

## The complaint

The estate of Mr W complains about poor customer service from Dignity Funerals Limited.

## What happened

To summarise, in 2019, Mr W bought a funeral plan from a company I'll call P, paying a little under £4000 up front. When Mr W bought his plan, the sale and administration of pre-paid funeral plans wasn't subject to compulsory regulation. But this changed in July 2022, when it became a requirement for firms in the pre-paid funeral plan industry to be regulated by the Financial Conduct Authority. P originally applied to become regulated, but later withdrew its application and went into administration. Customers were contacted with details of a transfer arrangement that Dignity was offering, or the option of a partial refund. Mr W transferred his plan to Dignity.

Sadly, in December 2022, Mr W died. His family sought to use his plan to provide his funeral. But a number of issues arose to do with the conduct of Dignity's nominated funeral director and communication with Dignity's staff. Ultimately, the family chose to use an independent funeral director, having lost faith in Dignity.

The estate complained to Dignity, asking for an apology and for Dignity to pay for the coffin, hearse, third-party fees and a £250 'release' fee the original funeral director required to allow collection of Mr W by the independent funeral director.

Dignity partly upheld the complaint. It did not uphold complaint points relating to the funeral director, although it acknowledged more could have been done in terms of information and explanation. It did uphold the estate's complaint about Dignity's customer service. And it also said it was sorry Mr W's family was unhappy with the service provided by the funeral director and Dignity's central operations department. It concluded by explaining that as Mr W's funeral had been carried out by an independent funeral director, the plan would need to be cancelled. But it would be unable to issue any refund at present as it had not received any funds from company P and was unable to confirm the amount of the refund. The plan would be noted as 'cancellation pending' and Dignity said it would write to the estate to confirm when the cancellation could be completed. Dignity also stated, *'although I am unable to issue payment to your chosen funeral director, as a gesture of goodwill, and to resolve this matter, I am awarding £250 for the distress and inconvenience caused to [the] family.'*

The estate was unhappy about this decision and came to the Financial Ombudsman Service. An investigator looked into things but didn't think Dignity needed to do anything more. He acknowledged the service received from Dignity had caused distress and inconvenience. But he explained that our rules only allow us to award compensation for distress and inconvenience to eligible complainants themselves, not their representatives. The complaint was brought on behalf of the eligible complainant – Mr W – by the representatives of the estate - members of Mr W's family. But as the events complained of all took place after Mr W's death, they had not impacted on Mr W himself. So we had no power to remedy any impact on Mr W's relatives, either personally or in their role as representatives of his estate.

However, in view of the cancellation status of the plan, our investigator did look at the cancellation terms to see if Dignity was responsible for issuing any refund. Relying on Dignity's terms, the investigator was satisfied that Dignity was responsible for providing any refund in line with the original plan terms, once it had received funds from the previous provider, P, and a copy of Mr W's death certificate.

The estate disagreed, so the complaint has come to me for a final decision. Since our investigator issued his opinion, the estate has expressed further dissatisfaction about the terms of the transfer. Its position is that Dignity is responsible for refunding the money due to Mr W under the terms of the original plan bought from company P. It's also unhappy that the family wasn't signposted to the National Association of Funeral Directors. Our investigator asked Dignity for additional information about the transfer arrangements and signposting issue. Nothing further has been received. The deadline has now passed and I've taken this as evidence that Dignity doesn't wish to provide anything more. I'm satisfied it's now appropriate for me to issue my decision.

### **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. I know this will be unwelcome news for Mr W's family and I'm sorry about that. I'll explain my reasons, focusing on the points and evidence I consider material to my decision. So, if I don't refer to a particular point or piece of evidence, it's not because I haven't thought about it. Rather, I don't consider it changes the outcome of the complaint.

Firstly, the representatives of the estate argue that the representatives/beneficiaries are eligible complainants in their own right. I appreciate the submissions the estate has made and note the legislation referred to. I'll clarify our rules. The rules governing the Financial Ombudsman Service are the Dispute Resolution: Complaints rules – known as DISP and are set out in the Financial Conduct Authority Handbook. DISP 2.7.1 R and 2.7.2 R state:

*'A complaint may only be dealt with under the Financial Ombudsman Service if it is brought by or on behalf of an eligible complainant.'*

*'A complaint may be brought on behalf of an eligible complaint (or a deceased person who would have been an eligible complainant) by a person authorised by the eligible complainant or authorised by law.'*

