

**Scottish Government
Funeral Expenses Assistance and Funeral Poverty Team
Social Security Policy
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Draft Statutory Guidance on Funeral Costs Consultation

The National Association of Funeral Directors is the largest trade association for the UK funeral profession. It represents more than 850 funeral firms which operate, between them, more than 4,100 funeral homes. In Scotland, the Association's 91 members operate more than 400 funeral homes across the country.

Please find, below, the NAFD's responses to the Scottish Government's Draft Statutory Guidance on Funeral Costs Consultation. We would be delighted to expand upon these points in more detail if this would be useful.

Nothing contained in this response should be considered confidential and it may be published as submitted, if appropriate.

Introductory comments

Our members know better than anyone that members of the public often both lack a basic understanding of the component parts of a funeral and associated costs, and have little desire to better acquaint themselves with the details. As research commissioned by the Competition and Markets Authority recently demonstrated, there are widespread behavioural and cultural barriers that will need to be overcome in order for useful public engagement on the topic of their funeral wishes to take place.¹

Indeed, it is usually a funeral director who is tasked with sitting down and explaining funeral costs to a family when they come to make arrangements for a loved one. Sadly, people can be reluctant to think about funeral costs ahead of time which, at a time when people are generally saving less, sometimes leaves families ill-prepared for what is typically a significant financial outlay. This lack of forward planning is one of the reasons why so many people sometimes struggle to pay funeral associated costs.

There are many reasons why people may be reluctant to plan ahead for their funeral but one is undoubtedly the widespread lack of awareness of the associated costs. For example, families are often unaware that, in addition to the funeral director's professional fees, a separate burial or cremation fee, the cost of which has risen significantly in recent years, needs to be paid. The NAFD would support any action taken by the Scottish Government to improve public awareness around this.

However, we are concerned that the draft guidance, in its current form, represents a missed opportunity to do exactly this. Section 98 of the Burial and Cremation (Scotland) Act 2016 ("the Act") provides that Scottish Ministers may publish guidance on the costs associated with making arrangements for a funeral. The Act is completely silent on the question of at whom this guidance should be aimed. However, it is clear that the audience that would most benefit from receiving guidance on funeral costs are the families and individuals who need to pay for them. We are therefore disappointed by the Scottish Government's decision to direct this funeral costs guidance, not at

¹ CMA Market Study Qualitative [Research](#) Report 2008 1.35-1.54

consumers, who would benefit greatly from additional guidance, but at funeral directors, who are among the most knowledgeable people in existence on the subject.

We are also concerned that the publication of guidance for funeral directors, rather than consumers, risks unintended consequences such as actually increasing the cost of a funerals. Where businesses feel they need to comply with new guidance, there are almost always associated costs and, in spite of the Scottish Government's reassurances that the draft guidance, once published, is not intended to be an enforceable or mandatory document, it is likely that funeral directors will feel they have no choice but to comply with it for fear of their non-compliance being used against them in a civil court of law - a judge is unlikely to look favourably on the defence of a funeral director who failed to comply with statutory guidance, published by the government.

In answer to the questions posed by the consultation document, we have raised a number of serious concerns about the draft guidance, ranging from the potential for inadvertent market interference to the risk of indirectly discriminating against certain religious groups. All of these concerns stem from the Scottish Government's decision to interpret Section 98 as instructing them to produce guidance for funeral directors on the way they describe their services and pricing, rather than the general public on the costs associated with arranging a funeral. Equally, all of these concerns would be resolved if this decision was reversed.

Question 1: Do you think that the Scottish Government should publish a glossary of terms alongside the guidance on funeral costs?

The NAFD would be happy to support the Scottish Government in creating a glossary of funeral terms, particularly one that was drafted with a view to better educating consumers and raising awareness of existing funeral terminology. We would however be uncomfortable with any proposal to publish a rigid list of terminology that funeral directors are required to adhere to in describing their services.

For many people, taking responsibility for arranging a loved one's funeral is something they will only ever do once or twice. Consequently, families are often unfamiliar with industry-specific terms such as 'embalming', 'chapel of rest' and 'casket'. An important aspect of a funeral director's role is to explain the meaning of such terms clearly but sensitively, ensuring that the family has sufficient information to make an informed decision.

