

Report into Infant Cremations at the Emstrey Crematorium Shrewsbury

May 2015

Foreword

Last November, Shropshire Council asked me to lead an inquiry into the way in which infant cremations have been carried out at the Emstrey Crematorium, in Shrewsbury. I began work in December 2014, and have been ably supported throughout by John Doyle, an independent research assistant.

There can surely be no more painful experience than losing one's infant child. Bereaved families have carefully and vividly explained to me how their sense of emptiness after losing their child felt all the more desolate for having had no ashes returned to them after the cremation. They feel strongly that to have retained a tangible memory of their lost child would have helped them through their grieving.

This inquiry has established that the cremation equipment and techniques that were employed at the Emstrey Crematorium between 1996 and 2012 resulted in there being no ashes from the cremation of children of less than a year old that could be returned to funeral directors and families. This practice seems to have been accepted locally as the norm.

The inquiry has also established that, using appropriate equipment and cremation techniques, it is normally possible to preserve ashes from infant cremations. The records show that ashes have been returned to funeral directors in all cases of infant cremations conducted at Emstrey since new equipment was installed, and different cremation techniques adopted, from January 2013.

I hope that this report explains to families, councillors, staff and others, the circumstances that resulted in no ashes being returned to bereaved families between 1996 and 2012.

While I have established that the failure to return ashes after infant cremations at Emstrey is historic rather than current, I have made a number of recommendations for future practice. Some of these are of national, as well as local, significance, as it seems to me that some of the issues I have encountered call for a national response.

David Jenkins

May 2015

Contents

- Section 1** Background and Approach to the Inquiry
- Section 2** Some Families' Experiences
- Section 3** Legal and Administrative Background and Regulation of Crematoria
- Section 4** Emstrey Crematorium and Infant Cremations
- Section 5** Conclusions and Recommendations

Section 1 – Background and Approach to the Inquiry

Circumstances leading to the inquiry

- 1.1 On 2nd June 2014, BBC Radio Shropshire ran a major news item about the cremation of the remains of babies of up to six months old at the Emstrey Crematorium in Shrewsbury. It was reported that between 2004 and 2012 there had been 29 cremations of infants for which no ashes had been returned to families, and one cremation, in 2013, where ashes had been returned.
- 1.2 The Shropshire news item followed the publication on 14th April 2014 of the report that Edinburgh City Council had commissioned from the Rt Hon Dame Elish Angiolini DBE QC into historical practices at the Mortonhall Crematorium in Edinburgh (“the Mortonhall Report”). The starting point for the Mortonhall report was that the parents of babies who had been cremated at the Mortonhall Crematorium had not had their babies’ ashes returned to them, while the parents of babies who had been cremated at other, privately run, crematoria, had received their babies’ ashes. The question also arose as to whether, when ashes were available, they had been treated in accordance with parents’ wishes.
- 1.3 The news report about Emstrey received more media coverage in later weeks and months. A number of families contacted Radio Shropshire to share their experiences of losing a child, and of their grief having been made all the worse by not having had ashes returned to them. The particular circumstances and perceptions of a number of bereaved families were prominently reported.
- 1.4 The Leader of Shropshire Council met with two bereaved families in June and July 2014. He was not able to account for why they had not had ashes returned to them after their children’s cremation. He undertook to commission an independent inquiry into practices at the Emstrey Crematorium. This announcement was welcomed by bereaved parents and by the local media.
- 1.5 At the suggestion of the Local Government Association, in November 2014, I was asked to lead the inquiry. I was fortunate to be assisted in this investigation by John Doyle, an independent researcher. Secretarial support has been ably provided by Jane Chapman and Paula Ryan, both PAs with the Council. I am most grateful to all three.

Terms of reference

- 1.6 The terms of reference to which we were asked to work were as follows:
- i. Review the policies, practices and procedures adopted by Emstrey Crematorium and partners dealing with bereaved families and infant cremation requests during the past fifteen year period but with discretion to take into account cases where parents come forward in relation to infant deaths outside of this period.*
 - ii. For the purposes of this Inquiry, “infant cremations” shall be taken to mean cremations of fetuses of more than 24 weeks and infants of up to 12 months. The Inquiry however shall also have discretion exceptionally to consider individual cases of children older than this if individual parents so request.*
 - iii. Review past practice involved with the process of infant cremation at Emstrey Crematorium over that period of time.*
 - iv. Review the infant cremations over that period of time.*
 - v. To engage with those bereaved parents who have expressed a wish to contribute to this inquiry.*
 - vi. Review the practices of Emstrey Crematorium during the relevant period in line with appropriate legislation and professional standards adopted by the professional institutes (ICCM and FBCA) at the time.*
 - vii. Compare current infant cremation policies, practices and procedures with national guidance and policy and practice by reference to professional institutes (ICCM and FBCA).*
 - viii. Review the process with relevant stakeholders involved in the crematorium process for example looking at communications between hospitals, Council, funeral directors and bereaved parents.*
 - ix. To publish a summary of findings and recommendations pertinent to Emstrey Crematorium and Shropshire Council.*

Specific terms

- i. The inquiry shall be led by an independent and qualified legal professional.*
- ii. The Council will supply a small team of officers to support the inquiry lead and the investigation.*

- iii. *The inquiry should last up to 12 weeks, ending no later than 31st March 2015, unless there is approval from the Leader of the Council and Chief Executive to extend this.*
- iv. *It is intended that a report containing findings, conclusions and recommendations will be completed by no later than 30 April 2015. The personal details of individuals should be anonymised.*
- v. *The head of the inquiry team will provide an update at the end of January and the end of March to Shropshire Council.*
- vi. *The inquiry report will be published.*

Approach to the inquiry

- 1.7 We began work on 9th December 2014. Our inquiry had no statutory authority and I am most grateful for the willing cooperation of those whose help we requested.
- 1.8 The terms of reference set by the Council, and the extensive local publicity surrounding it, use the term “inquiry”. I have therefore used that term throughout this report. I did not, however, hold formal hearings, and the process that I followed, with the Council’s agreement, was more that of an administrative investigation.
- 1.9 The launch of our inquiry was well publicised in Shropshire and I am grateful for the support of the local media in doing this. The Council set up a dedicated e-mail address for the inquiry, and invited anyone who wished to do so to contact us, in confidence or openly as preferred. We followed up each approach that was made in this way.
- 1.10 The terms of reference for the inquiry provided for the inclusion of cases of infant cremation where the child was of over 24 weeks gestation and up to 12 months old. The rationale for these parameters was that foetuses of less than 24 weeks gestation are not subject to statutory regulation as to registration and cremation formalities, and I am advised that public health statistical convention is to use the term “infant” for children of up to one year old. The inquiry’s terms of reference did however allow discretion for a case to be included within the scope of our investigation, if a family contacted the inquiry team and asked that their child be included within our investigation, even though the child’s age was otherwise outside our scope.
- 1.11 Three families contacted us in this way. One set of parents lost their son aged 2 ½ in 2004. Another family lost their stillborn son at 23 weeks gestation, in 2011. Both were cremated at the Emstrey Crematorium and in neither case were ashes returned to the family. Both cremations are included within the scope of this inquiry and within the figures cited in this report and its appendices.

- 1.12 A third family who contacted us lost their new born daughter in 1998. She was cremated at the Emstrey Crematorium, and the family received no ashes after the cremation. This cremation is outside the time period of our terms of reference. We have taken account of the family's experiences in this report, but the case is not included in the figures cited in the report and appendices.
- 1.13 The inquiry team did not initiate contact with parents who were identified from the cremation records, for two reasons. Some parents may not have wished to have been contacted, and may prefer not to reopen the painful experience of losing their child. Some may have moved away from their address at the time of their bereavement and not be readily traceable. We therefore relied upon the press releases and publicity concerning our inquiry to let parents know of the opportunity to contact us if they wished to do so. We followed up each contact where someone expressed a wish to meet us.
- 1.14 We met with nine sets of bereaved parents in individual meetings and had direct correspondence with a tenth. We are very grateful to all of them for going through their very sad experiences so carefully, and for sharing their feelings so openly with us. We were struck by their very real and acute sense of anguish that they have not had the ashes of their lost child as a tangible focus for their grieving, and, in some cases, anger at officialdom for, as they see it, depriving them of their child's remains.
- 1.15 Some bereaved parents who have not received the ashes of their child from the Emstrey crematorium have formed themselves into an action group, which they have called "Action for Ashes". At the group's invitation, John Doyle and I attended one of the group's meetings, where we discussed the issues that are the subject of this inquiry with the bereaved parents who were present, and with representatives of the local media.
- 1.16 We met with local funeral directors and with those who officiate at funeral services at Emstrey, both in individual interviews and in a more general meeting. We met with a medical director at Shrewsbury Hospital. I received written submissions from the Council and from its contractors, The Co-operative Funeralcare.
- 1.17 In order to understand the wider context, I met with appropriate officials at both the Ministry of Justice and the Department for Environment, Food and Rural Affairs. I asked for and received written submissions from the Institute of Cemetery and Crematorium Management, and from the Federation of Burial and Cremation Authorities. I also asked for and received written advice from the commercial firm that manufactured the cremators formerly in use at the Emstrey Crematorium. John Doyle spoke with the Chief Executive of the charity, Sands. This charity provides, amongst other services, support for bereaved parents and families.

- 1.18 We visited the Emstrey Crematorium on a number of occasions and staff there showed us how cremations take place, and explained to us the technical processes. The terms of reference for our inquiry are confined to the Emstrey Crematorium, but we visited some other crematoria, and also spoke by telephone to the operators of others, for comparative purposes. We gained information about cremation practice at six crematoria in all.
- 1.19 In order to gain outside views of good practice, I met with the Local Government Association's lead officer adviser on "bereavement services". I also met with a retired crematorium superintendent, who worked at Emstrey in the 1960s and early 1970s, and who contacted the inquiry in order to inform us with his experience and views.
- 1.20 I was provided by BBC Radio Shropshire with recordings of their local coverage of the story, including interviews with the Council's Leader, which led to the commissioning of the inquiry. I found these particularly helpful in understanding the local context. I met with a reporter from BBC Radio Shropshire, and gave a number of media interviews on the terms of reference and on the progress of the inquiry.
- 1.21 We were given access to the Council's records, its officers, managers from Co-operative Funeralcare, and their records and staff. I regularly met with relevant officers of the Council, sitting as an Inquiry Board. The Council was in this way kept informed of the progress of the inquiry. At my request, officers undertook a number of pieces of specific research to inform the inquiry. Officers of the Council, and crematorium staff and managers now employed by Co-operative Funeralcare, were unfailingly open and helpful.
- 1.22 In accordance with my terms of reference, and in the interests of transparency, I provided letters to the Council's Chief Executive at the end of January and at the end of March 2015 outlining the progress of the inquiry. The Council made these letters public, and they were reported in the local media. These letters are included in this report, at Appendix 9 and Appendix 10.
- 1.23 I provided the Council with a draft of this report at the end of April. They and their contractors, Co-operative Funeralcare, made submissions to me and provided certain further information on aspects of my draft. I am grateful for these points, which I took into account when preparing my finished report, in order to improve clarity and accuracy. They have not, however, affected the substance of my conclusions and recommendations.

