

Scottish Parliament Region: Central Scotland

Case 200503076: North Lanarkshire Council

Summary of Investigation

Category

Local government: Policy/administration

Overview

The complainants (Mr and Mrs C) complained that information on a sign at the gates of a cemetery was inaccurate. They had based their decision to have their child interred in the cemetery on the information on this sign and other information supplied to them by North Lanarkshire Council (the Council).

Specific complaint and conclusion

The complaint which has been investigated is that the information on the sign at the gates of the cemetery, which played a large part in Mr and Mrs C's decision to have their child interred there, was inaccurate (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) reconsider their decision not to close the cemetery gates in light of the discrepancy between the decision and the Rules, and thereafter install signage that accurately reflects the security of the cemeteries and ensure that the Rules are compatible with the outcome of the decision; and
- (ii) addresses the specific injustice caused to Mr and Mrs C by apologising to them for the distress caused by the misleading signage and, whilst reconsidering their decision as noted in (i) above, the Council take action to ensure that paragraph 36 of the Rules is properly enforced. This could take the form of regular security checks being made in cemeteries outside manned hours or further liaison with the Police to ensure adequate patrols are made of cemeteries.

The Council have accepted the recommendations and will act on them accordingly.

Main Investigation Report

Introduction

1. On 9 February 2006 the Ombudsman received a complaint from Mr and Mrs C. Their complaint was that inaccurate information on the sign at the gates of a cemetery had led them to believe the cemetery gates would be locked each evening, and this was a major factor in their decision to have their child interred there. They had discovered the gates were, in fact, never closed or locked and this had caused them considerable distress.

2. The complaint from Mr and Mrs C which I have investigated is that the information on the sign at the gates of the cemetery, which played a large part in Mr and Mrs C's decision to have their child interred there, was inaccurate.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including communication between Mr and Mrs C and the Council, minutes of Council meetings and the Council's rules for the management, regulation and control of cemeteries and burial grounds (the Rules). I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr and Mrs C and the Council have been given an opportunity to comment on a draft of this report.

Complaint: The information on the sign at the gates of the cemetery, which played a large part in Mr and Mrs C's decision to have their child interred there, was inaccurate

4. In March 2005 Mr and Mrs C's son died. They chose to have him buried in a particular cemetery due in large part to a sign at the cemetery gates which read:

'North Lanarkshire Council Cemeteries
Opening – Closing Times

From 1st April to 30th September:

08:00 hours to 19:00 hours on Monday to Saturday inclusive

08:30 hours to 19:00 hours on Sunday

From 1st October to 31st March:

08:00 hours to 16:00 hours on Monday to Saturday inclusive

08:30 hours to 16:00 hours on Sunday'

and another sign which stated 'No dogs allowed'.

5. They purchased a lair (a plot of land in a cemetery in which the deceased are laid to rest) and arranged their son's burial. Shortly afterwards, Mr and Mrs C were upset when they visited his grave and found dog paw prints on the headstone and a vase smashed. They also saw dog owners letting their dogs off their leashes to run free in the cemetery, people drinking alcohol, couples kissing and young people congregating in the cemetery. They noted that the vehicle and pedestrian gates were never closed.

6. Mr and Mrs C contacted the Council and were told that dogs were not permitted in the cemetery but as the gates were never closed it was difficult for the Council to enforce this rule outside of working hours. They were assured that steps would be taken to remove dog waste bins from the cemetery to discourage the exercising of dogs there. Mr and Mrs C were also told that a decision had been taken by the Council a few years previously that, in general, no cemetery gates would be closed in North Lanarkshire. Mr and Mrs C had this confirmed to them by a local councillor (Councillor 1).

7. In July 2005 Mr and Mrs C wrote to their MP with their concerns. Their MP forwarded this correspondence to Councillor 1 who raised the matter with the Council's Community Services Director. In a letter of 24 August 2005 the Community Services Director confirmed that the dog waste bins were scheduled to be removed during the summer and that new signs relating to dogs would be erected. He also said that the sign relating to 'Opening – Closing Times' indicated the times the cemetery was staffed rather than the opening and closing of the gates. He confirmed that the Council decided in 2001 to end cemetery gate closure throughout North Lanarkshire. He said that the Police had been requested to visit the cemetery regularly outside the times when it was staffed in order to combat vandalism or inappropriate behaviour. He also noted that a costing exercise had previously been undertaken to identify the options to close vehicle gates at the Council's cemeteries.

8. Mr and Mrs C wrote to another Councillor (Councillor 2) on 29 August 2005 asking what the outcome of the costing exercise had been, and for a firm timetable for the removal of dog bins and erection of new signs. They also questioned the Community Services Director's statement about the staffed hours of operation as they had never seen staff at the cemetery.

9. In September 2005 Councillor 1 wrote to Mr and Mrs C confirming that he had been told that there was no Council presence at the cemetery after 16:00. He organised a meeting between Mr C and the Head of Land Services on 6 October 2005.

