



Updated April 2020

Diploma in Funeral Arranging and Administration

Module 5 SCOTLAND	Unit 14	Understanding Client Liability, Entitlement and Consumer Regulations within the Funeral Service.
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Purpose and Aim of the Unit:	The purpose of the unit is to develop learners' understanding of the significance of a valid will and a pre-paid funeral plan. Additionally, the unit aims to develop knowledge of client liability for payment of funeral expenses, any available financial assistance and the implications of current consumer regulations.
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This unit has 6 learning outcomes.

LEARNING OUTCOMES	
The learner will:	
1	Know about client liability and options for meeting funeral costs.
2	Understand the implication of an available, valid Last Will and Testament.
3	Know where to search for a Last Will and Testament.
4	Know the potential financial assistance available to meet funeral expenses.
5	Understand the purpose and use of pre-paid funeral plans.
6	Understand current consumer regulations and current liabilities.

Learning Outcome 1

Know about client liability and options for meeting funeral costs.

Primary Responsibility

The primary responsibility for the disposal of a deceased person falls upon their personal representative. A personal representative can be an Executor to a Will, if the person that has died has a Will in place. A personal representative may also be the person authorised to deal with an estate where the deceased person has died intestate (without a Will in place).

The personal representative is entitled to recover from the deceased person's estate (if there is one), funeral expenses reasonably and properly incurred. The personal representative should consider what funds are available through the deceased person's estate to help pay the cost of the funeral arranged. They should also bear in mind any written instructions in respect of the funeral (including whether burial or cremation is requested) and whether a pre-paid/pre-arranged funeral plan is in place.

Funeral expenses have priority over other claims against a deceased person's estate, along with any legal expenses incurred in administering that estate. Reasonable funeral expenses may also include the cost of a memorial, for inheritance tax purposes.

It is worth noting that primary responsibility does not necessarily fall to those who had 'Power of Attorney' over the deceased person's affairs when they were alive. Power of Attorney (a person appointed to help make decisions on behalf of someone or to make decisions on their behalf) ceases when the person dies.

Client Liability

Case law has established that if the Funeral Director and their client agree on the details of the funeral arrangement and the cost of that arrangement, a contractual relationship between the two exists. This enables the Funeral Director to recover fees and expenses incurred in line with that agreement.



It should be noted that it is not necessary for the client to be the deceased person's personal representative (as defined above). Equally, the personal representative is not required to agree to or authorise payment from the deceased person's estate, to meet the cost of a funeral arranged by anyone other than themselves.

Settlement of Estates

It is good advice for the informant to the Registrar Chapter 10 - Registering a Death (Scotland) to obtain a list of who is qualified to act as an informant), in order to obtain a full copy of the extract of entry (not the abbreviated version), as this will be required when applying for a confirmation.

Confirmation is a legal document from the court giving the Executor(s) authority to uplift any money or other property belonging to a deceased person from the holder (such as the bank), and to administer and distribute it according to law.

It is worth noting that if a Solicitor is dealing with the deceased person's estate, only one copy of the extract of entry is required, as photocopies can be made and certified by that solicitor.

Small Estates

All estates with a total (gross) value of less than £36,000 are classed as small. This figure will change from time to time. If the Funeral Director's client is the executor, they should check with their local Citizens Advice Bureau or with the sheriff clerk what the current limit is. You should note that confirmation need only be obtained if required by a fund holder, for example a bank.

If the client does wish to obtain confirmation without a solicitor, the sheriff clerk will help them prepare the documents. They should consult the sheriff clerk where the deceased last resided, to ensure they are collecting the correct information. They should telephone or call at your local sheriff clerk's office to arrange an appointment.

If the estate has assets of over £36,000, it is advisable for the executor to use the services of a solicitor as dealing with a 'large' estate can be complicated and there are legal consequences to

obtaining confirmation e.g. in the event of any mistakes being made, the executor is legally responsible. Solutions for correcting any errors made are few and potentially expensive. The procedure will vary according to whether or not there is a will.