Review of the Cremation Records

- 1.24 The inquiry initially examined the cremation records collated in the cremation register held at Emstrey Crematorium for a period covering fifteen years, from 1st January 2000 to 31st December 2014. The cremation register is hand-written for the first six years of this period, and is in electronic (pdf) format for the remaining nine years.
- 1.25 Owing to the format of the electronic record, it was not possible to interrogate electronically the tables of information in order to identify, with a suitable degree of confidence, the cases that would fall within the scope of the inquiry. Consequently, the whole cremation register for the fifteen year period was examined manually. The validity of the cases was subject to further verification by the examination of the registration and cremation records held by Shropshire Council and by Co-operative Funeralcare. I am most grateful to John Doyle for undertaking this arduous task, and for working through more than 26,000 cremation records and sets of associated documentation. This was done with the valuable support of Council and Crematorium staff.
- 1.26 In total, 57 cases were identified within the inquiry's terms of reference. We admitted a further two cases that parents had asked us to include, although otherwise outside our remit because of the age of the children. Of these 59 cases, 53 cremations were conducted between 2000 and 2013. For 51 of these 53 cremations, ashes were not recovered. There were two exceptions. The first was a child aged two and a half years. The parents of this child, however, did not receive the ashes. This case is addressed more fully in section 2 of this report. The second was a case described to the research assistant to the inquiry where a stillborn infant was cremated within the same coffin as a parent and ashes were recovered from the cremation.
- 1.27 The records show that from the beginning of 2013 to the end of 2014, there were six cremations of infants falling within our terms of reference. Ashes were recovered in all six of these cases and returned to the funeral director.
- 1.28 A table summarising the cases is set out in Appendix One to this report. Each infant has been given an inquiry number and their age is recorded along with the year of the cremation. There is also a description of what the cremation register, the permission to cremate slip, and other relevant documentation, record concerning the recovery of ashes.
- 1.29 The documents referred to include:
- the cremation register – this is a statutory record of all cremations.
 - the permission to cremate slip – this confirms the details of the

person to be cremated. The slip is present at every stage of the cremation process.

- the authority for the disposal of remains – this is a form completed by the funeral director in consultation with the person who has requested the cremation ('the applicant') and the relatives of the infant.

- 1.30 A supplementary report, running to some thirty pages, has been provided to the Council, as the commissioner of this inquiry, summarising the contents of the records concerning all 59 cases, i.e. all associated certificates and authorisations leading to the cremation.

Review of the Cremation Register July 1994 to June 1998

- 1.31 Following the initial interview with staff at Emstrey Crematorium, I decided that the records concerning the recovery of ashes, following the cremation of infants between 1994 and 1998, should also be reviewed.
- 1.32 The purpose of this review was to determine whether ashes were routinely recovered for infant cremations when the older Dowson and Mason cremators were in operation (up to mid 1996) and to determine if ashes were routinely recovered from infant cremations after mid 1996 when the newer Newton cremators had been installed.
- 1.33 Some 9,000 more records were examined, including the contemporaneous technicians' diaries. The outcome of this review of the cremation register and technicians' diaries is summarised in Appendix Two to this report. The review shows that in some cases the cremation register and the technicians' diary are inconsistent, as to whether there were or were not ashes remaining after individual infant cremations between 1996 and 1998. I have asked why that should be the case, and what this inconsistency shows about the reliability of the records overall.
- 1.34 The maintenance of the crematorium technicians' diary is not a statutory requirement placed upon the cremation authority or the crematorium operator. It is simply a convention of practice that has been followed by the staff at Emstrey Crematorium for a considerable time. Crematorium staff have told me that during the period 1996 to 1998, the cremation register was maintained at a different site from the crematorium itself. It may be that staff maintaining the register had assumed that there would be ashes resulting from the infant cremation, and so the register at that period was anticipatory, rather than recording actual observation after the event. The cremator technicians' diaries, however, would have recorded the technicians' contemporaneous observation of the cremation process. It therefore seems probable that the diaries are more reliable. The diaries record that for infant cremations after the installation of the Newton cremators in 1996, there were no ashes from the infant cremations.

For the period from 1998 to December 2012, the registers and the diaries are consistent, and both record that there were no ashes from infant cremations, and so the period of anomalous discrepancy is simply for the first two years of the operation of the cremators installed in 1996.

- 1.35 I therefore deduce from the records that until the new cremators were installed in 1996, ashes were normally recovered following infant cremations. But that from 1996 onwards (until 2013), they were not.

The Mortonhall and Bonomy Reports

- 1.36 The Mortonhall investigation commissioned outside scientific and legal advice. The investigation lasted a year, and reported in April 2014. Some of the issues that arose in Emstrey and in Mortonhall overlap, and I have had the advantage of Dame Elish Angiolini's substantial report being available to me. The Chief Executive of Edinburgh City Council and Dame Elish have both kindly agreed to my referring to their report and citing it, where appropriate, here. I have met with Dame Elish and we have discussed our respective investigations.
- 1.37 Following debate in the Scottish Parliament and within the Scottish Government, Scottish Ministers on 16th April 2013 established an Infant Cremation Commission. The Commission had thirteen members, and was chaired by the Rt Hon Lord Bonomy. It was supported by a secretariat. The Commission ("the Bonomy Commission") was asked to review the current policies, guidance and practice in Scotland in relation to the handling of all recoverable remains (ashes) following the cremation of babies and infants, and to make recommendations for improvement.
- 1.38 The Bonomy Commission reported in June 2014 and made 64 recommendations. Their recommendations are reproduced at Appendix Three to this report. A number of their recommendations are relevant to cremation practice beyond Scotland. Again, I have had the advantage of the Commission's report and their recommendations, in examining practice at Emstrey. The Permanent Secretary to the Scottish Government has kindly agreed to my quoting and referring to the Bonomy Commission's report, in this report. I have spoken with the official in the Scottish Government who is leading on the implementation of the Commission's recommendations. He has told me that the Scottish Government has accepted the Commission's recommendations in full and that primary legislation is now being prepared to give effect to some of them.

Section 2 – Some Families' Experiences

- 2.1 Ten families came forward to us in response to our published invitation, to let us know about their individual experiences of losing a child, and how they felt during and after the cremation of their child at Emstrey. We met with nine of them, and considered a careful letter from the tenth. I am most grateful to all these families for being prepared to relive the personal anguish involved in telling us of their experiences, in order to inform this inquiry. This section of the report recounts some of what the families related to us of their experiences of losing a child and of the cremation service.
- 2.2 In each case, family members vividly explained, in different ways, how their sense of emptiness after losing their child felt all the more desolate for having no ashes returned to them after the cremation. Parents explained to us that, regardless of how small a quantity of ashes they might have received, they would have felt comforted by having some physical reminder of their lost child, as a focus for their grieving. One parent told us that just a teaspoonful would have sufficed, and that not to have been given even this felt like body snatching. Another family told us that the ashes are the last thing that you have left of your child, and they were denied them. One family said that they feel “robbed” of the chance to have a physical memory of their lost son.
- 2.3 One set of parents, whose baby was stillborn, after several years of their trying to start a family, explained of their sadness that it was not possible for them to show others a photograph of their son. They said that they had nothing tangible at all as a result of the pregnancy, and that ashes, no matter how small a quantity, would have helped them get through the distress of the experience and come to terms with it.
- 2.4 A bereaved mother told us that, even though she had been told there would be no ashes, she went on hoping for several days that the telephone would ring and that someone would tell her that there had been ashes after all.
- 2.5 In some cases, parents left metallic objects in the casket – a coin, or metal fastenings to clothes. They cannot understand how even these, or metal pins from the casket itself, could not be available to be returned to them.
- 2.6 In most cases, parents said that they were told by the funeral director in advance of the cremation that there would be no remains. One bereaved mother said that the funeral director informed her that if the baby was less than three years old, there would be no remains following the cremation. This created a dilemma for some parents as to whether to proceed with a cremation or a burial.

One family told us that burial would have involved either the expense of buying a whole plot, or their baby being buried in a shared infants' grave.

They therefore opted for cremation, but were very unhappy to learn later that had they gone to a different crematorium, they would have been likely to have received ashes as an outcome of the cremation.

- 2.7 A family who had lost a slightly older child, who would otherwise have been outside our terms of reference, asked us to include their experience within the scope of this report. They said that they were definitely told before the cremation that there would be no ashes. They said that they were sad about this, but had asked for a rose bush to be planted in memory of their son, at a particular place in the crematorium garden, within sight of an existing plaque in memory of a great grandparent. Not until much later, as a result of the local news coverage of the general issue, did they discover that there had in fact been ashes from the cremation of their son, which had been deposited in the crematorium rose garden without their knowledge and without reference to them.
- 2.8 This was the only case that the inquiry discovered of the parents having understood that no ashes were recovered, whereas in fact there had been ashes, which were disposed of without the parents' knowledge. It is noteworthy that the child in this case was older, and so larger, than the babies in the other cases we have examined. The authority for disposal form for this child, which appears to be signed by the parent, bears a tick in the box giving authority for the disposal of the ashes. Beside the box are hand written words "if any...", and a direction as to where ashes should be placed in the garden of remembrance. The ashes were placed there, without further reference to the parents, while the parents, until recently, had understood that there had been none.
- 2.9 A representative of the firm of funeral directors who had made the arrangements for this cremation confirmed to the inquiry that a colleague within the firm had completed the "authority for disposal" form, before it was signed by the parents. He said that from his firm's experience, they would not expect any ashes to remain after a cremation at the Emstrey crematorium, but that a representative of his firm would always check the point with a member of the crematorium staff when contacting them to make arrangements for the cremation. He said that he thought that the stance of crematorium staff as to the lack of expectation of ashes after a child's cremation remained the same in this respect, and had not changed recently.
- 2.10 While it is not possible for me to determine with absolute certainty who said what to whom, it seems highly probable that the funeral director and/or crematorium staff in this case had been over cautious, had

mistakenly assumed that there would be no ashes from the cremation of the child, and had conveyed this understanding to the parents. The parents seem to have thought that the instructions as to location on the authority for disposal form referred to the planting of a rose bush rather than to the spreading of ashes. There seems to have been a lack of clarity of communication and understanding between parents, funeral director, and crematorium staff, concerning whether the hand written instruction on the authority for disposal form referred to ashes or a rosebush.