However, a funeral director can only fully explain their services once a family has walked through their door. With an increasing number of families seeking to shop around and compare services online, there is a clear need to make this information available to consumers at an earlier stage. The publication and promotion of a glossary of funeral terms would provide families with a useful information resource that would help them navigate online price lists and form an early view on what funeral options will meet their needs. It could also act as a useful tool for funeral directors by providing them with plain English descriptions that they could use and adapt when advising clients and on their own websites.

In relation to items or services that are given different names in different areas of Scotland, the glossary could list these descriptors alongside each other. This would balance the need to protect traditions with the need to promote transparency.

Question 2: If you answered "yes", please list any particular terms that you think this glossary should include, along with a rough definition of what you understand the term to mean.

The NAFD would be keen to work with the Scottish Government on producing a glossary of terms and will provide some suggested terms and definitions separately.

Question 3: Do you think that the guidance should include measures which encourage private cemeteries and crematoria and funeral directors with a website to display their pricing information online? Y/N/DK

The NAFD does not agree that the guidance should be aimed at funeral directors. However, if the Scottish Government were to publish costs guidance for funeral directors we would have no particular issue with the parts of the guidance specifically aimed at encouraging private cemeteries, crematoria and funeral directors to display their pricing information online.

Question 4: Please explain your answer.

The NAFD continues to believe that the best way for a family to ensure they get the service they want, at a cost they are comfortable with, is to sit down with a funeral director and discuss their specific needs. A meeting will also enable people to find out if they feel comfortable with the funeral director as well as checking the range of services and prices. The Competition and Markets Authority's (CMA) recent report acknowledges this: "Where respondents decided not to go ahead with a particular funeral director, this was either because they didn't like the funeral director's manner (e.g. they found them rushed or unsympathetic), or (most commonly) because the price was not within the ballpark range they had in mind."²

However, we recognise that, when faced with the responsibility of arranging an unplanned funeral, increasingly families turn to the internet as a first port of call, to get an idea of potential costs before making arrangements to visit a funeral home.

All NAFD member firms are required to provide a comprehensive price list and transparent estimates to customers under section five of our Code of Practice. In addition, we have been encouraging our members to publish some or all of their pricing information online since 2016.

To support and encourage our members to do this, we have invested significantly in the funeral-directory.co.uk, an online information portal for consumers that are searching for funeral directors. Building on the previous 'Find a Member' facility on the NAFD website, since the summer of 2018 consumers have been directed to the funeral-directory.co.uk website which guides them, step-by-step, through the process of finding their local NAFD members and, in the second phase, will also provide information about their services, reviews from previous customers and details of how to contact them. Members are being strongly encouraged to add pricing information to the site, with information on both simple and bespoke funerals.

The NAFD therefore agrees that funeral directors with a website should be encouraged to make their pricing information available online. Indeed, we have actually gone further by providing an online platform for NAFD members that do not have their own websites.

While we agree with this proposal, and that an increase in the availability of funeral pricing information online is in the interests of consumers generally, it is important to highlight that the potential for this measure to help those families at greatest risk of falling into poverty will be limited as many are likely to have limited or no access to the internet.

Question 5: In order for crematoria to display their prices in a consistent manner, the Scottish Government proposes that all crematoria should base their standard cremation service charge on a common set of components. These are:

² [CMA Funeral Markets Study Qualitative Research Report 2008](#) (para 4.3.12)

- Cremation fee
- Mercury abatement fee (where applicable)
- Provision of container for ashes
- Cremation certificate
- Provision of chapel / service room
- Administration and processing of forms

Do you think that the standard cremation service definition proposed in the draft guidance captures all of the necessary elements? Y/N/DK

No

Question 6: If you answered “no”, please provide suggestions for items that you think should be added or removed.

If a crematorium charges for any of the following services this should be made clear alongside any information about the price of a standard cremation service charge:

- Any additional charge that applies in relation to an international cremation certificate
- Any additional overnight ‘holding over’ fees
- If no container for ashes is provided free of charge, the price charged for a container
- Pricing information for visual tributes - this is something that is often overlooked until after a decision has been made. In some areas it can even be more cost effective to have the cremation at one crematorium but to scatter ashes at another.
- Any environmental levies or other unavoidable charges

It is also important that crematoria are clear and transparent about the period of time that will be made available for a service. For example, if an advertised 30 minute time slot includes time for people to enter and be seated, the crematorium should explain that a 30 minute service will not be possible. The importance of making this clear is underlined by recent UK-wide Research commissioned by Dignity, which suggested that almost three in ten people feel they do not have enough time in the crematorium.³ In light of this, we would also suggest that, where there is an option to pay for additional time in the crematorium, this should be made clear by the cremation authority.

