The Convener: Does anyone else want to come in on that point?

Tim Morris: The reclamation of unused lairs should be included in the bill, but that would not transform cemeteries into sustainable assets. The bill should include the reuse of lairs that have been abandoned—which can be proved through having proper notification processes written into legislation—and the reuse of lairs where remains are disturbed and reburied in the same lair at a greater depth. The bill covers the rights of any family who object—if they do so, their lair would not be reused—and protects the remains. The remains would be reinterred in the same grave, which would keep the cemetery records and registers intact and those deceased persons would be traceable in the future. The institute is concerned with making cemeteries sustainable for the future. Reclaiming unused lairs goes some way to making cemeteries sustainable, but it does not make them completely sustainable.

The Convener: What would you do with the headstones in such circumstances?

Tim Morris: An authority should put in place a conservation management plan before it reuses lairs. That would identify the areas of the cemetery that had historic and cultural importance and would remove them from any reuse or restoration process. Only the less significant areas would be used, so heritage, history and the cemetery landscape would not be affected.

The Convener: That does not really answer my question, Mr Morris. What would happen to the headstones in those circumstances?

Tim Morris: Any headstones that were not of historic importance could be removed.

The Convener: How would that help with the records that you talked about, given that the headstone itself is a record?

Tim Morris: A photographic record of insignificant headstones could be kept.

The Convener: Does the industry think that that is acceptable?

Tim Morris: For insignificant memorials, yes.

Jayne Baxter (Mid Scotland and Fife) (Lab): My question picks up on an answer that was given two questions ago. I am interested in the relationship between funeral directors and crematoria management. It was said earlier that there might be some liaison about the size of coffins. Is that a regular occurrence? Do the two sides of the equation work together commonly, or does that happen only if there is an exception? What sort of relationship exists between the two parts of the sector? Perhaps Mr Brown could answer first.

Andrew Brown: There is a constant relationship between funeral directors and crematoria management. There is really only an issue when we are dealing with larger coffins. In those circumstances we would liaise with the local crematorium management. As Robert Swanson said, we would perhaps make arrangements for the coffin to be in place in the crematorium before the family arrived, for reasons of dignity. We would also speak to the crematorium about any manual handling issues and the length of time that the cremation might take. It might be appropriate for us to book an earlier time slot, for example. We liaise regularly with crematoria about such matters.

Rick Powell: As Andrew Brown has just said, there is constant liaison between funeral directors and the management staff of the crematorium. There is normally an expectation that the funeral directors will complete a preliminary form, which is submitted to the crematorium and which asks all sorts of questions that are not part of the statutory obligations. The questions might be to do with music at the service and all sorts of things. One of those things is normally the size of the coffin. There are physical restraints, whether that be because of the size of the opening in the catafalque from the chapel through to the crematory area or the physical size of coffin that a cremator will accept. Some cremators in the UK, including in Scotland, will take a maximum 41-inch coffin. Others that are made by a different manufacturer or that are older machines will not take a coffin that is anywhere near that size.

Those sorts of liaisons take place constantly and on a daily basis. There will be telephone conversations between the crematorium and funeral directors to ensure that there is absolutely no misunderstanding about any of those details.

Robert Swanson: Rick Powell talked about the size of the coffin. Most crematoria that undergo refurbishment now go for a larger cremator, which generally takes coffins that are up to 41 inches wide. It is standard for the width of the coffin to be known. However, the combined weight of the body and the coffin that will arrive is often not known. That information is sometimes but not always given. Funeral directors often do not have provision to weigh the body, so they cannot give that answer. Likewise, at present, crematoria do not have weighing facilities to do that. My understanding from speaking to staff is that knowledge of the combined weight helps them to assess how long things are going to take. They know how long it will take for a normal or average body and so what time of day is best to put it through. Clearly, a bigger one will take longer, and there are health and safety implications relating to the handling all the way through.

An issue that has been brought to my attention and which is of more concern around the country is crematoria not knowing that items have been left in the coffin. When people are saying their last farewell to someone, they are usually afforded the opportunity to do that in private and, quite often, things are placed in the coffin. They are innocent things such as photographs. The issue is not the photograph but, if it is in a glass-fronted frame, that can be a major problem. I do not know about the technical side, but the feedback that I get on the practical experience is that, in effect, the solids in the glass can affix to the brickwork inside the cremator, which means that it is present for the next cremation and is liable to stick to further ashes. There are practical issues. It is worse if a battery is left in the coffin. I am aware of a case in which what appeared to be a mobile phone was placed in a coffin, and the battery then of course exploded. That can cause damage.

