



Funeral Director: Code of Practice - Consultation

Please find, below, the NAFD's responses to the Scottish Government's consultation in relation to its draft code of practice for funeral directors.

Nothing contained in this response should be considered confidential and it may be published as submitted, if appropriate.

Introductory comments

The National Association of Funeral Directors is the largest and most inclusive trade association for the UK funeral profession. We represent the interests of the entire spectrum of funeral directing businesses – including independent and family owned firms, co-operatives and major funeral groups – and has more than 4,000 UK funeral homes in membership. Between them, NAFD member firms conduct the vast majority of UK funerals each year.

NAFD members across the United Kingdom are required, as a condition of membership, to abide by our Code of Practice ("the NAFD Code"), which sets out the high standard of service that bereaved families may expect in their dealings with an NAFD member firm, including key requirements in respect of price information, estimates, final accounts and marketing. The NAFD Code is strictly monitored by a team of Standards and Quality Managers, which ensures that bereaved families can look for the NAFD logo as a symbol of quality and standards when they are choosing a funeral director.

We are currently involved in work to produce a new and even more robust Code of Practice for our members. The Independently Chaired Funeral Service Consumer Standards Review (FSCSR)¹ has brought industry stakeholders, regulatory experts and consumer interest groups together to agree a comprehensive code of practice. The two main funeral director trade bodies, ourselves and the Society for Allied and Independent Funeral Directors, have committed to adopting the FSCSR Code once it has been published and will require our members to abide by it as a condition of membership. We expect the FSCSR Code to sit alongside and complement, but to be significantly more prescriptive than the Scottish Code.

Unfortunately, a significant minority of UK funeral firms are not members of the NAFD or SAIF. These firms are not therefore required to adhere to any such codified standards in terms of the way they care for bereaved families nor the deceased people entrusted into their care. We believe this poses a significant risk to funeral consumers and the dignity of the deceased people taken into the care of such funeral directors. The NAFD therefore supports the good work the Scottish Government and former Inspector of Funeral Directors have done to bring all funeral directors operating in Scotland under the remit of a statutory regulator.

We also broadly support the contents of the draft code but we do have some concerns about the level of prescriptive detail and potential cost implications for funeral directing firms. We feel it is important that any statutory code should be flexible, not impose disproportionate costs and not erect undue barriers to market entry. We were particularly struck that the consultation document

¹ For more information about the FSCSR you can visit www.fscsr.co.uk.

makes no attempt to quantify the costs and potential impact of the proposals. For example, a set ratio of refrigeration spaces may well reflect current practice for many funeral directors but for some firms compliance is likely to lead to extra costs, in some cases without real benefits.

Overall, this draft code represents a significant step in the right direction and we hope our comments and observations will further assist the Scottish Government in ensuring that regulatory requirements for funeral directors are suitable, proportionate and fit for purpose.

Response to consultation questions

Question 1: If you own or operate a funeral director business, will the requirement to have a designated and fit for purpose care facility or mortuary as outlined in the Code have an impact on your business?

The NAFD does not operate a funeral business but does inspect and monitor standards in relation to the majority of UK businesses that do.

It is important to highlight that the draft code would require funeral directing firms to have access to designated and fit for purpose facilities, rather than to have possession of their own, as the wording of the question suggests. This is an important distinction as a requirement to actually have possession of such facilities would represent an unnecessary barrier to market entry and the NAFD would object strongly to this.

The NAFD requires its members to demonstrate that they have access to suitable premises, which meet all of the criteria set out in the draft code, save for the requirement that they should have access to equipment that can accommodate all body types. While we do not disagree that this should be a requirement of the Code, feedback from the NAFD Standards and Quality Team is that this requirement is likely to impact on some NAFD member firms.

We agree that all care of the deceased should take place at locations that are fit for purpose but would question the usefulness of the additional requirement that all care of the deceased must take place at locations “specifically chosen for that purpose”. In the absence of guidance on how such a choice should be made we cannot see that this restricts a funeral director’s choice of location at all – a funeral director could specifically choose a completely inappropriate location and remain compliant with this provision of the Code.

Our recommendation would be to remove this additional requirement in order to simplify the Code. However, we appreciate that the Scottish Government’s intention in including it was likely to deter funeral directors from utilising facilities that are primarily used for other things (e.g. an air-conditioned staff room used to store deceased people during busy times). If it is felt that an additional provision to this effect is needed, the Scottish Government could perhaps consider substituting the words “primarily used” for “specifically chosen” as this would be clearer.