- 2.11 A common feature of the experiences that parents explained to us was that, in most cases, parents did not expect to lose their child. It was explained to us that in the case of an ageing parent or other adult relative, the family often have time to prepare their thoughts about the death and about the funeral arrangements. Families who lose a child, whether at birth or shortly afterwards, on the other hand, often find that the period of building up to a joyful new life and a new dimension to their lives suddenly changes to one of grief and a desolate sense of loss. The parents are not ready to make decisions about funerals and cremations. In some cases, their memories of this period are now something of a blur, and they cannot be sure that they now remember exactly what options were put to them. As one parent said, your world just stops. And then you are asked to make decisions that you may regret.
- 2.12 One family told us that they had been told by the funeral director before the cremation that there would probably not be a lot of ashes, but that there would be some. They say that they asked the funeral director for the ashes, after the cremation service, and that, having checked with crematorium staff, he had then told them that there would be none. They say that they now bitterly regret having had the cremation conducted at Emstrey rather than at another crematorium where they would almost certainly have received ashes back after the cremation.
- 2.13 The inquiry has checked the cremation slip for this case. It bears a hand written note, dated the day before the cremation: "FD (standing for Funeral Director) has been informed that there will not be any remains to collect". The family say that they were not in fact informed of this until after the cremation. Again, it is not possible for me to determine with certainty who said what to whom, and when. But there seems to have been less than clarity in the line of communication between family, funeral director, and crematorium staff.
- 2.14 Another family, who lost their baby at six weeks old, told us that the funeral director contacted them at 11 10 pm the day before the cremation, to tell them that there would be no ashes to be returned to them. The family felt compelled to continue with the cremation, assuming that nothing else could be done.

As there would be no ashes, before the ceremony, the baby's grandmother removed a lock of hair, finger nails, and a cutting from her dress, for the family to keep as a reminder of their baby.

- 2.15 Another family, who lost their new born baby, chose cremation as they wished to have their baby's ashes with them forever and they would not want to leave a grave behind if they moved away from the area. They were told by their funeral director that there would be only a small amount of ash. The cremation occurred just over two weeks after the baby's death. Three days before the cremation, the funeral director visited the family and told them that there would be no ashes, because the baby was too small. The family said that they simply couldn't believe that this would be the case. They were not offered the option of another crematorium. They proceeded with the cremation, but are now very angry that they received no ashes after the cremation. The family say that the recovery of any amount of ash, no matter how small a quantity, from their baby, would have been very important to them.
- 2.16 Some parents told us that they were not aware until the publicity on BBC Radio Shropshire last year that had they taken their baby to some other crematoria, they would almost certainly have received ashes. They feel that Shropshire Council and Emstrey crematorium let them down badly in this respect.
- 2.17 A number of parents said to us that if other crematoria were able to return ashes after infant cremations, then it was absolutely unacceptable for Emstrey, their local crematorium, to carry out infant cremations at all, if those responsible knew that they could not recover ashes. One father felt very strongly that if the Council thought that the equipment in their local crematorium was not capable of preserving ashes after the cremation of children, then they should have replaced it with equipment that could. He was angry that they had not.
- 2.18 A number of families told us that, while it was painful and most distressing to relive their experiences that were now in some cases several years old, they wished to do so in order, they hoped, to help this inquiry contribute to a change in the law and/or cremation practice, so that other bereaved parents in future would not be denied their baby's ashes as they had been.
- 2.19 Some parents, having learned that other crematoria would have returned ashes to them, feel not only distressed but also angry. A number have emphasised to us that they now seek an apology from whomever was responsible for denying them their baby's ashes. One family say that they cannot understand why, when the issue came to light, someone did not hold their hands up, take responsibility, and take swift action to put things right for the future.

2.20 The Action For Ashes group anticipate other inquiries into the practices used for the cremation of children at other crematoria in other parts of the country. They see their experiences in Shrewsbury as being part of a wider national issue, on which they now seek a national response.

Section 3 - Legal and Administrative Background and Regulation of Crematoria

- 3.1 The statutory framework for the cremation of human remains in England and Wales is provided by the Cremation Act of 1902. This is a short piece of legislation, which extended the powers of a burial authority to include the provision and maintenance of crematoria.
- 3.2 The Act gave power to the Secretary of State to make regulations for:
- the maintenance and inspection of crematoria,
 - prescribing in what cases and under what conditions the burning of any human remains may take place,
 - directing the disposition or interment of ashes,
 - prescribing the forms of the notices, certificates and applications to be given or made before any such burning is permitted to take place, and
 - the registration of such burnings as have taken place.
- 3.3 Penalties are prescribed for breaches of the Act and of regulations made under it.
- 3.4 The burial authority may charge fees for the cremation of human remains.
- 3.5 A number of sets of regulations have been made at various times under the Act. Those currently in force are the Cremation (England and Wales) Regulations of 2008 (“the 2008 Regulations”). These Regulations came into force on 1st January 2009. They consolidated and replaced earlier sets of regulations.
- 3.6 The 2008 Regulations make provision, among other matters, for:
- the formalities necessary to open and close a crematorium,
 - the maintenance of a crematorium in good working order, staffed with a sufficient number of attendants, and in a clean and orderly condition,
 - the inspection of crematoria at any reasonable time by any person appointed for that purpose by the Secretary of state,
 - the appointment of medical referees,
 - the forms, medical certification and procedure to be used to apply for the cremation of a deceased person, including a still born child, and the retention of these records for fifteen years from the date of the cremation,

- the disposal of ashes, and
- the permanent maintenance by a duly appointed registrar of a register of all cremations carried out, and of prescribed details of each.

Inspection

- 3.7 The Cremation Act and successive regulations made under it provide for crematoria to be inspected by persons appointed by the Secretary of State. Officials at the Ministry of Justice have told me that they have not appointed an inspector of crematoria in England and Wales, and that they are not aware of the Secretary of State having used his power to inspect, under the current or previous regulations.
- 3.8 Recommendation 63 of the Bonomy Commission is that Scottish Ministers should appoint an independent Inspector to monitor working practices and standards at crematoria, provide feedback to cremation authorities on how they are performing and to report to the Scottish Ministers as required. The Commission go on to recommend that the independent Inspector should have authority to investigate complaints from the public about working practices and standards at crematoria, to adjudicate upon these complaints and report findings to the Scottish Ministers. They also recommend that the role of the Inspector should be extended to the funeral industry in respect of which there is no current provision for inspection.
- 3.9 An independent Inspector has been appointed and is now in post in Scotland. The Ministry of Justice have told me that there are no corresponding proposals to appoint an Inspector of crematoria for England and Wales.

“Ashes”, their definition and possible changes to the law

- 3.10 The 2008 Regulations, and their predecessor regulations, provide that after a cremation, the cremation authority must give the ashes to the applicant for the cremation or a person nominated for that purpose by the applicant.
- 3.11 If the applicant does not want to be given the ashes, and has not nominated any person for that purpose, the cremation authority must retain the ashes. Any ashes retained by a cremation authority must be decently interred in a burial ground or in part of a crematorium reserved for the burial of ashes, or scattered there.
- 3.12 In relation to ashes left temporarily in the care of a cremation authority, the authority may not inter or scatter the ashes unless 14 days notice of their intention to do so has been given to the applicant.
- 3.13 Neither the Cremation Act nor regulations made under it define “ashes”.

- 3.14 The Mortonhall report records a fundamental difference of opinion between the two leading professional organisations in the UK involved in the process of cremation. The Federation of Burial and Cremation Authorities considered that ashes consist of cremulated bone, to the exclusion of any other source of ash obtained from the burned coffin, clothing, or soft toys cremated along with the baby. The Institute of Cemetery and Crematorium Management, on the other hand, considered ashes to include all ashes from the cremation, both cremulated bone, as well as ash from items which were mementos or part of the fabric of the baby's last resting place. Dame Elish comments in her report that the absence of a definition has caused ambiguity and confusion for those involved in the practice of cremation and is a significant underlying cause of the distress now being suffered by next of kin in Scotland.
- 3.15 The Bonomy Commission recommended that "ashes" should be defined in legislation for these purposes as "all that is left in the cremator at the end of the cremation process and following the removal of any metal". They further recommended that cremation authorities should review their practices immediately to ensure that, in dealing with the "ashes" following cremation, they proceed on the basis of this definition. Both the professional organisations I have referred to have now adopted this definition in their advice to their members.
- 3.16 The Commission's terms of reference are specific to Scotland. However, the Commission recommend that the Scottish Government should inform their counterparts in England and Wales and Northern Ireland of this particular recommendation as to the definition of ashes, so as to enable them to consider clarification of the definition in identical terms.
- 3.17 Officials at the Ministry of Justice have told me that they have begun preliminary consultations on amending the 2008 Regulations to clarify the definition of "ashes" in England and Wales. They have also begun very preliminary consideration to giving effect to recommendation 13 of the Bonomy Commission, in England and Wales, that the cremation of non-viable babies should be the subject of legislative regulation. I was advised that any changes to the 2008 Regulations would be made at the same time as changes sponsored by the Department of Health to introduce the medical examiner system as recommended by Dame Janet Smith's Shipman Inquiry.
- 3.18 In a written reply on 5th March 2015 to a parliamentary question asked by Mr Daniel Kawczynski, the Member of Parliament for Shrewsbury and Atcham, as to what plans the Secretary of State for Justice has to review burial and cremation law, Mr Simon Hughes, the then Minister of State for Justice, stated that the Government appreciates that burial and cremation law and practice are of particular concern to those affected by previous practices at Emstrey Crematorium, that the

Government have the greatest sympathy for the parents in these cases, and await the report of the independent inquiry into infant cremations at Emstrey, commissioned by Shropshire Council.

The Minister also stated that when the Department of Health implements its death certification reforms, the Ministry of Justice will also amend its cremation regulations to reflect the changes to cremation authorisation processes. He added that planning for these reforms will present an opportunity for consultation and to consider the recommendations both of the Shropshire inquiry and of the Bonomy Commission in Scotland.

Regulation of crematoria and environmental protection

- 3.19 Crematoria are subject to planning regulation, building control, and health and safety requirements. They are required under the Cremation Regulations to be maintained in good working order, sufficiently staffed, and kept in a clean and orderly condition.
- 3.20 The cremation of human remains is an activity that requires an “environmental permit”, by virtue of Part B of Section 5.1 of Part 2 of Schedule 1 to the Environmental Permitting Regulations of 2010. These regulations were issued under the Pollution, Prevention and Control Act of 1999. This Act replaced the procedure for authorisation under the earlier Environmental Protection Act of 1990, which introduced a system of environmental protection including a system for authorising emissions into the atmosphere. The 2010 Regulations consolidated and replaced previous similar regulations that had been issued under the earlier 1999 Act.
- 3.21 In summary, the environmental permitting regime requires operators to obtain permits for facilities specified by the regulations. The purpose of the permitting regime is to protect the environment and human health from harm. Regulations generally require “Part B” installations to be operated in such a way that all the appropriate measures are taken against pollution, in particular through application of “the best available techniques”, and that no significant pollution is caused.
- 3.22 National guidance is in place, issued by the Department for Environment, Food and Rural Affairs, as to the conditions that should be applied through environmental permits. Environmental permits issued for crematoria generally focus on controlling emissions into the atmosphere, so as to protect people and the environment from atmospheric pollution.
- 3.23 The appropriate authority for the issuing of an environmental permit and for the environmental regulation of Emstrey Crematorium is Shropshire Council. Regulatory officers undertake this function, at arm’s length from the managerial and operational responsibility for the crematorium.

