



## **LMC UPDATE: DEATH VERIFICATION, INFORMATION, CERTIFICATION AND CREMATORIUM FORMS V2 Dated 17<sup>th</sup> April 2020.**

Following our previous guidance, we had a constructive meeting with the Senior Coroner for Derby & Derbyshire, Dr Hunter. There was much common ground at that meeting, and we have incorporated the pragmatic suggestions we discussed to facilitate the process of informing, verifying and certifying death and the completion of cremation forms. However, there remains an apparently unreconcilable difference of legal opinion. Without turning this into an extremely lengthy rehearsal of the legal arguments I will try and summarise. We do all agree that there is no statutory duty on a GP to verify death nor attend in person to be able to complete the MCCD or Cremation Form 4. However, while the LMC (and GPC/BMA and CQC) believe this means there is therefore no legal obligation on GPs, Dr Hunter's opinion is that there is a common law obligation. He cites the now withdrawn BMA guidance (he quotes 2009, but the recently withdrawn guidance was dated 11<sup>th</sup> October 2013 and updated on 21<sup>st</sup> November 2019) and GMC ethical responsibilities to support his opinion. Interestingly (although we do understand they have no jurisdiction in Derbyshire) the 8 coroners who cover London also agree with the LMC position as they wrote an [open letter](#) on 14<sup>th</sup> April 2020 which states "It is correct that there is no legal requirement for a doctor to verify death. There is no legal requirement for any specified individual to verify death." A copy of the BMA response to that letter is attached.

### **DEATH VERIFICATION:**

Although there is no statutory requirement in English law for confirmation/verification of death to be carried out by a doctor, in the past GPs often chose to fulfil this function as part of the wraparound care for patients and their relatives. This, together with other guidance (such as Care After Death published by Hospice UK), led to the verification of death by suitably trained healthcare professionals (doctors, registered nurses or paramedics) being viewed as the accepted norm by many individuals and organisations.

Although the statutory position remains that verification of death can be done by any competent adult, Dr Hunter has some reservations about potential distress to family members verifying death; he is keen for all other options to be explored.

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We have agreed that every effort should be made to ensure that verification is carried out by someone who would be in contact with the deceased anyway and no *additional* visits are made to the deceased. This will reduce the risk of infection to family members, care home staff and residents plus the person carrying out those additional visits. Examples of this include:

- Paramedics attending the scene.
- Clinical or other staff in a nursing or care home.
- Police attending the scene. Many officers in Derbyshire have received verification of death training from the Coroner.
- Undertakers attending to remove the body. We are intending to help to facilitate this by producing a short training package with the Coroner and asking GPs to consider being available to give advice or answer any questions by phone/video.

**Our advice remains that GPs should not make any visits in person solely to verify any expected death, particularly of suspected COVID-19 patients.**

### **INFORMING THE REGISTRAR**

If the death occurred inside a house or public building such as a hospital, the following people (known as the informant) may register the death, by informing the Registrar:

- A relative
- Someone who was present at the death



- The occupier of the house or an official from the public building where the death occurred, e.g. the hospital
- The person making the arrangements with the funeral director

In the event of the death occurring elsewhere the “occupier of the house” ceases to be relevant but the informant can be any person finding or taking charge of the body.

Funeral Directors were added to the list of those able to act as informants by the Coronavirus Act 2020.

In England, the death must be registered by the Registrar within 5 days. It is possible to delay registration for a further 9 days provided that the Registrar receives written confirmation that the medical cause of death certificate has been signed by a doctor. Delays due to the involvement of the Coroner are not usually counted within these time frames.

### DEATH CERTIFICATION:

Summary of the current legal position incorporating changes from the Coronavirus Act 2020. (The legislation refers to registered medical practitioners but for the purposes of this guidance I have referred to GPs throughout. We understand this also includes any other clinician who was attending on behalf of the GP, but responsibility rests with the GP).

- Where a GP has attended (including remote consultations by phone/video) a person during their last illness they are required to “sign a certificate in the prescribed form stating to the best of his knowledge and belief the cause of death and shall forthwith deliver that certificate to the registrar.”
- If the GP who did attend is unable to sign the MCCD (or it is impractical for them to sign) then another GP is able to sign the MCCD provided they can state to the best of their knowledge and belief the cause of death.
- If no GP attended during the last illness any GP can still sign the MCCD if they are able to state to the best of their knowledge and belief the cause of death.
- We agree that every effort should be made to give the most likely cause of death on the MCCD.
- Please note that for **certification** there is no time limit on attendance. The 28-day limit (amended from 14 days by the Coronavirus Act 2020) is only applicable to completion of Cremation Form 4 **NOT** MCCD.
- Certificate can be filled in, signed, scanned and sent to the registrar electronically either by the person collecting it from the practice or direct via the GP. (If sent by GP electronically please securely retain the original copy, which must be forwarded to the registrar once the emergency is over).

In practical terms, the Coronavirus Act 2020 and local interpretation has amended procedures as follows:

- You must report the death to PHE in the normal way.
- You do not **necessarily** need to report confirmed or suspected COVID-19 deaths to the coroner.
- In the Derby and Derbyshire Coroner’s Area the default position is that deaths from COVID-19 are deaths from natural causes unless individual circumstances make the death unnatural.
- This principle was established by a legal case (Touche) in 2001 where the High Court ruled that a death of natural causes can become an unnatural death when there has been a culpable human failing (by act or omission) that has either caused or more than minimally contributed to the death. GPs should consider all the circumstances of the death before issuing a MCCD and if the Touche triggers are identified, then the death must be reported to the coroner. If there is any uncertainty on whether the triggers apply GPs are advised to contact the coroner’s office for advice.