<p>Learning Outcome 2</p>	<p>Understand the implication of an available, valid Last Will and Testament.</p>
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It is important for people to make a Will because:

If someone dies without a Will, there are certain rules which dictate how the money, property or possessions should be allocated. This may not be the way that an individual would have wished their money and possessions to be distributed.

Provides the opportunity to identify a named executor or executors. Executors are the people who will be responsible for carrying out the deceased wishes and for sorting out the estate. They will have to collect together all the assets of the estate, deal with all the paperwork and pay all the debts, taxes, and funeral and administration costs out of money in the estate. They will need to pay out the gifts and transfer any property to beneficiaries.

Unmarried partners and partners without a registered civil partnership cannot inherit from each other unless there is a Will, so the death of one partner may create serious financial problems for the remaining partner.

if there are children, a Will is essential to determine arrangements for the children if either one or both parents die.

It may be possible to reduce the amount of tax payable on the inheritance if advice is taken in advance and a Will is made.

If your circumstances have changed, it is important that you make a Will to ensure that your money and possessions are distributed according to your wishes. For example, if you have separated and your ex-partner now lives with someone else, you may want to change your Will. If you are married or enter into a registered civil partnership, this will make any previous Will you have made invalid

Learning Outcome 3	Know where to search for a Last Will and Testament.
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Where there is a Will

If the deceased person has left a will with a named executor, it will need to be submitted to the sheriff's court. The following documents should accompany the will and full extract:

- The Will
- Personal details of the dead person and his or her family
- A full list of the estate and its value as it stood at the date of the death including any interest, dividends or bonuses to be added to any bank accounts, stocks and shares or insurance policies;
- Proof of Identification. Acceptable forms of identification include a valid passport or photocard driving licence and a current council tax statement or recent utility bill (not printed from the internet).

The sheriff clerk will complete the necessary forms, and if no further enquiries are necessary will issue a confirmation within a short time.

More detailed information can be found here: www.scotcourts.gov.uk

When there is no Will (intestate)

If the deceased person has died intestate (not having made a will), or has made a will but naming no surviving executor, the personal representative can apply to become the appointed executor. The personal representative should provide the sheriff clerk's office with the same information

that is detailed under the heading 'Where there is a Will' above.

There is an additional step in the procedure from that described above. The personal representative, as part of their application for confirmation may need to obtain a 'bond of caution'. A bond of caution is a guarantor's agreement that the executive will carry out his or her duties correctly. The personal representative will normally receive a bond of caution from an insurance company as it also insures against losses in the handling of the estate.

There is a limited amount of insurance companies who are willing to issue a bond of caution.

The Scottish Government is in consultation on removing this step from law so do double check whether this procedure is still appropriate.

More detailed information can be found here: www.scotcourts.gov.uk

Dying intestate, with no known heirs

Where a person dies intestate (i.e. does not leave a Will) and either has no spouse, civil partner or blood relative or none who can be easily traced, the estate both moveable and heritable (i.e. cash, shares, pension etc. and land or buildings), is claimed for the Crown by the Queen's & Lord Treasurer's Remembrancer (QLTR) as ultimus haeres (last heir). Those assets are in-gathered by the QLTR office based in Edinburgh. After the deceased person's debts (including the funeral account) have been paid, the remainder falls to the QLTR. Heirs often do later appear and, provided they prove relationship, the net assets of the estate can be paid to them.

Where there has been a death and there is apparently no spouse, civil partner or blood relatives, the death should be reported immediately to the National Ultimus Haeres Unit based in Glasgow.

It is the duty of the QLTR to examine a funeral account before agreement to meet it from the estate he/she is dealing with. If the amount of the account is more than can be properly and justifiably charged against the deceased's estate, any excess may well be refused.

More detailed information can be here: www.qltr.gov.uk

Learning Outcome 4	Know the potential financial assistance available to meet funeral expenses.
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FUNERAL SUPPORT PAYMENT

A new Support Payment benefit was launched by the Scottish Government in 2019, to replace the UK Government's Social Fund Funeral Payment for applicants living in Scotland.

The payment has three elements:

- burial or cremation costs;
- a flat rate payment towards other expenses for example, Funeral Director fees, coffin, flowers; and
- certain transport costs.

