

Adult Social Care and Health Directorate

Funeral Arrangements Practice Guidance OPPD Division

Issue Date:	15 June 2018
Review Date:	24 months from issue
Owner:	Policy and Standards Team Policy&StandardsEnquiries@kent.gov.uk



Funerals Arrangements Practice Guidance

Document Information

Working Title:	Funeral Arrangements Practice Guidance
Status:	final
Version No:	3
Date Approved by DivMT	Not applicable
Date Issued	15 June 2018
Review by:	Operational Support Unit (Policy and Standards)
Review Date	24 months from issue
Lead Officer/s:	Policy and standards team
Master Location	Policy and Standards
Publication	KNet: ASCH operational policy page click here for page link
Authorised to vary	Jean Wells, Janice Grant
Replaces	Funeral Arrangement Policy, Practice Guidance v2a January 2014

References

Deprivation of Liberty	Mental Capacity Act and Deprivation of Liberty Safeguards Policy and Practice Guidance on KNet ASCH policy page
Protection of Property	Protection of Property Policy (includes care of pets) on KNet
House of Commons briefing paper Number 06242, 7 February 2017	Arranging and paying for a funeral click here
Legislation.	<u>Section 46 of the Public Health (Control of Disease) Act 1984 (the 1984 Act), Care Act 2014</u>

Version control

Version	Issued	Summary changes	Reviewed by
3	15/06/18	When a person lived in a KCC care home or integrated care centre immediately before death and KCC has exercised its discretionary power to pay and arrange the funeral, it is permissible to enter the deceased's home address specifically for the purposes of locating a Will, prepaid funeral plan or life insurance policy only. See section 4.2.3. Guidance expanded to help staff understand KCC (or others) responsibility when someone dies in a care home, NHS care, in the community or lived in a private care home.	Jean Wells and Hannah Rumball
	12/09/18	Added line to introduction to highlight https://www.gov.uk/when-someone-dies	Hannah Rumball

Funerals Arrangements Practice Guidance

Contents

Introduction

1 Scope

2 Key principles

3 Relevant Legislation

3.1 Section 46 of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”)

3.2 Duty of the district council

3.3 Duty of the NHS

3.4 Discretionary powers of KCC

3.5 Deprivation of Liberty Safeguards

4 Practice guidance

4.1 Contacting the local district/borough council

4.2 When KCC exercises its discretionary powers

4.3 When the deceased lived in a privately-owned care or nursing home

4.4 When the deceased lived in the community

5 Monitoring the guidance

Introduction

If the deceased left a will and appointed executors, they have the primary responsibility for arranging the funeral. Where there is no will, the person who would be entitled to administer the estate (usually the closest relative) would generally have this responsibility. In practice, it is often family members or friends who arrange the funeral, sometimes on behalf of, and with the specific authority of, the executors.

Sometimes the deceased will have expressed a wish in a will, or elsewhere, as to the type of funeral they want.

In certain circumstances (see section 3.3 and 3.4), the local authority (district/borough council) or NHS may have a duty to organise and pay for a funeral. This is where it appears that no other suitable arrangements have been or are being made.

Where a person dies in NHS care, the NHS may arrange and pay for the funeral, if there are no relatives or friends who are willing or able to do so. However, before doing so, an NHS Trust may approach the local authority (local district/borough council/county council) to see if they are willing to arrange and pay for the funeral.

When the person was living in a KCC managed care home or integrated care centre, (even if admitted to acute hospital from the care home then subsequently dies in the hospital) it is the Directorate's policy to request the relevant district council to arrange and pay for the funeral. However, the district council may argue that "other arrangements" could be in place if KCC exercises its power (not duty) to make the arrangements because the accommodation was being provided under Part 1 of the Care Act 2014. (Reference [46\(2\) of the Public Health \(Control of Disease\) Act 1984](#)).

This document provides guidance when KCC has exercised its discretionary power to arrange and pay for a funeral when the deceased lived permanently in a KCC in-house care home or KCC managed integrated care centre immediately before their death (referred to as "*KCC residential establishment*" from this point forward).

This power will only be considered when there are no funeral arrangements being made by willing family members, no prepaid funeral plan in place, no other arrangements by the district council or NHS.

KCC may claim the costs of the funeral from the deceased's estate, if there are sufficient funds.

Please also see <https://www.gov.uk/when-someone-dies> for further information and a step by step guide regarding what to do when a person dies, e.g. how to register the death, what benefits may be available and how to deal with the estate.

POLICY

1. Scope

- 1.1 For adult social care practitioners and registered managers/staff of KCC managed residential establishments within older people and physical disability division.
- 1.2 When the deceased lived permanently in a KCC in-house care home or KCC integrated care centre immediately before their death.
- 1.3 When KCC has exercised discretionary power to arrange a funeral for a person who died in a KCC managed residential establishment.
- 1.4 In exceptional circumstances, when KCC has exercised its power to arrange and pay for the funeral, it is permissible for KCC representatives to enter the deceased's property (former home address) to locate a Will or Life Insurance Policy for the purposes of recovering funeral expenses from the deceased's estate or locate a prepaid funeral plan.