- 3.24 It is an offence for a person to fail to comply with or contravene an environmental permit condition, (Regulation 38 of the 2010 Regulations.) Conviction in a Magistrates' Court carries a fine of up to £50,000 and up to 12 months imprisonment. Conviction in the Crown Court can lead to an unlimited fine and imprisonment for up to 5 years. (Regulation 39.)
- 3.25 The detailed technical provisions of the environmental permit for the Emstrey crematorium, and their consequences for the processes of the cremation of infant remains, are addressed in section 4 of this report.

Administrative Aspects of Cremation

- 3.26 Officers of the Council's registration service have explained to the inquiry the detailed sequence of prescribed forms involved in the registration of still births and infant deaths, and their function and significance in the process leading up to the cremation.
- 3.27 In recent years, there has been only one significant change to the registration regulations, concerning the registration of still births. The current regulations require registration from the point of 24 weeks' gestation, a change from the previous point of 28 weeks gestation.
- 3.28 Foetal remains under 24 weeks gestation are not subject to the provisions of the Cremation Act of 1902 or the regulations made under it, and there is no requirement to register the death.
- 3.29 A description of the sequence of prescribed forms necessary for the cremation process is set out at Appendix Four to this report.

Section 4 – Emstrey Crematorium and Infant Cremations

Emstrey Crematorium Operating History

- 4.1 Emstrey Crematorium and cemetery are situated in the south-eastern outskirts of Shrewsbury, the county town of Shropshire. The crematorium, which is set in pleasant and well maintained gardens, has been in operation since 1958. It serves communities throughout Shropshire and mid Wales.
- 4.2 Until 1st April 2009, the crematorium was run by the former Shrewsbury and Atcham Borough Council.
- 4.3 In 1995/6, the Borough Council replaced the previous Dowson and Mason cremators (the main operating equipment at the crematorium) with three 28” double-ended Newton cremators, manufactured by Furnace Construction. The first was installed in 1995, and two more in 1996. These Newton cremators remained in operation at Emstrey until the end of 2012. They are therefore the equipment that was in use for most of the period within the terms of reference of this inquiry.
- 4.4 On 1st April 2009, the system of local government in Shropshire was reorganised. The former district councils in Shropshire, including Shrewsbury and Atcham Borough Council, were abolished, and their functions and responsibilities were transferred to Shropshire Council, which became responsible for district council services, as well as county ones. From that date therefore, Shropshire Council became the cremation authority for Emstrey.
- 4.5 The Council has told me that the former Borough Council first considered replacing the Newton cremators in mid 2005, owing to future environmental controls contained in statutory guidance that would require the abatement of emissions by 2012. The cremator design, unreliability and high maintenance costs, indicated that the only feasible option was replacement of the cremators. Further investigations were carried out, including obtaining quotations for new cremators, and following a further update in the environmental control standards requiring notification of intent to the Secretary of State, the Borough Council in 2008 committed to installing abatement equipment by 2012. They notified DEFRA of the Council’s intention to replace the equipment. They created a financial reserve for the purpose, which was inherited by Shropshire Council. However, they did not proceed to

begin the project, as consideration was by then being given to the possibility of forming a new single tier, or unitary, authority, and so the decision would become one for Shropshire Council.

- 4.6 An officer who first encountered the crematorium operating equipment in mid 2009 has told the inquiry that by then, it was in poor condition. Crematorium staff have confirmed this, and said that by 2009 it was ready to be renewed. Crematorium staff told me that the optimum working life of a cremator of that type is ten to twelve years, depending on the number of cremations carried out. The equipment had not been maintained by the original manufacturer, but through an arrangement with a former employee of that company. The standard of maintenance has been described to us as “basic”. I have been told that the refractories, or linings, of the cremators were at the end of their life, and were regularly cracking and breaking. The gas valves were old and not fully automated. I have been told that one was managed by an improvised bolt to keep it in position. The computer control system was “archaic”. The system ran on obsolete “floppy discs” and staff had to recycle old computers in order to keep the system running. I have been told that the condition of the system was such that data management was almost impossible, that the automation of the system was not responsive, and that the computer system was constantly failing. There was a focus in this period on maintaining the service and ensuring compliance with the environmental permit. I have been told that this scheme of maintenance remained the case until Co-operative Funeralcare assumed responsibility for the running of the crematorium in 2011 and placed the maintenance of the cremators back with the original manufacturer at the commencement of the contract with Shropshire Council.

Consultants’ report

- 4.7 Shropshire Council, having inherited responsibility in 2009 as cremation authority, established a project board in late 2009 to upgrade the cremators to meet the emission control standards required by 2012. The project board then commissioned a report from outside consultants: “to review their existing crematorium facility at Emstrey (Shrewsbury) specifically in relation to the current cremator provision and compliance with Government Directive PG5/2 (04) and the potential of upgrading the public and administrative facilities”.
- 4.8 The consultants’ report was submitted to the Council in April 2010. It stated that during the previous 18 months, the cremators had suffered a number of malfunctions and breakdowns necessitating frequent engineer’s visits and unbudgeted expense. The number of failures had risen sharply in the previous 4-6 months. The report advised that the cremators had reached the end of their working life, and were in urgent need of replacement.

- 4.9 The consultants' report also advised that the Department for Environment, Food and Rural Affairs ("DEFRA") had issued a directive, PG5/2 (04) which stated that by 31 December 2012, 50% of all cremations in the UK must be treated to ensure the removal of a range of identified toxic elements typically emitted from the main cremator flue (including mercury, various dioxins and hydrogen chloride). These emissions result both from the cremation of the body and as a result of the combustion of the chemicals contained within the materials used to manufacture the coffin. The report advised that 100% abatement would be likely to be required by the end of 2020, and that Shrewsbury and Atcham Borough Council had in any event given a commitment to DEFRA in June 2008 that Emstrey crematorium would be "abated" by the end of 2012.
- 4.10 The report recorded that some 1750 cremations a year took place at Emstrey. It set out recommendations for the installation of abatement equipment, the replacement of the cremators, and improvement to the premises including building a new waiting room, bearers' room, and WCs and refurbishment of the administration facilities. The estimated costs of these recommended works were £1.5 million.
- 4.11 Based on the report, the project board began to finalise design needs and prepare contract documentation for the procurement of the new cremators and associated abatement equipment. During this detailed design period, another option, namely entering into a contractual arrangement with an external provider, was evaluated and included in the options for consideration.

Contract with the Co-operative

- 4.12 On 10th November 2010, Shropshire Council's Cabinet (the committee of councillors responsible for major decisions) considered a report from the Council's officers that summarised the consultants' recommendations. The report advised that the Council's approved capital budget included £1.5 million for the crematorium, to be funded by borrowing. It set out three options as to how to proceed:
- upgrade the crematorium as recommended and continue providing the service directly,
 - enter into a long term agreement with a private sector provider for upgrading and operating the crematorium and cemetery,
 - sell the crematorium to a private sector provider.
- 4.13 Councillors accepted their officers' recommendation to adopt the second of these options. A competitive tendering procurement process followed, involving public advertising and other processes in accordance with the European Union Procurement Directive. This led to a decision by the Council's Cabinet on 3rd August 2011 to award a contract for the running of the Emstrey Crematorium and Cemetery,

and a lease for the associated land and premises, to Funeral Services Ltd, a subsidiary of the Co-operative Group, trading as The Co-operative Funeralcare. The contract, which took effect from September 2011, was for a term of 30 years. The staff at the crematorium and cemetery who were previously employed by the Council became the employees of Co-operative Funeralcare. The Co-operative have recently appointed an experienced bereavement services manager, for this and other crematoria. It was a requirement of the contract that the cremators should be replaced and that abatement equipment should be installed before the December 2012 statutory deadline. The technology that was to be installed was proposed and approved as part of the tendering and contract.

- 4.14 Infant cremations were not mentioned in the substantial specification for the tendering exercise or in the contract.
- 4.15 The position therefore became, and remains, that the Co-operative operated the crematorium on behalf of the Council. This is how the arrangement is described in the brochure and the website for the crematorium. Legal advice to the Council, in response to my seeking clarification of this point, is that the Council remains the cremation authority, although it has passed many of its obligations as a cremation authority to the Co-operative through the contract.
- 4.16 Under the terms of their contract with the Council, the Co-operative had the three Newton cremators removed and replaced by two larger size single ended (42") Joule cremators, manufactured by Matthews UK. The work began in March 2012 and the first new cremator was installed by September 2012. The second cremator was in place and commissioned in December 2012. The new abatement equipment was required by the environmental permit to be in place by January 2013 and it was this date that drove the timetable.
- 4.17 The two new Joule cremators have a "foetal setting" which allows the temperature in the primary cremator chamber to be maintained at a lower level than in the secondary chamber, and the turbulence in the primary chamber to be reduced. New operating manuals were provided, and additional technician training was provided by the manufacturers. Alongside the introduction of the new equipment, the method of conducting infant cremations was changed. A "baby tray" was introduced for the cremation of small coffins containing infant or foetal remains, thus increasing the chances of maintaining identifiable remains from the cremation. (The purpose of using a baby tray is outlined in paragraphs 4.54 and 4.55 of this report.)
- 4.18 For the first infant cremation for which the new cremators were used, in late 2012, a baby tray was not used. No ashes were recovered from this cremation. The crematorium records show six infant cremations from early 2013, when the new cremators, the baby tray and new operating methods were used, to the end of December 2014. In each of

these six cases, identifiable ashes are recorded as having been preserved from the cremation.

- 4.19 Crematoria are normally funded from the charges that are made for carrying out cremations. Neither the Council nor the Co-operative make a charge for the cremation of people who have died under the age of 18.

The Environmental Permit and its Consequences for Infant Cremations

- 4.20 I have summarised in section 3 the legal and administrative background to the issuing of environmental permits. These are required by law to be held and observed by the operators of premises where human remains are cremated.

- 4.21 Statutory guidance on the issuing and contents of environmental permits for crematoria is contained in a document issued by the Department for Environment, Food and Rural Affairs (DEFRA), called Process Guidance Note 5/2. The guidance was issued jointly with the appropriate authorities for Northern Ireland, Wales, and Scotland, and so applies consistently across the United Kingdom. The guidance is periodically updated. The current guidance was issued in 2012, and subsumes and replaces previous comparable guidance.

- 4.22 The document states that its purpose is “to give guidance on the conditions appropriate for the control of emissions into the air from the cremation of human remains”. It is based on the state of knowledge and understanding, at the time of writing, of what constitutes “Best Available Techniques” for the sector.

- 4.23 Technical and regulatory officers at Shropshire Council are keenly aware of the guidance, which is regarded as an authoritative reference point for their work.