Clients can use the payment towards funeral costs for a baby, child or adult. This includes babies who were stillborn. It usually will not cover the full cost of the funeral but it should help pay for some costs. It can be paid either to the client or to the Funeral Director. Only one person can get Funeral Support Payment for the funeral.

Clients will not be eligible if they've already had other government support for the funeral, this includes:

- Funeral Expenses Payment (England or Wales)
- Funeral Payment (Northern Ireland)
- The hospital arranging and paying for the baby's funeral if it was a stillbirth

Eligibility

Clients are eligible for a Funeral Support Payment if all of the following apply:

- They live in Scotland;
- They or their partners receive certain benefits or tax credits;
- The person who died lived in the UK;
- The funeral is being held in the UK, EU, Iceland, Liechtenstein, Norway or Switzerland
- They are applying after the person has died, until 6 months after the date of their funeral;

and

- They or their partner are responsible for the funeral.

To be responsible for a funeral, the client must be both:

- Named on the funeral bill; and
- The nearest relation to the person who died. This is usually a partner, child, parent or sibling.

Qualifying benefits

- Child Tax Credit
- Universal Credit (UC)
- Income Support
- Pension Credit
- Working Tax Credit (disability or severe disability element)
- Housing Benefit
- Income-based Jobseeker's Allowance (JSA), not contribution-based JSA
- Income-related Employment and Support Allowance (ESA), not contribution-based ESA

Applications

For further information and how to apply, please visit: www.mygov.scot/funeral-support-payment

Practical Considerations

- At an early stage of the funeral arrangements, try to ascertain whether the client intends to make a claim for a Funeral Support Payment (FSP).
- Explain the financial limits of the FSP so that discussions may take place and agreements made on how the excess owed by the client can be repaid.
- Funeral Directors are urged not to complete an invoice for exactly the maximum payment, plus disbursements, unless that is the actual charge. A detailed breakdown of the costs (both funeral and third party costs) should be provided.

- Advise the client to apply online, by calling Social Security Scotland on 0800 182 2222 or by visiting their local Citizen's Advice Bureau as soon as possible.
- It must be made clear to clients that if their claim fails, the whole of the funeral account will become their responsibility.

ADDITIONAL FINANCIAL ASSISTANCE

Apart from assistance with the payment of funeral expenses, it may also be possible for the client to apply for a bereavement support payment.

More detailed information can be found here: www.gov.scot/Publications/2016/11/6948

Some general information is as follows:

Bereavement Support Payment

A claimant may be eligible to receive a bereavement support payment. The claimant will receive a larger first payment followed by up to 18 monthly payments. The amount received will depend on the claimant's circumstances. Payments are made directly into the claimant's bank or building society account.

In order to be eligible for the bereavement support payment, the claimant's husband, wife or civil partner died on or after 6 April 2017 and if they:

- Paid National Insurance contributions for at least 25 weeks
- Died because of an accident at work or a disease caused by work

The claimant, when their husband, wife or civil partner died must have been:

- Under State Pension age
- Living in the UK or a country that pays bereavement benefits.

The claimant must make a claim within 3 months of the death to get the full amount. However, a claim is allowed up to 21 months after the death but the payments received will be less.

The claimant will not be eligible to make a claim if they are in prison.

NB: The Bereavement Support Allowance replaces the Bereavement Payment, Bereavement Allowance, and Widowed Parent Allowance.

Publications

The Scottish Government has developed the following information guides:

- When Someone has Died
- What to do after a Death in Scotland
- Help from the Social Fund

These guides will help explain how a bereaved person may feel and offer some practical guidance on what has to be done when making arrangements after the death of a relative or friend.

CLIENTS WITH LIMITED FUNDS

If a client is unable to secure a Funeral Expenses Payment and has no other means of covering funeral costs, Funeral Directors may wish suggest these alternative options to them.

Local Health Authority (NHS).

If a person dies in hospital, the hospital administrator will arrange and pay for a very simple burial or cremation. This is usually done by way of asking local Funeral Directors to the health authority to tender to carry out this service for an agreed fee. This type of contract is usual where there are no relatives able to take responsibility for the arrangement/payment of a funeral.

