

19 June 2019

**Social Security Advisory Committee
Minutes of the meeting held in room 5.21/5.22
Caxton House, Tothill Street, London, SW1H 9NA**

Chair: Sir Ian Diamond

Members: Bruce Calderwood
David Chrimes
Carl Emmerson
Chris Goulden
Grainne McKeever
Dominic Morris
Seyi Obakin
Charlotte Pickles
Victoria Todd

Apologies: Philip Jones
Jim McCormick
Liz Sayce

1 & 2 Private Sessions

[RESERVED ITEMS]

3. The Social Fund Children's Funeral Fund for England Regulations 2019

3.1 The Chair welcomed the following officials to the meeting: Richard Mason (Ministry of Justice, Deputy Director for Administrative Justice, Coroners, Burial, Cremation and Inquiries), Heather Atkinson and Isabella Bird (both Ministry of Justice, Coroners, Burial, Cremation and Inquiries Team), Matthew James (lawyer DWP, Universal Credit and Housing Support) and Ron Butler (HEO DWP, Children, Families and Disadvantage).

3.2 Introducing the item, Richard Mason advised the Committee that the Children's Funeral Fund was a priority for the Prime Minister and, subject to the outcome of the Committee's scrutiny, the intention was to lay the regulations on 1 July with them coming into effect before the end of that month.¹

3.3 The Ministry of Justice, which has responsibility for burials and cremations in England and Wales, intended to establish the fund under powers contained in

¹ 23 July 2019.

section 138 of the Social Security Contributions and Benefits Act 1992.² While the existing Social Fund provided help with the costs of funerals for those on low incomes, the Children's Funeral Fund (CFF) would neither be income-related nor would the residency or nationality of the child or the parents be a factor in determining eligibility. The scheme would be administered by the Ministry of Justice.

3.4 The CFF had been designed to provide parents with the core costs of burying or cremating a child up to the age of 18 in England. This would include still births after the 24th week of pregnancy. There are around 4,000 deaths each year in England of children below age 18, and just over 3,000 post-24 week stillbirths. The estimated cost of the CFF ranges from £8.5m to £14m pa. This includes the £7m to £12.5m pa to cover burial or cremation fees and other associated expenses stipulated under the CFF, including the estimated £2m pa arising from the £300 contribution towards the price of a coffin. It also includes around £1.5m pa in administration costs.

3.5 The core costs which the CFF would meet would be the essential fees necessarily associated with the burial or cremation itself. The claim for such fees would be made by the appropriate authority responsible for the funeral or burial in order to minimise the burden on the family of the deceased. Certain other stipulated items and services associated with the funeral would also be eligible under the CFF and whilst they would usually be claimed by the funeral directors, they could be claimed by the bereaved family if they chose to make the funeral arrangements themselves.

3.6 The following main questions were raised in discussion by Committee members:

(a) What was the policy principle behind providing only for the core funeral costs?

The intention to introduce legislation was announced in April 2018. Consideration was first given to using section 31 of the Local Government Act 2003 but was discounted. Ministers also looked at the model which existed in Wales, but because of different laws in operation, it was difficult to replicate that model. The principle underlying this policy-making phase was to remove from families the need to pay burial or cremation fees. From the outset Ministers were agreed that they wanted to introduce a generous scheme. The Home Office, for example, was content that the issue of a person's immigration status should not be an issue, and that to restrict eligibility on the basis of immigration status would not be in the spirit of what had been agreed.

(b) What do the core costs cover?

At the point at which it was acknowledged that the Ministry of Justice should be given responsibility for the policy an iterative process of Ministerial submissions was commenced. Having agreed that burial or cremation fees

² Relates to the Social Fund administered by DWP.

should be met, Ministers wanted to go further. Meeting the costs of the coffin up to a reasonable amount was therefore added to the proposals. Associated travel costs were also considered. Although there were good arguments for including travel costs, it was felt that the scheme as proposed was generous and had gone as far as could reasonably be expected. The scheme therefore covers the entirety of burial and cremation fees. In practice this forms the vast majority of the expense. Some items of expenditure in a funeral package are optional, and it would not be appropriate to cover them. Bereaved families would retain the choice of paying for additional items should they wish to do so. It was important to stress that stakeholders had looked closely at the proposals and welcomed them. As a non means-tested scheme they had described it as 'generous'. The proposed £300 cap on coffins could, in some cases, be supplemented for those on qualifying benefits from the existing Funeral Expenses Payment scheme run by DWP. In practice funeral directors tended to be generous in waiving fees when it came to a burial or cremation of a child. Government was hoping that that same generosity of spirit would continue should these draft regulations come into force as intended. If so that would help meet any additional expenses not covered by the CFF.

(c) What was not covered?

Items such as transport costs, operational costs of a funeral, flowers and ministers' fees.

(d) Had any consideration been given to providing a lump sum and letting the bereaved family decide best how to use it?

Yes, but because of the wide disparity between burial and cremation fees across the country, Ministers did not think that was the right way to go.

(e) The idea of requiring the burial or cremation authorities to make the claim, and therefore exempting bereaved families from the process, was a good one. The draft legislation still allowed for families to make the claim. When would that be needed?

With burial and cremation fees, the responsible authority would be obliged to make the claim. An option however for the bereaved family to make the claim for associated funeral costs had been inserted. It was not envisaged that this would be the choice for the huge majority of bereaved families who, in practice, would almost certainly be content for the funeral director to make the claim. It was nevertheless considered necessary to include a choice because there were instances of people not wishing to use a funeral director. In such a situation it would be helpful to allow a family to make the claim independently.

(f) Was there any available data on the extent to which funeral directors currently waived fees?

