

Introduction of Medical Examiners and Reforms to Death Certification in England and Wales

LGA Response

The Local Government Association is the national voice of local government, working with councils to improve, promote and support local government. We are a politically-led, cross-party organisation that works on behalf of councils to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems. We are a membership organisation, representing 414 local authorities. These members include 349 English councils, the 22 Welsh councils via the Welsh LGA, 31 fire authorities, 10 national parks and one town council.

This response has been informed by extensive discussions with representatives of councils and from the evidence and learning from the two major piloting areas, Sheffield and Gloucestershire. Rather than addressing each of the specific questions posed in the consultation document and the accompanying documents, we have focused on issues of most significance to our member authorities and where evidence from the pilots indicates significant implications and challenges for councils in implementing their new duties. We also raise some issues that are not included in the consultation document but of real concern to local government. The key issues covered in this response are:

1. funding of the new process for death certification
2. liability for the fee
3. exemptions from the fee
4. proposed process for death certification
 - a. level of scrutiny for each case
 - b. non-forensic examination of bodies
5. implications for registrars, coroners and other local authority services
6. IT and data sharing
7. arrangements to collect the fee
8. Cost implications of the new system
9. appointment of medical examiners (MEs) and the role of the National Medical Examiner (NME) in setting and monitoring performance standards
10. support to councils to implement the new duty
11. time to prepare for the new duty

Summary of key concerns

- **We urge the Government to reconsider introducing a compulsory charge for death certification** - The three primary objectives of introducing a medical examiner are: to ensure timely and appropriate referral of deaths to the coroner; to improve the accuracy of the medical certificate of the cause of death (MCCD);

and the early detection and appropriate referral of clinical governance concerns. We feel strongly that since the objectives of this new service relate specifically to improving clinical governance, they should be seen as a core quality assurance measure for health services and should not be funded by a compulsory charge on bereaved families. We urge the Government to reconsider introducing a compulsory charge for death registration and instead fund this new duty centrally.

- **Liability for payment** – If the Government chooses to fund the service through the imposition of a national fee, local authorities and members of the public need clarity on who will be liable to pay the fee. Moreover, local councils and the DH will need to promote awareness that a mandatory fee is to be introduced.
- **Level of the fee** – We urge the Government to reconsider the proposed level. Several of the cost assumptions in the impact assessment are questioned by the LGA. Running costs, assumptions about time taken to deal with each case and the amount of work involved processing each case have been significantly underestimated. There are also additional costs that have not been included in the impact assessment. This leads us to conclude that a fee of between £80 and £100 will not be sufficient to cover the costs of running the new service. A previous cost analysis undertaken by DH estimated the costs per case to be £160. It is not apparent why there is such a large discrepancy between the two cost analyses undertaken by DH.
- **National voluntary agreement on collection** – The LGA is committed to continuing discussions with the DH and national representatives of funeral directors regarding the development of a national voluntary agreement for fee collection. However, ultimately the method of fee collection is for local councils to decide and if they do wish to pursue this option, they will need to reach an agreement locally with their funeral directors.
- **Time to prepare for effective implementation** – We propose that preparation to implement the new duty will take time and careful planning and that this will not be possible within the current timetable for implementation by April 2018. We recommend that the DH postpone implementation for at least six months to October 2018 at the earliest.

1. Funding the Medical Examiner Service

We agree strongly with the Government that the death certification system is long overdue for reform. There is a clear need to provide independent scrutiny of all deaths not referred to the coroner in order to meet three key objectives: to ensure timely and appropriate referral of deaths to the coroner; to improve the accuracy of the medical certificate of the cause of death (MCCD); and the early detection and appropriate referral of clinical governance concerns.

We also believe that bereaved families, carers and professionals should be able to raise their concerns about deaths and that families, in particular, have greater clarity about the cause of death. However, we see this as a core component of clinical governance to assure the quality and safety of medical practice. We believe that it is unfair to impose a mandatory charge on all bereaved families to fund a service that is primarily aimed at improving clinical practice, appropriate reporting and referral. This should be the core business of the NHS and not dependent on a charge on the public. We therefore urge the Government to reconsider their proposal to fund this new service through a compulsory national charge on bereaved families. Instead, it should be funded by central government, either through the allocation to councils, or to the NHS, which would then be passed on to local government to cover the costs of running the service.

2. Liability for paying the fee

If the Government chooses not to fund the service centrally, the LGA believes that there should be someone clearly prescribed in law who is responsible for paying the fee. Crucially, without such clarity, there will be no legal basis for local authorities to collect the fee, and recover their costs of running the service.