- 4.24 On the subject of the cremation of foetal and infant remains, the guidance includes the following two paragraphs:

- 5.28 Small-scale cremators may be developed in order to cremate stillbirth, neonatal and foetal remains. Not all the standards for full-scale cremators are appropriate for such small-scale cremators because of the relatively small mass of pollutants emitted. For these purposes “small-scale cremators” should be taken to mean cremators with a maximum door opening of 300 x 300 mm and with a maximum length of primary chamber of 1000 mm.
- 5.29 When stillbirth, neonatal, or foetal remains are cremated in full-scale cremators, the guidance for those cremators should apply.
- Paragraph 5.30 goes on to specify which parts of the overall guidance should still apply to small-scale cremators.

- 4.25 The intent of the statutory guidance is clear in this respect. Where small scale cremators, as defined in paragraph 5.28 of the guidance quoted in the previous paragraph of this report, are used to cremate stillbirth, neonatal and foetal remains, there may be some relaxation of the conditions that otherwise apply to control emissions into the air. However, when infant remains, and also stillbirth, neonatal or foetal remains, are cremated in full-size cremators, there should be no relaxation of normal requirements.
- 4.26 The environmental permit currently applying to the Emstrey Crematorium was issued on 12th September 2011. It replaces and consolidates earlier authorisations and permits that have been in place since the Environmental Protection Act of 1990 first came into force. It is a document of twelve sides containing 41 conditions, many of them highly technical.
- 4.27 The Council's officer who oversees the environmental regulation of the crematorium has drawn the inquiry's specific attention to four of the permit's conditions which in his view prevent the crematorium conducting overnight cremations of infant remains with the burners turned off - a practice that has been commended to me by some, during this inquiry.
- Conditions 25 and 26 require that gases in the secondary combustion zone shall be held at a minimum of 850° C, shall be continuously monitored, and for alarms to be triggered if the temperature falls below 850°.
 - Condition 27 requires that the charging system shall be interlocked to prevent the introduction of a coffin to the cremator unless the temperature in the secondary combustion zone exceeds 850° C.
 - Condition 28 requires the oxygen concentration in the waste gases at the exit to the secondary combustion chamber to be maintained at a minimum average of 6% and an absolute minimum of 3%. (I am advised that keeping the oxygen level up is crucial to ensuring efficient and effective combustion of pollutants.) The substance of these conditions has been the same, in the successive authorisations and permits that have been issued for the Emstrey crematorium.

The officer has also drawn the inquiry's attention to the overriding requirement to use "best available techniques". For this reason, he would not accept a process whereby a cremator was operated unattended as it would not be possible to comply with the specific conditions of the permit and would also fall short of required standards of management and supervision.

- 4.28 The officer has been involved in the environmental regulation of the Emstrey Crematorium since 2009. He has explained that his interest in the regulatory process has been to ensure effective cremation and to minimise emissions to air. His view is that the cremators that were in use between 2009 and 2012 were not capable of being operated within the terms of the environmental permits that then applied, in a way that would have allowed the guaranteed recovery of ashes from infant cremations. His view is that the position has now significantly changed, with the current cremators and their more sophisticated settings.
- 4.29 The officer has told the inquiry that, even with hindsight, he does not believe that he would have amended the permit conditions so as to allow any cremation to be provided without adequate secondary combustion controls. The purpose behind the time, temperature and oxygen conditions in the secondary chamber is to ensure that any unburnt or partially combusted materials and toxic fumes and gases that are not dealt with in the primary combustion chamber are destroyed in the secondary chamber. There had been occasions, within the officer's knowledge, when even with controls in place, unacceptable emissions of smoke had occurred from the stack.

Technical Aspects of Cremation

- 4.30 The cremation of human remains is carried out in a purpose-built furnace known as a "cremator". Each crematorium will operate one or more cremators, depending on the number of cremations held there. Two or more cremators may be operated simultaneously in one crematorium.
- 4.31 There are a number of different types of cremators made by manufacturers and supplied to crematoria. They are generally gas powered, as they are at Emstrey.
- 4.32 The cremator has two chambers. The coffin is placed in the main or primary chamber, where the primary cremation takes place. In the secondary chamber, a secondary process of combustion of the emissions from the first chamber takes place so as to eliminate noxious gases and other pollutants so far as possible, before the discharge of exhaust gases through the flue.
- 4.33 At a third stage, abatement equipment, which was installed at Emstrey in December 2012, filters the outflow from the secondary chamber, so as deal with any pollutants which have not been adequately dealt with by the combustion in the primary and secondary chambers.
- 4.34 Cremators are generally controlled and operated through computer based software. Modern software includes a "foetal" or infant setting through which smaller coffins containing infant or foetal remains may be cremated at a lower temperature and less aggressively than is

necessary for the cremation of a larger and more substantial adult. I have been advised that other relevant factors are the flexibility of the design of the burners and the combustion controls.

- 4.35 The Mortonhall and Bonomy Reports both describe fully the cremation process. I quote from Section 6 of the Bonomy Report:

In his expert report to the Mortonhall Investigation, combustion engineer Dr Clive Chamberlain described the cremation process. The coffin is placed adjacent to the cremator on a bier, from which it is pushed ("charged" is the technical term) into the primary chamber either manually or by mechanical means fitted to the charger.

The interior of the cremation chamber at the start of most cremations is in the range of 650 to 850° C. Air for combustion is admitted to the chamber along its length in order to establish burning along the whole of the coffin and thereafter the ignition of the body. Body fat continues to fuel the process, at times raising the chamber temperature to around 1000° C. ...

When the flame has ceased and the cremation is complete and the remains have been removed from the chamber and allowed to cool, non-combustible items such as coffin screws and handles, artificial joints and other metals, are generally extracted by the use of magnets or other means. The residue remaining comprises inorganic components of both the body, principally cremated bone, and the coffin and any other item in the coffin. These are ground down to a sand-like consistency in a machine known as a "cremulator". The resulting contents of the cremulator are consigned to a container and referred to as the "ashes". In baby and infant cremations, this may be done by hand.

In order that a cremation can be completed within a reasonable time, the combustion conditions within the primary cremation chamber are quite aggressive, comprising jets of air introduced along the cremator together with support burners to create the conditions necessary for active burning to take place. As a result, turbulence is created within the chamber. As Dr Chamberlain has explained in his report, "This turbulence will entrain the lightest solid particles and carry them out of the cremation chamber into the secondary combustion system."

The bones in an adult cremation retain enough shape and weight to remain in the primary chamber to be raked out but those of a baby may not. Any cremation residue that passes to the secondary chamber is lost and cannot be recovered. When a baby is cremated in the routine way that is applied in adult

cremations, the risk that significant cremation residue will be lost in this way is ever- present.

- 4.36 The issue is summed up by the Bonomy Commission at paragraph 8.6 of their report:

The recovery of ashes in baby and infant cremations is a challenging process due to the limited quantity and the nature of the human material placed in the cremator. The problems are clearly explained in 8.2.1 of the expert report of Dr Roberts where, relying on the expert report of Dr Chamberlain, she says this:

“The aspects of cremation which are most detrimental to foetal and infant remains appear to be the jets of air introduced into the cremation chamber and direct heat in excess of 1000° C from support burners. Whereas the weight of adult bones ensures that they are not carried out of the cremation chamber into the secondary combustion cremation chamber, foetal bones are much lighter and so they may be carried through ...so if foetal remains have been blown into the (secondary) combustion chamber then they will not be retrievable.”

Particular issues for infant cremations

- 4.37 For these reasons, as the Bonomy Commission put it at paragraph 6.7 of their report, until it became apparent at the end of 2012 that there were circumstances at Mortonhall Crematorium that required investigation, there was a fairly widespread understanding among those with a role to play in arranging or carrying out cremation, that ashes were unlikely to be recovered when a baby was cremated, and that there might be no ashes recovered following the cremation of a still born baby or a very young infant.
- 4.38 This understanding, however, is not shared or accepted by many families of deceased children. As one bereaved mother in Shropshire put it to me, you get ashes from a cremated guinea pig, so why did we not get them from our child?
- 4.39 I have been asked by bereaved parents where their baby’s ashes went, if they were not recoverable from the cremator’s primary chamber. I have been advised by technical officers that, when the former Newton cremators were in use, any particulates that were carried into the secondary chamber would have been burned there, and any residual particulate matter leaving the secondary chamber would have become air-borne. There was no exit filter gathering ash in the chimney from the secondary chamber. The ductwork was swept out periodically, normally annually. The resultant “fly ash” was interred within the crematorium’s garden of remembrance.

- 4.40 There are a number of special measures that may be taken by crematorium technicians for infant and foetal cremations, to maximise the chances of identifiable ashes remaining in the primary chamber, so that the ashes may be swept up when the cremator has cooled, and returned to the funeral director or family. What technique, or combination of techniques, is used varies from crematorium to crematorium.

Manual override of computerised programme

- 4.41 Some crematorium technicians, by reference to the information provided to them on a computer screen and/or observed through a spyhole in the cremator door, may manually override the computerised setting so as to reduce the temperature and/or turbulence in the primary chamber, in order to increase the prospect of ashes remaining in the primary chamber. Placing the coffin close to the charging door may protect it from the full force of the burners.
- 4.42 The question arises as to why these override techniques were not followed at Emstrey. The firm that manufactured and installed the Newton cremators have told me that the equipment could have been placed on manual control so as to de-couple the main cremation chamber from the secondary, and to reduce the temperature and air flow in the primary chamber, while retaining full temperature in the secondary chamber. The staff have told me that their introductory training in the use of the Newton cremators had not covered the possibility of manual override for infant cremations. They did not know that this was a possibility, until the inquiry raised it with them. The possibility had not therefore arisen for cremation practice at Emstrey. The staff have told me that, in any event, the manual controls on the primary chamber had only three settings – high, low, and off. The scope for manual override control was therefore limited.
- 4.43 The Council's regulatory officer has told the inquiry that, while it may have been technically feasible manually to de-couple the primary and secondary chambers in terms of temperature control, he would still be concerned that the effectiveness of controls on the manual settings would have made it difficult to maintain effective combustion conditions so as to avoid smoke and other pollutants, without generating significant turbulence which may have entrained fine materials from the primary chamber to the secondary chamber.
- 4.44 **Overnight cremation.** At some crematoria, the practice is followed of placing the infant coffin in the cremator at the end of the day, when the burners have been turned off. The residual heat in the chamber will be sufficient to ignite the coffin, which is then left unattended overnight to complete its combustion. The ashes are recovered and cremulated if

appropriate, in the morning. I understand, from a now retired member of staff, that within his experience this process was followed in the 1960s and early 1970s at the Emstrey Crematorium.

I also understand that it is still followed at some crematoria, and normally results in there being ashes to return to the family.