Any money from the deceased person's estate may be used to pay for the funeral. This arrangement can include stillborn babies.

Local Authority

Local authorities have a duty to arrange for the burial or cremation of a person that has died (or

been found dead) within their area. However, they will firstly satisfy themselves that there is no other person available or willing to arrange the funeral themselves.

The Local Authority should not arrange for the cremation of a deceased person where they have any reason to believe that cremation would be contrary to the wishes of the deceased.

As with a Local Health Authority (NHS) funeral, the Local Authority may ask local Funeral Directors to tender for this service and any money from the deceased person's estate may be used to pay for the funeral.

War Pensions

On the death of a war pensioner, the family may be able to claim the cost of a simple funeral from the government. Please visit: www.gov.uk/government/publications/war-pension-scheme/war-pension-scheme-what-you-need-to-know to find out more.

Employer Pension Schemes

Some employers provide occupational pension schemes that include life insurance cover. This means that a lump sum is paid upon the death of the insured to help with the funeral costs.

Trades Union

Some Trades Unions are able to make grants upon the death of a member under certain circumstances.

Provident Associations, Friendly Societies, Clubs, Charities and Other Associations

There are some clubs and associations that are able to make grants upon the death of a member or their dependents under certain circumstances.

Crowd Funding/Family & Friends/Donations

Crowd funding (typically advertised through social media) is the practice of asking many people to contribute possibly small amounts of money. Family and friends of the deceased person and/or client may contribute toward the cost of the funeral.

Donations given to the family or collected by the Funeral Director may also be used to help pay for the funeral. It should be noted that any monies collected through these methods may be deducted from any amount awarded by the DWP, should the client be making a claim for financial assistance.

Learning Outcome 5

Understand the purpose and use of pre-paid funeral plans.

PRE-ARRANGEMENT/PRE-PAYMENT OF FUNERALS

Pre-arranging a funeral, or simply setting out wishes in relation to a funeral, is undertaken by some people to assist surviving relatives or their named executor after their death has occurred. This enables major decisions involved in arranging a funeral to be made in an atmosphere less charged with emotion than when death takes place. Pre-arranging for a funeral does not necessarily include the pre-payment of those arrangements.

My Funeral Wishes

A number of organisations and funeral firms offer leaflets to assist people in setting out their funeral wishes.

Since 2013, the NAFD, in conjunction with Dying Matters, has operated 'My Funeral Wishes, a simple leaflet which encourages people to talk to their loved ones about their final wishes and record them, however informally, as a record for the future.

Pre-paid funeral plans

A funeral plan is an arrangement that allows a customer to pay in advance for theirs or another persons' funeral. The plan is a contractual arrangement with a provider, who assuming the plan has been paid for, is then responsible for paying for those elements of the funeral that are covered by the plan.

Pre-paid funeral plans allow consumers to choose and agree the arrangements for the sort of funeral they wish to have, in advance. They also enable consumers to fix the cost of some

elements of the funeral, and protect them from the future inflation of funeral-related costs.

There are a number of benefits to someone wishing to either pre-arrange or pre-pay for their funeral. Some examples might be:

- They wish to make a record of their final wishes.
- They wish to reduce any financial burden on those left behind.
- They wish to fix the costs of the funeral (whether all or only some costs are fully covered depends on the individual pre-paid funeral plan).
- There is often a choice for the client to pay in full or by instalments.
- Whether pre-arranging or pre-paying, a client will be accepted regarding of health or age.

There are two main investment models underpinning funeral plans: trust funds and insurance policies. Plan providers have different terms and conditions in respect of the management and administrative charges they levy in respect of their plans – and there are a variety of plans available, including those which guarantee to cover all of the costs of the funeral and others which make a contribution towards them. Your business may sell or accept plans offered by other providers, accept plans sold by third party agents, or operate its own funeral plan.

Regulation of funeral plans

At present, the pre-paid funeral plan market is not regulated by government, although this is set to change.

Currently, the Funeral Planning Authority (FPA), an organisation set up by the industry to regulate providers in the UK pre-paid funeral plan industry, aims to ensure that its registered providers are operating in a manner that will result in customers getting the funeral they have paid for when it is needed. All registered providers abide by a set of Rules and a Code of Practice, which exceed statutory requirements. Registration with the FPS is not mandatory.

