

Case 200603409: Midlothian Council

Summary of Investigation

Category

Local government: Burial grounds/crematoria

Overview

The complainant (Ms C) said that Midlothian Council (the Council) notified her, three days after her father's funeral, that her family's three-interment burial lair would not be able to accommodate a third interment. Her father (Mr A) was the second person to be interred in the lair (Mr A's mother being the first) and it was his and Ms C's mother's wish to be buried together. Ms C feels that her family should have been made aware of this situation prior to her father's funeral so that alternative arrangements could have been made to ensure both of her parents could be interred in a lair together.

Specific complaint and conclusion

The complaint which has been investigated is that the Council failed to give advance notification of the fact that the complainant's family's three-interment lair would only be able to hold two interments (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council review their procedural document, and include in it guidance to staff on what action should be taken should lairs be found to be unsuitable for their intended number of interments upon opening, whatever the reason for the problem.

The Council have accepted the recommendation and will act on it accordingly.

Main Investigation Report

Introduction

1. Upon the death of his mother, in 1976, Ms C's father (Mr A) purchased a burial lair, which he expected to accommodate three interments. Mr A was buried in the lair on 20 January 2007. On 23 January 2007 Ms C was contacted by the family's Funeral Director and informed that Midlothian Council (the Council) had deemed the lair to be unsuitable for a third interment.

2. Ms C found it unacceptable that her family should only be made aware of this fact after the funeral. She contacted the Council to establish how this situation could have arisen and was told that it is an increasingly common problem.

3. The complaint from Ms C which I have investigated is that the Council failed to give advance notification of the fact that the complainant's family's three-interment lair would only be able to hold two interments.

Investigation

4. In order to investigate this complaint, I have reviewed all of the complaint correspondence between Ms C and the Council. I have also identified relevant legislation (Appendix 2), interviewed Ms C over the telephone and corresponded with the Council. I have not included in this report every detail investigated, but I am satisfied that no matter of significance has been overlooked. Ms C and the Council were given an opportunity to comment on a draft of this report.

Complaint: The Council failed to give advance notification of the fact that the complainant's family's three-interment lair would only be able to hold two interments

5. Mr A purchased a burial lair in 1976, at which time his mother was buried in it. It was expected that this lair would accommodate three interments, as this is normally the case with such lairs. It was Mr A's wish to be buried with his wife and he, therefore, intended the remaining tiers to be used for this purpose.

6. Mr A died in January 2007 and his funeral was held on 20 January 2007. On 23 January 2007, Ms C was contacted by the family's funeral director and told that the Council had deemed the lair to be unsuitable for a third interment. Ms C was unhappy with this as, had the family known in advance, they would

have made alternative arrangements to ensure that Ms C's mother and father could be buried together in a separate lair.

7. Ms C complained to the Council verbally on 24 January 2007 and then in writing on 30 January 2007. The Council's response explained that 'for a decade or so', their lair certificates have included a disclaimer stating 'while it is expected that each lair will hold three full interments this cannot be guaranteed'. They went on to explain that this wording was necessary as it is 'quite common' for there to be insufficient space for a third interment in lairs, for reasons such as ground collapses, obstructions in the ground and changes to the water table.

8. The Council explained to Ms C that on the morning of her father's funeral, there was a slight soil collapse in the lair prior to the funeral. Burial staff were able to shore up the lair and the funeral went ahead as planned. It is the Council's policy not to stop funerals or inform the families of such situations so close to the ceremony as this is potentially upsetting and disruptive.

9. Ms C asked what could be done to facilitate her parents' wishes and to have them buried together. Two options were discussed, the first being for Ms C's mother to opt for cremation upon her death and for her ashes to be buried in the lair. Ms C and her mother did not feel that this respected Ms C's parents' wishes. The second option was to exhume Mr A's body and move it to a more spacious lair where Ms C's mother could later be buried. A second lair opposite Ms C's family lair was reserved indefinitely should the family wish to move Mr A's body. The Council told Ms C that her family would be liable for costs in the region of £340 for the exhumation and reburial. Ms C feels that, as no prior warning was given that the original lair would be unsuitable, the Council should cover any associated costs of the exhumation.