- 4.45 I have been advised, by both the Council's regulatory officer and by staff at the crematorium that the practice of overnight cremation would be contrary to the conditions of the environmental permit for the crematorium. It would also be contrary to the national guidance in clause 5.29 of Process Guidance Note 5/2(12). This is because the conditions would not be maintained in the secondary chamber that are required to deal with pollutants. I understand that at some crematoria, greater priority may be given when conducting infant cremations to the preservation of ashes to return to the family, than to compliance with the conditions of the environmental permit. Staff at the Emstrey crematorium, however, within the fifteen year period within this inquiry's terms of reference, have been conscious of the legal requirements of their environmental permit in this respect, and have not conducted overnight cremations.
- 4.46 Staff have told me that it has been a firm part of their training that, as a matter of good practice, cremations should always be supervised and not left unattended. As one current member of staff told me "It is inside my psyche." While feelings about what is appropriate treatment of a deceased child are likely to be deeply personal, I suspect that, regardless of the legal requirements of the emissions permit, at least some parents would find it unsatisfactory for the cremation of their deceased child to be conducted overnight in an unattended crematorium.
- 4.47 The manager of another crematorium where similar cremators to those formerly in use at Emstrey are still used, has told the inquiry that the process they use is for the infant cremation to be the first, rather than the last, of the day, when the cremator is in "warm-up mode". This approach results in a less aggressive process, at a lower temperature than when the equipment has reached full temperature. The technique enables the crematorium normally to recover ashes. It may however involve a high risk of breaching the standard conditions of environmental permits, if minimum required temperatures in the secondary chamber are not reached.
- 4.48 The Bonomy Commission recommended that a working group should be established in Scotland which among other matters should examine the practice of cremating babies at the end of the working day and overnight in a way that will cause no material environmental damage and satisfy the appropriate authorities that it should be permitted. It seems that at present, regulatory requirements and operating practice may be at odds.

- 4.49 **Foetal setting.** Most modern cremators, including those currently in use at Emstrey, have an infant or foetal setting. Such cremators can be controlled, through the computer setting, or manually, or through a combination of both, so as to achieve a lower temperature and gentler conditions in the primary chamber than would be the case for an adult cremation, while the secondary chamber operates at full temperature and performance. This uncoupling of the conditions in the two chambers enables the chances of ashes being retained in the primary chamber to be maximised, while the operation of the secondary chamber and the abatement equipment is in accordance with the emissions permit, thus ensuring the protection of the atmosphere intended by the environmental protection legislation.
- 4.50 The cremators that were in use between 1996 and 2012 did not have a foetal setting. The new cremators that were installed in 2012 do have this setting. Reliance on it, together with the introduction of the baby tray, has resulted in ashes being recorded as preserved in all infant cremations at Emstrey since the new equipment and processes have been in use.
- 4.51 I have asked whether it would have been possible to upgrade the previous cremators by the “retro fitting” of a foetal setting. Crematorium staff did not think that the possibility had ever been considered. I have however been advised that a new control system would have been required which would have involved a substantial amount of work and expenditure, on cremators which for some years had been regarded as at the end of their operating life, and which were planned for replacement.
- 4.52 **Small scale cremators.** Purpose built small scale cremators were introduced in a small number of crematoria from the 1990s. The design is such that turbulence within the combustion chamber is kept to a minimum. Only a small number have been built and supplied. The Bonomy Commission reported that they had identified only eight crematoria, out of a total of around 245 in England and Wales, where small scale cremators have ever been in use, and only two where they are currently in use. At paragraph 8.29, the Commission report that discussions with representatives of the cremation authorities that had discontinued their use of small scale cremators indicated that their reasons for doing so were a lack of financial viability because of their limited capabilities, the need to achieve financial efficiencies to help fund the installation of abatement plant, and the need to find additional space for the installation of that plant.

- 4.53 There is not, and has not been, a purpose built infant cremator at Emstrey.
- 4.54 **Baby trays.** Some crematoria place an infant's coffin into a metal tray with raised ends. This is done better to retain the resultant ash and to restrain its spread by turbulence throughout the cremator. The upright end of the tray may also deflect the impact of the burner from the baby's coffin. The ashes remaining in the tray may be gently brushed out of the tray and carefully preserved.
- 4.55 Such a tray was not used with the previous cremators at Emstrey, as the view was taken that the available settings would not enable ashes to be preserved. There were also concerns about health and safety risks from the heat of the tray. It has however successfully been used with the present more technically advanced equipment, as part of an overall approach to maximising the chances of preserving ashes.

Advice of professional associations

- 4.56 **The Institute of Cemetery and Crematorium Management (ICCM)** is a "not for profit" company, limited by guarantee. 62% of crematoria in the UK, including Emstrey, are corporate members. Two members of staff at Emstrey are also associate members, as individuals. The primary function of ICCM is to provide accredited education and training opportunities and best practice guidance to burial and cremation authorities. The ICCM has no powers of enforcement.
- 4.57 In their submissions to this inquiry, the ICCM have drawn attention to the perceived difference, identified in the Mortonhall investigation, between "ashes" and "cremated remains", and to the previous difference of view between the two main professional organisations on this issue. They refer to parents of babies cremated at Mortonhall having been informed that no "cremated remains" had been recovered, while ashes resulting from the cremations were buried within the crematorium without the knowledge of parents.
- 4.58 The ICCM say that they were not until recently aware that any cremation authorities or staff were making any judgement on what is left after any cremation or separating what is judged to be ashes from cremated remains. They have issued a statement to their members making clear that they make no distinction between the two. They recommend this inquiry to focus on that issue.
- 4.59 Crematorium staff have told me that this distinction has not been an issue at Emstrey, and that no distinction has been made between ashes and cremated remains. I have found nothing to cause me to

doubt this. The issue has however been raised in a recent policy statement by Co-operative Funeralcare.

The statement is reproduced in paragraph 4.81 of this report and referred to in paragraph 5.28 in the Recommendations section of this report. I realise that this statement has been issued as a conscientious attempt to respond to the recommendations of the Bonomy Commission on this subject. I am not sure, however, that the statement, as worded, provides helpful clarification for bereaved families.

- 4.60 The ICCM also drew my attention to the importance of good cremation technique, to maximise the chances of the preservation of ashes from an infant cremation. They refer to the importance of a “baby setting” on the cremator, to the possibility of manual intervention to reduce air input and burner activity so as to reduce turbulence, and to where the coffin or tray is placed in relation to the burner.
- 4.61 They have also drawn my attention to the guidance they issued in 2013, and revised in 2014, on infant cremations. That guidance appears at Appendices Five and Six to this report.
- 4.62 The Emstrey Crematorium is also a member of the other main professional association, **The Federation of Burial and Cremation Authorities (FBCA)** (until 2008 known as the Federation of British Cremation Authorities). The FBCA has since 2003 operated a Technicians Training and Examination Scheme (TEST). The Council have told me that: “Operational practice, undertaken by cremator technicians, was certified by the FBCA. Initial certification took place in the mid 1980s, with all technicians receiving refresher training and re-certification in November 2009, which is also a requirement of the environmental permit.”
- 4.63 Section 8.2 (b) of the TEST training manual issued in November 2003 is relevant to infant cremations. The guidance, which was brief, is reproduced at Appendix Seven to this report. That guidance was revised in October 2014, in the light of the Mortonhall and Bonomy reports. The rather longer and more detailed revised text relevant to infant cremations is attached at Appendix Eight

Sands

- 4.64 Sands, the stillbirth and neonatal death charity, is a UK charity providing support for bereaved parents and families. The charity provides direct personal support for bereaved parents, the promotion of excellent bereavement care, and support for research and development. The charity have reminded this inquiry of the evidence presented to the Mortonhall investigation that there is evidence of human remains in ashes after the cremation of a baby as early as 17 weeks gestation.

- 4.65 The position of Sands is that denying grieving parents the choice of having ashes following the cremation of their baby is unacceptable. Their view is that if there will be no ashes at all, parents must be informed so that they can make other arrangements if they wish. Some parents may choose another crematorium or may opt for burial instead.
- 4.66 Sands consider that unless offering ashes to parents becomes standard practice, public trust in crematoria practice is unlikely to be restored. They are calling for a UK wide review of baby cremation practice to ensure a consistent approach to the cremation of very premature, stillborn and very young babies.

Infant cremation practice at Emstrey

- 4.67 Staff at the crematorium initially worked for Shrewsbury and Atcham Borough Council. On local government reorganisation in 2009, their employment passed to Shropshire Council. Their management changed on a number of occasions.
- 4.68 On the Council contracting out operational responsibility for the crematorium in 2011, the employment of staff at the crematorium transferred to the Co-operative.
- 4.69 The crematorium technicians were qualified through the FBCA. There was no requirement for retraining, refreshing competence, or continuing professional development. Managerial staff at the crematorium told us that the former Borough Council did not encourage professional networking beyond the local area, or attendance at industry conferences. This changed when employment transferred to Shropshire Council, after which fees for attendance at industry conferences were paid. This greater openness to outside networking has continued under the employment of Co-operative Funeralcare.
- 4.70 Staff have told us that during the period when the Dowson and Mason cremators were in use, until 1996, infant ashes were normally found at the end of the cremation, raked out, put through the adult cremulator, and returned to the funeral director or family. No baby tray was used.
- 4.71 We were told that the Newton cremators that were installed in 1996 had computer controlled temperature settings. The temperature in the main chamber would reach 850° C, and more, and the technicians thought that there was nothing that could be done to override that. (The inquiry has since been told that the cremator also had the manual settings of “high, low and off”). The full power of the burners and the force of the jets would result in little chance of ashes remaining in the primary chamber after the cremation of a small infant.

- 4.72 Operating staff told us that they would always look through the two chambers, as a matter of course, after every cremation, for ashes, but that for a baby of less than about 18 months, they would not find them. They told us that for babies above 18 months to two years, they would normally expect to find ashes, which would be carefully swept up and dealt with as before.
- 4.73 In 2009, a new manager invited the FBCA to Emstrey crematorium, to refresh the training for the cremator technicians. The technicians have told me that the possibility of manual override for infant cremations did not arise during this training.
- 4.74 The FBCA, however, have referred the inquiry to the training programme that was used, which indicates that the course would have addressed control techniques beyond the automatic settings. They also refer to the TEST training programme used by the FBCA at the time, which refers to manual override.
- 4.75 The Joule cremators, which were fitted at the end of 2012, are of a different design and have a foetal setting, which enables the temperature and turbulence in the primary chamber to be reduced, while maintaining the full performance of the secondary chamber and of the abatement equipment. When the “charging” temperature of 800° C is reached, the baby tray, containing the baby’s coffin, is pushed into the cremator with a rake. The cremation in the primary chamber is then conducted, with very little air and at a temperature of 700° or lower. The progress of the cremation is monitored on the computer screen, and also through the spyglass in the cremator door. The process is automatic.
- 4.76 The average time for the baby’s cremation is something over an hour. When the cremation is complete, the technicians leave the tray in the cremator overnight: they always ensure that an infant cremation is the last of the day so that this can be done. They ensure that the equipment is all closed down, and leave the crematorium at about 9 pm.
- 4.77 The first technician will arrive at the crematorium by about 8 am the following morning. He will open the charge door and allow the chamber fully to cool down, while the second cremator is being powered up. He will then check the remains, extract any pieces of metal, and sweep up the ashes with a brush and pan, and grind them by hand with a pestle and mortar. The ashes will then be placed in a casket, ready for return to the family or funeral director.
- 4.78 In this way, staff at the crematorium have recovered ashes in every infant cremation carried out since the new cremators have been used together with the baby tray.

