

IMPLEMENTING THE MEDICAL EXAMINER SYSTEM

Transition period or non-statutory backstop?

By Morgan Harris, NAFD Policy & Legislation Manager

As members will be all too aware, the death certification system in England and Wales has remained largely unchanged for over fifty years and is no longer fit for purpose. Since The Shipman Inquiry, there has been much discussion about how the systems for certifying/scrutinising deaths can be improved. However, little has happened in practice.

On 1 April 2019, almost a decade since the Coroners and Justice Act 2009 first made provision for their introduction, it finally seems that a system of medical examiners will be rolled out across England and Wales.

Whilst any progress will be welcomed by the profession, celebration at this stage would be premature. The initial roll-out of Medical Examiner services will not be underpinned by legislation and is, therefore, unlikely to deliver the certainty and simplicity that many have been hoping for. Many questions about the practical delivery of a uniform national system also remain unanswered, but it now seems we can add a further question to the list: how long will the Medical Examiner system in England and Wales remain in a non-statutory transitional phase?

The NAFD recently attended a special event, hosted by the Royal College of Pathologists, to learn more about what the non-statutory implementation of a Medical Examiner system will look like and how it might affect funeral directors.



What is wrong with the current system?

Cremation

Before a cremation can legally take place, the relevant paperwork must be signed by two separate medical professionals, one of whom must be of at least 5 years' standing. This means that the cause of death is, in theory, scrutinised twice. However, the inadequacies of this safeguard were exposed by the investigation into the crimes of serial killer Dr Harold Shipman.

Overstretched medical professionals are under no legal duty to complete cremation paperwork, which can lead to delays in obtaining paperwork and consequent disputes between doctors and funeral directors. In addition to this, families are required to pay a significant charge for this service and can often be charged for mileage and other expenses of medical practitioners as the paperwork is often completed at the funeral home, outside of business hours.

Burial

In the case of a burial, the process is relatively straightforward but only one medical professional is required to complete the paperwork. This means that the cause of death receives worryingly little scrutiny. There is currently no charge to the family for the completion of burial paperwork.

The initial roll out of a non-statutory system

Jeremy Mean, Deputy Director for Health Ethics at the Department of Health and Social Care, told delegates that the intention remains to work towards a statutory system of Medical Examiners but that the initial roll out will be conducted on a "non-statutory basis". This means that there will be no initial change to the law but, from 1 April 2019, NHS trusts will be encouraged to set up new Medical Examiner services to replace existing death certification processes.

What is a medical examiner?

A Medical Examiner is a specifically trained independent senior doctor (from any speciality). The intention is that they will scrutinise all deaths across a local area that do not fall under the Coroner's jurisdiction.

By providing a greater level of scrutiny over the cause of deaths, it is hoped that the

introduction of Medical Examiners will make it less likely that unnatural causes of death will go unnoticed and that national data about causes of death will be captured more accurately.

While the hope is that all NHS trusts will set up Medical Examiner services, they will not actually be required to do so during this non-statutory phase. It is, therefore, possible that many will choose not to do so, leading to inconsistency across the country.

When challenged about this, Jeremy Mean explained that, while NHS Trusts will not be required to set up Medical Examiner services, they will be encouraged to do so and will be financially supported by central government so that the service is completely cost neutral to them. The Royal College of Pathologists will play an important role in promoting the availability of this funding to NHS trusts.

The fact that NHS trusts will be able to decide when they wish to make any changes to their existing death certification processes means that there is unlikely to be a mass-nationwide change on 1 April 2019. It is far more likely that individual trusts will start to set up Medical Examiner services gradually and sporadically.

“

WHILE NHS TRUSTS WILL NOT BE REQUIRED TO SET UP MEDICAL EXAMINER SERVICES, THEY WILL BE ENCOURAGED TO DO SO AND WILL BE FINANCIALLY SUPPORTED BY CENTRAL GOVERNMENT

”

Will the new system be mandatory for families?

During the non-statutory phase, families will not be technically required to engage with the new system. For example, if a family is concerned about the potential for delay to a burial they could, in theory, decide to have the form completed by a willing medical practitioner in the normal way or, in the case of a burial, avoid Medical Examiner scrutiny altogether. An example of when a family may want to do this is to avoid a delay in burial, for religious or cultural reasons.

The NAFD has been informed that Medical Examiners will first be introduced in a secondary care (hospital) setting. Once the system has been established in a secondary care setting, the intention is for it to be rolled out for deaths that occur in a primary care (GPs, community care, etc) setting. It is not yet clear what will trigger this expansion to primary care, or when this will happen. Nevertheless, the Government predicts that, by early 2021, all deaths in England and Wales will be subject to Medical Examiner scrutiny.

The cost of a Medical Examiner system for England and Wales

It is not yet clear what the non-statutory roll out of the national





system will cost or exactly how it will be delivered. We were told that it is broadly estimated that there will need to be one Medical Examiner per 3,000 annual deaths, but that this will vary depending on local community and geographical factors.

During the non-statutory phase, each NHS trust will have a significant degree of freedom to implement the service in a way that works well for the community it serves. The precise number of Medical Examiners employed, their hours of operation and the delegation of responsibility to other parties (such as Medical Examiner Officers) will all be decided by individual trusts.

At the event, NAFD Past President Nigel Lymn Rose raised concerns that, unless trusts were given guidance on the amount of money they should spend on service provision, this could lead to inconsistencies, both in the cost of the Medical Examiner services and the way they are provided across the country. Jeremy Mean conceded that this is, indeed, a risk but explained that the rationale for approaching the roll-out in this way is to learn from each trust's individual experience in order to inform the design of a universal statutory model.

