

Funeral Plans: Proposed approach to regulation

**Consultation Paper
CP21/4*****

March 2021

How to respond

We are asking for comments on this Consultation Paper (CP) by **13 April 2021**.

You can send them to us using the form on our website at: www.fca.org.uk/cp21-04-response-form

Or in writing to:

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1 Summary

Why we are consulting

- 1.1** In January of this year, the Government legislated to bring pre-paid funeral plans ('funeral plans') into our regulation.
- 1.2** From 29 July 2022 activities involving the provision and distribution of pre-paid funeral plans will become fully subject to our regulation, and firms conducting these activities will need to be authorised by us.
- 1.3** We are consulting now on our draft rules and guidance for the funeral plans sector, and to ask if stakeholders agree with the standards we are proposing that firms will need to meet.
- 1.4** In the run-up to legislation being made, Parliament debated both funeral poverty and the varied experiences of consumers in the funeral plans sector. We are therefore particularly mindful of the presence of vulnerable consumers in this market, e.g. due to lower financial resilience or recent bereavement. That forms an important backdrop to our work and our views on how the sector should operate under our regulation.
- 1.5** Our proposed rules are intended to protect consumers that have, or will in future take out, a pre-paid funeral plan product. We want to see an improvement in outcomes for consumers in this sector, with better value products, better sales practices, and better controls in place so consumers can be confident they will receive the funeral they have agreed. Our proposed rules will also set a level playing field for firms – all firms who want to carry on this business after July next year will need to meet the same standards.
- 1.6** As this is a regime for a newly regulated sector, large parts of this consultation paper are concerned with the application of rules formalising basic standards that we expect of all financial services firms, and already apply to other sectors.
- 1.7** Many of the concepts set out in those rules will be recognisable to firms in the sector, because they reflect good business practice, for example dealing with integrity with clients, or disclosure of contract terms. There is also some overlap with the requirements of the Funeral Planning Authority (FPA), the existing industry voluntary regulator. Many well-run firms will already be meeting these standards; or be very close to them. However, we anticipate that for a subset of firms meeting our standards will necessitate a significant change in business practices.
- 1.8** We are also proposing some requirements that are specific to this sector, and the risks it can pose. In designing these we have taken into account the current structure of the industry, which is generally backed by a trust or insurance arrangement.
- 1.9** This consultation paper sets out the full suite of our regulation, for a sector which is not currently regulated by us. We have sought to set out why we have made the choices we have, and in places we have set out possible alternatives in detail to allow respondents to provide us with the richest responses and evidence possible. As a result, in designing

our proposals we have considered a number of key objectives for consumers. A funeral plan sold after regulation takes effect should deliver a funeral without top-up payments being required. We also want provider firms to have adequate arrangements in place to meet the contractual liabilities they have entered into, be that through insurance or trust structures, and consumers should have certainty over which funeral director is contracted to deliver their funeral.

- 1.10** We recognise that existing contracts may have been sold on different terms to those set out in this consultation and our proposals will generally allow these contracts to continue on those terms. But firms will have to meet a range of standards in their dealings with existing customers as set out in this document, and our overarching Principles for Businesses e.g. to treat customers fairly.
- 1.11** In relation to intermediaries, we are highly sceptical that the commission structures which are common in a subset of the industry benefit consumers, and so we propose to prohibit these. For example, we have observed that funeral directors typically receive no or minimal commission, whilst intermediaries that are focused only on selling plans may receive up to £900. We do not think these payments add value for consumers, for example the intermediaries receiving the payments are not shopping around on the customer's behalf. But these payments do increase the cost consumers pay, or the risk that their funeral will not end up fully funded. We are seeking feedback on whether our understanding of commission in this market is right. If not, we have set out alternative ways to regulate the payments so that they are allowed but are fair to the customer.
- 1.12** We are aware that this consultation comes at a challenging time for the sector, with the industry particularly impacted by Covid-19. However, all firms will need to be authorised by 29 July 2022 to be able to continue carrying out activities relating to funeral plan business. We urge firms and other stakeholders to engage with this consultation, as well as the authorisation process where applicable. We will also be reaching out to firms proactively.
- 1.13** From 29 July 2022, the Financial Ombudsman Service (ombudsman service) will become responsible for resolving consumer disputes about funeral plans. This consultation also sets out proposed changes to the compulsory and voluntary jurisdictions of the ombudsman service, and is a joint consultation with the ombudsman service on those changes.

Who this applies to

- 1.14** Who needs to read this document:
- firms that sell or carry out funeral plan contracts for funerals in the UK
 - investment advisers who provide advice on funeral plan contracts
 - insurance firms who provide life insurance policies that back some funeral plans
 - trustees of trusts and discretionary investment managers which manage the assets of trusts that back some funeral plans
 - trade bodies representing firms that carry out or sell funeral plan contracts, including those representing funeral directors
 - groups representing consumer interests

1.15 Who else is affected by this consultation:

- consumers that have a funeral plan, or are thinking of purchasing one

The wider context of this consultation

1.16 Funeral plans are products under which a consumer pre-arranges and pre-pays for their funeral with a provider, generally for a fixed cost. The funeral plan could be sold by a third-party intermediary or directly by the provider firm.