So the eligible complainant in this case is, and only is, Mr W himself. In accordance with the terms of his will and corresponding entitlement to apply for grant of probate, under our rules his executor is authorised by law to bring the complaint on his behalf. This position was upheld by the Financial Conduct Authority when it drafted amendments to our rules to allow for the consideration of complaints about regulated pre-paid funeral plan providers. Being authorised by law does not make the representative the complainant under our rules. And we can only make distress and inconvenience awards for mistakes, such as poor service, experienced by the complainant themselves. As the events complained of all happened after Mr W died, I cannot consider the impact of Dignity's actions on Mr W's family – as relatives, beneficiaries of his will or his executor. I appreciate this is a very unsatisfactory position for Mr W's relatives and I'm sorry about that. But it is not something I can change.

So in practical terms, this limits the scope of what I can deal with. The estate has complained about poor customer service from Dignity and its nominated funeral director, including failure to consult regarding the date of the funeral, communication issues with Dignity's central operations department and failure to inform the estate of its ability to contact the National Association of Funeral Directors about its complaints. These are all issues for which the only possible remedy could be a distress and inconvenience payment. I don't doubt that Mr W's family has found the contact with Dignity frustrating and upsetting. But as I cannot consider impact on representatives, this is not something I can pursue further. Neither can I comment on the £250 compensation Dignity has offered Mr W's family, which I understand remains available, should they wish to accept it.

As part of the remedy sought, the estate also wanted payments to be made to cover various costs – outlined previously - incurred after Mr W's relatives chose to use an independent funeral director. The estate stressed that these were all services covered under the plan. Dignity said that, as the estate had used a non-Dignity funeral director, the only option was to cancel the plan and make a refund in line with the plan terms. I appreciate the estate viewed its proposal as a reasonable resolution and I can understand why that was so. But I'm satisfied that there was no requirement for Dignity to make any such payments and that cancellation and refund would be the appropriate response.

So as our investigator explained, we can look at whether Dignity is responsible for providing a refund of the plan, and its reasons for not yet doing so. Both the original plan terms and the terms of Mr W's transfer to Dignity are relevant. If a next-of-kin wishes to cancel a plan, the original terms from P allow for a refund of payments made, less a cancellation fee. But the terms of the transfer of Mr W's plan to Dignity are significant here. I understand Dignity has yet to receive a notice of cancellation from the estate. But in any event, to explain why it wouldn't yet be in a position to issue a refund, it's relied on the Dignity term below:

*'Upon receiving your notice of cancellation, we will refund all the money paid within 30 calendar days of us receiving your notification. For the avoidance of doubt, where your plan was previously held by another provider, the refunded sum shall be capped at the amount of money received by us in relation to the plan from your previous provider and any subsequent payments made directly from you to us.'*

The transfer of his plan offered Mr W continuity of funeral provision at the time of need, after his original provider left the funeral plans market with the advent of regulation. That continuity of provision was not dependent on funds being received from P. Once Mr W opted into the transfer, his funeral was guaranteed. And it's not disputed that Mr W actively chose to transfer his plan to Dignity. Mr W's plan was paid up with P. But the terms of that transfer allow Dignity to refund not payments made by the customer, but payments received from the previous provider. The terms reflected the commercial agreement made between P and Dignity to offer continuity of funeral provision to P's customers. Having seen the terms, I think Dignity is entitled to rely on them to say it would not be in a position to make any refund until funds are received from P.

The estate has said Mr W's contract was with Dignity and has asked for evidence that Mr W signed up to those transfer terms. This hasn't been provided by Dignity, so I don't know what Mr W would've seen and when. But having reflected carefully, I don't think it makes a difference to my decision. I say this because, with P leaving the market, the only other options available to Mr W were to be without any pre-paid funeral provision and to wait to see what refund might be obtainable via P's administrators, or to purchase a replacement plan from a regulated provider at full market cost. So even if Mr W had known that subsequent cancellation with Dignity would mean waiting for a refund until funds had been received from P, I think he'd have gone ahead with the transfer anyway, because he actively

chose to maintain his funeral provision, so his chosen arrangements would still be covered when the time came.

So overall, I think Dignity has acted fairly in setting out the cancellation position to the estate and explaining that any refund would be limited to payments received from P. So I'm not going to ask Dignity to do anything more in respect of this complaint.

Once again, I'm sorry to send disappointing news to Mr W's family.

### **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 the estate of Mr W to accept or reject my decision before 14 September 2023.

Jo Chilvers  
**Ombudsman**