

# NAFD RESOLVE

## Independent Adjudication Service

### Service Rules (June 2019 edition)

#### Introduction

These rules apply to applications for adjudication under the NAFD Resolve Scheme operated by Centre for Effective Dispute Resolution (CEDR) on or after 1 June 2019 and should be read in conjunction with CEDR's 'Adjudication Guidance for Customers'.

If you require this document in an alternative format, please contact us for further details.

#### 1 General

- 1.1 The NAFD Resolve Independent Adjudication Service ("the Service") provides an informal and independent way of adjudicating disputes between Funeral Director Members of the National Association of Funeral Directors ("NAFD") that subscribe to the Service ("Funeral Directors") and their customers.
- 1.2 The Service is the final stage of the NAFD Resolve Scheme as set out in the NAFD Code of Practice and applies to claims by customers for compensation or any other remedy. It is administered by Centre for Effective Dispute Resolution (CEDR).
- 1.3 The Service is provided to Funeral Directors and their customers when conciliation has not resulted in an outcome that has been agreed to by both parties.
- 1.4 The cost of providing the Service is covered entirely by the NAFD and will be free of charge to the customer.
- 1.5 Decisions under the Service are taken by independent adjudicators appointed by

CEDR to decide on the outcome of disputes dealt with under the Service. Decisions made by adjudicators on eligible cases are only binding on the customer and the Funeral Director when the customer accepts the decision. Acceptance by a customer must take place within 20 working days of the decision being issued for the decision to become binding.

- 1.6 Applications to the Service will be accepted from customers or their nominated representatives.
- 1.7 A 'customer' is an individual who is the recipient of services provided by a Funeral Director in exchange for payment to, or an agreement to make payment to that Funeral Director.
- 1.8 If a customer wishes to nominate a representative to act on their behalf, the customer must provide signed authority on their application to the Service confirming that they agree to the representative acting on their behalf.
- 1.9 A customer can use the Service if they have not been able to settle a dispute with the Funeral Director via conciliation and the customer refers the matter to the Service.
- 1.10 An adjudicator appointed under these Rules will make a decision on the dispute by considering the information received from the customer and the Funeral Director.
- 1.11 Any decision made by an adjudicator appointed under these Rules applies only to the specific dispute referred. Under no circumstances do decisions made by adjudicators set precedents.

## **2 Scope of the Service**

- 2.1 The Service can be used to settle disputes between a customer and a Funeral Director about:

- 2.1.1 A dispute over the bill, estimate or Funeral Director's fee;

- 2.1.2 The Funeral Director's handling of a family dispute;
  - 2.1.3 The sale of a pre-paid funeral plan (by a Funeral Director);
  - 2.1.4 The servicing of a pre-paid funeral plan;
  - 2.1.5 The condition of the Funeral Director's premises or equipment;
  - 2.1.6 The physical care of a deceased person;
  - 2.1.7 The general customer service received;
  - 2.1.8 The handling or care of cremated remains (ashes);
  - 2.1.9 The way the Funeral Director dealt with the initial complaint;
  - 2.1.10 The poor conduct of a member of the Funeral Director's staff.
- 2.2 The Service cannot be used to settle disputes which fall into one or more of the following categories:
- 2.2.1 Claims which are brought by someone who does not fall within the definition of a 'customer' under Rule 1.7 above;
  - 2.2.2 Claims which are made against a Funeral Director that is not a member of NAFD;
  - 2.2.3 Claims which have not gone through NAFD Resolve's Conciliation Scheme;
  - 2.2.4 Cases where the customer's application to CEDR has been submitted more than three months from the date on which the Funeral Director has given notice to the customer that it is willing to participate in adjudication.
  - 2.2.5 Claims which contain no aspect relating to the issues set out at Rule 2.1 above;

- 2.2.6 Claims made for a total sum exceeding £10,000.00 (inclusive of VAT (if any)) (this sum includes any claims for compensation, refunds, credits and/or waivers);
  - 2.2.7 A dispute which, in the opinion of CEDR, is more appropriately dealt with by a court, regulatory body, or other formal process;
  - 2.2.8 A dispute that is considered by CEDR to be frivolous and/or vexatious;
  - 2.2.9 A dispute that is the subject of an existing or previous valid application to CEDR;
  - 2.2.10 A dispute which has been or is the subject of court proceedings or an alternative independent procedure for the determination of disputes (unless such proceedings or alternative procedure have been abandoned, stayed or suspended).
  - 2.2.11 Claims concerning physical injury, illness or nervous shock or their consequences.
- 2.3 Putting a dispute through the Service does not remove the customer's duty to pay the Funeral Director any other amounts which are due and which are not disputed.

