

Alternative Dispute Resolution

There are approx. 4000 funeral businesses within the UK. Many trading in the funerals industry are members of one of two trade associations. These are the National Association of Funeral Directors (NAFD) and The National Society of Allied & Independent Funeral Directors (SAIF). **Note** that people in the funeral trade are not forced to be a member of a trade association.

The Courts are keen for consumers to use resolution services before bringing legal action. This is known as Alternative Dispute Resolution (ADR). ADR is heavily relied on by trade associations and I am reliably informed will always look to encourage consumers making a complaint to agree on a privacy & confidentiality statement. **Note** that *The English Arbitration Act 1996* places no legal duty on a company or a consumer to agree on privacy and confidentiality. I would urge anyone making a complaint not to sign anything that affects your legal right to reveal to the public any wrong committed by an undertaker or any other funeral event organiser!

If agreeing on privacy and confidentiality the person making the complaint would be prevented from discussing that complaint with anyone. This includes talking to agents at the Office of Fair Trading (OFT). The OFT has never conducted an investigation into the amount of complaints received by any trade associations. This makes it difficult for the OFT or advocate of the “funeral consumer” to establish just how many complaints are made about funeral companies on an annual basis.

Another problem that I sense exists with ADR is that it is predominantly a private system. Because ADR processes and outcomes are generally not known to the public, ADR may keep some legal issues of vital public importance outside the reach of the Courts, thus depriving the common law of a critical means of progress. Some cases could be so momentous that the failure to litigate them may in fact stunt the growth of common law and even delay the development of an important social movement.

Note that an arbitrated decision is final and is recognised by a Court. If a legal principle has been overlooked only then can a complaint be escalated to the Courts. That legal principle might be for instance that the arbitrator may not have considered that it has been legally established that a funeral contract is a “unique” contract. Please see link on this site to “making a contract”.

Advice Guide gives some basic guidance on how to make a complaint.

http://www.adviceguide.org.uk/england/consumer_e/consumer_professional_and_financial_services_e/consumer_funeral_services_e.htm

Note that should a complaint relate to an indignity, violation or lack of honour being brought upon a person who has died and has caused a relative emotional distress, be mindful not to rely on consumer protection alone. Explore your options before attempting to recover compensation. Statutory provision affords six years to make a claim for breach of contract and three years for personal injury claims.

Common law recognises a criminal and civil offence to commit an indignity upon the dead or prevent a decent burial. For some information about criminal and civil offences under common law I point you to Answers.com. <http://www.answers.com/topic/dead-body-1>

If you believe that a complaint relates to indignity you might consider bringing a private prosecution or contacting the police and insist that the CPS bring a public prosecution.

The media is always interested in sensational stories, but at least it reveals names of undertakers or other funeral event organisers which may behave badly.

If a service provider acknowledges a complaint, don't be fooled into accepting a small discount on the final bill. I recently heard about a funeral company that admitted that one of its staff members had breached a contract and offered to pay an 'undisclosed' sum of money to a Charity of the complainant's choice. I trust that the person that I assisted felt better equipped to argue his position and the funeral company obviously realising that a legal claim could be brought and would likely succeed, paid out £2800.