Emissions from crematoria are governed by the Scottish Environment Protection Agency. If there is such an item in a coffin and the crematorium breaches the regulations on what comes out of the chimney, the crematorium will say that it did not know about the item, but it will be penalised for that, rather than the funeral director. The funeral director will have given an assurance that, to the best of their knowledge, there were no forbidden items in the coffin. That is a more major issue that I hear about around the country than the size of the coffin. Perhaps by working more closely with funeral directors, the issue can be lessened.

Jayne Baxter: That is really helpful. Thank you, everybody.

It seems to me that being a funeral director is a highly skilled role that requires a lot of sensitivity and communication skills. How is the registration and regulation of funeral directors managed? Is it compulsory to be registered? Is there training and is there a requirement to be qualified? How does all that work?

Andrew Brown: There is currently no legal requirement. As I said in my opening statement, the National Association of Funeral Directors represents 369 funeral homes in Scotland and in excess of 80 per cent of funerals in Scotland are conducted by NAFD members. We have a code of practice and a professional standards board. We have a number of requirements for membership, which include issues such as training. We employ four standards and quality managers, who inspect each of our members' premises on a biennial basis. They inspect the front and back-of-house facilities and the mortuary and embalming facilities, as well as ensuring that members adhere to codes of practice on the financial aspects for families, on issues such as invoices and providing estimates.

There is at least one other trade association that many funeral directors are members of but, for those who are not members of a trade association, there are no regulations in place.

Jayne Baxter: Are those standards enforceable or are they voluntary? Are there sanctions if your inspectors find that there is a problem with one of your members?

Andrew Brown: There are sanctions, which go from a fine up to expulsion from the National Association of Funeral Directors.

Jayne Baxter: Just to work that through, that means that someone could be expelled but could still be a funeral director in another setting. It is a voluntary scheme.

Andrew Brown: Yes. They would cease to be a member of our association.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I ask the witnesses to say a wee bit more about their views on the proposed removal of the 200-yard restriction. Mr Powell gave a few examples of his concerns about that. It seems like a long distance, but could you give us a couple of examples of where issues have arisen and what kind of impact there has been? Would you be happy if the distance was relaxed to, say, 100 yards or 150 yards, or does it have to be 200 yards in your view?

Rick Powell: You asked for an example. The classic example is, unfortunately, in Edinburgh at Mortonhall crematorium, where housing has been

allowed to come right up to the curtilage of the crematorium. There are gardens in the region of 25 to 30 yards away from the walkway through the memorial garden. On a Sunday afternoon when families are having barbecues and generally doing the things that families do in their garden on a Sunday afternoon, that really does not fit with the peace and tranquillity that one would expect when visiting to remember a loved one and to sit in peace and think one's thoughts. It is a very unfortunate situation.

Forgive me for saying this, but that shows the unfortunate fact that local authority planning has not managed that situation particularly well. The bill suggests that the location of crematoria and what happens around them should be very much in the hands of local authority planners. That is one example of that not being managed well, and there are other examples in the country where exactly the same has happened.

As I mentioned in my opening statement, we would prefer it if the area was protected for the life of the crematorium. It should not be possible for the distance to be set when a crematorium is built and then for developments to be allowed to encroach right up to the boundary. That destroys the setting and the feeling of tranquillity and peace, and all the other things that families should be allowed not only at the time of the funeral but, as I say, when they come back to spend time in the gardens in remembrance.

10:45

Willie Coffey: In your view, must the distance be 200 yards, or would 150 yards or 100 yards be acceptable? There is pressure to find development space and space for crematoria. Could there be any acceptable reduction of that distance, or does it have to be 200 yards?

Rick Powell: I do not think that anyone is being silly and saying that it has to be exactly 200 yards. However, the bill talks about a crematorium being classified as a building that contains the equipment to carry out the cremation, but that is just the crematory and does not include the ancillary buildings—the chapel, the book of remembrance room and all the other things that normally go with a crematorium. The bill talks just about the crematory being the crematorium. In theory, that means that a crematory could be created anywhere, including in the middle of an industrial estate. There are all sorts of things that we are extremely concerned about because they may destroy the dignity and setting that the public associate with a crematorium.

The Convener: Does any of our other witnesses wish to comment?