Question 2: The Code sets out a ratio of the number of refrigeration spaces to number of deceased persons per year at 1:50. Do you agree with the ratio of 1:50?

The NAFD Disagrees with framing this requirement in terms of a ratio.

Refrigeration is arguably the biggest capital expenditure in a mortuary installation and, cared for properly, refrigerators have a significant maintenance (not to mention environmental) cost. That cost will be reflected in the cost of operating the funeral business, and therefore funeral prices. It is therefore important that the Code does not require funeral firms to obtain additional capacity that they do not need. For example, for religions where usual practice is for the funeral to take place within a day of death, the costs of meeting the requirements of an inflexible refrigeration ratio are likely to be disproportionately high.

Conversely, there is a risk that, by prescribing a specific number of refrigeration spaces, regulated parties will focus solely on achieving compliance with this requirement and will lose sight of the outcome it is seeking to achieve. It would be counterproductive if businesses were able to rely on their compliance with this provision of the Code to justify their failure to adequately provide refrigeration for the deceased people they take into their care.

It is not clear exactly how the ratio of 1:50 has been determined. While this ratio does not seem particularly unreasonable, we wonder if it might be too general to be usefully applied to all types of funeral business. For example, a rapidly expanding business is unlikely to have sufficient capacity if it projects how many refrigeration spaces it needs based on the previous year's figures.

Our suggestion would be to insert a mandatory requirement that all funeral directors should take reasonable steps to ensure they have a sufficient refrigeration spaces available, taking into account their business needs and all the information available to them. This mandatory provision could then be accompanied by some helpful guidance, suggesting that a ratio of 1:50 (or whatever ratio is deemed appropriate) is likely to be adequate for the majority of businesses.

Question 3: Do you agree there should be flexibility for the funeral director to provide refrigeration either as part of their business model, or to be able to access refrigeration by means of a formal SLA with a refrigeration provider/another funeral director?

The NAFD feels strongly that such flexibility must be included in the Code.

The role of a funeral director in helping both the deceased person and their bereaved family move along their respective journeys, from the point of death to burial or cremation, is complex and multi-layered. While nearly all aspects of this service have traditionally been provided by a single funeral director or firm, it does not follow that this will always be the case. In fact, there is no reason why companies shouldn't seek to specialise in providing particular parts of the traditional funeral service in order to provide a more cost effective and efficient service.

For example, a company could exclusively specialise providing mortuary facilities for the use of funeral directors that have no, or insufficient capacity. Such a business would need more refrigeration spaces than a typical funeral director, which could allow the business to take advantage of economies of scale thus reducing the cost of each refrigeration space. The benefits of this could be passed on to consumers and could even allow the firm to invest in additional capacity to help deal with sudden rises in demand (e.g. during a flu pandemic).

If all funeral directors, as defined by the Code, were required to own refrigeration facilities, this would stifle innovation of this sort, act as a barrier to market entry and would serve to reinforce a very traditional funeral directing business model. It would also make it impractical for a business that wanted to specialise only in transferring deceased people or arranging services to set up in Scotland. Such a business would have no need for expensive refrigeration equipment but would be forced to acquire it nonetheless.

It is presumably in recognition of the need to anticipate future business models that the Code defines 'Funeral Director' as widely as it does.² A requirement that funeral directing businesses must have their own refrigeration facilities would be completely counter-productive to this.

Question 4: If you own or operate a funeral director business, do you think the requirement to refrigerate the deceased will have an impact on your business?

The NAFD does not operate a funeral business but does inspect and monitor standards in relation to the majority of UK businesses that do.

² any person whose business consists of, or includes the arrangement and conduct of funerals.

We require our members to demonstrate that they have access to suitable care of the deceased facilities, including mortuary facilities. The standard of mortuary facilities is checked by our Standards and Quality team as part of their regular inspections. Therefore, the requirement to refrigerate the deceased is unlikely to have a major impact on the majority of NAFD members.

However, we do not specifically require our members to have access to a defined number of refrigeration spaces and do allow members the flexibility to make use of the mortuary facilities of other NAFD member firms. Should the Code require firms to have a specific number of their own refrigeration spaces, this would be likely to impact on a small number of NAFD member firms.