The responsibility for paying the fee needs to be clearly understood by local authorities and the public so that there is no confusion. Whether it is the informant or the person who collects the MCCD, both options may lead to delays in the death registration process: potential informants may be deterred from registering the death because they will be liable for the fee; and if it is the individual who collects the MCCD, they may be deterred from doing so.

Whoever is responsible for paying the fee needs to be clearly explained in a public information campaign and at the earliest possible stage in the death certification process. We do not consider that a statement on the back of the MCCD form is sufficient to make this clear. The wording of the information on liability for payment is crucial: if this information is vague then it may lead to non-payment and additional costs to local authorities in recovering the fee at a later date.

3. Exemptions for officials or employees who act as informants

The LGA believes that individuals acting in this capacity should be exempt from paying the fee as this may represent an additional financial burden on NHS staff or staff in residential care homes or nursing homes. However, if they are exempt, this will represent a loss of income to the local authority to cover the costs of death registration. It is vital that this is taken into account in the review of the financial impact on local authorities of implementing the new process for death registration. This may necessitate a revision of the fee to meet the true costs of delivering this service or for the Government to find additional resources to meet any additional financial burdens to local authorities.

4. Proposed process for death registration

Level of scrutiny by the Medical Examiner

We do not believe that a national charge of between £80 and £100 is sufficient to provide the service set out in the consultation document. If, however, the charge is introduced at this level, we anticipate that there will need to be changes to the process in order to deliver the service within the available budget. After extensive discussion with our advisers the LGA proposes that this would necessitate two levels of scrutiny. The first is full scrutiny by the ME of the cause of death for cases which are due for cremation and cases which cause concern, expressed by the next of kin, carers or medical professionals. The second tier would be a 'light touch' scrutiny for all other cases, where there are no causes for concern, such as natural or expected deaths. There will be a need to ensure sufficient scrutiny in all cases.

The two-tier process would need to be specified in regulations and subject to guidance issued by the Department of Health (DH) or the NME. The LGA would be willing to work with DH and the NME to draft appropriate guidance.

Non-forensic examination of bodies

We strongly support the proposal to give the ME discretion on non-forensic examination of the body. Evidence from the pilots indicates that it is not necessary to examine all bodies as this does not garner further relevant information in many cases. Indeed, the pilots found that external examination is only necessary in a small proportion of cases.

Furthermore, a requirement to conduct a non-forensic examination of all bodies would significantly add to the cost of the service and may result in unnecessary delays in issuing the MCCD. This a particular concern for councils coverage large geographical, rural and other isolated areas, where travelling and time costs could be considerable.

In respect of non-medical staff conducting non-forensic examinations, evidence from the pilot studies strongly indicates that professionals that have experience of working with the deceased such as funeral directors and mortuary staff would be able to carry out this check with appropriate training and guidance. An added benefit is that they are independent of the medical profession and would, therefore, be able to provide an independent check. The consultation does not give consideration to accountability of persons undertaking non-forensic, external examinations but the ME will need to specify accountability, quality and consistency of this in contracts.

5. Implications for registrars, coroners and other local authority services

The reformed process for death certification will touch on a number of other local government services including coroners, registration and public health. Local authorities will need to decide the best arrangements for collecting the fee. If they

decide to collect the fee themselves, this will have a significant impact on departments responsible for charging and billing for services.

We are also concerned about implications for bereaved families, in particular, on ensuring that the new system does not lead to delays in death certificates being issued as this can lead to delays in families being able to make funeral arrangements. This is a particular concern to some religious groups such as the Jewish and Muslim communities, whose religious practices require funerals to be arranged as soon as possible.

Implications for Registration Services

The pilots have shown that there can be a positive impact on registrars. Assuming that the forms are completed correctly and sent to the registrar's office in a timely way, the process of registration is made easier as all the information is on a single form in a clear format and the certifying medical practitioner's details are included, which means less need to chase for GMC numbers and names etc. However there were concerns that the introduction of the fee would make people less willing to register deaths, with the organisational and financial burden falling on local authorities instead.

If it is the registration service that collects the fee, local authorities will need to consider what impact this might have on the statutory requirement for deaths to be registered within five days. Consideration needs to be given to what registrars can do if the informant refuses to pay. There are also a number of other costs associated with the set-up, management and ongoing maintenance of the service.