Tim Morris: Although the Cremation Act 1902 deals with the construction of a crematorium close to dwellings and roads, the construction of houses and other facilities near a crematorium is a matter for the local planning authority. The institute suggests that both matters should come under the hands of the planning authority, albeit with proper guidance provided for those who issue planning consent so that they can fully investigate and understand the need to maintain the tranquillity of the crematorium environment.

Willie Coffey: I am happy with that. My next question is about record keeping—as you are here, we may as well take advantage of your knowledge and experience. I understand that there is no record in the National Records of Scotland of where a person is buried. If you go to a cemetery and see that a person is buried there, there is no connection back the way to identify who that person is in the records. Given that we are trying to improve records management in this process, would you support there being an additional entry in the national records detailing where a person is buried and perhaps where they were cremated?

Tim Morris: For many years, the institute has campaigned in England for the registrar of births and deaths—the person who registers a death—to be informed of the place of burial or cremation and for that information to be entered in the death register to create a national record. So far, the Registrar General for England and Wales has refused to allow that, but it would be a simple matter for that to take place.

Rick Powell: As Mr Morris says, the situation in England and Wales is nine tenths of the way there, because the green disposal certificate has a tear-off section that is completed and returned to the registrar of births and deaths, advising them of exactly where the disposal has taken place—yet that is not recorded in the register. That seems an absolute nonsense. I agree whole-heartedly with Mr Coffey that that would complete the circle and the record keeping. Detailed registers are kept at each of the locations where interments or cremations are carried out, but it is a case of identifying where the crematorium or cemetery is if someone wants to find the register. I see exactly what you mean.

Robert Swanson: On my travels, I was made aware that the people at an old cemetery in the west of Scotland have checked the cemetery lair registers going back to 1865, which has thrown up management difficulties in relation to some of the common ground where there were what were termed paupers' graves. On a number of occasions, one of those had been placed in a lair that was subsequently sold on—sometimes, evidently, with the knowledge that there would

already be a body in there, although that was not so obvious in other instances. Given the current talk about reuse and all the rest of it, that is causing issues for the people at that particular cemetery, who are looking at how they will know for sure. However, that shows that records exist and that they go way back to those days.

Willie Coffey: Thank you very much.

George Adam (Paisley) (SNP): I am glad that Mr Swanson mentioned the reuse of lairs, as I do not now feel bad about raising the issue again. One of the biggest problems with cemeteries in my constituency is that families buy a lair having been told that they will get three or four family members in that lair but, after the dad and the mum have died within about 20 or 30 years, the family is told that there has been a deterioration at the cemetery and they cannot get any more people in the lair. That ends up with the family going through all sorts of problems with the local authority and finally getting the matter sorted, but it is a costly venture for everyone. That happens after 20 or 30 years. In some cemeteries—I am thinking about Paisley—after 75 years will it not be very difficult and expensive to reuse the lairs? There seems to be an on-going problem, which I hear about regularly in my constituency business.

The Convener: Mr Powell, you are looking pensive.

Rick Powell: The only thing that I would say is that not every cemetery is the same. Much depends on the ground conditions in the individual location. In one cemetery, the lairs may be dug in sand; in another cemetery, there may be sandstone. There will be natural restrictions on the depth that can be obtained in some lairs, whereas in other areas there may be no problem at all. It is difficult to be precise and say what should happen.

George Adam: I know, but when family members are told that they will get three people in a lair, they take it that they will get three people in the lair and they will already have worked out who is going in there. Twenty or 30 years later, when that turns out not to be possible, they get very upset and the situation becomes quite difficult. If that is the scenario after 20 or 30 years, what will it be like after 75 years in some cemeteries? They are not all the same, as you said. In my constituency, the local authority cemetery is probably the worse of the two—it is the one that I get the most complaints about. How will that situation be dealt with? As Mr Morris said, how will that help the sustainability of cemeteries?

Rick Powell: The difficulty is the fact that we have moved significantly on health and safety regarding the precautions that we have to take when we work in such areas and excavate the graves. Perhaps 20 or 30 years ago, the graves

might have been excavated and not shored because the same restrictions were not in place. Things have moved on significantly since then and we cannot do today some of the things that we could do 20 or 30 years ago to achieve those promised results.

George Adam: Mr Morris talked about people of historical significance in the context of reusing graves. Some post-industrial revolution towns such as mine have the great and the good buried in certain parts although their families have all left. Who decides whether a site is of historical significance? We have a whole bunch of cotton barons whose families are flung to the four corners of the world. Who decides whether their graves are historically significant?

