

The Florist

I ordered two floral tributes for my son's funeral. I made a request that one was to be in the shape of a large dummy and must be made with pink flowers. I gave an indication to the florist of the size. The other was meant to represent an archangel's wings. I didn't specify a size but provided the florist with a picture so that she could see what shape I wanted and I made clear that the wings were to run the length of the coffin. We agreed that it would be made with laurel leaves and sprayed white. The florist did not write this down. She said that she knew exactly what I meant.

When the tributes arrived on the day of the funeral the dummy that was meant to be pink was lilac. The size was fine and the arrangement itself was made very well, but it was not pink. The other arrangement was so small that it looked like the sort of wings that a child would wear at a Christmas nativity play. I was so very disappointed. It completely destroyed the image that I had in mind for the top of my son's coffin. It was too late to change either of them. A few days after the funeral had taken place I made a complaint.

The matter of colour of the dummy was disputed. The florist didn't agree that the item was the wrong colour, yet many of my guests at the funeral agreed with me. I determined the arrangement had been sprayed, when pink flowers were in abundance at the time of year that I lost my son, more especially pink carnations. It appeared to me that the florist had used a flower that she bought in cheaper from her supplier and simply sprayed them with the wrong colour.

It transpired that because the florist knew my sister in law who had placed an order for a floral tribute a day or two after I did, the florist had asked her what size I wanted. This was all unknown to me. I was not happy with either of them for discussing my requirements without consulting me, which resulted in my being extremely disappointed. I was even angrier with the florist, as this behaviour is not professional and I allege that she breached the contract made with me.

The florist sent me a small bouquet as a goodwill gesture, but no gesture could have compensated me for this disappointment that I felt on a day I had chosen to perform the last loving act that I could for my son.

With hindsight, yes, I could have returned the arrangements after the funeral had taken place and sought legal action, but I think that anyone would understand why I didn't feel up to doing so. Even if I did, I doubt in these circumstances that a remedy could be determined to compel specific performance for a unique contract. The "uniqueness" of the day had passed and no sum of money could compensate me for that. Shortly after this bad experience I learned that the undertaker that I had hired had claimed to have buried a waste bag containing heavily blood stained clothes beneath my son's body in his coffin.

The undertaker

I determined that the undertaker that I hired, a Mr Matthews, a local undertaker in Bletchley now trading as Heritage and Son, had signed and taken receipt of a waste bag

containing my son's clothing that he had been wearing at the time of his death. Matthews had done so without my knowledge or consent. I only found this out when I had determined that a member of staff at Staffordshire Royal Infirmary had handed Matthews the property without my knowledge or consent and without itemising or recording the condition of the property on the receipt. When confronted, Matthews claimed that "the items were heavily blood stained" and that he had made an "unenviable decision to bury them beneath my son's body in his coffin". He mumbled something about meeting his duty under public health. The clothing if blood stained at all and placed beneath my son's body is not what offended me. What deeply offended me was that this man was (a) suggesting that my son and/or his possessions were some risk to public health, (b) that he considered them as waste, and (c) that he thought he had the right to make a decision to bury them with my son. My son was a gay man and I wondered had Matthews determined this and whether it had some bearing on the decision that he had made. I hasten to add that I would not have chosen to place a bin bag containing heavily blood stained clothing beneath my son's body, but rather wanted to imagine my son lying on his bed asleep. I would not have placed a bin bag containing blood stained clothing on my son's bed when he was alive and wouldn't wish to do so in death. I believe that Matthews has violated the memory of my son's final resting place and has hindered my ability to normally grieve the loss of my son's life!

For emotive reasons I had wanted everything belonging to my son that was close to him in his final moments returned to me. Despite the desire, the property legally became my own. Matthews was not hired to make decisions about what to do with my son's body or his property. He had been hired to collect my son's body and the money that my son had on his person, which had been placed by staff in the hospital's safe. Matthews may have thrown the property away, but he has placed an element of doubt in my mind that continually troubles me every day.

After learning what Matthews claimed to have done I telephoned Thames Valley police. An officer informed me that this was a civil matter and the police could only investigate criminal matters, i.e. theft. It was explained that had Matthews disposed of the property and could not recover it, it may have been possible to prosecute him for theft. I sensed that Matthews was playing with me. I imagine that, by claiming to have buried the property with my son, he knew I would have trouble proving that he had disposed of it. Working on the basis of what Matthews had told me I struggled to accept that this wasn't a criminal matter. I tried to explain that I didn't want compensation, but wanted Matthews punished. I couldn't prove that he had disposed of the property, but without exhuming my son's coffin, neither could I disprove it. I was reluctant to exhume my son's coffin then and I would struggle to do so now. Somewhere deep within me I believed that there must be laws to punish someone for doing such a thing. The police officer was apologetic, but insisted that the police could not help me.

