Scattering Ashes Guide to Ashes

1. Who gets the ashes?

The law is not the most dynamic of tools and the law regarding cremation is not at the top of the legislators' agenda. It is not set up to find the 'right home' for the ashes, it looks at it from the point of view of correct and efficient disposal.

However there are two well established trends in society that are making disputes concerning cremation ashes more common place: the removal of ashes from the crematoria (as opposed to scattering them in the garden of remembrance) and the break-up of the family unit. Resulting in frequent rows over who get the ashes.

Increasingly funeral directors and crematoria are coming under fire from the family members who think the ashes have been handed to the 'wrong person'.

So who should they hand them to? So before you start toasting the Funeral Director read the following, I have *attempted* to use in plain English without inaccuracy creeping in...

Funeral directors are obliged to follow the instructions of the client, who is the **applicant**

Applicants can be wide ranging: the executor of the will; a near relative over the age of 16; and if neither of those apply the medical referee (doctor or similar) can nominate someone. The executor is primary option.

The funeral director should give the ashes to the applicant, the ashes should be signed for and they should not give the ashes to anyone other than the applicant, unless the applicant gives written permission for this.

If you are not happy write to the funeral director prior to the ashes being released. Although there is little they can do unless lawyers are involved.

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The applicant holds the ashes as a trustee, they do not own the ashes.

The executor can possess the ashes for the purposes of disposal. Where there is no executor, it is given to those first in line -which can get tricky if there are two or more persons with equal entitlement e.g. children of the remaining parent (next of kin is not an automatic right to dispose of the ashes).

So:

- Make a Will (although I guess if you are reading this, it might be a bit too late)
- If it is too late and there is already a dispute, please don't take it out on the funeral director it's not their fault.
- Speak to the holder of the ashes, and try to explain they are a 'trustee' not an 'owner'
- Do persevere and try to find an amicable solution, fighting over ashes is unlikely to have been the deceased wishes. Also, unless there are religious reasons, consider splitting the ashes, this can mean everyone involved can have an amicable solution.

Note: we do know this is a very sensitive area, this article is nothing more than an informal guide, it isn't a legal document, but do please try to speak to other members of the family even if you are at loggerheads over other matters.

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