Question 7: To help consumers make comparisons between funeral directors, we have proposed a standard definition for a simple funeral. This is set out in paragraph 9 of the draft guidance for funeral directors and also in paragraph 50 of this consultation document. Do you think that the simple funeral service definition set out in the draft guidance captures all of the necessary elements?

No

Question 8: If you answered “no”, please provide suggestions for items that you think should be added or removed.

Price transparency and the ready comparison of prices for services on a like-for-like basis has been a priority of the NAFD since the early days of our Code of Practice. Today, the requirements for NAFD member firms are as follows:

³ A report by Trajectory: Cost, Quality, Seclusion and Time – What do UK customers want from a cremation funeral? (November 2018)

Information to be made available:

1. Within their price lists, which should be on display and available, members shall list the itemised charges and descriptions of the constituent elements of their services, which should include professional services, removal charges, coffins or caskets available, embalming, hearses, limousines and other services available.
2. Members shall make copies of their price lists available to be taken away by clients or prospective clients.
3. Members shall ensure that all literature detailing coffins and/or caskets available includes prices, and that coffins or caskets displayed on the premises are accompanied by the price.

However, the NAFD has concerns about the proposal to include a definition of a simple funeral in the guidance, and particularly in main body of the guidance, rather than in the proposed glossary of terms. We have concerns that the promotion of this definition by the Scottish Government could lead to several unintended consequences, including a rise in the price of lower cost funerals.

Until 2014, the NAFD Code of Practice sought to provide a ready comparison by specifying that all members should have a price for a 'Simple Funeral'. The 'Simple Funeral' was defined as:

1. The funeral director's services;
2. attending to the necessary arrangements;
3. provision of the necessary staff;
4. provision of a simple coffin suitable for cremation or burial;
5. transfer of the deceased from the place of death during normal working hours (within ten running miles allowed);
6. care of the deceased for up to fourteen days prior to the funeral; and
7. provision of a hearse direct to the nearest crematorium or cemetery (within ten running miles); if burial is specified (where this is available locally), this may involve an additional charge.

It did not include:

- embalming;
- viewing of the deceased;
- provision of a limousine; or
- any fees, for example disbursements payable on the client's behalf.

There were several reasons for the removal of the 'Simple Funeral' from the Association's Code of Practice:

Potential for indirect discrimination against religious and cultural groups

Firstly, we recognised that it was largely based on a white, Christian funeral service, which would not be suitable for some religious and cultural minorities and is not reflective of a wide variety of other funeral choices regularly made in the UK today. For example, the necessary arrangements for ritual washing, as is required in accordance with the Hindu and Islamic faiths, falls outside of the above description of a simple funeral. The NAFD did not feel it was right to promote a specific model of funeral that excluded so many of the United Kingdom's cultures and religions.

Risk of causing offence

Secondly, prior to 2014, it was regularly observed that families did not want or like the idea of their loved one having a 'simple' (basic) funeral – indeed it was frequently the case, in our members' experience, that families were upset or insulted when this option was suggested to them. In our

experience, there can also be a social stigma felt in relation to limited service options. The 2016 Marie Curie/University of York study on The Meaning of Funeral Poverty concluded that: “It was noted that people facing difficulties paying for a funeral rarely, if ever, used the term funeral poverty themselves to describe their own circumstances. Indeed, one participant described feeling generally uncomfortable with the term and avoided using it because it could put some people in a negative light.”⁴

Problems with interpretation

Finally, a lack of agreement on what should be included in the definition of a simple funeral made it increasingly unpopular with our members. For example, some NAFD members felt strongly that some form of viewing provision should be included in a simple funeral. However, we were concerned that simply including ‘viewing by appointment’ in our definition would have opened viewing up to an unlimited number of potential visitors, on an unspecified number of occasions, for an unlimited period of time. The fact that embalming was not included in the definition also raised questions over whether it was appropriate to specifically include viewing, as this could give the impression that viewing was advised even when the condition of the deceased person had deteriorated. Rather than set out exactly what the limits on viewing should be, and thereby set some arbitrary marker for who should be permitted to view the deceased person, we decided it would be more appropriate to leave such decisions for the funeral director who will have a better understanding of the family and the particular circumstances.