I telephoned the local authority licencing department and determined that undertakers are not licenced in the UK.

I contacted consumer agencies. I explained that:

- Matthews had failed to collect my son from the hospital in Staffordshire on the day

- agreed, which resulted in a five day wait until I could be reunited with my son again;
- He hadn't made provision to accommodate flowers on top of the hearse and that some friends had observed members of his staff mishandling the floral tributes when carelessly trying to fit them all in the back of the hearse;
 - Matthews had told me what he had done with property which had belonged to my son;
 - Matthews was aware that myself, and other family members and friends, had placed tokens of love in my son's coffin;
 - I instructed Matthews that I wanted to imagine my son in his coffin as though he was lying on his bed and for this reason I wouldn't be providing a pair of shoes and;
 - Nothing was put in writing.

An agent at the local Trading Standards office in Milton Keynes suggested that as I had alleged that Matthews had placed something in the coffin over and above my specification, coupled with the fact that he failed to collect my son's body on the day which we agreed on, he had breached the contract he made with me. The agent couldn't give me legal advice and informed me that I would find it difficult to claim compensation for injury to my feelings.

Despite my financial circumstances at the time, which would have qualified me for legal aid, I could not find a solicitor who was willing to assist me with legal aid. I later established that this was because the contract I had made with Matthews was for less than £5000, and that legal aid could not be obtained for smaller claims for breach of contract. No one had explained this to me at the time. I simply imagined that legal aid was not available for claims of breach of contract full stop. I was certain that I had taken out legal expenses insurance on my home contents insurance policy, but the insurers told me that I had not.

I phoned several solicitors and neither appeared to look beyond general breach of contract. Not one of them intimated that what Matthews had done with my son's property could be construed under common law as a criminal offence and, to uphold my human rights, the police should have investigated my complaint. Not one of them suggested that I could bring a private prosecution.

No one had advised me that I had 6 years to bring a claim for breach of contract. I thought that I had to act quickly. I attempted to represent myself. I couldn't identify a remedy of my situation as the only option that appeared obvious was to exhume my son's coffin and examine the contents. I feared that, in doing so, I might determine that Matthews had lied and that I would have been guilty of violating my son's final resting place. I feared what I would do physically to Matthews if I learnt that he had lied and put me through this anguish just to save him being investigated by the police.

I wrote to Matthews on a 'Without Prejudice' basis. I explained that I wanted compensation and that he was to reimburse the total cost of the funeral package in addition to compensating me for hurting my feelings. He ignored me. Some weeks later I wrote again and Matthews put the letter in the hands of a solicitor who wrote and explained that the court could not consider my letter that was written on "Without Prejudice" basis. I knew then that this matter was going to court. I attempted to draft a claim particulars and the court process began.

As I was in receipt of state benefit at this time, the court fee was waived. I had no knowledge of case law and no legal assistance. It appeared that I needed to prove that I was seeking a remedy. I made a request to government for an application form to obtain an exhumation licence. I sought out firms that carried out exhumations to determine what the cost would be to exhume my son's coffin and remove the bin liner containing the blood stained clothing. Costs to exhume were more than the cost of the funeral package contract. I wrote to forensic experts to find out if some type of geographic tool existed that could be placed in the ground to examine contents of a coffin. I was told that there wasn't and that this would not be possible.

My claim particulars were not accurate, and a judge set the case aside. I drafted another and resubmitted to the court, but still I had made mistakes. A judge set the case aside again, noting that my claim had little prospect of success. I was running around in the court reception asking people if they were solicitors and when I found one I asked what the judge had meant. It became apparent that I needed legal help if I was to be accurate with the claim particulars.

I eventually managed to get half an hour's legal help with legal aid from a firm of solicitors in Bedford, but who also practise in Milton Keynes. A solicitor reworded my claim particulars, which now revealed that I was submitting a claim for costs to exhume my son's coffin coupled with an overpayment made to Matthews which he hadn't paid me back. Looking back it would appear that the solicitor was forced to indicate that I sought a remedy of the breach. This has never been clearly explained to me. My new claim particulars were accepted by the court and a pre-trial hearing date was set.