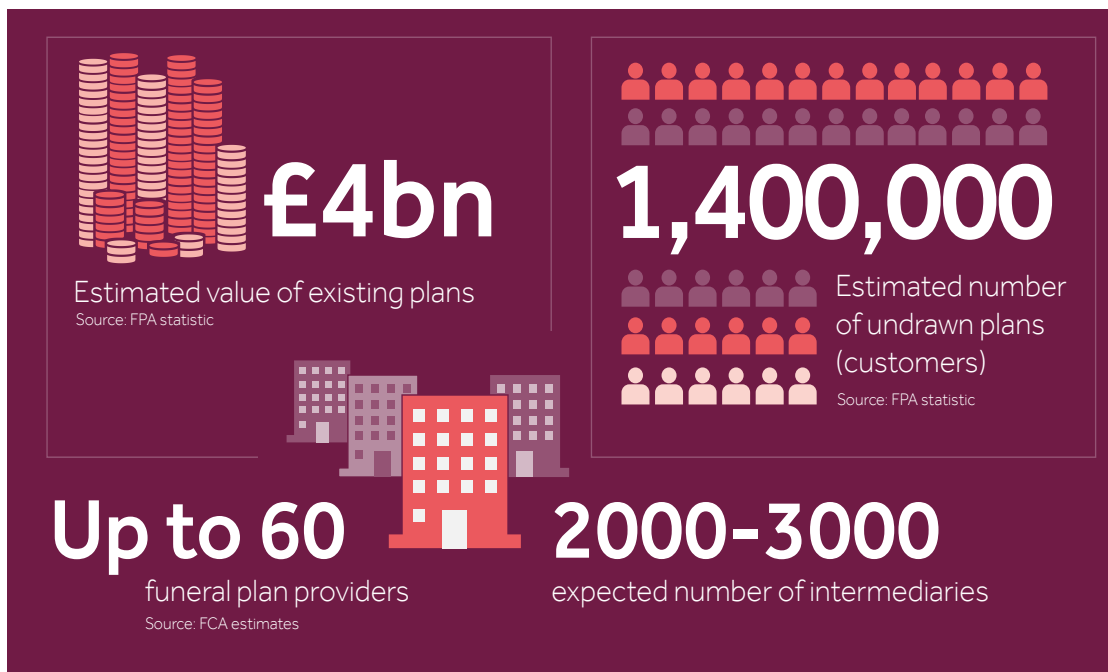
1.17 The main benefit of the product to consumers is to allow them to arrange the details of, and pay for, their funerals in advance, ensuring that any specific requirements are met and that their families are saved unexpected cost and inconvenience at the time of bereavement, which can be a challenging and traumatic time for most people. We recognise there can be psychological and emotional benefits to consumers buying funeral plans and that they can provide important 'peace of mind', as well as potential behavioural biases driven by the challenging context in which consumers access and use these products (eg consumers may focus on a perceived need to put arrangements in place rather than the value of a plan).

1.18 Consumers may also be protected from increases in the price of funerals in the time between buying the plan and their death. Sold well, these can be valuable products that support consumers and their families at a difficult time in their lives.

1.19 We understand that there are 2 different ways in which consumers can 'pre-pay' for their funeral under a funeral plan contract. Consumers can pay:

- A set amount, either as a lump sum or in instalments. The plan provider places the money into a trust or buys a life insurance policy.
- A fixed monthly amount until they die or reach a specified age (usually 90). The provider uses these payments to buy a life insurance policy.

- 1.20** Funeral plans are currently excluded from our regulation if they are either backed by insurance or a trust meeting certain conditions set out in the Regulated Activities Order (RAO). We understand that all current providers of funeral plans structure their plans to rely on the exclusions in the RAO.



- 1.21** The market is currently self-regulated by the FPA, which has a Code of Practice and rules but no statutory powers. Not all funeral plan providers have decided to become members of the FPA.
- 1.22** There has been significant growth in the funeral plans market in the last 2 decades since the decision was taken to broadly exclude funeral plans from the RAO. Members of the FPA (90-95% of the market in terms of existing plans) have over 1.4 million undrawn plans. In 2019, 165,200 new plans were sold.
- 1.23** Following concerns raised in the media and by consumer groups about the conduct and prudential soundness of some pre-paid funeral plan providers, the Treasury consulted in 2019 on the future regulation of this market. In this consultation, the Government stated its objectives for regulation of the sector as follows:
- all pre-paid funeral plan providers to be subject to robust and enforceable conduct standards
 - enhanced oversight of providers' prudential soundness
 - consumers to have access to appropriate dispute resolution mechanisms if things go wrong
- 1.24** The activities that will be regulated in future cover both plan providers ('entering into' and 'carrying out') and third-party firms selling plans (intermediaries which are generally 'arranging' or 'advising').
- 1.25** The Treasury has been clear that it intends for the FCA to regulate funeral plan providers both for new plans they sell after regulation comes into force and existing plans entered into prior to our regulation, in compliance with the existing exclusions in the RAO. It is partly for this reason that The Treasury has created the new regulated activity of carrying

out funeral plan contracts as provider. The Treasury's intention was that we should have regulatory oversight of existing funeral plan contracts as well as new plans.

