

Full Council

9th January 2023



Report of: Director of Legal Services

Title: Flax Bourton Mortuary Byelaw

Ward: Citywide

Recommendation

That Full Council pass a byelaw enabling the council to commence charging for storing of deceased people at Flax Bourton Mortuary where the funeral director delays collection.

Summary

The proposed byelaw, if adopted, would introduce new financial charges to ensure that funeral directors, and others who use the mortuary services, collect deceased persons within three working days following the completion of the coroner's investigations.

The significant issues in the report are:

There is increasing pressure on storage capacity at Flax Bourton Mortuary due to funeral directors delaying collection of the deceased until shortly before the funeral.

There are increasing numbers of 'direct cremations'. These are 'no frills' funerals where the provider often does not have a mortuary and relies on storing the deceased person in public sector mortuaries such as Flax Bourton Mortuary and NHS mortuaries.

There is also a lack of capacity in some funeral directors' own mortuaries, which leads them to leave deceased people they are responsible for in Flax Bourton and NHS mortuaries.

In response to these pressures on mortuary space, local NHS hospital mortuaries and the two largest funeral directors in the former Avon area have significantly increased their mortuary storage capacity in recent years. However, many funeral directors still do not have enough mortuary capacity and are keeping deceased people at Flax Bourton Public and Forensic Mortuary for long periods after the coroner has released them for collection.

The proposed byelaw also includes making health and safety safeguards mandatory. These are a requirement for at least two people to attend Flax Bourton Mortuary when collecting a deceased person, and for these people to wear personal protective equipment (PPE).



Policy

1. Not applicable.

Consultation

2. Internal

Maria Voisin, HM Senior Coroner for Avon
Christina Gray, Director for Communities and Public Health
Emergency Preparedness & Resilience Team

3. External

Public consultation via the External Communications and Consultation Team. The consultation ran for six weeks and closed at midnight on 31st October 2023.

78 responses to the public consultation were received from the public (45%), funeral directors (31%), NHS mortuaries (10%), bereavement organisations (6%), as well as the two main national funeral director associations.

69% agreed or strongly agreed with the proposal for a daily charge, while 27% strongly disagreed or disagreed. 48% thought that charges should start sooner than April 2025; 35% thought April 2025 is about the right time and 17% think charges should start later.

Please see appendix A for the full report.

Context

4. Flax Bourton Public and Forensic Mortuary provides mortuary and autopsy services for the Senior Coroner for Avon. The mortuary is used to investigate unexplained or unnatural deaths that occur in the Bristol, South Gloucestershire, North Somerset, and Bath and North-East Somerset council areas.

All four councils pay for the costs of running the mortuary, through local council taxation of residents. The proposals in the new byelaw may affect funeral businesses and people who use them in any of the four council areas.

When the coroner has finished investigating the cause and other details of a death, she releases the deceased person for collection by a funeral director. The funeral director, who is usually appointed by the deceased person's family, is then responsible for collecting the deceased person as quickly as possible and storing the deceased until they are buried or cremated. There is increasing pressure on storage capacity at Flax Bourton mortuary. This is partly due to some funeral directors not collecting deceased people promptly.

Bereaved people can expect the payment they make to funeral directors and direct cremation companies to include the cost of storing their deceased relatives/friends until the funeral or cremation/burial. At the moment, funeral businesses make no payment to help to cover the costs of keeping the deceased at Flax Bourton Mortuary. This means the cost is borne by taxpayers.

There is increasing pressure on storage capacity and costs of running Flax Bourton Mortuary and other local mortuaries. This is due to increasing population and more people dying, an increase in the average time between a person's death and their funeral (meaning deceased people need to be stored for longer), and the growth of 'no frills' funeral services that operate without their own mortuary capacity. In addition, some funeral directors are not collecting deceased people promptly. Similar trends are increasing pressure on mortuaries across the country.

In response to these pressures on mortuary space, local NHS hospital mortuaries and the two largest funeral directors in the former Avon area have significantly increased their mortuary storage capacity in recent years.

However, some funeral directors still do not have enough mortuary capacity and are keeping deceased people at Flax Bourton Public and Forensic Mortuary for long periods after the coroner has released the bodies for collection. This is further concentrating pressure on the Flax Bourton Mortuary and means that the taxpayer is paying to store the deceased people for longer, while the private funeral companies keep the fees paid by the families as profit.

An extension to the deceased storage area of Flax Bourton Mortuary is opening in early 2024 to expand capacity for the coroner's cases. However, even after the extension is built, Flax Bourton Mortuary will have limited capacity to store additional deceased people, such as those who have been released by the coroner and are now the responsibility of private funeral directors.

The four councils responsible for funding Flax Bourton Mortuary cannot afford to continue to subsidise the operations of private funeral directors in the way that we do now.

The proposals in this consultation are intended to manage this pressure at Flax Bourton Mortuary and to allocate the costs more fairly from the local authorities to private funeral directors.