The NAFD agrees that there could be some value in the Scottish Government setting out an example definition that could act as a starting point for families who may not have an awareness of the fundamental components of a funeral service. Such a definition could be included in the accompanying glossary of terms and would help consumers understand what a simple package is likely to include.

However, we would caution against any attempt to prescribe what individual businesses should offer as part of a simple funeral package. Many firms already offer their own entry-level (e.g. simple or basic) funeral package which may not correspond to the proposed definition. As these firms could potentially ignore the proposed definition, it could lead to unnecessary confusion. A member of the public may not appreciate that the guidance is not intended to be mandatory or enforceable and could purchase a simple funeral package on the assumption that it corresponds with the Government guidance, only to find that certain aspects are not included.

Paragraph 14 of the Draft Guidance

Conversely, many funeral firms are likely to feel that the guidance places pressure on them to offer a simple funeral that corresponds with the Scottish Government’s proposed definition. As the proposed definition will be read in conjunction with paragraph 14 of the draft guidance, we believe this could have the unintended consequence of interfering with the ability of funeral firms to set their own prices and could even lead to a rise in the cost of the most affordable funeral options currently available.

A firm’s simple funeral package is a carefully constructed and defined product and is typically discounted compared to the sum total of the component parts. There is a different impact on the package depending upon whether consumers ask to add to or upgrade the package. We agree that consumers should be able to add, and pay for, individual extra components in addition to that

⁴ <https://www.mariecurie.org.uk/globalassets/media/documents/policy/policy-publications/march-2016/meaning-of-funeral-poverty-exploratory-study.pdf>

package, without it affecting the original discounted package price. However, we do not believe consumers should be able to upgrade or modify components of the simple funeral package (i.e. the type of coffin) without losing the original discounts that have been applied to the package. This is because the basis on which the package has been calculated is changing.

The intention behind paragraph 14 of the draft guidance appears to be to encourage funeral directors to allow families to modify (i.e. upgrading the type of coffin) their simple funeral package without losing the discount already applied. We have two concerns about this approach. Firstly, it amounts to market interference – funeral firms should have the freedom to price and package their services as they wish, with the market being the judge as to whether they have packaged their services correctly. Secondly, if this were to be adopted, in order to avoid finding themselves unable to properly plan price entry level packages in such a way that it represents good business practice (i.e. to not operate at a loss), funeral firms could quite understandably decide to increase the cost of the entry level package to give themselves some protection. Given that the simple (entry level) package is most likely to be chosen by those on low incomes (who don't qualify for the Funeral Expense Assistance), they would be the ones most likely to suffer from this change.

Question 9: Do you think that the guidance for funeral directors should include a measure suggesting that funeral directors should describe their processes for care of the deceased to help consumers understand costs associated with this?

No

Question 10: Please explain your answer.

An important aspect of a funeral director's role is to describe their services clearly and sensitively, ensuring that the consumer has sufficient information to make an informed decision. However, it is not always appropriate for a funeral director to go into detail with a consumer about exactly how they (in the case of pre-need purchases), or their loved one will be cared for as this is not always sought or appreciated by bereaved people, as has been evidenced by the CMA qualitative research and also by Dignity plc in a report released over the summer called Time to Talk about Quality and Standards⁵, based upon independently commissioned research, which states:

"Care of the deceased is considered a critically important aspect of the service that funeral directors provide. Amongst both funeral arrangers and funeral attendees, 95% say it is either very or quite important, with almost three-quarters (73%) saying it is very important (second only to ensuring that the funeral runs smoothly). However, despite being such a high priority, it is rarely a consideration when selecting a funeral director, or when the funeral is being arranged. This is the result of two factors:

- 1. Consumers are reluctant to engage with or even think about some aspects of care of the deceased – for example, of washing and dressing of the deceased, of their loved ones being transported from place to place, or of embalming*
- 2. There is an assumption of consistent standards or regulation of these 'behind the scenes' facilities and services, meaning consumers perceive little difference between firms, making detailed consideration of this aspect unnecessary*