The FPA also helps customers who have a complaint about a plan, or a provider, by attempting to resolve matters with the provider. If resolution is not possible it offers access to an independent dispute resolution process.

At the time of writing, HM Treasury is consulting on proposals to bring the regulation of the sale of funeral plans under the responsibility of the Financial Conduct Authority. At the same time, the Competition and Markets Authority is reviewing funerals paid for by a funeral plan in its market investigation of the funeral sector.

Until such time as the current regulatory scheme changes, the NAFD recommends that its members only work with plan providers that are registered with the Funeral Planning Authority.

Choosing a plan provider to work with

There are a number of national, regional and local pre-paid funeral plan schemes providing a service to Funeral Directors.

Some of the benefits of using an existing scheme might be:

- It saves the cost of setting up a scheme and the challenges of administering it properly.
- The plan provider may already be registered with the Funeral Planning Authority and/or the Financial Conduct Authority.
- You will receive assistance with training any staff members that will be involved in the sale of funeral plans.
- You will be provided with promotional literature and other marketing tools.
- It can assist your business in acquiring a ready-made list of future clients.

However, it is also important to consider the potential disadvantages too:

- You may be required to conduct funerals at a price much lower than your normal price to a private client.
- There may be restrictions placed upon you in terms of how many schemes you are able to offer.
- You may find yourself tied to multiple Codes of Practice with different rules and disciplinary procedures.
- You may find yourself subsidising and promoting a potential or actual competitor.
- You may only find out that a funeral plan has been allocated to you after the plan holder

dies and the family need to arrange the funeral.

It is recommended that Funeral Directors confirm with any plan provider they work how they will be informed about plans sold with their name against them, and any other terms and conditions under which the plan will be sold.

Advising a consumer on the purchase of a funeral plan

A funeral plan is a financial product. When meeting with clients who wish to pre-arrange or pre-pay their funeral, you should ensure you are fully conversant with any policies your business has in relation to funeral plans – particularly which plan providers your business has agreed to work with, the procedures for selling funeral plans to clients and which plan providers you accept funeral plans from.

Your plan provider will provide you with specific guidance on how plans are to be sold, including the process to be followed, the information to be provided and how the details of the arrangement or plan are to be recorded.

However, in terms of general guidance, your firm should treat the sale of a funeral plan in the same way it does the arrangement of a funeral:

- The person selling the funeral plan should be well informed and well trained.
- Clients should be provided with clear, comprehensive and transparent information about the plan and its prices.
- The client should be presented with all terms and conditions, and any limitations of the cover should be explained clearly to them.
- You should answer any questions the client may have and encourage them to involve their next of kin in the decisions they make.
- You should ensure the client is given enough time to adequately consider the choices they are making and the associated cost.
- The storing and recording of pre-paid funeral plan information should comply with GDPR regulations relating to the protection of data.

Until regulation of the funeral plan market changes, the NAFD continues to recommend that its members only work with and recommend plan providers that are registered with the Funeral



Planning Authority.

Offering guidance to consumers

Funeral plans come in different shapes and sizes, just like all financial products and it's important that consumers choose one that's right for them.

The NAFD offers their members guidance that can be given to a consumer when considering buying a funeral plan. This may be of assistance to members when guiding clients and can be found on the NAFD's website – www.nafd.org.uk.

Learning Outcome 6

Understand current consumer regulations and current liabilities.

Consumer Contracts

13th June 2014 saw changes to Consumer Contract Regulations when the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 come into force. These new regulations govern the pre-contractual requirements of certain consumer contracts, including provisions focused on cost and cancellation rights.

The Notice of Right to Cancel

The funeral arrangements, as noted on a signed and agreed estimate/confirmation form, constitute a contract between the client and the Funeral Director. In case law, it is the person actually making the funeral arrangements and signs the form who is the client, and is therefore liable for payment of the account, regardless of their relationship to the deceased person, executor or next of kin.