4.79 There is an issue as to whether this improved capacity and performance has been made sufficiently known to funeral directors and others, so that people recognise it and rely on it.

4.80 The Co-operative have told the inquiry that the current cremators are serviced approximately six monthly. All fly-ash recovered from the cremators and the cremator flues is retained at the crematorium and interred in the garden of remembrance.

4.81 I have sought the advice of the company that manufactured and installed the Newton cremators at Emstrey in 1995/6 as to their technical capacity. They make the point that after the installation of the equipment, the former Borough Council chose not to have it maintained by that company, and so would not have used their technical back up, should the Council have needed it for advice. When they inherited responsibility for the crematorium in 2011, Co-operative Funeralcare returned to the manufacturer for their maintenance services. The manufacturing company say that when new, the hearth of the cremator is smooth, but that over time it becomes pitted and remains are more difficult to rake. If the hearth is not changed on a regular basis, it becomes more difficult to rake small amounts of ash, say from an infant. The manufacturer pointed out that they manufactured infant cremation trays that would make the retention of ashes easier.

4.82 The manufacturers have advised:

“In general, different crematoriums have different approaches to carrying out special cremations. This would be up to the management to decide the procedure. Many Newton cremators were installed over a long period in the UK from 1980 until 1997. Larger infants could easily be cremated in a normal automatic cycle, smaller and still born up to around 9 lbs would benefit from using a tray, with the operator ensuring as little turbulence as possible in the cremator chamber. Some crematoriums placed very small charges into the chamber on a tray after the machine was in night close down in order to produce no turbulence and maximise the ash remaining, which could be removed the following morning.”

The company point out that they also manufactured an infant cremator.

4.83 In October 2014, Co-operative Funeralcare issued an “Ashes Policy Statement” for the Emstrey crematorium, as follows:

“In arranging the cremation of a baby, whether arranged through a Funeral Director, a Local Hospital or direct with the Baby’s Parents, Emstrey Crematorium will always endeavour to ensure that the parents are fully informed on all aspects of our

services. We are committed to the sensitive and respectful care of all of those entrusted to us and to giving our client the highest standard of service at all times. It is Emstrey Crematorium's policy to return all ashes resulting from the cremation of a baby to the applicant of the cremation or their agent, if that is their wish. If they do not wish the ashes to be returned to them, then we will disperse them adjacent to the Babies' Memorial Garden in the crematorium grounds, in a similar manner as we do with an adult in our Garden of Remembrance.

We cannot guarantee that we will always get ashes from a baby cremation but in the majority of our baby cremations, including both foetal and full term, we do recover visible human remains. On the occasions when we do not have visible human remains, we cannot be sure that the ashes contain any human remains, but we also cannot be sure that they do not. Consequently, we would treat the ashes with equal respect."

Meetings with funeral directors

- 4.84 The inquiry team has spoken with a number of local funeral directors. Their general understanding is that it is very difficult for crematorium staff ever to guarantee that they can recover ashes from an infant cremation.
- 4.85 When parents approach a funeral director to manage an infant or foetal cremation, the funeral director will discuss with the family their preference for a burial or cremation. It is quite rare for a family to decide on a cremation for a deceased child, burial being more common. Time is taken to help distressed families think through what their preferences are.
- 4.86 Funeral directors' experience has been that while ashes are invariably returned after infant cremations at the nearby crematorium at Telford, they have not been returned after infant cremations at Emstrey. One funeral director said that someone in his firm would always telephone the crematorium to ask the position, but that his understanding is that the position remains that there is no confidence at Emstrey about ashes being obtainable and so parents would be well advised to avoid taking the risk. Some parents would therefore choose a cremation at Telford rather than Emstrey, in order to be confident of receiving ashes.
- 4.87 Some funeral directors said that they would welcome more information about what facilities are now available at Emstrey and what information can be passed on to parents.

Arrangements with local hospitals

- 4.88 We met a Medical Director at the Royal Shrewsbury Hospital. The hospital forms the Shrewsbury site of the Shrewsbury and Telford Hospital NHS Trust.
- 4.89 The Human Tissue Authority is the body that assures itself that the designated individual, the licence holder, the premises and the practices are suitable and comply with the requirements of the Human Tissue Act of 2004. The Royal Shrewsbury Hospital is licensed under this legislation to carry out post-mortem examinations and the removal and storage of post-mortem tissue for use for scheduled purposes under the legislation. The hospital carries out some 1,000 post-mortem examinations a year, the majority on behalf of local coroners.
- 4.90 While foetuses of less than 24 weeks gestation are not subject to the same legislative provisions as older babies in relation to registration of deaths and cremation processes, the medical director explained to us that in March 2014, NHS England contacted all NHS trusts with instructions concerning the management of foetal tissue, and seeking confirmation that foetal tissue (i.e. any tissue that is the product of human conception) was not incinerated in hospital incinerators. While not law, the relevant Royal Colleges had for some time laid down professional practice that foetal tissue should be cremated and not disposed of in a hospital incinerator.
- 4.91 Shrewsbury and Telford Hospital NHS Trust maintain documented procedures for the sensitive disposal of foetal tissue. All such tissue, regardless of age or gestation, is received by the hospital mortuary and is accompanied by a parental wishes form. Parents are asked if they would like the hospital to manage the disposal of the remains or if they wish to make their own private arrangements. If the foetus is of more than 24 weeks gestation, parents who choose to allow the hospital to dispose of the remains are offered the choice of cremation or burial. Mortuary staff will wait for seven days before arranging for cremation, in case the parents change their minds.
- 4.92 In the majority of cases, parents will sign a form asking for the hospital to arrange for the remains to be cremated. The hospital trust maintains a contract with a local funeral director. The funeral director provides a hearse that transports the foetal remains, normally three sets at a time, to the crematorium. The hospital chaplain will conduct a service before the cremation takes place.
- 4.93 Hospital staff inform parents that there will normally be no ashes recovered from the cremation of the foetal remains, but that should any be recovered, they will be scattered in the garden of remembrance at the crematorium.

- 4.94 As to infant deaths, there are standard operating procedures for the management of infants who are brought into the accident and emergency department who are dead on arrival, or who die following their arrival in hospital. The child is transferred to the mortuary and registered there. The child will not share mortuary space with an adult. The bereavement officer will liaise with the consultant and with the parents and normally secure consent for a post mortem. In some cases, the coroner may require a post mortem. If the deceased infant is less than twelve months old, the post mortem will be carried out by a paediatric pathologist at Birmingham Children's Hospital. The infant will then be transferred back to Shrewsbury or Telford Hospital, and, following authorisation, will be released for cremation or burial. For any infant or unborn child of more than 24 weeks gestation, the parents will be invited to arrange for cremation or burial.
- 4.95 The medical director said that he was perfectly happy with the service provided by the Emstrey Crematorium. The service had worked well, and particularly since the requirement to cremate all foetal tissue since 2005. When the Human Tissue Authority had conducted an inspection, they noted that records of foetal remains had been reviewed and showed that foetal tissue had been disposed of in accordance with the wishes of parents.

Section 5 - Conclusions and Recommendations

Conclusions

- 5.1 This inquiry has established that, between January 2000 and December 2014, there were 57 infant cremations at the Emstrey Crematorium within the inquiry's terms of reference. There were an additional two cases outside the age criteria, but which parents asked us to include. Of these 59 cremations, 53 were conducted between 2000 and 2013. For 51 of these, ashes were not recovered.
- 5.2 The records show that from 2013, when new cremators, new techniques, and a baby tray were introduced, to the end of 2014, there were six cremations of infants falling within our terms of reference. Ashes were recovered in all six cases
- 5.3 At first sight, the manner of cremation of very young children may seem an obscure and perhaps not very significant issue. Having had the opportunity of spending time with a number of bereaved parents and of hearing from them of their experiences and feelings, it is very clear indeed to me that this is a matter of the very utmost importance to families who have lost a child, and who have entrusted their child to the appropriate authorities for cremation.
- 5.4 There can surely be no more painful experience than losing one's infant child. Parents who have lost their child at birth have vividly explained to me how their joy, after building up for months, suddenly and unexpectedly turned to grief. Having expected to be choosing names, clothes and toys, they found themselves instead having to make decisions about burial or cremation, form of ceremony, hymns and readings. For some the decisions they made in the days immediately following the death of their baby remain a blur in their memory. They are not quite sure now who said what to whom and what their options were.
- 5.5 Some parents think that they understood at the time that they were unlikely to receive ashes after the cremation at Emstrey, but are now distressed to discover from media or other reports that had the cremation been conducted at some other crematoria they would have been likely to have had ashes returned to them. Some parents did not at first understand that there would be no ashes to be returned to them, and felt shocked, and sometimes angry, when they discovered that there would be none. In one case, of a slightly older child, the parents recall that they were told that there would be no ashes, and only later

discovered that in fact there had been ashes, which had been spread in the crematorium garden without their knowledge.

- 5.6 Parents cannot understand how a child could be cremated, through a competent and conscientious process, and no ashes remain. Some families see a cavalier disregard by public officials for the sensitivity of their feelings.
- 5.7 Crematorium staff, on the other hand, feel that they have conscientiously and professionally carried out a sensitive job in accordance with the standards they were instructed to meet and using the equipment that was made available to them.
- 5.8 So what lies behind these sharply divergent perceptions? The cremators that were in use at Emstrey from 1996 to 2012 did not have an automated special infant setting. Crematorium staff thought that it was not possible in practice to “uncouple” the conditions in the primary chamber from those in the secondary chamber, and so create the gentler conditions necessary to enable the recovery of ashes from an infant cremation. The Council’s regulatory officer doubts whether it would in any event have been possible to achieve this with the equipment that was in use, at least since his involvement in 2009, without breaching the conditions of the environmental permit. To have conducted the cremation of an infant child overnight, on residual heat from previous cremations but with the burners turned off, a practice commended by some, would also have breached the conditions of the environmental permit that was in force to protect the public against harm from atmospheric pollution.
- 5.9 Staff, who had worked at Emstrey for a long time, had come to regard the practice there as the norm. They had had little or no experience of practice elsewhere. The reality seems to be that infant cremation practice at different crematoria has varied, and until recently, no one seems to have paid much attention to this inconsistency.
- 5.10 Council staff realised by 2005 that it was time that the cremators at Emstrey were replaced. But this seems to have been primarily because of the requirement for abatement equipment to be fitted by 2012, and also because they regularly broke down, and because of high maintenance costs, rather than because of specific awareness of the practical issues involved in managing infant cremations. I am not confident that environmental regulators, nationally or locally, were conscious that the practical consequences of their regulatory requirements for infant cremations in cremators without infant or foetal settings, were to make it very difficult to recover ashes from infant cremations.
- 5.11 Although I have been told that by 2005, the former Borough Council were looking at replacing the former cremators, they were not replaced until the end of 2012. Firstly there was the period of consideration of

what to replace them with, so as to comply with changing environmental requirements. This was overtaken by the lead up to local government reorganisation. Then there was the reorganisation itself.