These two factors are interrelated. Although it is important to consumers to know that their loved ones are being cared for properly, the nature of this care can be unpleasant to consider. The assumption of common standards or regulation-enforced operations that go on behind the scenes – in parts of funeral premises generally invisible to the public – enables consumers not to have to worry about the level of

⁵ <https://www.dignityfunerals.co.uk/media/2999/time-to-talk-about-quality-and-standards.pdf>

care that their loved ones receive. Consumers find reassurance in these assumptions and although care of the deceased was rarely mentioned spontaneously during the qualitative interviews, when prompted (in both the qualitative interviews and quantitative survey) it emerged as a critically important and non-negotiable factor.”

This means that, for most people, feeling secure in the knowledge that standards being checked (which they will be by statutory inspections) is enough, they don't wish to know the details. This point was reinforced by the recent CMA Market Study's research findings, in which researchers reflected that, of the 100 qualitative interviews they conducted with individuals who had been closely involved in making funeral arrangements:

“No one inquired about the nature and quality of funeral directors' mortuaries when choosing a funeral director or took this into consideration. Again, respondents assumed funeral directors had to meet certain industry standards. Many also found thinking about the deceased's body stressful and preferred not to know details beyond the practical information they needed if they wanted to visit the body.”⁶

However, some clients do like to know more information than others and the NAFD would expect each of our members to be able to provide a full explanation if asked. We would also agree that a funeral director should never describe their services in a way that is likely to give people an inaccurate impression of how the deceased person will be cared for. We would however have concerns about any guidance that compels funeral directors to volunteer details of exactly how they care for deceased people to their families. With this in mind, we would suggest that paragraph 8 of the draft guidance could be removed completely without impacting the usefulness of the guidance. The required standards for transparency in relation to services offered by funeral directors is already being tackled in the Scottish Government's statutory code of practice. The draft guidance, by attempting to define acceptable standards surrounding transparency, risks overlapping with and potentially contradicting the statutory code of practice.

Even if the greatest care is taken to keep the language consistent between the documents, there is a risk that this will change over time. In accordance with the Act, the Code of Practice must be reviewed and updated by Ministers over time.⁷ Therefore, if the costs guidance attempts to imitate the language used in the code of practice, it would need to be kept under similar review.

A better way of achieving the desired effect could be to insert a paragraph at the start of the costs guidance that makes clear that it should be read in conjunction with the statutory code of practice. This would reduce the risk of inconsistencies and would also have the benefit of signposting the reader to the full statutory code of practice for funeral directors.

If the Scottish Government decides nevertheless to include the proposed paragraph, the wording should be changed to reflect that funeral directors should be able to describe their services in to the extent set out if asked, rather than to volunteer this level of information even when it would not be appreciated.

Question 11: Do you think the guidance should include a provision encouraging burial and cremation authorities to make reasonable efforts to accommodate the wishes of a person that does not want to use a funeral director?

Yes

Question 12: Please explain your answer.

⁶ [CMA Funeral Markets Study Qualitative Research Report 2008](#) (para 4.3.15)

⁷ S. 97(6),(7) Burial and Cremation (Scotland) Act 2016

We agree that cremation authorities should make reasonable efforts to accommodate bereaved families who do not wish to use the services of a funeral director and we are aware of the ICCM Charter for the Bereaved.⁸ However, it is important that the guidance is clear about the level of assistance cremation authorities should be expected to provide.

For example, it is reasonable to expect cremation authority staff to try to be helpful by explaining what a family needs to do in order to make use of their services. However, it would not be reasonable to expect them to guide families through all of the relevant paperwork or provide pallbearers free of charge. These are services that are quite correctly provided by funeral directors and, if cremation authorities were to spend time and resource providing them instead, the cost of doing so would inevitably be passed on to the public in the form of increased cremation fees.

Question 13: Paragraphs 3 and 4 of the draft guidance for local authorities suggest that local authorities should consult the public when developing charging proposals and explain the reasons for any proposed changes to charges. Do you think these measures will help improve the transparency of, and public engagement with, the local authority charge setting process? Y/N/DK

Yes

Question 14: Please explain your answer.