We are also concerned that requiring funeral directors to store each deceased person “individually in separate compartments” within their refrigerated units could have a disproportionately negative impact on some businesses. In our experience, it is not uncommon for funeral director businesses to store deceased people on wheeled biers within large cold rooms. In many cases, this allows firms to make best use of the refrigerated space available. Provided deceased people are in closed coffins and lying separately (never stacked), the NAFD has always taken the view that this does not offend the dignity of the deceased people in question. If the Code were to require these businesses to install separate compartments within their existing units, they would not only incur significant expense but it may also lead to a reduction in their refrigerated capacity.

Question 5: Would offering viewing of the deceased as a service have an impact on a funeral director business?

The NAFD believes a requirement to offer viewing facilities is likely to have a positive impact on some funeral director businesses.

We appreciate that there may be cost-saving advantages of offering funeral service packages that exclude the option of viewing (e.g. some direct cremation services) but believe it is important that the client should always have the opportunity to change their mind. We are concerned that a business that does not allow its clients to view their deceased relatives could easily provide a lower than acceptable level of care to these deceased people without this being detected.

We therefore agree that all funeral directing businesses that provide physical care for deceased people should be required to allow their clients to view their deceased loved ones upon request. Furthermore, we believe that this requirement should apply, not only when initial instructions are taken, but at any point while the deceased person remains in the funeral director’s care.

People choose options such as direct cremation for many reasons, and many do so with no desire or expectation to be able to view the deceased person. However, in the experience of our members, it is often the people whose choice is primarily influenced by their ability to pay who have the greatest desire to view their loved before cremation takes place. It is also these people who suffer the most when not able to do so. Giving these people greater opportunity to view their loved ones can only be a good thing.

However, there are clearly costs related to viewing and these, provided they are reasonable, proportionate and explained at the time of contract, should be paid for by the client. Businesses should also be able to place reasonable restrictions on the number of visitors and time slots for viewing.

Question 6: Do you agree that all funeral director, funeral arranger/administrator and funeral service operative/assistant/driver/bearer training and qualifications should be accredited by an official accreditation body, such as the Scottish Qualifications Authority or another official UK accreditation body?

The NAFD strongly agrees.

Accredited training and qualifications aim to provide a level of quality and consistent delivery from approved providers. We currently offer accredited qualifications in Funeral Directing and Funeral Arranging and Administration. Accredited training and qualifications should also extend to members delivering internal training.

Question 7:

Is Level 6 an appropriate level on the Scottish Qualifications and Credit Framework (SCQF) for a funeral director qualification to be registered at?

Yes.

The NAFD Diploma in Funeral Directing is benchmarked at an equivalent Level 3 in England / Wales, which is comparable to a Level 6 qualification on the SCQF. This qualification is completed by Funeral Directors from across Scotland.

Is Level 5 an appropriate level on the SCQF for a funeral arranger/administrator qualification to be registered at?

Yes.

The NAFD Diploma in Funeral Arranging and Administration is benchmarked at an equivalent Level 2 in England / Wales, which is comparable to a Level 5 qualification on the SCQF.

Is Level 4 an appropriate level on the SCQF for a funeral service operator/assistant/driver/bearer to be registered at?

No.

In our view, the occupational knowledge and responsibilities for a funeral service operative align more to a Level 2 standard accredited training programme on the SCQF. Any lower than this is recommended as appropriate to basic Induction training.

Please note, the NAFD recommends an accredited training programme for funeral service operatives, not an accredited qualification.

Question 8: Do you agree that funeral directors, funeral arrangers/administrators and funeral service operatives/assistants/drivers/bearers should undertake training and receive qualifications that are primarily vocational in nature, with a focus on gaining practical skills over more classroom-based learning?

No.

Due to the practical nature of roles within the profession, vocational training can be very beneficial. However, due to the breadth of technical job-related knowledge required in addition to soft skills for each of the roles, we feel that a blended approach of vocational and theory-based learning is essential to meet the full requirements of the profession.

We also feel that the industry could benefit from embracing newer methods of teaching such as online e-learning platforms and CPD as opposed to classroom-based learning.

Question 9: Do you believe that accredited training and qualifications should be available to those wishing to undertake embalming courses in the future?

Yes.

However, this is a question that can be better answered by the British Institute of Embalmers (BIE). The BIE offers the Diploma in Embalming through an approved team of tutors, but this qualification is not accredited. It should be accredited due to the complexity of the knowledge and skill required.