10. My investigation into Ms C's complaint found that an initial soil collapse occurred just over 24 hours before Mr A's funeral. The Council were later unable to determine what caused the soil collapse. The grave started to collapse after the grave-digging staff had dug to around 1.5 feet. After getting to 4.5 feet, a half set of shores was inserted to shore up the sides. The sandy soil of the grave continued to run into the grave, making the shores redundant, as gaps appeared between the shores and the adjacent graves and the shores were not large enough to support the hole that had now formed. For health and safety reasons, Council staff are not allowed to work below a depth of 3 feet without shoring, particularly where the soil structure is loose. As the grave was

deep enough for one interment, it was decided that it be left until the day of the funeral. The grave was still at a depth of 4.5 feet when the gravediggers arrived on the morning of the funeral. They were able to dig down further to a depth of 5.5 feet, the correct depth to allow for a third interment. Grass matting and walk boards were laid in time for the commencement of the funeral. When the funeral cortege arrived and pall bearers placed the coffin on the resting poles, more of the grave collapsed, reducing the depth to 4.5 feet. As the service was already taking place, nothing was done at that time to notify the family about the potential subsequent problems.

11. In response to my investigation, the Council referred me to the section of their current procedural document, Procedures for the Administration of Burials and Burial Grounds, which details the procedure that should be followed in the event that a lair is found to have insufficient space for subsequent interments. It states: 'If ... on opening the ground it is discovered that the details of interment have been incorrectly recorded and no space remains, the Funeral Director must be informed immediately and an alternative lair offered to the family at no charge'. I understand this statement as relating to the possibility of an administration error failing to record the number of interments that have already taken place, rather than issues such as soil collapse. However, it is clear that the Council recognises in its procedures the importance of notifying families at an early opportunity that a problem exists with their lair.

12. As well as what happened during the build up to Mr A's funeral, I made enquiries of the Council to establish whether Mr A or his family had been made aware of the possibility that the lair would be unsuitable for three interments, either at the time of purchasing the lair or subsequently. As the wording of lair certificates had been changed around 10 years ago, I asked the Council whether people who owned lairs prior to that point were notified of the fact that their lairs may not be able to hold as many occupants as expected. The Council confirmed that no contact was made with existing lair holders in this regard, however, historically, and in Mr A's case, lair certificates would not specify a number of interments per lair. Instead, they detailed the maximum depth that the first interment could be placed and the minimum covering of soil that the last interment should have. Whilst I accept this, the evidence that I have gathered indicates that it has historically been accepted that lairs were intended to hold three interments. Having spoken with Ms C, this was certainly her family's understanding. Notes made on the Notice of Interment also support this assumption. The Council's current Procedures for the Administration of

Burials and Burial Grounds states that lairs are usually sold to accommodate three full-sized interments.

13. Having had sight of the draft copy of this Report, the Council informed me that they had made arrangements with Ms C to exhume Mr A's body and re-inter it in a more suitable lair at no charge to Ms C's family. To instigate this, Ms C was required to apply, and pay, for a Sheriff's Order. The Council have issued a payment to Ms C of £240.00 representing the difference between the cost of the Sheriff's order, which they agreed to cover, and the cost of the new lair, which Ms C purchased.

Conclusion

14. The Council's policy is not to interrupt the funeral or contact the family directly, should such a situation arise at short notice. Given that the grave had, that morning, been dug to the correct depth for three interments and the subsequent reduction in capacity occurred once the ceremony was already underway, I accept that it would have been inappropriate to interrupt proceedings on the day to advise the family that the lair capacity had changed.

15. I acknowledge that Council staff made every effort to prepare the lair so that it would be appropriate for three interments by revisiting the grave on the morning of Mr A's funeral and digging deeper. However, work was abandoned on the previous day for health and safety reasons and due to the walls being unsupportable. I am concerned that no action was taken at this point to contact the Funeral Director and give Ms C's family the opportunity to make an informed choice as to how to proceed, particularly given the Council's recognition of the importance of keeping families informed. Furthermore, although I accept that lair certificates historically would only have detailed the maximum depth and minimum soil covering, anecdotal evidence from Ms C, the Council's policy document and the Notice of Interment completed in relation to Mr A's burial all suggest that lairs were sold on the basis of accommodating three full interments. Therefore, as no advance notification was given that Ms C's family's lair might not accommodate three interments, and the family's Funeral Director was not notified of the problems with the grave prior to the day of the ceremony, I uphold this complaint.

Recommendation

16. The Ombudsman commends the Council for taking action to resolve this matter to Ms C's satisfaction, however; the Ombudsman recommends that the

Council review their procedural document, and include in it guidance to staff on what action should be taken should lairs be found to be unsuitable for their intended number of interments upon opening, whatever the reason for the problem.

17. The Council have accepted the recommendation and will act on it accordingly.

24 October 2007

Explanation of abbreviations used

Ms C	The complainant
Mr A	The complainant's father
The Council	Midlothian Council

List of legislation and policies considered

The Burial Grounds (Scotland) Act 1855

The Health & Safety at Work Act (1974)

Procedures for the Administration of Burials & Burial Grounds
(Midlothian Council Policy Document)