- 1.26** The Treasury's consultation, and our own information gathering, have identified a number of potential harms to consumers arising from current practices employed by some firms in this market:
- a.** Plans which do not meet consumers' needs or expectations, particularly plans paid by instalment which do not guarantee to provide a funeral service
 - b.** The use of high-pressure sales tactics by some firms. This includes cold calling of potentially vulnerable consumers, which can result in consumers taking plans which are not suitable for their needs
 - c.** Consumers paying high prices in relation to product benefits driven by high rates of commission and fees
 - d.** Poor governance and controls within firms, including oversight of intermediaries and potential conflicts of interest where an intermediary gets a high commission
 - e.** Plans going unclaimed because the consumer's family do not know about them. The time-critical nature of funeral provision increases the risk of harm, as families cannot use plans if they discover them at a later date
 - f.** Poor financial management of trusts, meaning that there may not be sufficient funds available to cover funeral liabilities, with unclear and potentially poor outcomes for consumers if any firms fail
- 1.27** Our proposed rules will set standards that ensure no firm operating as an FCA authorised firm is permitted to operate in a way that causes these harms. Once finalised, the rules will set a level playing field for all firms in the sector and give consumers increased assurance that the products they buy will meet their needs.

What we want to change

Products which meet consumer needs

- 1.28** Consumers buy funeral plans to arrange their funeral services at a fair price. They do not expect to see investment returns or other financial benefits from the monies they pay, but they do need products which deliver services in line with their expectations. We are introducing rules to ban the sale of products which do not provide for funeral services in all circumstances on the consumers death.

Plans must be sold fairly

- 1.29** Under our proposed rules firms must only offer products which are consistent with consumer demands and needs. We propose to ban cold-calling, enhance pre-sale disclosure and introduce new standards on advertising.

Products must represent fair value

- 1.30** The price of a plan must have a fair relationship to the benefits the plan provides. We propose to ban commission payments to intermediaries and require providers to ensure that remuneration they receive from the trust or insurance provider does not negatively affect the product's value. In addition, fees charged outside of the headline price of the plan must be a genuine reflection of the costs incurred by the firm, and not be used to drive profits.

Improving governance standards and oversight

1.31 Firms must have proper controls in place to manage risks. In addition having one or several named, accountable points of contact has proven to be one of the most effective ways of supervising firms. We propose to apply our Senior Managers and Certification regime, and systems and controls rules on conflicts, risk management and controls over outsourcing, albeit in a proportionate manner to reflect that many firms in this sector will be relatively small companies. For many firms, we may only approve one senior individual.