Under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, the client has the right to cancel this contract if they so wish, by sending or taking a cancellation notice to the Funeral Director at any time within the period of fourteen days starting with the day of receipt of a notice in writing of the right to cancel.

Some funeral firms ask the client to sign the estimate, retaining a duplicate copy in the office. Your terms and conditions should be included in the documents, and they should be made clear to the client before the estimate is signed. The key areas to be covered with the client are:

- The client has the right to cancel the agreement made within 14 days.
- The cancellation must be made in writing.
- Any services or products provided to the client up to the point of cancellation will be charged for.



- In order for the Funeral Director/arranger to commence work on the client's behalf within the 14-day cancellation period, the client must sign allowing the Funeral Director/arranger to do so.

Before taking leave of the client, the Funeral Director should ask if there are any points that need clarifying or any questions or concerns they may have. They should remind the client of what actions he/she is going to take and hand the client a business card, if not already given at the beginning of the arrangement, and/or information about the firm.

A good way to complete the arrangement is for the Funeral Director to assure the client of his/her best attention and availability at all times.

Distance funeral arrangements

Whilst making a funeral arrangement via email or Skype, for example, is not ideal for the Funeral Director or, in particular, the client - it may sometimes be necessary.

Careful consideration must be given as to how signatures are obtained on all appropriate documentation as, often, crematoria or local authorities may require original signatures rather than e-signatures.



Notification of your right to cancel

(Name and Address of Business)

Notification of your right to cancel this Contract under the Cancellation of Contracts made in the Consumer's Home or Place of Work Regulations 2008

Funeral Business: _____

Name of _____

Deceased: _____

Name of Client: _____

Your right to cancel this contract within 14 days of receipt of this notice

You have the right to cancel this contract if you so wish. This right can be exercised by sending or taking a cancellation notice to the funeral business mentioned below at any time within the period of 14 days starting from the date of receipt of this notice in writing of your rights to cancel. Notice of cancellation will be deemed as having been served as soon as it is posted or sent to us at the address below or, in the case of electronic mail, from the day it is sent to us.

You should understand that, should you choose to cancel the contract having given your authority to commence work, you may be charged for services provided or disbursements incurred.

You may use the cancellation form provided if you wish, but you are not obliged to.

Signed (client): _____

Date: _____

Print Name: _____

CANCELLATION NOTICE

Complete and detach this form ONLY IF YOU WISH TO CANCEL THIS CONTRACT. If you wish to cancel this contract you MUST DO SO IN WRITING and deliver it personally or send (which may be by electronic mail) this notice to the business named below. You may use this form if you want to, but you do not have to.

To: _____

(Funeral Director/Arranger to insert name, address and email address of business to which the notice must be given)

I hereby give notice that I wish to cancel the contract for the funeral of -----with the above named business.

Signed (client): _____

Date: _____

Print Name: _____

Commencement of work relating to the contract prior to the end of the cancellation period

Regulation 9-(1)

Where the consumer enters into a specified contract and he wishes the performance of the contract to begin before the end of the cancellation period, he must request this in writing.

(2) Where the consumer cancels a specified contract in accordance with regulation 8 he shall be under a duty to pay in accordance with the reasonable requirements of the cancelled contract for the goods and services that were supplied before cancellation.

This element of the regulations is likely to apply in all instances that a Funeral Director will be involved with. Therefore, in order to ensure - should cancellation of a contract occur – that you have the ability to charge for services provided; the client's authority to commence work should be obtained.

Client Signature Requirement – the purpose is as follows:-

- a) Client to sign to acknowledge receipt of the form.
- b) Client agrees commencement of Contract and recompense goods and services supplied if contract is cancelled i.e. pay for all work up to point of cancellation.

AUTHORITY TO COMMENCE PERFORMANCE OF THE CONTRACT WITHIN THE CANCELLATION PERIOD

If you wish the performance of this contract to commence within the cancellation period you should sign this authority to enable work to commence in agreement with the contract to provide the goods and services associated with the contract. **(Client to complete in own hand writing)**

I authorise: _____
_____ (name of funeral business) to
commence work relating to the funeral of the late _____ before the cancellation
period has expired.

Signed (client): _____ Date: _____

Print Name: _____

Address: _____