I attended the hearing and represented myself. The judge made mention to the case of *Jarvis v Swan Tours*. This case was about a solicitor who sued a tour company because some components of the holiday that were promised to him in the brochure were not received. I acknowledge that the judge was trying to assist me, but I was furious at the time that he was relating my circumstances to a holiday package. The judge implored me to get legal representation and didn't appear to grasp why I could not do so. He adjourned the case for six weeks to afford me some time, but Matthews' counsel asked for costs. As I had made mistakes in my previous claim particulars, the judge awarded costs to the defence, which reduced my claim considerably. A hearing date was set.

The Milton Keynes Citizen newspaper reported my case to be one of the most remarkable cases ever to be heard in Milton Keynes County Court, but I sense that the 'system' set in place to afford those on lower incomes to have access to law remarkably let me down.

The complaint didn't get to a full trial. Matthews' solicitor telephoned me proposing an out of court settlement. The proposal was to relinquish the costs that I had already incurred, and to pay me £400. This was considerably less than the claim that I originally made to exhume my son's coffin. He asked that I sign a privacy statement. I consulted with the solicitor who had given me half an hour legal help and she suggested that I accept it. She explained that I would not get any further legal help and definitely not any assistance with legal aid to be legally represented at the hearing. She went on to explain that the judge

would not be made aware of the out of court proposal made before the actual trial and if my claim was successful at the hearing, and the judge had decided to award even a 1p less than what had been proposed, that he could look on me unfavourably for refusing to accept the proposal made out of court and throw the case out. I still haven't grasped a clear understanding of this game that is played, but it isn't justice. I could not see a way forward and I accepted the proposal, but I refused to sign a privacy statement. Still the solicitor who had helped me had her reservations and advised me to accept all of what had been proposed, but I refused. When Matthew's solicitor asked me why I wouldn't agree to signing a privacy statement, I told him that "I would not forsake my right to freedom of speech". If it meant going into court and getting thrown out I did not care. In hindsight I wish that I had let the claim go to full trial and taken my chances.

Matthews' solicitor failed to pay me the sum of money promised. When I threatened to go back to court he asked that I go along to his office in Bletchley on a Christmas Eve to collect the cheque. When I arrived the solicitor told me that "he thought that he would save a stamp". I wanted to pull the solicitor over his desk and ensure that he didn't see that Christmas or any other Christmas again!

I had always believed that I was the last person to visit my son before his coffin was sealed. A short time after agreeing to release Matthews from any further matters in relation to the contract I learnt about something else that he had done. A friend of my son who knew Matthew's from the local pub went to visit my son after I had left. Matthews let her visit him and place something in his coffin without my knowledge or consent. Now, whilst I am aware that this young lady would not have placed anything in the coffin that I would have found offensive, neither she nor Matthews had any business putting anything in my son's coffin without my knowledge. Neither did Matthews have any business allowing someone to visit my son without my consent.

I also discovered that I did have legal expenses with the insurer for my home contents. Had I not been misinformed this could have made a world of difference to my being forced to represent myself.

Aside from what Matthews had done, I was and remain angry at public officials who could have done more to ease my journey after losing my son, which included treating his belongings and more especially his body with respect. I objected to a post-mortem which wouldn't reveal any new information about why my son died as a result of injuries sustained when a passenger in a car that crashed. I learned about rights people had to arrange funerals themselves for family and friends and I created a campaign to encourage that state departments make this very obvious and by default. Had I had the opportunity to care for my son's body in death and arrange his funeral myself, I would not now be suffering torment inflicted by an arrogant man who thought that he could make decisions for me and who failed to provide me with company terms and conditions or a written contract.

It was only as a result of creating the campaign that a barrister no longer practising, but lecturing in law, brought me knowledge of the common law. He explained that the common law recognises a criminal and civil offence to commit an indignity upon the dead or prevent decent burial. It became apparent that the Thames Valley police who had failed to

investigate my allegations against Matthews could have breached my human rights.

I am now statutorily time-barred from bringing legal action against the Thames Valley police. Even if I weren't, based on what I know now, I doubt that, even if legally represented, I would have had a successful legal claim against the police. It is evident that few legal professionals have expertise in this area of law. What becomes obvious is that the police had no will or desire to explore what if anything they could do about Matthews, but at the very least I would have expected them to have investigated my allegations. I sought advice from solicitors claiming to specialise in public (criminal) law, who wrote to Thames Valley police. The response indicated that the Criminal Prosecution Service could not now interfere as I had sued Matthews for theft. As explained here, this was not the case, but the solicitors were content with the response and expressed to me that I had little prospect of success.