### **3 Applying to use the Service**

- 3.1 To apply to use the Service, a customer must send to CEDR a completed application form, which will be provided by CEDR.
- 3.2 On the application form, the customer must request at least one of the following remedies from the Funeral Director:
  - An apology;
  - A product or service;
  - Something to be done about a bill or bills;

- Some practical action to be taken;
- A payment which must total no more than £10,000.00 (including VAT). This sum includes any claims for compensation, refunds, credits and/or waivers.

The customer is encouraged to clarify the remedies sought in as much detail as possible, but a failure to do this will not render an application invalid. If, in the opinion of CEDR, any aspect of a customer's application is unclear, CEDR will make one attempt to contact the customer to obtain clarification. This will not affect the case process or the associated timescales.

3.3 The claim should include details of:

- The service provided by the Funeral Director which the dispute is about;
- The precise issues which are in dispute;
- The steps already taken to attempt to reach a resolution with the Funeral Director;
- The reasons for requesting the remedy or remedies sought; and
- The reasons for the amount of any compensation claimed.

3.4 The customer should supply any essential supporting documents with their application.

## 4 The adjudication procedure

### 4.1 The Claim

4.1.1 When an application form is received along with any supporting documents, CEDR will make an initial assessment within 15 working days as to whether or not the dispute falls within the scope of the Service. This assessment will be made by reference to Rules 2.1 and 2.2 above.

- 4.1.2 When an application is processed by CEDR, a case reference number will be allocated and communicated to the parties in correspondence from CEDR. Both the customer and the Funeral Director must quote this case reference number in all subsequent correspondence with CEDR regarding the case.
- 4.1.3 If CEDR considers the application to be valid, it will notify the Funeral Director by sending an electronic copy of the customer's application form and any supporting documents to the Funeral Director ("the notification").
- 4.1.4 If CEDR sends the notification to the Funeral Director before 4.00pm, the Funeral Director is deemed to have received it on that day. If CEDR sends the notification on or after 4.00pm, the Funeral Director is deemed to have received it on the following working day.
- 4.1.5 Once the notification is deemed to have been received by the Funeral Director, they have 10 working days in which to either:
- 4.1.5.1 Confirm to CEDR that it is prepared to give the customer all of the remedies requested on the CEDR application form or that it has agreed an alternative settlement by negotiation directly with the customer (this period cannot be extended); or
- 4.1.5.2 Send CEDR its written defence to the customer's claim (in exceptional circumstances, CEDR may, at its own discretion, grant the Funeral Director an extension of the deadline for providing a defence by up to a further five working days).
- 4.1.6 If, before the expiry of the timescale at Rule 4.1.5 above, the customer contacts CEDR to add further evidence or submissions to their application, the Funeral Director will be sent the extra documentation and the timescale at Rule 4.1.5 for the Funeral Director to reach a settlement or file a defence will be restarted.

## 4.2 Settlement

- 4.2.1 If the Funeral Director agrees to give the customer all of the remedies they have asked for on their CEDR application form (ie. a settlement in full), the Funeral Director must notify CEDR of this within the timescale set out at Rule 4.1.5 above. When CEDR receives notification from them that a settlement in full has been reached, CEDR will close the case. The Funeral Director must provide the customer with all of the remedies requested on the CEDR application form within 20 working days of CEDR being notified of the settlement in full, unless an alternative timescale has been agreed between the parties.
- 4.2.2 If the Funeral Director reaches any other resolution with the customer to settle the dispute (ie. a negotiated settlement), the Funeral Director must notify CEDR of this within the timescale set out at Rule 4.1.5 above. At the same time, the Funeral Director must provide CEDR with evidence of the offer made to the customer and evidence confirming that the customer has accepted that offer in exchange for the closure of their CEDR case. When CEDR receives evidence of the negotiated settlement from the Funeral Director, CEDR will close the case. If evidence of the negotiated settlement is not provided by the Funeral Director, the case will remain active. The Funeral Director must provide the customer with the remedies agreed as part of the negotiated settlement within 20 working days of CEDR being notified of the negotiated settlement, unless an alternative timescale has been agreed between the parties.
- 4.2.3 If the Funeral Director has not provided the customer with all of the remedies under the settlement in full or negotiated settlement within the relevant timescale, the customer must advise CEDR within 20 working days of the expiry of the relevant timescale (or the case will remain closed). At this time, the customer must advise CEDR which of the remedies have not been provided.

Upon the customer advising CEDR that one or more remedies remain outstanding, CEDR will re-open the case and will give the Funeral Director five working days to either provide a defence to the customer's claim or to provide evidence showing that the remedies required under the settlement have been provided. If the Funeral Director provides evidence showing that the remedies required under the settlement have been provided, the case will be withdrawn from the Service. If the Funeral Director does not provide evidence showing that the remedies required under the settlement have been provided, or the adjudicator does not accept such evidence, the case will proceed in line with Rule 4.4 below.

