

The complaint

Mrs F complains that Avalon (Europe) Limited mis-sold her a funeral plan. She's also unhappy Avalon has said it will charge her fees to cancel her plan.

What happened

In brief, in 2013 Mrs F bought a pre-paid funeral plan. At the time, Mrs F had homes in the UK and abroad. The plan allowed for goods and services to be provided from either location. Mrs F paid a deposit for her plan, with the remainder being paid in instalments over 18 months.

Earlier this year, Mrs F - now permanently living in the UK - visited her nominated funeral director to confirm the details of her requirements. She was shocked to discover her plan didn't include provision for a church service. Mrs F says this wasn't made clear to her when she purchased.

Mrs F contacted and subsequently complained to Avalon (Europe). Avalon didn't uphold her complaint, saying that none of its plans include a church service as standard and that a church service couldn't ever have been added to the plan specification for Mrs F's residence abroad. It also said the terms were sent to her at the time of sale. Avalon explained that Mrs F could make an additional contribution towards a church service in the UK at the time of need. Avalon also told Mrs F she could cancel her plan, but, in line with the plan terms, would be charged a set-up fee and cancellation fee. It agreed to discount those fees to match its current plans.

Mrs F remained unhappy so came to the Financial Ombudsman Service. An investigator said that we didn't have jurisdiction to consider her complaint, as the events complained of happened before the funeral plans industry became subject to compulsory regulation by the Financial Conduct Authority in July 2022. We could only look at complaints about pre-regulation events where the business was a member firm of the previous voluntary regulation scheme – the Funeral Planning Authority. Avalon (Europe) wasn't, so this meant we couldn't investigate Mrs F's complaint. Mrs F challenged our investigator's view, particularly around the proposed cancellation fees, so her complaint came to me for a decision.

In October 2023, I issued a provisional decision. The gist of that decision is quoted below. Having considered all the evidence, I said:

I think we can look at part of Mrs F's complaint – the part relating to proposed cancellation fees. But I don't think Avalon (Europe)'s intentions in this respect are unfair. I'll explain my reasoning and provisional thoughts on the matter.

Jurisdiction

Our investigator is correct when he says that we cannot consider complaints against Avalon (Europe) about events that occurred before 29 July 2022. This is because our

compulsory jurisdiction only allows us to consider such complaints where the business was a member of the predecessor scheme – the Funeral Planning Authority. So as Avalon (Europe) wasn't, I can't look at anything to do with the sale of Mrs F's plan, such as what she was told at the time or whether the terms were made clear to her.

But not all of Mrs F's complaint points relate to events before 29 July 2022. Mrs F is unhappy about Avalon's stated fees for cancelling her plan. She thinks the fees are unfair. This complaint point is an administrative matter, raised after Avalon (Europe) became subject to compulsory regulation by the Financial Conduct Authority. It relates to a current issue. Avalon dealt with the issue in its complaint response letter to Mrs F and affirmed its position in its final response. This matter is within the jurisdiction of the Financial Ombudsman Service and therefore, something I can consider.

Cancellation fees

So given that, I've gone on to think about whether Avalon (Europe)'s proposed cancellation charges are reasonable.

Mrs F's application/order form has a section headed 'payment details'. It details the price of the plan - £2916.67 - and an 'administration fee'. The cost of the administration fee varies, depending on the payment option chosen. For Mrs F's payment by instalments, the administration fee is recorded as £160. So the total price payable is recorded as £3076.67. I've not seen any fee specifically referred to as a set-up fee, but I accept that there would've been initial set-up costs as well as ongoing administration costs. So on balance, I think the administration fee referred to on the application form includes set-up fees.

Avalon (Europe) says that if Mrs F were to cancel her plan it would be entitled to retain £420 from funds paid - £120 set-up fee and £300 cancellation fee. But it's also said it would reduce that charge to £395, as a gesture of goodwill and to align it with current cancellation charges. I've looked at the terms and conditions provided. Avalon (Europe)'s fees are set out in section 15.

- 'i) We are remunerated for conducting our duties as described in term 5. Our fees are described below and are payable in addition to the Funeral Plan, as specified on the Order Form:
- ii) a set up fee of £120;
- iv) for Instalment Plans ongoing administrative charges are levied at a rate of 8% of all instalment payments made; and
- v) in the case of refunds following cancellation we will charge an administration fee of £300.'

Section 18 covers cancellation rights. It says:

- i) You may cancel your Funeral Plan at any time by writing to our Head Office and returning the documents provided within the 14 day cooling off period following our receipt of your Order Form. All payments made by you will be refunded without obligation.
- ii) Cancellation outside the 14 day cooling off period is permitted, but we will deduct our fees, as specified in term 15.

Section 18 (ii) is the pertinent section in Mrs F's case, as any cancellation would be outside the cooling off period. I note that the term refers to fees plural. So I think these terms would entitle Avalon (Europe) to retain £120 set-up fee from Mrs F's refund and

also to charge her the additional £300 cancellation fee. In other words, from the total £3076.67 she paid, Avalon could retain £420.

However, I note Avalon (Europe) has said it would reduce that retention to £395, in line with its current cancellation policy. I appreciate this is not the news Mrs F was hoping for and I do understand her frustration about the situation. But I don't think Avalon (Europe) would be treating her unreasonably if, upon cancellation, it were to retain £395 fees from her refund.

I told both parties I would consider any new evidence or comments received by 9 November 2023, after which I would issue my final decision.

Avalon (Europe) said it had nothing to add. No further information has been received from Mrs F.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I'm not upholding this complaint. No new submissions have been received, so I see no reason to deviate from my provisional decision.

For the reasons previously given, I don't uphold Mrs F's complaint about proposed cancellation fees.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 8 December 2023.

Jo Chilvers
Ombudsman