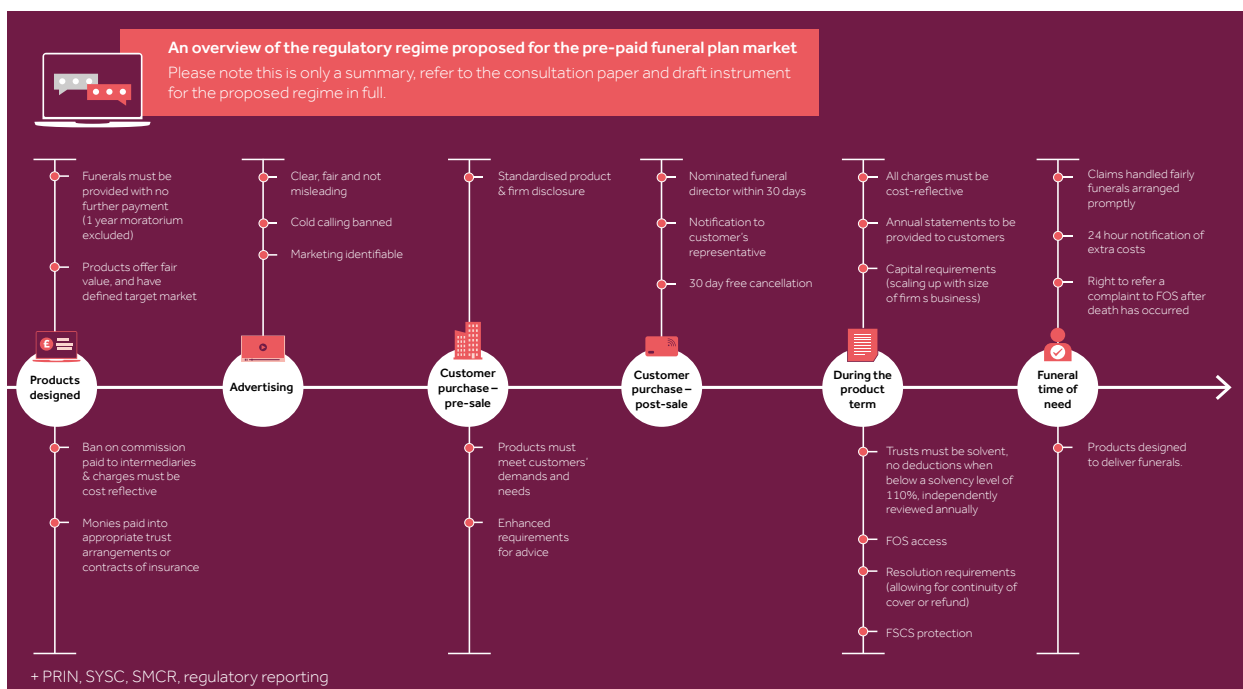
Ensuring services can be delivered

1.32 A plan provider can only honour its commitments if it has access to sufficient funds to deliver the contracted funerals. To ensure the commitment to the consumer can generally be honoured regardless of the financial health of the provider, we want to ensure firms have appropriate risk transfer arrangements in place to ensure delivery of services in line with consumer expectations. We propose that firms should continue to back plans with adequate trust or insurance arrangements, and that these need to be adequate to ensure delivery of services in line with consumer expectations. We also expect to see firms monitor pricing to ensure products are economically viable, and require firms to hold resources (capital) to protect against future risks.

Backstops in place should things go wrong

1.33 We want to ensure that consumers are protected in future should a firm fail. We are not aware of any firm failures in this market to date, but it is prudent to plan for such events in advance. We propose that firms must have arrangements in place to provide for continuity or reimbursement in the event of insolvency, and that consumers have access to the Financial Services Compensation Scheme ('FSCS') from day 1 of regulation.

1.34 In addition, consumers will also have access to the ombudsman service for complaints. The effect of the Treasury's legislation is that this will include those complaints relating to acts or omissions that took place before our regulation, where the relevant provider was a member of the FPA at the time the act or omission occurred.



Other proposals

- 1.35** We are consulting on a number of other proposals to ensure firms meet the basic standards that are in place for other FCA-regulated firms. These include:
- high-level requirements (see Chapter 3)
 - other conduct standards, including disclosure to next of kin and annual statements
 - data reporting
 - fees
- 1.36** We propose that the changes set out in this CP will apply from 29 July 2022 when regulation of funeral plans transfers to the FCA, unless the relevant section specifies otherwise. This means that firms which are authorised by us to undertake regulated funeral plan activity will need to be ready to comply from day 1 of our regulation.

Applying the rules to contracts entered into before our regulation

- 1.37** Our general approach proposed in this consultation is not to impose requirements on providers for their existing plans, as this would require them to amend existing contractual arrangements. However, in certain respects we do propose that our rules apply in the same way to existing plans as to new plans. We have sought to highlight in this consultation paper where we propose that our rules would apply in relation to existing plans as well as new plans sold.
- 1.38** We anticipate that many firms in the sector will be able to adjust their business to meet regulatory standards, and continue administering existing contracts. However, we also anticipate that there will be a small number of firms that will not be able to, or will choose not to, evolve to a regulatory environment. These firms will not be able to continue to administer existing contracts and will be required to cease all activities in relation to funeral plans.

Outcomes we are seeking

- 1.39** Through our proposed regulatory approach, we want to see a market which works well for consumers, including:
- products which offer fair value, meet consumer needs and are sold fairly
 - well run firms with high conduct standards and sufficient resources and risk transfer arrangements to ensure ongoing delivery of funeral services
 - consumers have time and all the necessary information to make better informed decisions when choosing between different products and whether a funeral plan is right for them at all
 - protections in place to ensure the fair treatment of consumers, many of whom are likely to be vulnerable
 - clear, proportionate and supervisable standards that firms in the sector must meet

Measuring success

- 1.40** We will put in place strong authorisation, supervisory and enforcement processes to ensure firms meet the standards set out in our final rules. Our proposed reporting requirements will allow us to collect data from firms to assess changes in the market over time and identify and take appropriate action on any potential poor conduct or other sector risks.
- 1.41** We propose to evaluate our regime in 2026, when the industry has had time to adapt to these changes. We will examine evidence on firms' adaptation to the new regime, outcomes for consumers and other relevant factors to determine whether the regime is delivering good outcomes.
- 1.42** We would expect to see our regulation result in benefits to consumers such as products being offered which are better matched to individual customers and their needs, an improvement in the quality of available plans, and lower prices. We discuss benefits to consumers in more detail in Annex 1: Cost Benefit Analysis (CBA).