Question 10: The Scottish Government proposes that 18 months is a reasonable amount of time for funeral directors to meet the requirements of the Code before it comes into force. What do you consider to be a reasonable timeframe for funeral directors to meet the requirements of the Code before it comes into force?

We need to understand what the requirements of the Code are before we fully answer this question. If the requirement of the Code were to provide accredited training and qualifications to all funeral professionals, 18 months would be an unrealistic time frame as we currently do not have the resource or infrastructure to offer this level of training.

Our view will also depend on whether there will be any provision for government funding and business investment to support implementation of the requirements of the Code for smaller and medium sized businesses.

Question 11: In order to stay up to date on industry or profession best practices, many industries and professions require members to complete a number of hours per year of Continuous Professional Development (CPD). CPD can include short industry courses, attending seminars, trainings, etc. How many hours of CPD per year do you think funeral directors, funeral arrangers/administrators and funeral service operatives/assistants/drivers/bearers respectively should need to complete in order to stay up to date on industry best practices in the funeral industry?

The NAFD believes that CPD is an important part of educating the profession, and as such is actively planning and developing a CPD framework outside of any Code of Practice. We recommend the following hours of CPD for each of the distinctive occupational groups within the profession:

- Funeral Directors – 20 – 30 hours per year
- Funeral arrangers/administrators – 10 – 20 hours
- Funeral operatives/assistants/drivers/bearers – 1 – 10 hours per year

However, undertaking adequate CPD is not just a question of amassing a certain number of hours, but also involves ensuring that an adequate range of topics are covered. If someone chooses to do all their CPD on a single topic, or very narrow range of topics that interest them, this is not good enough. We would suggest that any CPD framework should make sure that funeral directors are covering a sufficient range of topic areas.

Question 12: The Code stipulates that records should be kept in certain circumstances. In your view, how long should the Code require funeral directors to keep these records? (For reference, the Cremation (Scotland) Regulations 2019 place a duty on all cremation authorities to keep records relating to a cremation for 50 years.)

The NAFD agrees that funeral directors should retain a comprehensive record of all deceased persons who have been in their care. Our view is that such records should be kept for such time as is reasonable to allow a regulator to effectively monitor standards and investigate allegations of wrongdoing. It is therefore difficult to fully answer this question without knowing more about how the regulator will function in future.

Whatever retention period the Scottish Government arrives at, we would urge it think carefully about the need to balance the desirability of being able to access historic records with the privacy rights of individuals. Although deceased people do not have a legal right to privacy, their families do and it will not always be practicable to separate their personal information from the records relating to the deceased person.

We would be interested to know more about how the time period of 50 years was arrived at in relation to cremation authorities. If the rationale was primarily to facilitate effective regulation, the same period may be appropriate for funeral directors. However, three important distinctions between funeral directors and cremation authorities are that: 1) funeral directors are not responsible for the disposal of human remains; 2) funeral directors tend to have more personal contact with the families and friends of the deceased person; and 3) there is currently no standard form for funeral director records. It will not therefore not necessarily be reasonable and proportionate to require funeral directors to retain records for the same period of time as cremation authorities.

Question 13: Do you think the standards set out in the Code will raise barriers for people considering entering work in the funeral director industry for the first time?

It is clear that the standards set out in the code will raise barriers for people considering entering work in the funeral director industry for the first time. However, provided these barriers are justifiable, we do not believe this is a bad thing. At present, there are remarkably few barriers to market entry.

For example, businesses are currently able to legitimately operate without securing access to any suitable mortuary facilities. Such businesses can avoid investing in their facilities or securing an appropriate service level agreement by relying heavily on the use of overstretched and publicly funded mortuary facilities to store the deceased they take into their care. The NAFD does not condone such behaviour and would not accept such firms into membership. However, they are not acting in breach of any rules external to trade-body membership. A requirement for funeral directors to have access to sufficient refrigeration facilities will serve as a barrier to new businesses of this sort setting up.

Similarly, a requirement for businesses to be able to facilitate viewing will necessitate investment in care of the deceased processes and maintaining suitable viewing areas. This may be a barrier to market entry for some businesses but we would question whether it is in the public interest for them to be permitted to operate in such a way.

Mandatory regulation is, by its very nature, a barrier to market entry. Provided care is taken to ensure the standards and requirements are proportionate, we believe such barriers are entirely justified. Subject to our comments in relation to questions 2 and 3 (in relation to refrigeration), the NAFD is broadly content that the standards set out in the Code are reasonable and proportionate.