The LGA notes that the Registrar General has advised the DH that registrars should not collect the fee on behalf of the ME. If this was the preferred method of payment, local authorities would need to negotiate with the Registrar General.

Implications for coroners

The pilot areas have shown a mixed impact on coroners. Each coroner's office works in different ways and therefore the impact will be different. For example, in the Sheffield pilot there has been a large increase in the number of referrals to the coroner's service which resulted in an increase in post mortems and inquests. This has been attributed to the ME identifying industrial deaths which hadn't previously been brought to light. In contrast, the Gloucestershire ME service had been running informally for several years before the formal ME pilot and so did not experience the same increase.

Reaching a definitive view of the impact on coroner's service on the evidence of two pilots in two very different areas is difficult. However, on the advice of our advisers the general consensus is that there would be a reduction in the number of Part As as these would be dealt with by the ME and the medical certificate of the cause of death (MCCD) would be written rather than sent to the coroner. Our advisers further

anticipate that there is likely to be an increase in the number of more complex issues arising from hospital deaths, which would need to be referred to the coroner for post mortems and inquests. This could lead, therefore, to increased costs to local authorities in undertaking more post mortems and inquests that are complex, requiring greater resources and staff time.

We have serious concerns that some families may ask for a coroner referral in order to avoid paying the fee. This will have an impact on the workload of coroners services even if the referral does not lead to an investigation or inquest.

6. IT and data sharing

The consultation document makes assumptions about interoperability of IT systems that do not match the reality for most areas. GPs and hospitals use different case management systems so this looks unachievable in the short term. This is further complicated by the fact that in many areas local authority IT systems are not compatible with NHS systems. Furthermore, the case management data base set up by the NME uses the 'Access' system, which is not in common usage in local government so it is unlikely to be adopted as the common case management system.

Ideally, the ME should be able to access patient information and test results rather than someone having to collate all of the relevant information and enter it on the form which may increase costs and the likelihood of errors being made. The sharing of patient information must also be made as simple as possible but organisations will need to operate within the current legislative framework for sharing data. One of the pilots had difficulty in sharing information between hospitals and hospices. While the use of electronic signatures would make the use of the forms easier, national support and guidance on sharing information and developing an electronic information system is necessary.

Currently there are legal barriers to CCGs sharing information with hospitals, LAs and Coroners. Will the regulations be able to amend primary legislation on data protection? It is very likely that this will require further legislation.

7. Arrangements to collect the fee

The LGA is prepared to work with the DH and national representatives of funeral directors regarding the development of a national voluntary agreement on fee collection in order to support councils to implement the new requirements for death certification. However, it should be noted that the method of fee collection is ultimately the decision of each local authority. They will need to consider the most cost effective method of collection, taking into account the likelihood of gaining agreement from local funeral directors to collect the fee on their behalf.

There are a number of different options for fee collection which could be considered nationally or locally:

- **A national method of fee collection** which is a centrally managed system that collects all the fees on behalf of local authorities and then distributes them to each local authority. We are happy to work with the DH to identify whether there is an existing national payment system that provides this service for other fees.
- **Direct collection by the ME's office** the ME administrative support could raise the charge directly. This option would lead to accurate reconciliation of who is liable to pay the fee. However, the costs to local authorities of raising invoices is likely to be considerably more than an agreement with local funeral directors to include the fee in their bills for funeral costs.

8. **Cost implications of the new system of death registration**

The LGA and our advisers, who have extensive knowledge and experience of registration, coroners and bereavement services, have given close consideration to the impact assessment. We have a number of serious concerns about the cost assumptions in the impact assessment. In particular, we are concerned that a number of assumptions which have been used to identify the costs of running the service, are not accurate. This may mean that the cost of running the service is significantly higher than has been estimated. We urge the DH to work with the LGA and with local authorities to monitor the cost of running the service and to review the financial impact.

The new burdens doctrine for all government departments clearly states that all new burdens on local authorities must be properly assessed and fully funded by the relevant department. Full consideration of the cost of new proposals is a key element of good policy making and should therefore be viewed as core business by all government departments.

Below is a summary of our key concerns regarding the cost impact of implementing the new duty.

Communicating with the public – There is a pressing need for a high profile communications strategy prior to the reforms being introduced. One of the main aims of the reforms is to make the process more of death certification more open and transparent to bereaved families. However, the consultation document does not consider the cost of communicating with the public on the new system of death registration and the fee. It is vital that the DH identifies the costs and provides resources for a national publicity campaign to inform the public of changes in death registration prior to it being introduced in April 2018. In addition, resources for local information campaigns will need to be included in the set up costs of the service.