Next steps

- 1.43** We want your feedback on our proposed rules and other issues discussed in this CP. Please send your answers to the questions in this consultation paper (CP) by Tuesday 13 April using one of the methods in the 'How to respond' section on page 2.
- 1.44** We understand that Government is considering further legislative changes for funeral plans to ensure that the FSCS would be effective for consumers if it covered funeral plans. We will consult later in 2021 on any further rule changes required should there be further legislative change affecting funeral plans.
- 1.45** In Chapter 7 we set out options for the repayment of funeral plan monies to consumers in the event of firm failure. We would welcome respondent's views on this, and we will consult on any additional resolution rules that we propose to make through a subsequent consultation paper. We will separately consider the implications for the amount of compensation payable by FSCS.
- 1.46** We recover our costs from the firms we regulate. Funeral plans firms will pay one-off application fees when they apply for authorisation and periodic (annual) fees from 2022/23. We will consult on our fees proposals as part of our annual consultation on FCA fee-rates, which is due for publication early in April. We will provide feedback on the responses received in the fees policy statement, which we will publish at the beginning of July
- 1.47** Firms should review Chapter 12 for details of the application process, and our dedicated webpage at <https://www.fca.org.uk/firms/regulating-funeral-plans>

2 The wider context

The harm we are trying to reduce/prevent

- 2.1** When the market is functioning well, funeral plan firms can offer useful services for consumers. Funeral plans can help consumers organise their funeral arrangements ahead of time, which brings comfort to themselves and their families and helps to protect against inflation in the cost of funeral services.
- 2.2** However, the Treasury's Call for Evidence (June 2018) found significant consumer harm in the market, including the mis-selling of products, poor disclosure and high upfront costs. Existing consumer research and our own evidence-gathering supported these findings, and found further potential harms around longer-term instalment plans and the risk of funeral plans failing to deliver the consumer's funeral. We set out the key harms in this sector below.
- 2.3** While we do not believe that these behaviours are common to all firms in the sector, under our regulation we want to see all firms meet standards which result in good outcomes for consumers.
- 2.4** None of the descriptions of current market practices, nor proposals represent a commentary on the operation of the existing exclusions in Article 60 of the Regulated Activities Order.

Firms using high-pressure sales tactics and misleading information, resulting in consumers buying plans which are not suitable for their needs

- 2.5** In common with some other financial services sectors, we have found evidence of misleading information and high-pressure sales tactics, which result in consumers buying plans which are not suitable for their needs.
- 2.6** Poor sales practices, driven by skewed incentives such as commission payments, are a key driver behind consumer harm in the funeral plans market. The Treasury's Call for Evidence found that pressurised sales tactics, such as cold calling, meant that consumers often did not have enough time to fully assess whether the plan was right for them. A Fairer Finance survey in 2017 found that 30% of consumers felt pushed into taking out a plan, and 40% of consumers marketed to had been contacted by phone.
- 2.7** We have also seen examples of cold calling, emotional pressure being put on vulnerable consumers, and lead generation websites posing as price comparison services to collect consumers details, which they then use to drive telephone-based sales.
- 2.8** Our review of existing product information given to consumers suggests that it is often heavily focused on the benefits that plans provide, and does not give a balanced picture of plan limitations, costs (eg of the increased cost of paying by instalment) or risks (eg that plans may not provide the funeral service).

Consumers are paying higher prices for plans than they should

- 2.9** The Treasury's Call for Evidence found concerns around the high levels of commission in the market. This often incentivised third-party distributors to sell plans with the highest commission, rather than those that best met the consumer's needs. Data from firms using commission-based distribution arrangements shows commission ranges from £90 to £900 (usually on a sliding scale relative to the price of the plan), with an average of £550. We know from other sectors that high upfront commission can incentivise poor practice by distributors.
- 2.10** We have seen evidence of high commission driving up the price that the customer pays, relative to the funeral service benefits the plan provides. In particular it is common practice for providers to pay high commissions to intermediaries operating solely as a salesforce who are providing little or no benefit to consumers. This leads to consumers being charged significantly higher prices than they would otherwise be.
- 2.11** Plan providers may also receive payments from the trust or insurance provider. These payments are generally made up-front. We have not seen any instances of consumers being informed of what proportion of the price of their funeral plan constitutes the revenue of the provider, compared to that kept in the trust or insurance for the ultimate cost of the funeral.
- 2.12** There are also often high fees for paying through instalments which, over time, mean that consumers are paying a much higher cost than the value of their funeral. For example, paying for a plan over 60 months can add roughly 15-26% to the overall cost.

Poor governance and controls within firms

- 2.13** We have seen examples of firms lacking appropriate senior management oversight and having weak internal controls. In particular, having limited oversight of third-party intermediaries selling their plans, and lacking well thought through arrangements for dealing with a wind-down of their business should they choose, or be forced, to exit the market.
- 2.14** Insufficient oversight of intermediaries could produce additional conduct risks and drive poor outcomes for consumers, particularly where there are financial incentives to reward firms hitting sales targets.

