

10.00am, Thursday, 5 February 2015

## Mortonhall Crematorium - settlement of claims

<b>Item number</b>	8.1(a)
<b>Report number</b>	
<b>Executive/routine</b>	
<b>Wards</b>	

### Executive summary

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This Report sets out the basis of a proposed scheme to settle 129 claims from parents affected by previous practices at Mortonhall Crematorium.

It is proposed to offer these claimants, represented by Thompsons, solicitors, a means of settling their claims without litigation. The main terms of the proposed settlement scheme are set out in this Report.

### Links

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<b>Coalition pledges</b>	
<b>Council outcomes</b>	CO26
<b>Single Outcome Agreement</b>	

## Mortonhall Crematorium - settlement of claims

### Recommendations

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- 1.1 To consider and approve the terms of the settlement scheme (“Scheme”), the main details of which are outlined in this Report;
- 1.2 To approve payment of the costs of the Scheme in the amount necessary to settle the 129 claims in accordance with the terms of the Scheme; and
- 1.3 To delegate authority to the Chief Executive or the Director of Corporate Governance to finalise the details of the Scheme with such supplementary terms as the Chief Executive or the Director of Corporate Governance shall consider appropriate and to enter into the Scheme on behalf of the Council and make payments to claimants in accordance with its terms.

### Background

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- 2.1 The circumstances surrounding past practices at Mortonhall Crematorium were the subject of an independent report by Dame Elish Angiolini DBE QC commissioned by the Council which was received in April 2014. The report made recommendations to the Council for the future management and delivery of cremation services. Those recommendations are being progressed and an update on the actions taken is the subject of a separate report to Council.
- 2.2 The Council has received claims from parents of infants cremated at Mortonhall Crematorium. Thompsons, solicitors are representing the vast majority (129) of the claimants.
- 2.3 Given the large number of claims and the potential costs of lengthy, protracted and uncertain litigation to all parties, a scheme for settling claims from those 129 parents has been negotiated by the Council’s external legal advisors with the lawyers of those parents.

### Main report

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- 3.1 It is difficult to place a financial value on claims in these circumstances. Given that the vast majority of those parents who have pursued a financial claim are represented by the same firm of solicitors, the opportunity exists to seek to achieve an appropriate resolution of the existing claims on an *ex gratia* basis. The payments proposed are at a level negotiated between the lawyers for the

129 parents and our external legal advisors. All parties are in agreement that the scheme should be recommended to all concerned.

3.2 The main terms of the Scheme are summarised as follows:

- a. The Scheme will apply to those 129 existing claimants, who intimated their claim prior to 31 December 2014, and will be available to any of those claimants who wish to settle their claim in accordance with its terms.
- b. The Scheme will apply in respect of infants who were cremated at Mortonhall.
- c. Claimants will fall into two categories as follows:
  - i. Category 1 – those with no psychiatric injury.
  - ii. Category 2 – those with psychiatric injury.
- d. Each claimant in category 1 will receive a payment of £1,000.
- e. Any claimant who can show they fall within category 2 will receive a payment of £4,000, subject to appropriate evidence being provided.
- f. Payment is made on an *ex gratia* basis, without admission of legal liability and claimants who accept will sign a discharge agreeing to accept the payment in full and final settlement of their claim.
- g. An agreed sum, together with VAT and reasonably incurred outlays will be paid to the claimants' solicitors in full and final settlement of claimants' legal expenses in connection with their claims and the Scheme.

## Measures of success

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4.1 The resolution of those 129 claims against the Council.

## Financial impact

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5.1 The Scheme will give rise to a cost which has not been budgeted for. The Council's Head of Finance has advised that it will be possible to identify funding for the cost of the proposed Scheme subject to Council approval.

5.2 The cost of the Scheme will depend upon the respective numbers of category 1 or 2 claimants among the 129 claimants.

## Risk, policy, compliance and governance impact

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6.1 The proposed scheme is designed to resolve 129 claims brought against the Council.

## Equalities impact

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7.1 None.

## Sustainability impact

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8.1 None.

## Consultation and engagement

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9.1 There has been consultation with Group Leaders, the Convener and Vice-Convener of the Transport and Environment Committee, the Council's external legal advisors and the legal advisors who represent the 129 claimants.

## Background reading/external references

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Report of Mortonhall Investigation undertaken by Dame Elish Angiolini DBE QC

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## Links

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### Coalition pledges

**Council outcomes** CO26 - The Council engages with stakeholders and works in partnership to improve services and deliver on agreed objectives

### Single Outcome Agreement

**Appendices** None