#### 4.3 Objections to eligibility

- 4.3.1 Within the timescale at Rule 4.1.5 above, the Funeral Director can object to CEDR dealing with the application if it considers the dispute to be entirely outside the scope of the Service.
- 4.3.2 In making an objection, the Funeral Director must contact CEDR and specify one or more reasons under Rule 2.2 above as to why the application is outside the scope of the Service. The evidential burden rests with the Funeral Director to prove why the application falls outside the scope of the Service.
- 4.3.3 A CEDR adjudicator will examine the Funeral Director's objection and decide whether or not the objection is upheld. This decision will be communicated to the Funeral Director within two working days of the objection being received by CEDR.
- 4.3.4 If the Funeral Director's objection is not upheld by the adjudicator, the case will remain active, and an additional two working days will be added to the timeframe under Rule 4.1.5 for the Funeral Director to file a defence or settle the dispute. This time extension can be applied only once per case, and no time



extensions will be given to any subsequent unsuccessful objections made by the Funeral Director. If an adjudicator is subsequently appointed to determine the dispute, all objection correspondence will be forwarded to that adjudicator to be taken into account when reaching a final decision in the case.

4.3.5 If the Funeral Director's objection is upheld by the adjudicator, CEDR will write to the customer to advise them of this and the reasons given for the objection. The customer will then have a period of five working days to contact CEDR and provide reasons why the case is valid. Upon receipt of the customer's response, a CEDR adjudicator will decide whether or not to reinstate the case within two working days. The evidential burden at this stage rests with the customer to prove why the application falls within the scope of the Service.

4.3.6 In the event that the customer responds to CEDR within five working days after receipt of correspondence from CEDR regarding the objection being upheld, and the adjudicator decides that the case falls within the scope of the Service, the case will be reinstated and the Funeral Director will be given 10 working days to reach a settlement with the customer or to file a defence with CEDR.

4.3.7 If the customer makes no contact with CEDR within five working days of the Funeral Director's objection being upheld, or the adjudicator does not consider that the case falls within the scope of the Service following receipt of the customer's response, the case will be withdrawn from the Service.

#### 4.4 The Defence

4.4.1 When CEDR receives the Funeral Director's defence, a copy of it will be sent to the customer.

4.4.2 Upon receipt of the defence, CEDR will formally appoint an adjudicator to the case.

- 4.4.3 If the Funeral Director does not submit a defence to CEDR within the time allowed, an adjudicator will be appointed who will have the discretion to proceed to make a decision considering only the information provided by the customer.
- 4.4.4 The customer has a period of five working days from the date on which the Funeral Director's defence is sent to them to provide any comments on the defence that they see fit. The customer is not required to submit comments on the Funeral Director's defence. Any comments that are submitted must be restricted only to points raised in the Funeral Director's defence and must not introduce any new matters. Any new matters put forward by the customer at this stage will be disregarded by the adjudicator.
- 4.4.5 If the customer makes any comments on the Funeral Director's response, CEDR will send a copy of those comments to the Funeral Director for their information only.

#### 4.5 The Decision

- 4.5.1 An adjudicator appointed under these Rules will make a decision by considering the submissions and evidence received from the customer and the Funeral Director. CEDR aims for decisions to be issued within 30 working days of an application being made to the Service.
- 4.5.2 The adjudicator's decision will be set out in writing and will include full reasons for the decision. The adjudicator will send a copy of the decision to CEDR when complete.
- 4.5.3 Once CEDR receives a decision from an adjudicator, it will send copies to both the customer and the Funeral Director simultaneously.
- 4.5.4 The adjudicator's decision will only become binding on the customer and the

Funeral Director if the customer advises CEDR that they accept the decision in full. The customer has 20 working days from the date on which the decision is sent to them to notify CEDR of their acceptance.

4.5.5 If, during the time period specified at Rule 4.5.4 above, the customer advises CEDR that they reject the decision, or that they do not accept the decision in full, or if the customer fails to contact CEDR during the time period, the adjudicator's decision will not be binding on either party. The decision cannot be accepted at a later date.

4.5.6 Adjudicators' decisions are final. They cannot be reviewed or appealed under any circumstances.

#### 4.6 Compliance with the Decision

4.6.1 If the adjudicator's decision directs the Funeral Director to take one or more actions in relation to the customer, and the customer accepts the decision, the Funeral Director must complete the necessary action(s) within 20 working days from the date on which CEDR notifies the Funeral Director of the customer's acceptance of the decision.