There was no authoritative data on this, but a good deal of anecdotal evidence. Co-op Funeralcare and Dignity Funeral Directors, who between

them have around 30 percent of the funeral market have said that they intend to continue to waive costs. It was fair to say that charities who represented bereaved families would be keeping under review this aspect of the proposals, and monitoring developments. The proportion of funerals of young people under the age of 18 years, including still births, was very low in comparison to the overall number of funerals. It was therefore reasonable to think that continuing to take a lenient view of charging fees in respect of child deaths would not seriously impact profits.

(g) How did the CFF interact with the Scottish and Welsh schemes?

Separate schemes already existed in Scotland and Wales that make financial support available to providers of burial and cremation for children. Officials have talked to their counterparts in Scotland and Wales about their respective provision, and were satisfied that all three schemes providing support towards child funeral costs were based on where the burial or cremation took place. There would therefore be provision across the three countries, based on the jurisdiction in which the burial or cremation takes place.

In addition, the Scottish Government was introducing their own means-tested funeral expenses scheme, eligible for all those on qualifying benefits. These draft regulations include a way of future-proofing the interaction between the CFF and this other, means-tested, funeral expenses scheme.

(h) What was the situation in Northern Ireland?

As this was a devolved issue, it would be for the Northern Ireland Assembly to consider, as and when it resumes. There was anecdotal evidence that fees were increasingly being waived in respect of children's funerals in Northern Ireland.

(i) Was there not a challenge for communicating a clear message to bereaved families? The danger might be that there was an expectation that funeral costs would be met in full, leading to frustration should a bereaved family then receive a bill they had not anticipated.

The Ministry of Justice had made a big effort in ensuring the communications would be clear and accurate. There had been a strong engagement with the appropriate authorities on how this should be done and there was confidence that from 23 July the communication products would all be in place. The claiming system would also be in place by 23 July, both for the burial or cremation authorities and for funeral directors applying for the cost of the coffin and other associated costs. The same applied for bereaved families wishing to make their own claim for associated funeral costs. Although claims could be made electronically, hard copy applications would be available for those who needed it.

(j) What was the position on back-dating?

The legislation would not be retrospective. It would not be possible therefore to recoup the costs relating to the funeral of a young person which occurred

before 23 July. However, if a young person died before they had reached age 18 years and the funeral had yet to take place when the legislation came into force, help would be available under the CFF.

- (k) **It was noted that the costs included those associated with the storage of cremated remains up until the deceased person would have reached age 18 years. Would there be up-front communications on that point, alerting bereaved parents that this would be the point at which they would have to take on the costs?**

Yes. The information would make it clear that the Ministry of Justice would be taking on the responsibility for paying these fees up to the date in question.

- (l) **Was that the same with the cost of plot maintenance where paying such fees was a condition of the right of burial?**

Yes. That too needed to be communicated clearly as these costs would also only be paid up until what would have been the deceased person's 18th birthday. The renewal of a right of burial was a similar issue, although those affected had the option of deciding not to renew that right at the relevant time.

- (m) **Who would make the decision on the claim and how would any reconsideration or appeal process work?**

The decision would be made by decision-makers within the Ministry of Justice. Claims would be handled initially by SSCL and then relayed to the Ministry of Justice for a decision. Anyone disputing the decision would first be able to apply for a mandatory reconsideration and, in the event that it failed to satisfy the aggrieved party, there would be a right to an appeal to the First Tier Tribunal, Social Entitlement Chamber.

- (n) **The requirement for documentation at the mandatory reconsideration stage seemed to be particularly onerous. More so than the requirements made of individuals requesting the mandatory reconsideration of a decision made by a DWP decision-maker.**

That particular aspect of the process had yet to be finalised. The Ministry of Justice would look at that and reconsider what was being asked of people. The requirement to produce documentation was something that would mainly apply to the funeral or cremation authorities and not bereaved families.

- (o) **Could you not have different approaches – one for the authorities concerned and for funeral directors; the other for members of bereaved families?**

Thank you. That point would be taken away and considered.

- (p) **Who would provide the funds for the CFF?**

This too was a work in progress. A conversation was still ongoing with the likelihood that differing amounts of contributions towards the scheme would come from the Ministry of Justice, DWP and the Ministry for Housing, Communities, and Local Government.

3.7. The Chair thanked the officials for attending the meeting and answering the Committee's questions. He advised them that, after a period of private discussion, the Committee was content that the regulations could proceed without the need for their formal reference. There were however, a number of concerns which had been raised and on which the Committee would welcome further clarity. In particular, the Committee would like to be assured that:

- the expectations of potential beneficiaries of the CFF would not be raised beyond what was actually available through the scheme;
- any messaging would be accurate, clear and comprehensive;
- there was a rationale behind the principle of capping the coffin when it was not applied to other aspects of funeral costs;
- that the forecasts about costs were based on accurate statistical information; and
- that the CFF would be properly evaluated and costed after a year.

4 & 5 Private Sessions

[RESERVED ITEMS]

6. Date of next meeting

6.1 The Committee's next meeting was scheduled to take place on 24 July at Caxton House.

Attendees

Guests and Officials

Item 3: Richard Mason (*Ministry of Justice, Deputy Director for Administrative Justice, Coroners, Burial, Cremation and Inquiries*)
Heather Atkinson (*Ministry of Justice, Coroners, Burial, Cremation and Inquiries Team*)
Isabella Bird (*Ministry of Justice, Coroners, Burial, Cremation and Inquiries Team*)
Matthew James (*DWP Lawyer, Universal Credit and Housing Support*)
Ron Butler (*HEO DWP, Children, Families and Disadvantage*)

Secretariat: Denise Whitehead (Committee Secretary)
Paul Mackrell (Assistant Secretary)