Question 14: Do you think the standards set out in the Code will have a negative impact on funeral director businesses plans for expansion?

Subject to our comments in relation to questions 2 and 3 (in relation to refrigeration), the NAFD believes the standards set out in the Code are proportionate and reasonable. Therefore, any impact on funeral director businesses plans for expansion would be justified.

Question 15: Do you think the standards set out in the Code will have a negative impact on innovation and experimentation in the funeral industry?

Subject to our comments in relation to question 3 (refrigeration), the NAFD does not believe the standards set out in the Code will have a negative impact on innovation and experimentation. On the contrary, we believe a set of clear mandatory standards requirements will encourage positive innovation as businesses compete to attract custom without being able to compromise on minimum standards in 'back of house' areas that the consumer often never sees.

Question 16: How would the Code impact on the people of Scotland with respect to age, disability, gender reassignment, pregnancy and maternity, ethnicity, religion or belief, sex, sexual orientation or socioeconomic disadvantage?

There may be a risk for firms specialising in conducting funerals for some religious groups, where usual practice is for the funeral to take place within a day of death, that the costs of meeting the requirements of a set refrigeration ratio could be disproportionately high.

Question 17: The Code sets out two events/reportable incidents that should be reported to inspectors within 48 hours. These are: damage to ashes and complaints about the care of deceased persons. Are there any other events/reportable incidents that should automatically be reported to inspectors within 48 hours e.g. accidental damage to a deceased person?

We would recommend that any incident relating to the loss of, or the failure to be able to identify, a deceased person (including ashes) should be immediately reported to the independent regulator.

We would caution against requiring funeral directors to report any accidental damage to a deceased person as this would include very minor damage such as a slight marking of the skin. If the Scottish Government is minded to include such a provision, we would encourage it to be more specific about the severity of damage it envisages should necessitate a mandatory report.

Question 18: Do you have any other comments on any aspects of the Code not covered by the questions in this consultation?

Competition concern

Paragraph 3 of the Code requires funeral directors to attempt to establish contact with the client as soon as possible after being contacted by a third-party (most likely a member of care home or hospital staff) in relation to the collection of a deceased person. We appreciate that the good intention behind this requirement is to help ensure bereaved relatives are kept informed about the situation but we are concerned that this requirement could inadvertently lead to people feeling pushed into making snap financial decisions about their choice of funeral director.

It is good practice for Nursing homes, hospices or hospital staff to ascertain the funeral director to be used when the patient is admitted or alternatively the patient takes a deterioration in their health. This allows the family to make a considered decision about the provider they wish to use and to make contact before the death takes place. However, it is not possible to rely on this happening in every, or even the majority of instances.

The NAFD does not feel it is appropriate for a funeral director to make unsolicited contact with a family member or personal associate of a deceased person in the immediate aftermath of their death. It is during this time that the prospective client is likely to be at their most vulnerable and ill-prepared to make sound financial decisions.

Research recently commissioned by the Competition and Markets Authority (CMA) indicated that only 14% of UK funeral consumers currently compare the offerings of multiple funeral directors before entering into a contract. We would suggest a consumer who is actively contacted by a funeral director in their early hours of bereavement is even less likely to consider the other options that may be available to them.

Professional indemnity insurance

A notable omission from the draft code is a requirement for funeral directors to obtain suitable professional indemnity insurance cover. The NAFD feels strongly that any business that seeks to take on the great responsibility of caring for deceased people and their bereaved loved ones should not be permitted to do so without having suitable cover in place.

At present, there is no legal requirement for funeral directing businesses to obtain suitable cover. This fails to protect customers, the majority of whom are bereaved and potentially vulnerable. When providing a funeral directing service, simple mistakes can have devastating consequences for families. For example, a failure to take good physical care of a deceased person can impact their family's ability to say goodbye and a failure to properly fill out paperwork can lead to the destruction of an irreplaceable heirloom. While it will never be possible to fully compensate for such outcomes, we feel it is irresponsible not to insure against them.

The current major trade body codes do not include a requirement to obtain professional indemnity insurance. This is simply because all NAFD and SAIF members are already covered by professional indemnity insurance by virtue of their membership. However, as the draft code will apply to all funeral directors, we would strongly recommend including a requirement to obtain suitable professional indemnity insurance.

National Association of Funeral Directors

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