Not in scope

- 1.5 KCC is not responsible for the funeral arrangements (or clearing the deceased property) when the deceased has:
 - been living in the community
 - been living in the community but died while being provided with temporary KCC residential accommodation (e.g. short break, respite)
 - died in hospital/NHS care (and did not live in a KCC residential establishment immediately before admission)
- 1.6 Learning disability or mental health respite or short breaks services are not in scope because home address is in the community, therefore funeral arrangement responsibility (if no willing family members/friends) falls to the local district/borough council. (Note: permanent residential services for these groups of people are commissioned externally).

2 Key Principles

When a person is admitted permanently to a KCC residential establishment, the following principles to be applied in relation to the person's funeral arrangements.

- 2.1 Establish the existence and location of a Will, prepaid funeral plan or Life Insurance Policy.
- 2.2 The next of kin must be documented on the persons case file and service support plan, but if there are none, their cultural and religious beliefs and preferences in relation to funerals is known and recorded (unless the person declines to provide this information).
- 2.3 The deceased's relatives should be notified immediately, irrespective of the time, unless it is recorded on the person's service support plan that the relative does not want to be

Funerals Arrangements Practice Guidance

notified until a specific time, for example, if the death occurs during the early hours of the morning. Relatives are expected to take over the responsibility for making funeral arrangements, paying costs and administrating the estate.

- 2.4 If KCC Client Financial Affairs team are involved, they must be informed of the death as soon as practicably possible.

3. Relevant Legislation

3.1 [Section 46 of the Public Health \(Control of Disease\) Act 1984](#) (“the 1984 Act”). This is the statutory authority for the disposal of dead bodies the key paragraphs of which are:

Section 46(1) “It shall be the **duty** of a local authority¹ to cause to be buried or cremated, the body of any person who has died or been found dead in their area, in any case where it appears to the authority that no suitable arrangements for the disposal of the body have been or are being made otherwise than by the authority”.

Section 46(2) “Any council which is the local authority for the purposes of the Local Authority Social Services Act 1970 **may cause** to be buried or cremated the body of any deceased person who immediately before his death was being provided with accommodation under Part 1 of the Care Act 2014.”

3.2 Duty of the district/borough council

3.2.1 [Section 46 of the Public Health \(Control of Disease\) Act 1984](#) (“the 1984 Act”) imposes a duty on district/borough councils to arrange burial or cremation (aka *public health funeral* or *Pauper Funeral*) of any person who has died in their area (in the absence of known or willing relatives or prepaid funeral plan in place) and may claim the costs of the funeral from the deceased’s estate (if there are sufficient funds).

3.2.2 The district/borough council will not become involved if funeral arrangements have already been made or the funeral has taken place. They do not have power to reimburse funeral costs where a third party has already arranged the funeral.

3.2.3 Under s61 of the 1984 Act (*Power to enter premises*), the local district/borough council (relevant Officers) have a right to enter premises at all reasonable hours to exercise his/her duties (e.g. to ascertain the extent of the estate, find or ascertain the location of a will, and remove any items or assets that may assist in funding the funeral).

3.2.4 They cannot ask another agency to enter the property on its behalf. However, KCC may give the key/access codes to the relevant Officer who can lawfully access the property in accordance with s61 of the 1984 Act. s62 does however provide for the relevant Officer

¹ The 1984 Act- In this Act “local authority” means any of the following— (a) a district council;(b) in England, a county council for an area for which there is no district council;(c) in Wales, a county council or county borough council;(d) a London borough council; (e) the Common Council of the City of London;(f) the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple;(g) the Council of the Isles of Scilly.

Funerals Arrangements Practice Guidance

to take with them any other persons as necessary (e.g. KCC representative) “and on leaving any unoccupied premises which he has entered by virtue of such a warrant he shall leave them as effectively secured against trespassers as he found them”

3.3 Duty of the NHS Trust

3.3.1 Where a person dies in NHS care and they do not have a record of traceable relatives, or where relatives consider they are unable to meet funeral costs, the NHS Trust (Trust) are responsible to arrange and pay for the funeral. The Trust may subsequently make a claim on the person’s estate.

3.3.2 Before doing so, the Trust may approach the district council in whose area the body lies, to see if they are willing to arrange and pay for the funeral under the 1984 Act.

3.3.3 The Trust may approach KCC if the person was provided with KCC residential accommodation. In these circumstances, KCC may exercise discretionary power to make the funeral arrangements (see 3.4 below). The KCC registered manager would then make the arrangements with Assistant Director authorisation (see 4.2 practice guidance below).

3.4 Discretionary powers of KCC

3.4.1 Section 46(2) of the 1984 Act **gives a power (not duty)** to KCC to arrange the funeral where the person, immediately before their death, was being provided with “accommodation” under the Care Act 2014.

3.4.2 The district/borough council may argue this point and challenge a KCC decision not to exercise its discretionary power to make the arrangements for a funeral.