When I have finally gathered all the information that I need I intend taking my complaint about the Thames Valley police to the Secretary of State. I will make a request that the offence to commit an indignity upon the dead or prevent a decent burial is made obvious in the Criminal Statute of England and Wales, just as it has been made obvious in the Criminal Statutes of other countries that were formerly part of the British Empire.

My agreeing to release Matthews from the contract meant that, despite learning that he had committed additional breaches to my contract made with him, I could not revisit any action against him myself.

What has become even more obvious is that consumer agents, the solicitor who had given me half an hour help, including other solicitors that I had telephoned coupled with agents from the Community Legal Services helpline, all tried to fit my complaints about Matthews within the constraints of Breach of Contract. The courts do not look to punish someone who has breached contract, it looks to remedy and maybe order specific performance. Neither of the individuals whom I contacted appeared to have knowledge of common (case) law which recognises a civil and criminal offence to commit an indignity on the dead or prevent a decent burial. The head of Milton Keynes Trading Standards remarked that agents couldn't be expected to be aware of all laws that exist. My answer to this would be that new and distinct consumer legislation needs to be made which specifically relates to those in the funeral trade and that is set apart from other general consumer legislation. After all it might prove less likely that another trader providing services such as a plumber or an electrician could inflict an indignity upon the dead or prevent a decent burial!

If specific and distinct legislation existed, I would have expected consumer agents or even solicitors to have directed me to a legal professional with relevant legal expertise to bring about a private prosecution. If successful, this would have resulted in Matthews being punished for causing me added emotional injury. Maybe the same legal professional could have brought about a private prosecution of the Thames Valley police for failing to uphold my human rights. If successful in that, too, I would have set a legal precedent for other people to rely on when they are too often told by the police that they cannot investigate a complaint because it is a civil matter!

I made a contract with a man who clearly has no scruples! I have no doubt that there are likely plenty of others in the same trade working to provide the best service that they can for their customers, but they are not decision makers. They are hired to assist and alleviate distress in the immediate hours and days following a death. They should never presume to know what best serves the needs of their clients, and always be keen to provide a written contract making obvious any specific requirements. They too should be expected to be aware of laws that relate to dead bodies and respect it!

I believe that the potential of bringing successful claims for certain breaches of a funeral contract has not yet been fully explored. This is because too many complaints are settled out of court, whether in the way that I settled, or through the Alternative Dispute Resolution route which prevents the common (case) law from progressing. I fail to see how some issues, more especially in relation to cremation, given that it is so final can be remedied under common or civil contract law.

Courts do not accept “ignorance of the law”, but judges need to understand that not everyone has access to legal assistance and solicitors who are meant to know the law. What becomes very obvious to me is that some solicitors take on cases and have little understanding of the law relating to those cases and are too quick to tell people that they have little prospect of success. It is outrageous!

If any legal professionals working for the good of the public stumble across or are directed to this page, I would welcome them making available on this website what someone might do when there is no remedy. What would someone do who believes that a contract has been breached, but cannot be remedied to afford them the opportunity to be placed in the position they would have been in if the breach had not occurred.

At this stage I can only suggest that if anyone should believe that they have a complaint that cannot be remedied under common or civil contract law, seek guidance from a legal professional practising Private law preferably with expertise in Equity. Private law is a law between individual parties. Should you seek assistance from say, a volunteer at a Citizens Advice Bureaux (CAB) and they are not familiar with the law on Equity they can contact the team at the Public Law Project on your behalf at <http://www.publiclawproject.org.uk/>

Should you be experiencing financial difficulty and would qualify for legal aid, but are still unable to gain legal aid funding for any reason, contact a Citizen Advice Bureau (CAB) and ask that they contact the Bar Pro Bono Unit on your behalf at: <http://www.barprobono.org.uk/>

NOTE: Do examine insurance policies to determine if you are covered for legal expenses. More often this is an additional item to home contents or building insurance policies.

For some information about criminal and civil offences of common law I point you to Answers.com. <http://www.answers.com/topic/dead-body-1> and for further information about property and possession rights to The Free Dictionary.com <http://legal-dictionary.thefreedictionary.com/corpse>