4.6.2 If the Funeral Director is for any reason unable to complete the necessary action(s) within the timescale at Rule 4.6.1 above, the Funeral Director must advise the customer and CEDR why that is before the above timescale expires. At the same time, the Funeral Director must specify a substitute date by which the necessary action(s) will be completed.

4.6.3 If the customer informs CEDR that the Funeral Director has not completed the required action(s) within the timescale set out at Rule 4.6.1 or any substitute timescale advised by the Funeral Director under Rule 4.6.2, CEDR will contact the Funeral Director to request compliance with the decision. In the event that

the Funeral Director does not respond or fails to comply with the decision within five working days, the matter will be escalated to a senior member of staff at the Funeral Director.

4.6.4 In the event that the Funeral Director's failure to respond and/or failure to comply persists, appropriate action can be taken by CEDR which may include suspension or termination of CEDR membership and automatic notification of such action communicated to the Competent Authority designated under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015.

4.6.5 CEDR is unable to enforce compliance with decisions, nor is CEDR able to apply penalties or sanctions to a Funeral Director for failing to comply with an adjudicator's decision.

## 5 Powers of the adjudicator

5.1 The adjudicator will be fair and unbiased at all times and will make a decision that is in line with the relevant law, any relevant codes of practice, and contracts between the Funeral Director and the customer. The adjudicator will act quickly and efficiently.

5.2 The adjudicator has the power to do any of the following:

5.2.1 Change any of the time limits set out in these Rules;

5.2.2 Request further evidence or documents from the customer or the Funeral Director, and set time limits in which the customer and the Funeral Director must provide such evidence or documents;

5.2.3 Proceed with the adjudication if either the customer or the Funeral Director does not keep to these Rules or any instruction or direction made pursuant to these Rules;

5.2.4 Consult any relevant evidence not presented by the parties (but the adjudicator must

tell the customer and the Funeral Director about such evidence and allow them to provide comments);

- 5.2.5 Receive and take account of any evidence the adjudicator thinks is relevant;
- 5.2.6 End the adjudication if, in the adjudicator's opinion, the entirety of the claim falls outside the scope of the Service (there is no appeal if the adjudicator decides to end the adjudication);
- 5.2.7 End the adjudication if the customer and the Funeral Director settle their dispute before a decision is made;
- 5.2.8 Determine whether or not the Funeral Director has complied with their decision, in the event that a dispute arises between the parties regarding compliance.
- 5.3 If the adjudicator finds that the customer's claim succeeds in full or in part, he or she can direct the Funeral Director to:
  - 5.3.1 Provide the customer with an apology;
  - 5.3.2 Provide the customer with a product or service;
  - 5.3.3 Take some practical action;
  - 5.3.4 Do something about one or more of the customer's bills;
  - 5.3.5 Make a payment to the customer, the total value of which shall not exceed £10,000.00 (including VAT).
- 5.4 In exceptional circumstances, the adjudicator may award more than has been claimed by the customer.
- 5.5 If the adjudicator finds that the customer's claim does not succeed, the Funeral Director will not be directed to take any action(s).

## 6 Costs

6.1 The use of the Service is free of charge to customers.

6.2 The NAFD is responsible for paying CEDR's fees.

6.3 The customer and the Funeral Director must pay their own costs of preparing their cases.

By using CEDR, each party agrees not to take any legal action against the other to recover such costs.

## 7 Confidentiality

7.1 No party involved in the adjudication will give details of the adjudication or the decision (including the reasons for it) to any person or organisation not directly involved in the adjudication, unless this is necessary in order to enforce the decision.

7.2 By using the Service, the parties agree that CEDR may gather, retain and publish statistics and other information in relation to cases whilst preserving the anonymity of the parties.

## 8 Other rules

8.1 CEDR will appoint a substitute adjudicator if the adjudicator originally appointed is unable to deal with the dispute for any reason. CEDR will inform the parties if such an appointment is made.

8.2 With the exception of amending a decision following any minor error, neither CEDR nor the adjudicator will enter into correspondence relating to any decision.

8.3 If the customer or Funeral Director has a complaint about the quality of service provided in the course of the administration of a CEDR case, the complaint should be made through the published complaints procedure, copies of which are available from the CEDR website. The complaints procedure cannot be used to challenge the content or outcome of an adjudicator's decision, the decision process adopted by an adjudicator, or the content of these Rules.

8.4 If either the customer or the Funeral Director requires their original documentation to be

returned to them, they must make such a request within 20 working days of the date of the adjudicator's decision being sent to them. If no such request is made, CEDR will dispose of the documents securely.

8.5 Any reference in these Rules to working days by definition excludes Saturdays, Sundays and bank/public holidays celebrated in England and Wales.

8.6 The Service, including these Rules, may be updated from time to time. Disputes will be settled according to the Rules in force at the time the customer applies to use the Service.