

Sent: 03 May 2020 17:55

Subject: Verification of death and issuing MCCDs

Dear colleague,

Not least because of Coronavirus and the recent amendments to the law, this has been the subject of much debate across the Country. I think the legal and de facto positions are now clearer.

Verification of death

There is no statutory duty for a doctor to establish the fact of death. The law says that any competent person can confirm death. There is no clear definition of 'competent' in this context, certainly no legally accepted definition.

The MDU states that anyone, such as a family member, can declare a person dead. It appears that it may not even be necessary for a death to be verified before a body is moved.

In other areas in England this is accepted and does not cause a problem, removing from clinicians the risks of attending potentially infected bodies solely to verify that life is extinct.

In law, coroners have no jurisdiction over verification of death; it is outside their powers. Despite this, in many areas, including Shropshire and Telford, the Senior Coroner has ruled that death must be verified by a suitably qualified clinician or police officer.

Because of this ruling (although not enforceable) and because of the wording of their professional liability insurance, funeral directors will usually refuse to move a body before death has been verified by either a doctor or paramedic. In law, there is no onus or requirement for any doctor to attend to verify - but the reality, not least because of the situation otherwise created, is that it may be difficult not to do so.

In summary, English Law:

- does not require a doctor to confirm death has occurred or that "life is extinct".

- does not require a doctor to view the body of a deceased person.
- does not require a doctor to report the fact that death has occurred.
- does require the doctor who attended the deceased during the last illness to issue a certificate detailing the cause of death.

Issuing a M CCD

To quote the Chief Coroner (Summary of the Coronavirus Act 2020):
Signing and attendance are effectively decoupled, but with safeguards.
Any registered medical practitioner can sign an M CCD, even if the deceased was not attended during their last illness and not seen after death, provided that they are able to state the cause of death to the best of their knowledge and belief.

No need to have ever attended or seen after death to issue and no need to have attended or been in presence of body to complete Form 4 M CCD.

Once that M CCD reaches the registrar there are two possibilities depending on whether the deceased was seen before or after death. First, if a medical practitioner (who does not have to be the same medical practitioner who signed the M CCD) attended the deceased within 28 days before death (a new, longer timescale)³ or after death, then the registrar can register the death in the normal way.

Second, if there was no attendance either within 28 days before death or after death, then the registrar would need to refer that to the coroner. This is a safeguard parliament put in place to ensure that M CCDs are not issued without any recent medical practitioner attendance prior to or after death or without any other form of oversight (in this case, by a coroner).

The coroner could cover the second scenario with a Form 100A if they decided it was appropriate to do so. In practice, it may be that the signing medical practitioner and the coroner are in communication before the M CCD reaches the registrar. Either way the outcome would be the same upon issue of the 100A.

The General Register Office position is that attendance before death can be visual (i.e. in person) or by video (e.g. Skype), but cannot be audio (i.e. telephone) only. Attendance after death must be in person.

Cremation

The requirement for a confirmatory certificate (Cremation Form 5) is suspended. There is only a requirement for one medical certificate (Cremation Form 4).

Any medical practitioner can complete Cremation Form 4. They do not have to have seen the deceased. However, a medical practitioner (not necessarily the medical practitioner who signs the Cremation Form 4) should have attended the deceased (including visual/video/skype consultation) within 28 days before death, or *viewed* the body after death. 'Viewing' here means in person.

However, the crematorium medical referee may accept a Cremation Form 4 where the deceased has not been seen within 28 days before death or after death but where the death has been registered with an MCCD supported by a Form 100A issued by the coroner. In other words it is possible for a crematorium referee to accept Cremation Form 4 without the patient having been seen before or after death by a GP.

I hope this is helpful and clears up some of the unresolved areas in the previous email.

Ian

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