10. On 13 October 2005 the Head of Land Services wrote to Mr C with a response to some of the issues raised at the meeting. The Head of Land Services reiterated that the signs indicated the times when Community Services staff would be available at the cemetery and not when the cemetery gates would be opened and closed. He also said that it had been decided to remove the signs to resolve any possible further confusion. This had been done on 10 September 2005. He said that the Council's dog warden service had been contacted and asked to visit all cemeteries in the area and, where necessary, take action in relation to anti-social behaviour. He reiterated the decision of the Council not to close cemetery gates.

11. On 18 October 2005 Mrs C wrote to the Head of Land Services pointing out that, contrary to his statements to Mr C, new signs had not been erected and dog waste bins had not be removed. She asked why this had not been done and requested a copy of the minutes of the meeting when the decision not to close the cemetery gates had been taken.

12. In early 2006 Mr and Mrs C submitted a petition to the Council requesting that the cemetery gates be locked every evening. This petition was considered by the Community Services Sub-committee and it was decided that no action would be taken.

13. During my investigation I requested copies of the documentation supplied to Mr and Mrs C when they purchased the lair in the cemetery. The Council provided a copy of the lair certificate. I then requested a copy of the rules and regulations for the management of burial grounds made by the Council (the Rules).

14. Mr and Mrs C informed me that they had not received a copy of the Rules when they purchased the lair, but had downloaded a copy from the internet.

15. Paragraph 36 of the Rules states: 'The hours when any cemetery shall be opened and closed shall be such hours as may from time to time be intimated

by notice displayed at or near the principal entrances. No person shall enter or wilfully remain in any cemetery outwith such opening hours'.

16. I asked the Council about the opening and closing times noted on the sign. They have told me that these indicate 'when the cemetery is available for use and which for the most part is manned'. They also said that, following the decision to cease closing vehicular gates, the signs were not altered as 'it was considered that the signs were not specifically about gate closing rather about the expectation of the times that the public would use the facilities'. They explained that there are usually two Council employees on site at the cemetery from 08:00 to 16:00 Monday to Thursday, 08:00 to 15:30 on Fridays and 08:00 to 12:00 on Saturdays. There is generally a member of management staff available by telephone outside these times to cope with emergency situations. The Council accept that the Community Services Director's letter of 24 August 2005, where he stated the sign indicated 'the times the cemetery is manned' represented an over-simplification of the position.

17. I asked the Council how they enforce the statement in paragraph 36 of the Rules that 'No person shall enter or wilfully remain in any cemetery outwith such opening hours'. They told me that this is generally enforced reactively following complaints. As and when concerns are raised, management action is taken, and this can involve assistance from the Police.

Conclusion

18. The sign at the cemetery gates stated 'Opening – Closing Times'. Paragraph 36 of the Rules states 'No person shall enter or wilfully remain in any cemetery outwith such opening hours'. These two pieces of information are compatible and, therefore, it would be reasonable to expect that access to the cemetery outside the opening and closing times would be restricted in some way, affording some degree of security to the resting places and headstones in the cemetery. Further, it is also reasonable to expect that this would generally be the case. It is clear that, at the distressing time of arranging the unexpected burial of a loved one, the security of the final resting place would be a principal concern. The Council's decision that gates will not be closed is not, therefore, compatible with either the sign, the Rules or reasonable expectation. Access to the cemetery is completely unlimited to pedestrians or vehicles as the gates are never closed or locked. As well as this, the times noted on the sign bore no relation to the hours the cemetery was actually staffed, nor the usual times of burials. The information on the sign was, in fact, wrong.

19. Mr and Mrs C noted the information on the sign and came to the reasonable conclusion that access to the cemetery outside these times would be restricted. The information in paragraph 36 of the Rules confirmed this conclusion.

20. The Council did not properly consider the implications of their decision to cease closing the vehicular gates of the cemetery. Proper consideration would have resulted in the signs being updated to reflect the fact that the gates were never closed, and consideration of how the Rules should be altered to reflect the change in circumstance. As it was the signs were inaccurate and misunderstanding could easily occur. The signs have now been removed. This action removed the cause of the injustice to Mr and Mrs C but it does not resolve the injustice itself. Therefore, I uphold the complaint.

Recommendation

21. The Ombudsman recommends that the Council:

- (i) reconsider their decision not to close the cemetery gates in light of the discrepancy between the decision and the Rules, and thereafter install signage that accurately reflects the security of the cemeteries and ensure that the Rules are compatible with the outcome of the decision.
- (ii) addresses the specific injustice caused to Mr and Mrs C by apologising to them for the distress caused by the misleading signage and, whilst reconsidering their decision as noted in (i) above, the Council take action to ensure that paragraph 36 of the rules is properly enforced. This could take the form of regular security checks being made in cemeteries outside manned hours or further liaison with the Police to ensure adequate patrols are made of cemeteries.

22. The Council have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Council to notify her when the recommendations have been implemented.

18 July 2007

Explanation of abbreviations used

Mr & Mrs C	The complainant
The Council	North Lanarkshire Council
The Rules	the Council's rules for the management, regulation and control of cemeteries and burial grounds
Councillor 1	The local Councillor Mr and Mrs C first contacted.
Councillor 2	The second local Councillor Mr and Mrs C contacted.