Central to information to the public will be clarity on who is liable to pay the fee, at what time and the process for payment. Some of these decisions will be for local discretion, for example the process for paying the fee. However, the most important issue for the public will be clarity on who is liable to pay the fee and this will need to be set out in regulations. Local authorities will need clarity on who is liable to pay the

fee, in order to collect it. We urge the DH to give consideration to how this information is communicated as clearly and as early as possible in the death certification process.

Estimates of ME and MEO time to process each case – The impact assessment estimates an average time for carrying out each case will be 28 minutes for the ME and 60 minutes for the MEO, in line with the estimates provided by the pilot site in Sheffield. Previous DH analysis of costs undertaken in 2011 estimated the average time taken for full scrutiny as 51 minutes for MEs and 38 minutes for MEOs. Furthermore, when other routine activities such as coordinating the service, providing analysis and reports, arranging briefings and support for colleagues and coroners and reviewing trends were taken into account the estimate of time for each case were 63 minutes for MEs and 57 minutes for MEOs. The estimates have been significantly reduced in the current financial impact assessment. We assume this is because routine tasks have not been included and we urge the DH to include these in a revised impact assessment and the costs adjusted accordingly in order to come to a more accurate estimate of the time and costs required for each case. This will need to be reflected in the level of the national fee in order to ensure that costs of running the service are covered by the fee.

Other costs of running the service

Working with our advisers, we have also identified other costs that have been omitted or underestimated in the impact assessment. They include:

- Local authority management costs – there is no consideration that local authorities will require a senior manager who is responsible for the service. In reality, this service is likely to be added to the responsibility of an existing senior officer rather than requiring a new appointment at additional cost. However, there will be opportunity costs for the manager responsible for the ME service in the impact it has on their capacity to manage their existing responsibilities.
- There will also be additional costs for the local authority in setting up and managing the service, including financial costs, in particular if the local authority decides to collect the fee through existing payment and charging processes, human resources costs associated with staff development, appraisal, training and welfare. If the service is commissioned from a third party provider, local authorities will also have costs associated with commissioning the service, and ongoing contract and performance management.
- Office accommodation – We consider the 7m² per FTE ME and MEO does not take into account additional space needed for equipment and suitable space available for the ME or MEO to meet bereaved families, some of whom will want to meet the ME or MEO rather than discuss their concerns over the phone.

- IT costs are likely to be significant. Local authorities will need to have an IT system to collect and monitor the data and create regular reports. A further cost to the whole health economy will be ensuring the interoperability of IT systems to ensure that data can be securely shared between local authorities, hospital, GPs, nursing homes and residential homes.
- Estimates of the level of unpaid fees is significantly lower than in the cost analysis undertaken in 2011 when the reality for many local authorities is that the level of bad debts has risen since 2011. The impact assessment also does not take account of the financial impact of exemptions from paying the fee if the informant is an NHS staff member or a member of staff at a residential or nursing home. If as a result of the consultation, it is decided that the informant is liable to pay the fee and that NHS and other care settings are exempt, this will represent a loss of income to the local authority. It is vital that this is taken into account in the review of the financial impact on local authorities of implementing the new process for death registration. If the informant is liable to pay the fee, there is a risk that families will ask care homes to register on their behalf in order to avoid paying the fee. There is also a risk of families seeking to refer to coroners to avoid the fee.
- The impact assessment underestimates the costs in rural areas of a number of factors including: the process for registering deaths in the community and running the ME service over a large geographical area with MEs often operating at a long distance from MEOs. Since the consultation document proposes that the fee is to be set nationally with no local discretion to set the level to cover local variations in cost, we urge the DH to consider how unavoidable local variations in the cost of running the service can be identified and met.

Taking into account the additional and underestimated costs outlined above we do not consider that the suggested fee level of £80 to £100 will be sufficient to cover the costs of operating the service. The previous detailed cost analysis undertaken by DH estimated that each case would cost £160. We do not understand how the DH have arrived at a subsequent estimate of cost per case that is up to 50 per cent less than their previous analysis.