Proposal

- 5.** Bristol City Council proposes to pass a byelaw in 2023 that would permit the council to start charging for storing a deceased person at Flax Bourton Mortuary if they are not collected within three working days of the coroner's release date.

After three working days, a charge would be applied for each day the deceased person remains at Flax Bourton mortuary. The amount of the daily charge would be set with the aim of encouraging prompt collection, not for the purpose of making a profit, and would be publicised on the council's website. We expect the charge to be in the range of £100 to £200 per day. This may be varied from time to time in line with changes in costs or as needed to encourage prompt collection. Any charges paid will be used to maintain and operate the mortuary.

The charges would be paid by the appointed funeral director or direct cremation company. If a funeral director is not appointed, the family or friends would be responsible for paying the charges.

We propose that charges would start on 1 April 2025, to allow time for funeral companies to

source alternative mortuary space. These charges would also apply to any future mortuary provided by Bristol City Council.

The wording in the proposed byelaw that describes this is as follows:

Storage of deceased after discharge note issued

For the purposes of ensuring the efficient running of any mortuary provided by Bristol City Council, any dead body for which a release note has been issued shall be removed as soon as reasonably possible and in any event no later than three working days after the issue of the release note.

Should a body not be collected within three working days of the issue of the release note, then the person or organisation collecting the body shall be liable for a daily charge for each day after that third working day, the amount of such charge which shall be publicised on the council's website.

The proposed byelaw also includes new health and safety changes. These are a requirement for at least two people to attend Flax Bourton Mortuary when collecting a deceased person, and for people to wear personal protective equipment (PPE) when collecting a deceased person.

Other Options Considered

6. Do nothing or introduce a non-statutory charge for storage.

Risk Assessment

7. If the proposed course of action is not pursued, there will continue to be pressure on the deceased storage facilities due to deceased persons not being collected in a timely manner. This will have impacts on the public in terms of the dignity of their loved ones if on-site or off-site temporary deceased storage facilities are required and will have a financial impact on the Council due to the cost of obtaining and operating such storage.

Flax Bourton Public and Forensic Mortuary is the Dedicated Disaster Mortuary for Avon and Somerset and Wiltshire, and one of three for the South-West.

The volume of deceased people overstaying, especially during winter pressures, reduces the capacity of the mortuary to perform its role as a contingency Dedicated Disaster Mortuary, which can then cause a Major Incident with a need for national assistance. Emergency spend for additional storage falls to the Local Authority - which could be avoided/reduced risk, if collections were made on time.

With the climate emergency and increase in heatwaves and high temperatures, the seasonal pressures will not just be in the winter months, but the summer months too.

Any financial charge that is not underpinned by a legal mechanism such as a byelaw will not be effective.

8. Summary of Equalities Impact of the Proposed Decision

Equality Impact Assessment included as Appendix B.

9. Legal and Resource Implications

Legal

Section 198 of the Public Health Act 1936 gives local authorities the power to provide mortuaries and post-mortem rooms and to make byelaws in relation to the management and charging. Legal services is providing continuing support in relation to the process of making and bringing into force the proposed byelaw.

The consultation responses must be conscientiously taken into account in finalising the decision. The leading cases on consultation provide that consultation should occur when proposals are at a formative stage, should give sufficient reasons for any proposal to permit intelligent consideration and should allow adequate time for consideration and response.

There must be clear evidence that the decision maker has considered the consultation responses, or a summary of them, before taking its decision.

(Legal advice provided by Husinara Jones, Team Manager/Solicitor)

Financial

(a) Revenue

The consultation period has now ended, and the feedback supports the introduction of a daily charge for storing of a deceased person at Flax Bourton Mortuary, where the funeral director delays collection, in line with the proposed byelaw.

As BCC is the first local authority to introduce this type of charge, estimating the likely number of cases where charges will apply is extremely difficult, as it hinges upon the extent to which funeral directors accept the need for behaviour change to avoid charges. However, it is expected that a charge will need to be levied in some cases.

Details of the charge and the associated implemented costs are still being finalised. The charge is estimated to be between £120 and £150 per day and based on assumed numbers, implementation costs (staff and IT costs) are likely to be minimal as additional resources are unlikely to be required. However, if once the charge is introduced the volume of cases is significant, there may be a requirement for additional resources, but in such a scenario, it is expected that the income generated would be sufficient to cover any additional costs.

Given that the charges have not been levied previously, any income raised will be additional to current income levels relating to recharges to neighbouring authorities for provision of the mortuary service, which are forecast to exceed budgeted income in 23/24.

(b) Capital

No impact.

(Financial advice provided by Alison Bennett, Interim Finance Business Partner)

Land

Not applicable.

Personnel

No HR implications evident.

(Personnel advice provided by Bryn Williams, HR Business Partner)

10. Appendices:

Appendix A: Consultation Results

Appendix B: Equality Impact Assessment

11. LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers:

None.