Provided this is done in a consistent way, we believe this could improve the situation for both families and for our members. We would also recommend extending consultation to include other stakeholders such as local funeral directors, industry bodies, local clergy, local care homes and the Inspector of Funeral Directors. By casting the consultation net more widely, local authorities will gain better information and will improve their reach.

It is a constant source of frustration to our members that the first time a family becomes aware of the local authority charges is often when their funeral director explains them. In addition to this, unless the family have organised another funeral in the recent past, they have no immediate way of knowing how the price has changed in recent months and years. Our members frequently express concerns to us about unexplained rises to local authority charges but the families who are forced to pay them are often completely unaware of the issue. As these charges are almost always collected by the funeral director as a disbursement it is often the funeral director that deals with the confusion (and concerns) about the level and nature of these charges which, unlike most other aspects of the funeral, have no flexibility and must be paid at the level set.

Our members have also raised concerns about the recent appearance of new charges that are not reported on annually by Citizens Advice Scotland (CAS) in the same way as 'burial plot' and 'interment' fees. For example, some councils now charge a 'perpetuity fee' (a charge to cover the maintenance and upkeep of a lair) which tends to fall under the radar despite being an unavoidable burial cost. We believe it is important that local authorities consult with stakeholders before introducing or varying such fees.

If local authorities took steps to consult with the public and other stakeholders when developing charging proposals, this would increase awareness of their charges and would also provide local authorities with better information to inform their decision-making. We would therefore support this proposal.

⁸ <https://www.iccm-uk.com/iccm/library/CharterGuidingPrinciples.pdf>

If this recommendation proceeds, we would also suggest that greater consistency in how local authorities describe and publish burial and cremation fees would be helpful to the public.

For example Edinburgh City Council, in its two-page charges document, describes the interment of a casket containing cremated remains as:

“Cremated Remains Casket Burial - Exclusive Right of Burial with Certificate”

Whereas South Lanarkshire Council describes the same service, on a single webpage, as:

“Lair of ashes only”

While Glasgow City Council, which publishes its costs as part of a 24-page book of charges, calls it:

“Purchase of exclusive right of Ashes burial (Ashes only Lair)”

Question 15: Paragraph 5 of the draft guidance for local authorities suggests that local authorities should publish information from their Local Financial Returns annually on their websites, showing income generated and expenditure incurred through the provision of burial and cremation services. Do you think that this would help increase public understanding of the costs associated with local authorities’ provision of these services? Y/N/DK

Yes

Question 16: Please explain your answer

If the basis for cost reporting is properly set out, the publication of this information could increase public understanding of the costs associated with the provision of services. We would like to see the publication and central monitoring of any income generated and expenditure incurred as this would make clear when a local authority uses profits from burial and cremations service provision to make up budgetary shortfalls elsewhere.

However, as with the reporting of all financial accounts, there is potential for information to be presented in such a way as to give a misleading impression of the true picture. For example, it would be misleading if a local authority reported its full expenditure for grounds/maintenance, including public parks and civic buildings, under the report for the provision of burial and cremation services. Unless safeguards are put in place to prevent such creative reporting, there would be a risk that the publication of such information could actually mislead and reduce transparency.

We are also unconvinced that the fact that a particular local authority is in financial difficulty, or has invested heavily in infrastructure, should be seen as justification for charging families increased burial or cremation fees.

Question 17: Do you think the guidance should encourage local authorities to link burial and cremation charge setting to broader strategies and duties aimed at reducing poverty? Y/N/DK

Yes

Question 18: Please explain your answer.

If local authorities fail to link their charge setting to broader strategies and duties aimed at reducing poverty it is likely that these charges will continue to have the effect of placing more people in poverty.

Where a family is eligible for a Funeral Expense Payment, the burial or cremation charge is paid in full by the state. Where a family is not in receipt of this benefit, the funeral director will typically pay the charge on behalf of the family, on the understanding that they will be reimbursed at the same time as they are paid. In the increasingly common event that these families are unable to pay, the funeral director is often left to pursue, and often eventually write off, the bad debt.

Our members often complain that, as the local authority is typically one place removed from the family and almost always receives full payment of the burial/cremation fee, there is little acknowledgement of the impact increased charges are having on many families' ability to pay. We would certainly like to see a greater acknowledgment of the strain that burial/cremation charges are having on both families and funeral directors.