3.4.3 In relation to KCC funeral arrangements practice guidance, “accommodation” under the Care Act 2014 means a KCC managed care home or integrated care centre only (not supported living/extra care housing/shared lives).

3.5 Deprivation of Liberty Safeguards (DoLS)

If a person dies whilst subject to a Deprivation of Liberty Safeguards Standard Authorisation, the care home (or hospital) must urgently contact the Supervisory Body² and relevant person's representative and other relevant parties. The Managing Authority³ must inform the Care Quality Commission (CQC) by completing the relevant notification form.

Coroners are no longer required to hold an inquest if a person dies while subject to a Deprivation of Liberty Safeguards authorisation because people who die while under DoLS (or a Court of Protection order) are no longer classed as having died "in state detention". **However**, a coroner will still investigate where there is a concern about the death such as concern about the care and treatment received before death or where the medical cause of death unknown.

4. Practice Guidance.

4.1. Contacting the local district/borough council in first instance

It is the Directorate's policy to request the relevant district council to arrange and pay for the funeral when no family or friends willing to make the funeral arrangements or no funeral plan in place

4.1.1 The KCC registered manager will contact the customer services department at the local district council, informing them of the death of a resident and that there are no family members arranging the funeral.

4.1.2 However, there may be a time when a district council is non-contactable (e.g. office closed at weekends), on these occasions only, a registered manager may give instructions to a funeral director to remove the body, pending contact at the earliest opportunity with the local district council.

4.1.3 It is important to remember that district councils will not become involved if funeral arrangements have already been made. Anyone who makes the arrangements with a funeral director may be considered to have a binding contract and may therefore be liable to pay the costs.

4.1.4 Where the deceased's estate is sufficient, the costs incurred by the district council are recoverable from the person's estate. If there is a shortfall, this will be borne by KCC.

² Supervisory body is the local authority area the person is ordinary resident, responsible for assessing the need and authorising the DoLS.

³ Managing authority is the local authority area where the care home is situated, responsible for care and requesting a DoLS assessment.

Funerals Arrangements Practice Guidance

4.1.5 If the district/borough council believe s46(2) of the 1984 Act is applicable (i.e. deceased accommodation provided under the Care Act-see 3.4 above), KCC may exercise discretionary **powers**⁴ to arrange and pay for the funeral. (see 4.2 below).

4.2 When KCC exercises its discretionary powers

4.2.1 When it has been established that there are no relatives or friends willing to undertake the funeral arrangements and that no other arrangements have been made (e.g. with the district council/NHS Trust, or no prepaid funeral plan), the Directorate will arrange and pay for a simple dignified funeral (cremation) in Kent (Assistant Director authorisation is required). The registered manager will be responsible for these arrangements.

4.2.2 KCC shall not cause a body to be cremated where there is reason to believe that cremation would be contrary to the cultural or religious beliefs and preferences of the deceased.

4.2.3 Two KCC authorised representatives may enter the deceased person's property to locate a prepaid funeral plan, Will or Life Insurance Policy for the purpose of arranging and/or recovering funeral expenses from the deceased's estate, but only when safe systems of work are in place. KCC representatives must not enter the property alone or remove any other items /assets.

4.2.4 Other arrangements by the KCC registered manager include registration of the death and instructing a funeral director to collect the body, provide a coffin and transport the deceased to the crematorium, then for the ashes to be strewn in the crematorium grounds or taken away by a family member.

4.2.5 Any known family and friends are to be advised of the date and time of the funeral and expected to make their own arrangements to attend the funeral if they wish.

4.2.6 Expenses incurred by KCC in relation to funeral arrangements may be recovered from the deceased's estate by raising an invoice through KCC Accounts Receivable (Non-Kent Care) accounts.

4.3 When the deceased lived in a privately-owned care or nursing home

4.3.1 When the deceased person lived in a privately-owned care or nursing home, even if placed by KCC, the homeowner is expected to make the arrangements, which may include contacting the local district council who can then advise the homeowner about public health funerals arrangements for the area if applicable.

4.3.2 The homeowner may argue that a person placed by KCC in their privately-owned care or nursing home is now KCC responsibility upon death, where there is no relative willing/available to make the arrangements. However, the duty to arrange cremations and burials still rests with the districts. See 3.4 about KCC discretionary powers.

4.3.3 The homeowner is responsible to register the death when no family able to do this. The death must be registered at the register office for the district in which the care home is situated.

⁴ Discretionary powers under s46 (2) of the Public Health (Control of Disease) Act 1984 ("the 1984 Act").

Funerals Arrangements Practice Guidance

4.3.4 If a person was subject to a Deprivation of Liberty Standard Authorisation, the care home must urgently contact the Supervisory Body and relevant person's representative and other relevant parties. See 3.5 above for other details.

4.4 When the deceased lived in the community.

KCC has no responsibility to make the funeral arrangements (or clear the deceased property) when someone has been living in the community. The responsibility is with the administrator of the estate, executor of the will, NHS Trust (funeral) or district/borough council.

5. Monitoring the guidance

The monitoring of this guidance will be through the Good Practice Forums, whose membership includes KCC registered managers.