Then the newly established unitary Shropshire Council considered what to do with the crematorium and cremators they had inherited. There then followed the tendering exercise through which the Co-operative were awarded the contract. There was then the commissioning and installation of new equipment. Each individual step in this sequence can be justified. The total period of time that resulted, during which unreliable equipment remained in use, however, cannot.

- 5.12 It is noteworthy that infant cremations, and the particular practical issues that they present, were mentioned neither in the consultants' substantial report commissioned by Shropshire Council that was presented in April 2010, nor in the officers' report to councillors in November 2010, nor in the specification to tenderers that followed, nor in the contract between Shropshire Council and the Co-operative. Infant cremations are hardly mentioned either in the operating manuals for the new cremators that were installed in 2012-13. However, while this was not the reason they were replaced, the new cremators now have an infant or foetal setting and so, with the use of the baby tray, can now deal both sensitively and lawfully with infant cremations.
- 5.13 The issue of infant cremations at Emstrey producing no ashes that can be returned to families is, therefore, an historic rather than a current one. But that message does not yet seem to have been clearly and confidently communicated to or understood by funeral directors, crematorium users, or the public.
- 5.14 When councillors and senior council officers were confronted with the issue, by the reporter from BBC Radio Shropshire, it was not an issue that they had any consciousness of, and, when publicly asked why ashes had not been returned to families after infant cremations at Emstrey, they simply did not know. That is understandable, given the great range and complexity of services for which the Council are responsible. The fact that there did not seem to be a technical adviser readily available who understood the issues and could brief them, however, is another indication that there had been little managerial focus on this sensitive service issue.

Recommendations

- 5.15 This report has been commissioned by Shropshire Council and its terms of reference are local to Shropshire. However, I have decided also to make a number of recommendations of national significance, for a number of reasons. The issues that have arisen in this inquiry to some extent, it seems to me, call for a national, as well as a local response. I have been asked to compare practice at Emstrey with national guidance, policy and practice. I have however been struck by the absence of authoritative national guidance, other than on the specific issue of environmental protection. I have referred earlier in this report to the answer given by the Minister for Justice to a parliamentary question on 5th March 2014, when the Minister referred, among other matters, to the government awaiting my report.
- 5.16 Practice for infant cremation appears to have varied significantly from one crematorium to another. It seems that until recently there has been little focus on the extent of this variation. The Bonomy Commission have recommended that a national code of practice should be developed for baby and infant cremation. The Mortonthall Investigation recommended that there should be comprehensive national research to ascertain the most effective, practical and safest practices for the future that will provide greater assurance to next of kin that the ashes of their child will be recovered. The Sands charity are calling for a UK wide review of baby cremation practice to ensure a consistent approach to the cremation of premature, still born and very young babies. I have considerable sympathy with that position. **I recommend that the Government takes steps to ensure a single and authoritative code of practice for baby and infant cremations. (1)**
- 5.17 When Parliament enacted the Cremation Act in 1902, it contemplated the inspection of crematoria, conferring on the Secretary of State the power to make regulations to bring this about. Successive regulations, including those currently in force, have provided for the inspection of crematoria. But I have been told that no arrangements have been made for the inspection of crematoria in England, and none are planned.
- 5.18 The Bonomy Commission recommended the appointment of an independent inspector to monitor working practices and standards at crematoria, to provide feedback to cremation authorities, to report to ministers, and to investigate and adjudicate on complaints. An inspector has now been appointed in Scotland.
- 5.19 Crematoria in England are largely un-scrutinised and, other than on the specific issue of emissions into the air, largely unregulated. But they provide a vitally important public service. In my view, bereaved families are entitled to greater certainty that best practice will be consistently employed, so as to maximise the chances of ashes being available to

be returned. It would also be right that in England, as in Scotland, there should be an authoritative adjudicator to whom next of kin can take complaints about their experience at a crematorium, rather than a cremation authority having to establish an inquiry in each case.

- 5.20 **I therefore recommend that the Secretary of State exercise his powers under the Cremation Regulations to appoint an independent inspector with powers comparable to those outlined in recommendation 63 of the Bonomy report. (2)**
- 5.21 **I also recommend that the inspector's responsibilities shall include the promotion of a single national code of practice with regard to cremator technology and techniques for infant cremations so as to maximise the chances of the preservation of ashes that can be returned to the applicant for the cremation. (3)**
- 5.22 The Bonomy Commission recommend that the "ashes" which the cremation authority is obliged to give into the charge of the person who applied for the cremation if he so desires should be defined in legislation as "all that is left in the cremator at the end of the cremation process and following the removal of any metal". I have found that the lack of a statutory definition of "ashes" was not as central an issue at Emstrey as Dame Elish Angiolini found it to be in her report on Mortonhall. The two main professional bodies have now brought consistency to their respective guidance on the subject. However, the recent Ashes Policy Statement issued by Co-operative Funeralcare, applicable to Emstrey, shows that there is still scope for uncertainty. **I recommend that the Cremation Regulations are amended in England, as in Scotland, to give effect to the Bonomy Commission's definition of ashes. (4)**
- 5.23 It seems to me important that people who rely on the vital public service that crematoria provide should be assured that crematorium supervisory and operating staff are all professionally qualified, and have received up to date training in current best practice, including for infant and other special cremations. **I recommend that minimum standards of professional training, and for continuing professional development, be introduced for crematorium supervisory and operating staff. (5)**
- 5.24 When visiting the Ministry of Justice and the Department for Environment, Food and Rural Affairs, it seemed to me that there were a number of officials whose areas of expertise covered particular aspects of the business of crematoria, both administrative and technical, but that they were not necessarily in close contact with each other. **I therefore recommend that a single official, reporting in this**

respect to a single minister, be given responsibility for coordinating the government's approach to cremation law and practice and for drawing together into a coherent whole the policies, including environmental policies, of different government departments on the subject. (6)

- 5.25 I have mentioned a number of times the extensive and carefully thought out recommendations of the Bonomy Commission. Some of them are specific to Scotland, but many of them are just as relevant to practice throughout the United Kingdom. I understand that at present only two of the Commission's recommendations are under consideration for implementation in England. **I recommend that arrangements be made within government for the Bonomy Commission's recommendations to be considered more widely for their applicability for infant cremation law and practice. (7)**

Arrangements at Shropshire

- 5.26 I have identified that previous cremators at Emstrey, which a number of people have told me were well overdue for replacement, remained in use for an unacceptably long period of time. The current cremators are relatively new, and of a higher specification. There will come a time, however, when they will need replacing. **I recommend that the Council, working with their contractors, ensure that adequate arrangements and financial provision are made to ensure that the crematorium equipment is maintained in good order and at optimum performance, and is renewed promptly when it is time to do so. (8)**
- 5.27 Since Shropshire Council entered into a contract with The Co-operative Funeralcare for the latter to run the Emstrey Crematorium, the Council's influence over the day to day running of the crematorium is through contractual, rather than line management, arrangements. However, legal advice is that the Council remains the cremation authority and retains the statutory responsibilities of a cremation authority, albeit exercised through a contractor. Local people, rightly in my view, hold their elected local authority as responsible for the quality of services provided at their Council owned crematorium. I think that the Council need to take care not to remove themselves too far from day to day practice. **I recommend that the Council ensure and participate in arrangements for regular liaison with Co-operative Funeralcare, funeral directors, funeral officiants, and hospitals so as to keep connected with practical service issues and contribute to a high quality of public service being provided at the Emstrey Crematorium. (9)**

- 5.28 The section of Shropshire Council that manages the contract with the Co-operative is called Bereavement Services. However, the expertise that is brought to bear by the officers overseeing the contract relates primarily to the technical aspect of cremation and emissions. This expertise is of course vitally important. But so is an awareness of the highly personal nature of the service that is provided to bereaved families and next of kin at a time when they may be in shock and grief. It seems to me that an expertise in and empathy for this very important dimension of the service to be provided to the bereaved should be part of its management culture. **I therefore recommend that the Council ensure that the management arrangements for its bereavement service include expertise and competencies normally associated with personal social care, as well as expertise associated with the technical aspects of cremator technology. (10)**
- 5.29 I have recommended that there should be minimum standards of professional training and continuing professional development for crematorium supervisory and operating staff. Whether or not this recommendation is taken up nationally, **I recommend that Co-operative Funeralcare and Shropshire Council ensure that there is a programme of continuing professional development in place for managerial and operating staff at the Emstrey crematorium. (11)**
- 5.30 The records show that in every infant cremation at Emstrey since new cremators, associated equipment and new processes were in use from early 2013, ashes have been preserved. The capacity of the current equipment, and the cremation techniques employed by the crematorium staff, seem now to maximise the chances of ashes being preserved. But we found little or no confidence among the funeral directors that we met that the Emstrey Crematorium are now able to preserve and return ashes from infant cremations. It seems that at least some bereaved parents are still being advised that this will not be possible. And Co-operative Funeralcare's own recently issued Ashes Policy reads less confidently than their performance would seem to merit. I recognise that it is prudent to make clear that it is not possible to give an absolute guarantee that there will be ashes available to be returned in every case. But it does now seem probable that there will be. **I therefore recommend that Co-operative Funeralcare and the Council now consult on and then jointly issue a revised and plainly written Ashes Policy Statement, to be made known to local funeral directors, officiants, and hospitals. (12)**

Appendices

- One Table of cases of infant cremations conducted at Emstrey Crematorium from 1st January 2000 to 30 December 2014.
- Two Table of cases of infant cremations conducted at Emstrey Crematorium from 1994 to 1998.
- Three Recommendations from the Report of the Infant Cremation Commission published in June 2014.
- Four Sequence of prescribed forms necessary for the Authorising of a Cremation.
- Five Guidance on infant cremations issued in 2013 by the Institute of Cemetery and Crematorium Management (ICCM).
- Six Updated ICCM Policy and Guidance for Baby and Infant Funerals issued in November 2014.
- Seven Section 8.2.b of the Federation of Burial and Cremation Authorities' (FBCA) training manual guidance on infant cremations, issued in November 2003.
- Eight Revised FBCA training manual guidance on infant cremations, issued in October 2014.
- Nine Letter to the Chief Executive of Shropshire Council, 29th January 2015 from the chair of the inquiry.
- Ten Letter to the Chief Executive, Shropshire Council, 31st March 2015 from the chair of the inquiry.