Plans are often not redeemed as the consumer's family does not know about them

- 2.15** Respondents to the Treasury's Call for Evidence were concerned around the growing number of 'orphan plans'. These occur when consumers do not tell family members or representatives about the plan or, with longer-term instalment plans, forget they had bought the plan. If the consumer's family are unaware of the plan, they are likely to pay for a funeral when their loved one dies, instead of drawing on the plan, usually at a higher price.
- 2.16** It is not possible to determine the scale of this problem, because firms cannot provide comprehensive data on active plans where the consumer has died. However, our data shows that 4-6% of active plans are for consumers who are (or would be) over 90 years old. The time-critical nature of funeral provision increases the risk of harm because families who discover a plan months or years after the consumer's death cannot benefit from it.

2.17 If providers are made aware that a funeral has already taken place, some refund the cost of the plan less a cancellation fee. While this arrangement is preferable to families receiving no payment, funeral cost inflation means that this sum will be unlikely to cover the cost of the funeral that has already been bought by the deceased's next of kin. The cancellation fee will further reduce the amount returned to the family. It also leaves families at risk of having to raise funding at short notice when that is not what the plan holder wanted.

Some plans in the market do not deliver in line with consumers' needs or expectations

2.18 Some plans have payment term lengths of 25 or 30 years. If the consumer dies during this time, many firms will not provide the funeral unless the consumer's estate pays the remaining balance in a lump-sum. Data provided to us shows that approximately 34% of plans sold in 2018 carry this risk, and this proportion is increasing. Longer-term products are relatively new, so most consumers are still alive and making payments. However, firms have told us that 20-32% of plans involve an early death and no delivery of a funeral without further payment.

2.19 Where the consumer's estate is unable or unwilling to pay the outstanding balance, the consumer's payments are typically returned. The firms typically deduct a cancellation fee. In such instances, the consumer has made a payment, or series of payments, they have not benefitted from any investment gains on this money, and when they die they not only do they not get a funeral, but the cancellation fee means their next of kin gets back less than they paid in. We do not think this is a good value product for consumers, who would have likely been better off had they had, for example, simply saved the payments in a savings account.

2.20 Poor financial management of firms may mean that sufficient funds may not be available to cover funeral liabilities, and consumer outcomes in these circumstances are unclear. The Treasury's Call for Evidence found that firms providing trust-backed plans offered little publicly-available information about the financial health of the trust, its investment strategy and any ongoing withdrawals from the trust (for example, administration fees).

2.21 High levels of commission appear to be the primary driver of high prices. We have also seen evidence that this can result in trusts being systematically underfunded.

2.22 Some providers could withdraw ongoing administration fees from the trust, resulting in lower total trust assets being available to pay for consumers funerals.

2.23 There are also few arrangements in place for what would happen if a provider had to exit the market, perhaps due to its financial failure. In some cases, firms were not including provisions in their trust deed to prescribe how the trust would be administered in these circumstances. Some firms also had insufficient assets to cover the administration costs of arranging funerals and the cost of funerals themselves. These factors put consumers at risk of losing money or not receiving their funeral service as expected.

Scope of future FCA regulation

2.24 The Treasury have confirmed that funeral plan providers will need to be FCA authorised if they are carrying out either of 2 regulated activities:

- Entering into funeral plan contracts as provider – this refers to providers entering into funeral plan contracts with consumers.
- Carrying out (or 'administering') funeral plan contracts as provider – this broadly refers to the administration and performance of obligations under the contract, eg securing the delivery of funeral services. This regulated activity will apply to the carrying out of both plans sold after FCA regulation takes effect on 29 July 2022 and plans entered into before that date.

2.25 Legislation defines a funeral plan provider as the person to whom one or more payments are made under the contract. This definition will be extended to include a person who has assumed the undertaking to provide, or secure the provision of, a funeral as a result of the novation, assignment or transfer by operation of law of an existing funeral plan contract.

2.26 This means that where books of funeral plans are sold, the entity that buys them will be carrying out those funeral plan contracts as provider, and they will need to be authorised. Where our rules are applied to firms carrying out funeral plan contracts as provider, this also means that they will generally apply to the administration of plans which the firm has both entered into and acquired.

2.27 The effect of the Treasury's removal of the existing exclusions for trust and insurance-backed plans is that other specified activities will also become regulated when carried on in relation to funeral plan contracts. We think the regulated activities which are most likely to be carried on in relation to funeral plan contracts ('funeral plan distribution activities') are:

21	Dealing in investments as agent	Rights under a funeral plan contract are 'relevant investments'. As such, dealing (buying, selling, subscribing for or underwriting securities/ contractually based investments) will be relevant to some firms.
25(1)	Arranging (bringing about) deals in investments	Rights under a funeral plan contract are 'relevant investments'. As such, arranging (bringing about) deals in funeral plan contracts will be relevant to some firms.
25(2)	Making arrangements with a view to transactions in investments	Rights under a funeral plan contract are 'relevant investments'. As such, making arrangements with a view to transactions in funeral plan contracts will be relevant to some firms.
53(1)	Advising on investments	Rights under a funeral plan contract are 'relevant investments'. As such, advising on funeral plan contracts (to the extent that such activities exist) will be relevant to some firms.