Tim Morris: There should be a consultation with Historic Scotland on conservation plans and reuse proposals prior to their taking place.

George Adam: Okay. How will the bill help with the general upkeep of cemeteries? I get people complaining about the fact that they are not the same when they go to visit their mum or dad every couple of weeks. How will the bill make cemeteries more sustainable and ensure that they are a better environment for the families who go to visit their loved ones?

The Convener: Do you want to have a crack at that first, Mr Brown?

Andrew Brown: As funeral directors, we, too, have concerns about that and would welcome anything in the bill that would address it. However, it might be more appropriate if someone who deals with burials were to comment on that.

Tim Morris: I have visited quite a few Scottish cemeteries and, in general, they are maintained to a higher standard than cemeteries in other parts of the UK. Bringing lairs back into use will help to fix maintenance costs, because it will avoid building more sites and adding to maintenance burdens. If those costs are fixed, maintenance can be continued at the same level, which is quite high at present.

Rick Powell: I agree with Mr Morris about the condition of cemeteries. If you are looking at how effective the bill will be, it is probably more appropriate to look at any regulations that are developed in relation to the bill and how they set out how cemeteries should be managed. In England and Wales, we have the Local Authorities' Cemeteries Order 1977, which sets out the dos and don'ts for management of local authority cemeteries. I am not suggesting that Scotland should do the same thing, but setting it out in regulation may well be the way to enhance the legislation.

John Wilson: Have there been any changes in the regulations regarding the depth of interment? Like George Adam, I have heard about people being told by the local authority that they could get three or four interments in a lair and then, when they deal with the funeral of a family member, they are told that there has been a mistake and that there is no space left in the lair because the regulations have changed.

Tim Morris: There are still instances in Scotland in which a third interment cannot take place because of insufficient depth. However, a few authorities in Scotland have adopted the spirit of the Local Authorities' Cemeteries Order 1977 in respect of depth of burial, so that they can guarantee that third burial. This is an opportunity for the Scottish Government to regulate depth of burial and avoid conflicts where a third interment cannot take place. That would satisfy bereaved families who have purchased rights for three burials in a grave and are then told that their right for the third does not exist. Those disputes can be eliminated through regulation of depth of burial.

John Wilson: Mr Brown, do your members come across the situation in which family members are told, when they are making arrangements for a funeral, that they do not have an interment space?

Andrew Brown: Unfortunately, we come across that. When we make the booking at the cemetery, it can be uncertain whether there will be space left in the lair. There would have to be a probe to determine whether there was space. Sometimes families have to opt for a new lair, an alternative family lair or, in some cases, cremation with interment in the lair because there is sufficient space for ashes to be interred but not for a full interment.

Part of the reason why the NAFD is opposed to the reuse of lairs and headstones is that we have experience of families having an expectation about a lair that can no longer be fulfilled. As the agent booking the cemetery on behalf of the family, we often have to deal with resolving those issues.

John Wilson: Mr Brown referred to the interment of ashes in a lair and Mr Powell's submission referred to the scattering of ashes on top of a lair.

Does the Institute of Cemetery and Crematorium Management provide any general guidance to its members on the interment of ashes in a lair? In the example that Mr Brown gave, a lair may be full but people want their ashes to be interred in it. How widely accepted is that within the institute's membership?

Tim Morris: If there is space for a further coffin burial in a lair, the institute's guidance is to bury the ashes at full depth so that, should a coffin

burial take place in the future, the previously buried ashes are not disturbed. Alternatively, the lair owner can agree with the authority that the ashes can be buried at a shallower depth, which attracts a smaller fee. The grave is then closed to any future coffin burial, so that there is a clear understanding of the position by both parties.

The institute would propose that any regulation on depth of burial should require that the depth at which every burial takes place is registered. There would then be no need for probing, and the authority would always know how much depth was available in a grave and could therefore guarantee what would in effect be a contract with the bereaved family that owns the lair.

John Wilson: Would that contract last for 75 years, as in the bill? At the end of the 75 years, would that lair then be open to the authority to make use of?

Tim Morris: It would also be possible for the lair owner to renew for a further 75 years. Generation after generation, the same family could maintain their rights, carry out further burials and bring their own lair back into use. That happens across Europe.

The Convener: Thank you very much for your evidence today, gentlemen. We move into private session.

11:01

Meeting continued in private until 11:18.

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