Funeral Planning Authority stakeholder group tackles future rules for funeral plan providers

NAFD and SAIF in attendance for lively debate

The second meeting of the Funeral Planning Authority's (FPA) new stakeholder group, the consultative body advising the FPA on policy formation issues, was held in late February. For the first time, representatives from the National Association of Funeral Directors and the Society of Allied & Independent Funeral Directors were present as full members of the group. In addition, there were 15 funeral plan providers of all sizes represented, and the FPA's two new Non-Executive Directors, Alison Beeston and Shaun Astley-Stone, were also in attendance.

so the debate in the room on this aspect of the review was pretty straightforward.

"More challenging are the issues that arise from looking at the FPA Rules. As a result the debate in the meeting focused more on this aspect. The discussions were largely grouped under three headings - prudential issues, conduct issues and enforcement and sanctions.

"Central to the work we do at the FPA is making sure that funeral plans from providers registered with us have enough money set aside to deliver the funerals the customer has paid for. In the meeting we discussed to what degree the FPA should set rules on how liabilities are valued and require a minimum amount

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Graeme McAusland, CEO of the Funeral Planning Authority, said that the FPA Board had felt it was important to hear directly from funeral trade bodies and so, following the debate at the NAFD's Autumn Meeting in October and ongoing interactions with both NAFD and SAIF, had readily agreed to invite the two trade associations to join the group .

The main purpose of the meeting was to examine the FPA's Rules and Code of Practice as part of the review that the FPA is currently undertaking to ensure they are fit for purpose in a fast-changing landscape in respect of funeral plan regulation. The FPA is also looking at the development of a customer charter – something that translates the content of both the Code of Practice and Rules into words that are meaningful for customers in terms of their expectations from an FPA-registered firm.

Says Graeme: "The Code of Practice is actually pretty good. We have a few gaps to fill and we need to add in some guidance around the proper care and treatment of vulnerable customers – and

to be set aside. I think there is support for this latter idea within the providers. It's not without its complications, of course, as there are different types of plans with different funding structures, but the basic principle was received well during the discussions. It is something we do informally anyway as we're tracking this on a quarterly basis by provider so we know it can be done, but it needs some further thought on how it is codified.

"Issues around conduct generated some very lively debate as we considered issues such as how plans are and should be sold, how customers are treated, complaints processes and the terms and conditions that plan providers put in place.

"Probably the most thorny issue in respect of conduct, which NAFD members will also remember from the Autumn Meeting, is transparency. For example, whether commission should be disclosed. We understand the sentiment expressed by funeral directors in this area and it's something we are examining. However, it is important that whatever we mandate our registered providers to report avoids creating distortion in the market. In other markets, commission disclosure has led to strange outcomes, as providers simply use different methods to sell or apportion costs, depending upon the structure of the business.

"Another part of the topic of conduct is the degree to which the FPA should be involved in customer literature. For the FPA, it is about making sure our Rules do enough to ensure people can see what they are buying, and that's ultimately less about documents such as terms and conditions and more about the key items of marketing collateral that consumers use to make a decision. We may need more rules on how these documents are structured and what information they contain, but without creating a disproportionately onerous regime.

"We also considered the creation of financial services-style 'approved persons' who have specific responsibility within funeral plan firms. We have no proposals for this, as yet, and we do background checks on new providers and the people involved with them anyway …. but it's another area of due diligence that we're considering.

"Another area of lively debate in the meeting was our enforcement and sanctions regime - what happens if someone doesn't play by the rules.

"We actually have quite a lot of powers already, but they are somewhat vaguely described. We would like to see them be more specific in terms of the sorts of things we can do. For example, we would have the right to require a provider to remedy any breech (fix issues, make good any detriment), suspend all or part of operation while investigation is taking place (although this needs to be done sensibly, to avoid firms being unfairly punished where there are vexatious complaints) and even appoint a skilled person or organisation to investigate where a provider doesn't open itself up to scrutiny in the event of a complaint. In the latter instance we would appoint a specialist, such as one of the 'Big 4' accountancy firms, to investigate and the provider will have to pay for it. It's a massive deterrent and really encourages most sensible funeral plan providers to co-operate.

"We're definitely looking to increase our fining power from the current maximum of £5,000 – which is simply not large enough. We might consider linking it to turnover. And our enforcement structure is too cumbersome. It's a one-size-fits-all approach, whereas we need some readily enforceable powers that our compliance committee can get on and deal with for lower level breeches.

"The final thing we discussed is the need to publish the results of investigations, which is difficult under current rules but is something that we would like to do.

"Our approach, with the feedback we gained from the meeting, will be to shape set of principles for funeral plan providers, which protect customers whilst avoiding the creation of distortion in the market."

"It was a really good discussion and meeting with lots of interaction, and it was very useful to hear the perspective of funeral directors during the debates. Clearly, not everyone agrees on every issue – but that's healthy and the more we can get issues debated, the more likely it is that we will get to an end decision that will work for the customer.

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NAFD Past President Nigel Lymn Rose represented the Association at the meeting. He said: "It was a very useful session and good to meet the new members of the FPA Board. Both Terry Tennens, on behalf of SAIF, and myself were given the opportunity to participate and comment at all stages during the discussions, which was really encouraging, and I am pleased to see the FPA tackling some of the key issues raised during the debate at the NAFD's Autumn Meeting.

"I am also pleased that the NAFD has a regular place at these stakeholder meetings going forward. The perspective of funeral directors - who deliver the

Graeme McAusland

Nigel Lymn Rose

funeral plans that are sold and so experience, at first-hand, some of the challenges faced by families when a plan doesn't provide what they expected it to – will prove useful in assisting the FPA in delivering the changes it is seeking."

As well as the debate, Mr McAusland updated the stakeholder group on what the FPA has been working on recently, including compliance activities like mystery shopping. The FPA has also been on a programme of visits to providers and has been working with non-registered firms to help them get to a place where they can meet the required standards. "I don't know if they will or won't register," he said, "but we're engaging with them and, hopefully, that leads to a good place."

Mr McAusland also gave an update on complaints in this year, noting that it is largely in line with the prior year. He reported that, in 2017, there were 87 complaints to the FPA, 43 of which were upheld, and with an average resolution time of two weeks. "That speed is really important in this market because of what we're dealing with and how consumers are feeling. I am pleased to say that providers are being very responsive," he added.

There was also a discussion about the impending arrival of GDPR, something NAFD members can read about again in this issue The FPA warned funeral plan providers that, if they hadn't got their head around it yet, they need to do so fast. Mr McAusland cautioned that, while there were bigger businesses that were more directly under the watchful eye of the Information Commissioner, if someone made a complaint about you, you ran the risk of investigation and being subject to the full force of the Commissioner's powers.

As the FPA works to increase its powers and revise its Rules and Code of Practice to make sure they are working in the interests of the consumer, it is keen to seek the assistance of funeral firms in improving public awareness. Concludes Mr McAusland: "FPA registration means something. One of the things we're keen for funeral directors to do is to explain what the FPA is there to do and promote it, to say to people that there is a difference between choosing a funeral plan provider who is registered with the FPA and one that isn't. We're happy to help and also welcome the chance to engage with funeral directors to support them in caring for families."