Question 19: Do you think that local authorities should be encouraged to take actions to support individuals who are struggling with the costs of a funeral? Y/N/DK

Yes

Question 20: Please explain your answer.

As stated above, we would like to see decisions around local authority charge setting linked more closely with strategies for reducing poverty. We also agree that local authorities should be encouraged to provide advice to the public and raising awareness of the need to plan ahead for funeral costs.

However, we are concerned that the wording of paragraph 7 is too vague and open-ended. In the interests of avoiding unintended consequences, such as local authorities starting to offer forms of financial support to families, which would risk further-complicating an already overly complex Funeral Expense Payment system, we would suggest limiting the scope of paragraph 7 to these two specific examples.

Question 21: Please tell us about any potential impacts, either positive or negative, that you consider the proposals in this consultation may have on people who may be differently affected in relation to the protected characteristics.

As stated above, one of the reasons the NAFD decided to remove the requirement for members to offer a defined 'simple funeral' was that our definition was largely based on a white, Christian funeral service, which would not be suitable for some religious and cultural minorities. We were also concerned that our continued promotion of the simple funeral would not be reflective of a wide variety of other funeral choices regularly made in the UK today.

The definition proposed by the Scottish Government, which is very similar to the NAFD's previous definition, risks indirectly discriminating against certain religious and cultural groups – and also restricting the choices and ability of families to arrange a funeral in line with the wishes of the deceased person, which has been consistently found⁹ to be the primary factor influencing funeral arrangements.

For example, the necessary arrangements for ritual washing, as is required in accordance with the Hindu and Islamic faiths, would likely fall outside of the proposed description of a simple funeral. Similarly, the definition is unlikely to accommodate the needs of the travelling community, whose culture normally requires that the deceased person be brought home before the funeral.

⁹ You Gov Funerals Matter 2016 and 2018; CMA Qualitative Research, Research Works 2018

Encouraging funeral directors to offer a standardised service that fails to meet the basic requirements of all of the United Kingdom's major religious and cultural groups would send out a negative message to these communities and risks placing them at an unfair disadvantage in terms of finding affordable funeral options.

Question 22: Please tell us about any potential business or regulatory impacts, either positive or negative, costs and burdens that you think may arise as a result of the proposals within this consultation.

The consultation document claims not to be seeking views on regulation of the funeral sector and we are pleased to have received confirmation from the Scottish Government that the draft guidance, once published, is not intended to be enforceable or mandatory. However, we still have concerns that funeral directors will feel they have no choice but to comply with the guidance for fear of their non-compliance being used against them in a civil court of law.

As stated above, we have concerns that the proposal to encourage funeral directors to provide a Scottish Government defined simple funeral service, combined with the guidance that any charges for modifications should be proportionate (paragraph 9 of the draft guidance for funeral directors), could have the unintended consequence of pushing up the baseline price of the most affordable funerals available.

We are also concerned that parts of the draft costs guidance for funeral directors, which imply a certain required level of standards, risk overlapping, and potentially contradicting, the statutory code of practice that is being developed by the Scottish Government.

For example, the proposed definition of a simple funeral includes a requirement to provide a coffin that is:

1. Appropriate
2. Robust
3. suitable for burial or cremation

The word 'appropriate' is very subjective in this context and, with the growing range of coffins available on the market, could cause unnecessary confusion. The word 'robust' is also open to interpretation and seems unnecessary, particularly in addition to the requirement for the coffin to be 'suitable for burial and cremation'. It is worth noting that crematoria will all have specific requirements regarding what coffins are acceptable.

Our view is that all coffins should be fit for purpose, which almost always means that they should be suitable for burial and/or cremation. However, we feel that the statutory code of practice is the appropriate place for setting out such standards and requirements.

We are also concerned about the potential inconsistent use of modal verbs ('should', 'shall', 'must' etc.) across the draft guidance and the statutory code of practice. For example, paragraph 7 of the draft guidance provides that:

*"7. Funeral directors **should** provide clients with a detailed itemised final account that is comparable with the written estimate provided."*

While we do not disagree with this statement, based on discussions we have had with the Scottish Government in relation to the likely content of the statutory code of practice, we would be surprised if it did not set out an almost identical requirement in much stronger terms - e.g. "Funeral directors **shall** provide clients with..."