Jeremy Mean emphasised that, during the non-statutory stage, the Government is committed to keeping

the system cost neutral for both NHS trusts and bereaved families. This means that families seeking to have a loved one buried will not have to pay anything and families seeking to have a loved one cremated will not be required to pay anything in addition to the existing cremation form fees.

How will Medical Examiners be funded?

During the non-statutory phase, families who choose for their loved one to be cremated will be required to pay the usual fee when submitting the relevant cremation forms. Once a trust has set up a Medical Examiner service, this fee will be paid directly to the trust rather than to a doctor. This money will then be used to fund the wider service. There will continue to be no charge in respect of burials. The Government has committed to reimbursing the trust for any shortfall.

It is not yet clear how Medical Examiners will be funded under a future statutory system, but the Government intention is to abandon the current system of cremation form fees. The NAFD believes it would be wrong to require bereaved families to pay and will continue to campaign for a centrally-funded system.

Structure of a national Medical Examiner system

A National Medical Examiner has now been appointed and will have an

important strategic role, overseeing and supporting the roll-out of Medical Examiner services across the country, with a view to designing a national statutory scheme. Once the name of the appointee has been made public, the NAFD will seek to maintain good communication with them so that the views of our members are kept in mind when developing a statutory system.

The NHS in England is being split into seven regions, with a Regional Medical Examiner Lead being recruited for each. An eighth Regional Medical Examiner Lead will be recruited for Wales. Medical Examiners will report to their Regional Lead.

Each Medical Examiner will be supported by a team of approximately three Medical Examiner Officers.

What is a Medical Examiner Officer?

Medical Examiner Officers, who may have a nursing or other clinical background, will provide support to Medical Examiners, including being a point of contact and source of advice for relatives of deceased patients, healthcare professionals and Coroner services. It is hoped that the use of Medical Examiner Officers, rather than Medical Examiners, to carry out certain tasks will help keep the cost of a national system manageable.

“
EACH NHS TRUST WILL HAVE A SIGNIFICANT DEGREE OF FREEDOM TO IMPLEMENT THE SERVICE IN A WAY THAT WORKS WELL FOR THE COMMUNITY IT SERVES.
”

Statutory roll-out

The end goal remains the implementation of a uniform statutory system for England and Wales. Disappointingly, there is no date set for a statutory roll-out. The NAFD does not expect to see the roll-out of a statutory system until late 2021 at the earliest.

However, the Government has stressed its commitment to developing a single, aligned statutory system for England and Wales. Jeremy Mean said: "The Government's commitment to reimbursing NHS trusts for all costs associated with the (non-statutory) implementation of Medical Examiner services demonstrates its commitment to the completion of this important work."

The funding structure for the statutory system has yet to be decided. It is not yet clear whether bereaved families will be required to pay a fee under the statutory system. Jeremy Mean explained that the funding structure will be informed by learning and the experiences of stakeholders during the non-statutory phase.

What do funeral directors need to know before 1 April 2019?

Funeral directors should speak to their local NHS trusts to establish what local changes are being planned. Unless, upon enquiring, you are informed of a change, funeral directors should assume that the old death certification procedures are still in place.

If an NHS trust notifies you that it is launching an Medical Examiner service:-

- you should ensure you and your staff are able to explain this service to the family;
- in the case of a cremation, you should collect the Cremation Form 5 fee in the same way as you do now. However, you may be required pay the fee directly to the NHS trust (in the case of a burial, there will continue to be no charge to the family);
- in the case that a family expresses a wish to opt out of Medical Examiner scrutiny, you should seek to have the Form completed by a doctor in the usual way.



“THE NAFD CONTINUES TO WELCOME CHANGE TO THE CURRENT SYSTEM OF DEATH CERTIFICATION AND IS, ON THE WHOLE, PLEASED THAT SOME ACTION IS FINALLY BEING TAKEN.”

NAFD analysis

The Government is certainly keen to underline its continued commitment to the implementation of a national system. Minister of State for Care, Caroline Dinenage said:

"I know from the events in my own constituency of Gosport that the drivers for the introduction of Medical Examiners have never been greater. We must now seize this moment to introduce a Medical Examiner system that will deliver the benefits identified by too many reports into patient safety. The Government remains committed to the introduction of a Medical Examiner system which puts the bereaved at its centre, provides proportionate scrutiny for all deaths that are not investigated by a coroner and enables lessons to be learned."

However, with so much of Government time being devoted to other pressing matters at present, it is perhaps unsurprising that many important questions about the implementation of a statutory Medical Examiner system remain unanswered. The NAFD continues to welcome change to the current system of death certification and is, on the whole, pleased that some action is finally being taken.

We continue to hold the view that bereaved families should not be required to pay for a mandatory service that exists for the benefit of society

as a whole. All other NHS services are free at the point of delivery, and we see no reason why this should be any different. For the time being, however, it seems clear that bereaved families will continue to pay a fee in respect of cremations, whereas those who choose burial will not. This arbitrary distinction and tax on certain bereaved families is unfair and should be ended as soon as possible.

Having already run several successful pilot schemes across the country, we do not understand the Government's decision to roll out a national system on a local basis. If local trusts are left to implement new services in completely different ways, this is likely to cause difficulties when later trying to bring these systems into line. These difficulties will only become more challenging over time as local ways of working become more ingrained.

It is the lack of a concrete timescale for implementation of a statutory system that is most concerning. With no definite timescales or clear plan of action for the future, a lot rests on the appointment of a suitable individual to lead the way as National Medical Examiner. The NAFD will seek to work closely with the new appointee to ensure that the statutory system they develop is fit for purpose and that, above all, we do not find ourselves stuck in a non-statutory backstop for yet another decade.