- It is acceptable to qualify mention of Covid-19 with words such as ‘possibly’ or ‘probably’ indicating the absence of a positive virology test or some ambiguity in clinical presentation, and such qualifiers do not in themselves imply sufficient doubt on the cause of death to require referral to a coroner.

#### CREMATION FORMS:

The General Register Office has advised that, while it is acceptable for consultation before death, video is not acceptable for the examination of the deceased after death. However, since there is actually no requirement (endorsed and expanded on by Dr Ferrer below) to have seen the body to complete the Cremation Form 4 this is a somewhat moot point. **Our advice remains that GPs should try and avoid making visits in person solely to examine the body of a deceased patient infected with coronavirus or suspected coronavirus due to the risk of infection.**

The removal of the requirement for a confirmatory Cremation Form 5 means the accurate, timely and comprehensive completion of Cremation Form 4 assumes increased importance in the process.

If GPs are completing the Cremation Form 4 we would urge you to follow the advice provided by Dr Ian Ferrer reproduced below.

#### **“From Chief Medical Referee at Markeaton Crematorium Derby Completion of Cremation 4; “part one”, for a deceased to be cremated.**

Firstly, can I thank many of my colleagues for their usual ‘good practice’ in completing Cremation Forms 4, and urge you to continue doing this through this time of pressure; especially since the Coronavirus Act 2020 has removed the need for a confirmatory (Form 5) placing more reliance on the information on the Form 4.

For information, before the actual disposal can place the referees at the Crematorium are legally required to complete and sign off the final Cremation Form 10 and since this is now the only “check” in place, the Form 4 must be adequately completed with sufficient information. These are signed off on a daily basis but are usually only received 36 hours before the actual cremation, so timescales are tight. Clearly we are all keen to avoid the scenario where a cremation has to be cancelled at very short notice because the referee has insufficient evidence to sign off the Form 10. The legal requirement here will not be lifted.

#### **Helpful Tips on Completion of Form 4.**

- Key to the new approach is that you can satisfy yourself, and the referee, that you can verify the death; especially as this will now often be through a third party
- Although the timescale for having consulted with the patient has been relaxed to 28 days before death, if you have been unable to see the body and state this in box 8 that this “due to risk of infection”. **It is still essential** that you state in either box 8 or in more detail in box 9, how you have verified that a death has taken place. E.g. By telephone with nurse confirming pulse / breathing / pupils / non- response.
- If there was a person present, please include their contact details (name, mobile number, relationship with the deceased. At present GPs often do this for relatives or professional carers in section 11; please continue to do this.
- The Cremation Regulations 2008 guidance requires that the evidence offered on the certificate should demonstrate sound clinical grounds for the cause of death given. Please use the large box 9 to provide an adequate history of events, and in the present circumstances this must include a brief summary of any type of clinical contact e.g. 111 call, telephone / video consultation, previous A&E attendance, hot hub contact, etc.
- Please complete the Form 4s legibly and fully and in accordance with good practice



- With this adequate information, the Cremation Referees will apply a clinical common-sense approach during this crisis and these measures will ensure a safe disposal of all deceased whilst meeting legal requirements and importantly avoiding any family being further distressed by a delay to a cremation.
- Please currently also include your mobile phone number in part 3, so any problems can be quickly resolved. This will never be used for any other purpose, and only in relation to the specific Form 4.
- If using the interactive PDF format, once completed, it must be printed, wet signed and scanned into a file, then transmitted from a secure identifiable email (normally nhs.net in the case of GPs) to the undertaker. This emailed copy will (temporarily) allow the cremation to go ahead, but the hard-signed copy **must** then follow on, to meet both decontamination and the legal documentation requirements".

Thank you in anticipation of your cooperation and assistance at this exceptional time."

During this pandemic many people are experiencing unprecedented pressure on their time and additional stresses due to the increased risks of infection. We would urge everyone to display the normal high standard of professional courtesy when dealing with dealing with the staff from other organisations including the Coroner's Office. This is reinforced by the GMC Ethical Guidance on Treatment and Care Towards the End of Life Para 85. *"You must be professional and compassionate when confirming and pronouncing death and must follow the law, and statutory codes of practice, governing completion of death and cremation certificates"*

## SUMMARY

The need to deal sympathetically with the death of a registered patient is best summarised by the GMC in their Ethical Guidance. *"Your professional responsibility does not come to an end when a patient dies. For the patient's family and others close to them, their memories of the death, and of the person who has died, may be affected by the way in which you behave at this very difficult time"*.

We have agreed that *additional* visits to view the deceased for the purposes of verification or certification of death and in order to complete Cremation Form 4, should be avoided.

When discussing issues around any deaths GPs are reminded that the view of the LMC, backed up by GPC/BMA is that from a legal (and contractual) perspective:

- Any competent adult is able to verify death.
- There is no need to have ever attended the patient or seen the body after death to issue an MCCD.
- There is no need to have attended or been in presence of the body to complete Cremation Form 4.

We have outlined some pragmatic suggestions in this guidance to ensure that, where they are involved, GPs are able to meet their legal obligations and support other professionals involved in the process.