Costs of setting up the service

Broadly speaking, the set up costs that have been identified in the impact assessment seem reasonable. However, there are a number of costs that have not been identified. There is no estimate of the management costs to local authorities of preparing to implement the new duty. A greater concern is that the consultation document suggests that a lead in time of just seven days will be sufficient preparation for the new services. The LGA advisers estimate that the lead ME will need to be recruited at least six months prior to the start date in order to shape the new service, lead local communications to explain the new service to the public, GPs, hospitals, coroners, residential and nursing homes and other key stakeholders,

and to recruit the local team. The MEO and other key support staff will need to be post at least one month before the service goes live to allow sufficient time for compulsory local authority training and induction. This will significantly add to the set up costs and should be included in the impact assessment.

9. Appointment of MEs and role of NME in setting and monitoring performance standards

The LGA is working with DH, the NME and NHS Employers to develop HR guidance on the appointment of medical examiners including descriptions of necessary role requirements. It is likely that LAs will require a Senior or Lead ME to be the overall manager of the service so we will need to have at least two MEO levels to reflect the reality of running the service at a local level. Other local authorities may choose for an existing senior officer to manage the service. As ever for local authorities, the aim must be to encourage flexibility to meet local circumstances whilst also satisfying national expectations. The guidance is still in development at the time of writing. An important consideration in the affordability of the service is the nature of the contractual arrangements for medical examiners. The hope with the guidance under development is that the range of medical backgrounds that would make people suitable for medical examiner roles can be made clear, thus allowing for a variety of approaches to paying for their services as suitable for local organisations.

We recognise that the NME has statutory powers in setting national standards and monitoring performance but we need to ensure that the standards and performance monitoring is proportionate and able to be achieved within the budget for the service.

Local authorities must be able to monitor and manage the quality of service delivery. Whilst they would not wish to interfere with the independence of the medical decisions, local authorities will have responsibility for behaviours and all other aspects of employment.

In cases where there is an issue of medical competence there needs to be a clear agreement on how this will be managed between the NME and the local authority.

10. Support to councils to implement the new duty

Perhaps the greatest challenge in preparing for the new duty will be to promote awareness of the new duty to councils. There has been a delay of seven years between the Coroners and Justice Act 2009, which set out the new duty, and the current consultation. While we understand the reasons for the delay, many councils may not be aware that it is proposed to be implemented in 2018. The LGA is doing all we can to promote awareness of the new duty but the DH also has a major role to play in promoting awareness.

Many local authorities do not have the resources to recruit additional on project officers or managers to specifically manage the implementation of a new service. This means that it will be done alongside someone's existing role unless councils are allocated specific funds to employ project management staff.

It is also crucial that members of the public are aware of the forthcoming changes to the process of death registration and the reasons for the changes. Local authorities have an important part to play in this but a national awareness campaign will also help get the message across.

The LGA recognises that the DH is currently developing a programme to support local government and their partners to implement the new duty effectively. We are keen to work with DH to ensure that a comprehensive support programme for councils is developed that includes:

- Comprehensive toolkits and resource packs outlining what each local authority will need to do to establish the new ME service, including links to the statutory framework and existing guidance.
- Summary of the key learning points from the pilot sites in operating the ME service.
- A series of regional workshops and roadshows to promote awareness and facilitation discussions on preparing for the new service, including engagement from coroners and NHS partners.
- Webinars, blogs, web-based forums and other electronic methods of communicating and sharing good practice.
- Support from DH on specific issues such as fee collection, including facilitating discussions on developing a voluntary national agreement on fee collection and disbursement and consideration of a national system for fee collection and disbursement.
- Guidance and good practice on IT systems for data collection and case management.
- DH implementation team to identify a lead manager in each local authority to lead the implementation locally.

11. Are we confident that councils will be ready to implement the new duty in April 2018?

The intention is that the new service will 'go live' in April 2018. The LGA is committed to supporting local authorities to implement the new duty effectively and to ensure that the service is effective, efficient and meets the objectives of providing independent scrutiny and reassurance to bereaved relatives. This will take time and resources and we have concerns that the process of setting up a new service would be both time consuming and costly. The DH will need to provide local authorities with a clear timetable outlining each stage of the process, including the timetable for laying statutory regulations on key issues, such as specifying who is liable to pay the fee, and issuing statutory guidance.

Some local authorities may wish to commission the service from a provider or seek joint arrangements with neighbouring authorities or with CCG and coroners areas. These arrangements will take time to put in place. In the case of commissioning the service, the average length of time taken to commission and procure a service of this size and complexity is estimated at 18 months and local authorities would not be in a position to begin the commissioning process until the statutory guidance has been published.

Given the time and resources required to implement a new duty effectively, we recommend that the DH consider postponing implementation until October 2018 at the earliest.