2.28 Intermediaries who are involved in distributing funeral plans to customers are likely to be conducting one or more of these activities. This includes funeral directors and others who sell funeral plans directly (such as financial advisers and will writers),

but it may also include firms whose role is more limited (such as lead generators). Intermediaries will need to consider which regulated activities they might be conducting and ensure that they do so lawfully by ensuring they have the correct permission from us.

- 2.29** Firms should be aware of the Treasury's view that the activities of lead generators are likely to meet the definition of article 25(2) 'making arrangements' (see 3.5 & 3.6 of the Treasury's Response to Consultation).
- 2.30** While the RAO gives certain exclusions from the regulated arranging activities (which are most likely to be relevant to intermediaries), firms should be aware that these exclusions contain various conditions. A firm is unlikely to be excluded from regulation because it views itself as only making 'introductions' to or for funeral plan providers. Guidance on the application of the regulated arranging activities to 'introducing' can be found in PERG 8.33.
- 2.31** Intermediaries which do not require authorisation should also be aware that some of our rules may still affect them. For example, our proposed ban on intermediary commission will generally prevent authorised providers from paying commission to firms engaged in funeral plan distribution.
- 2.32** As well as extending the regulated activity perimeter, the Treasury's legislation has the effect of widening the perimeter for financial promotions. This means that firms advertising funeral plans or related services are highly likely to be involved in communication of financial promotions. Financial promotions can only be lawfully communicated if (i) they are communicated by an authorised person; (ii) the content is approved by an authorised person; or (iii) a relevant exemption applies.
- 2.33** The table above is not exhaustive of all the regulated activities which may be relevant to funeral plan contracts. For example, the regulated activity of managing investments will also be expanded to include the scenario in which the managed assets consist of rights under funeral plan contracts. However, we believe that the activities listed above are likely to be most relevant to the activities of firms currently operating in the funeral plan market.

Exclusions and limits of our regulation

- 2.34** FCA regulation will not apply directly to the activities of funeral directors in providing the eventual funeral service. Therefore, funeral directors will not necessarily be carrying on regulated activity, unless they are involved in distributing funeral plan contracts. Funeral directors may also need to consider how regulation affects any marketing of funeral plans which they undertake. However, regulation does apply to funeral plan providers, who are responsible for ensuring that services are delivered in line with the plan.
- 2.35** The legislation will include exclusions for the following plans, which are those:
- entered into by local authorities
 - in which the customer and plan provider intend or expect the funeral to occur within one month of sale
 - which only provide for funerals outside the UK

- 2.36** Members of the Designated Professional Bodies will be able to carry out funeral plan distribution activities without FCA authorisation, if they meet the requirements of section 327 of the Financial Services and Markets Act 2000 (FSMA). We understand that that some members of Designated Professional Bodies are currently selling funeral plans, such as solicitors.
- 2.37** We know that some bodies help consumers to plan for their funerals on a 'not-for-profit' basis (eg providers of religious services). These organisations need to consider whether the arrangements which they offer constitute funeral plan contracts for the purposes of the RAO, in particular if they are engaged in regulated funeral plan activity within scope of Article 59 of the RAO by way of business. If they do, then the relevant body will need to consider whether it needs to apply for authorisation. For more information refer to the PERG annex of the legal instrument attached to this document, and PERG 2.3 (by way of business).

Our authorisations, supervision and enforcement regime

- 2.38** All funeral plan providers that want to continue to conduct regulated funeral plan activities will need to apply for authorisation, as will any intermediaries selling funeral plans who do not become appointed representatives (discussed further in Chapters 9 and 12). Firms that are not authorised or exempt from 29 July 2022 will not be permitted to carry out regulated activities for funeral plans. This includes administering funeral plans sold before our regulation took effect. Firms which are not appropriately authorised or exempt from 29 July 2022 will need to stop their funeral plan activities entirely.
- 2.39** For an application for authorisation to be successful, a firm will need to demonstrate that it satisfies, and will continue to satisfy, the FCA's Threshold Conditions (COND). These Threshold Conditions (TCs) are the minimum standards a firm must meet to be authorised by the FCA.
- 2.40** Firms can start to apply to the FCA for authorisation from September 2021 (also referred to as 'opening of the gateway'). Firms should ensure that they have started to prepare an application in good time before this date so they can submit it as soon as possible after the gateway opens. Firms can contact us with any queries on this process at funeralplans@fca.org.uk or via our Supervision Hub at firm.queries@fca.org.uk.
- 2.41** Our aim is to determine applications as soon as possible before our regulation takes effect. However, if applications are not submitted early, we may not have enough time to analyse all the information in the application, and any extra information needed, to be able to approve the firm ready for the start of our regulation.
- 2.42** We expect funeral plan firms that are authorised to comply with our rules from the start date of our regulation on 29 July 2022. We will supervise firms from this date to ensure they are complying with our rules. Where necessary we will take appropriate supervisory and enforcement action.
- 2.43** We want to be as clear as possible with firms about what to expect from interactions with us. Through our supervision function, we maintain continued oversight of firms and of individuals controlling firms to reduce actual and potential harm to consumers and markets. The core elements of our supervisory approach are set out in our Supervision Manual (SUP).