We appreciate that the word 'should' has been preferred for use in the draft guidance to avoid indicating necessity and we agree that it would be wrong for the draft guidance to set out absolute requirements for funeral directors. However, we feel it is important that the two Scottish Government produced documents are not be permitted to use inconsistent modal verbs in relation to, what is essentially, the same guidance as this is likely to cause confusion. For example, a funeral director could read the costs guidance and quite reasonably assume that a particular requirement is not mandatory, when in fact, by virtue of the statutory code of practice, it is.

Even if care is taken to ensure the language used in the costs guidance is consistent with that set out in the statutory code of practice, there is a risk that it will become inconsistent over time. In accordance with legislation, the statutory code of practice must be reviewed and updated over time.¹⁰ Therefore, if the costs guidance attempts to imitate the language used in the code of practice, it will need to be kept under similar review. We appreciate that the Scottish Government wants to make clear that acceptable standards should not be compromised when providing lower-cost options. However, a better way of doing this would be to insert a paragraph in the costs guidance that states that it should be read in conjunction with the statutory code of practice. This would achieve the same result without risking confusion and inconsistency going forward. It would also carry the benefit of signposting readers to the statutory code of practice.

We would also suggest removing all paragraphs of the draft guidance that are likely to overlap with the requirements of the statutory code of practice. In addition to the statutory Code of Practice, funeral directors will have their trade body Codes of Practice to comply with. Adding yet another standards document is not helpful and will increase the risk of confusion and drift between documents. Admittedly, this would leave very little of the draft guidance in place but this in itself highlights an important point – that, other than those aspects that will be covered by the statutory code of practice, there is very little useful guidance that can be given to funeral directors on this topic.

Additional observations

Section 98(4) of the Act suggests that the funeral costs guidance “may in particular cover the desirability of such costs being affordable”. This cryptic provision appears to have been reflected in the draft guidance by the requirement for funeral directors to “keep in mind that it is desirable that a person can afford to pay for them”.

Whether or not something is affordable depends entirely on the budget of the person who wants to purchase it. Therefore, unless the funeral director knows what their client can afford, it will not be possible for them to tailor their advice and recommendations accordingly.

The best way to overcome this obstacle is for the funeral director to encourage clients to disclose their budget before options are discussed in detail.

Respondents to the Research Works qualitative survey work for the CMA reported that funeral directors tended to explain how different choices would affect overall costs, and there were cases where the funeral director re-calculated the total sum as and when individual items changed to keep track of overall costs as the discussion progressed.

Respondents also said they did not report feeling 'steered' to buy optional or higher priced items, although there was a reported reluctance by respondents to negotiate on cost.

¹⁰ S. 97(6),(7) Burial and Cremation (Scotland) Act 2016

As a consequence of the rapport built by the funeral director with the client, those working within a budget reported feeling “comfortable in disclosing it”, something they often did before costs were discussed in detail.

We were not on a budget as such but there wasn't very much money. It wasn't extravagant. They (Funeral Director) explained exactly what was within our budget which was very good of them.” [Female, 47, DE, Cremation, Independent, Liverpool]

The report continues: “Where respondents did not disclose a budget, some funeral directors who offered packages would get a sense of customers’ budgets by asking them to pick one among several packages which differed in price.”

The Scottish Government may therefore wish to consider inserting a complimentary paragraph to encourage funeral directors to seek this information at an early stage. However, families can sometimes be reluctant to disclose this information, which will make it difficult for the funeral director to know which price-range is most appropriate.

Although some funeral directors are clearly able to gain a sense of what kind of budget is appropriate – this is not a universally-shared skillset and we do not think it would be appropriate for a funeral director to be required to form a view on what a person or family can afford based on factors other than their specific instructions. Such assessments may be inaccurate and may be affected by the funeral director’s own unconscious bias. We would therefore suggest making clear in the guidance that funeral directors should only keep in mind that it is desirable that a person can afford to pay for them when they have been made aware of that person’s budget.

It is also worth noting that it is not in any funeral directors’ interests to do anything other than seek to ensure a family is able to pay for the funeral they would like to arrange, as they will inevitably be left with unpaid debts if families fail to pay for a funeral they cannot afford.