- 2.44** As we regulate a broad range of sectors, we group firms into portfolios of firms that share a common business model. We will create a portfolio for funeral plan firms and, focus on firms posing the greatest harm. Once we have done more work with the portfolio, we will continue to communicate our expectations, priorities and examples of good or poor practice to the sector.
- 2.45** Underpinning our work are some key supervisory principles and we seek to ensure our approach is proportionate and risk based. To this end, we will need to make judgments about firms' business models, product strategy and how firm's run their businesses, this enables us to identify and intervene earlier to prevent problems crystallising.
- 2.46** We discuss our approach to supervision and enforcement in more detail in Chapter 11.

Equality and diversity considerations

- 2.47** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper.
- 2.48** Many consumers buying funeral plans or engaging with funeral plan firms will be in vulnerable circumstances, eg due to lower financial resilience or recent bereavement. Notwithstanding this, we do not consider that the proposals have a significantly different impact on any of the groups with protected characteristics under the Equality Act 2010 compared with consumers overall. We expect that all consumers, including those belonging to groups with protected characteristics, will benefit from our proposed rules, but some groups (eg older consumers) can expect a greater degree of benefit as a result of the general demographics of the consumers buying these products.
- 2.49** However, we will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when making the final rules.

Q1: Do you agree that our proposed rules will not have a material impact on groups with protected characteristics?

3 High level standards

- 3.1** The FCA Handbook sets out rules and other provisions made under powers given to us by the Financial Services and Markets Act 2000 (FSMA). The Handbook is divided into sections which in this consultation we refer to with acronyms (eg 'PRIN', 'SYSC', 'COND') For more information on the Handbook, please see our [Handbook Readers Guide](#).
- 3.2** The Handbook includes high-level standards that apply to all FCA regulated firms. We propose to apply these standards to funeral plan firms (both providers and intermediaries) in addition to the specific rules set out in later chapters. They will provide funeral plan firms with a clear statement of the standards of behaviour we expect and will help address the harms identified in the market. This chapter provides more information on these standards.
- 3.3** The key high-level standards which are proposed to apply to funeral plan firms are:
- Principles for Businesses (PRIN). These are a general statement of the fundamental obligations that firms must comply with at all times.
 - Threshold Conditions. These are the minimum conditions for which we are responsible, which a firm is required to satisfy, and continue to satisfy, to be given and to retain its permissions. We provide guidance on these conditions in COND.
 - Systems and Controls (SYSC). This section sets out the organisational systems, controls and compliance arrangements that firms should have in place, and standards for how they should treat whistleblowers.
 - General Provisions (GEN). This section sets out some of the standards that apply to all firms in their interactions with us, including statutory disclosure statements and use of the FCA name or logo.

Principles for Businesses (PRIN)

- 3.4** We propose to apply PRIN to all funeral plan firms.
- 3.5** PRIN sets out the fundamental obligations that FCA-regulated firms must meet at all times. As well as setting out our overarching expectations for firms, the Principles underpin other, more detailed rules and guidance. If a firm breaches the Principles they become liable to disciplinary sanctions.
- 3.6** A number of the Principles impose requirements on firms in relation to their customers. For regulated funeral plan activities, the definition of customer in PRIN refers to both the customer under a funeral plan contract and the covered individual, whose funeral will be provided.

No.	Principle Heading	Principle Content
1	Integrity	A firm must conduct its business with integrity
2	Skill, care and diligence	A firm must conduct its business with due skill, care and diligence

No.	Principle Heading	Principle Content
3	Management and control	A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems
4	Financial prudence	A firm must maintain adequate financial resources
5	Market conduct	A firm must observe proper standards of market conduct
6	Consumers' interests	A firm must pay due regard to the interests of its consumers and treat them fairly
7	Communications with clients	A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading
8	Conflicts of interest	A firm must manage its conflicts of interest fairly, both between itself and its consumers and between a consumer and another client
9	Consumers: relationships of trust	A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any consumer who is entitled to rely upon its judgement
10	Clients' assets	A firm must arrange adequate protection for clients' assets when it is responsible for them
11	Relations with regulators	A firm must deal with its regulators in an open and cooperative way, and must disclose to the FCA appropriately anything relating to the firm

Vulnerable consumers

3.7 Many consumers buying funeral plans or engaging with funeral plan firms will be in vulnerable circumstances, eg due to low financial resilience or recent bereavement. This means that our guidance on the fair treatment of vulnerable consumers will be particularly relevant to funeral plan firms. Firms should consider the needs of vulnerable consumers and how to respond to them to deliver outcomes consistent with our Principles for Businesses.

Threshold Conditions

3.8 As set out in FSMA, firms must comply with Threshold Conditions to be authorised. To help firms understand what is required firms should refer to COND. We are not proposing to make any changes to COND specifically for funeral plan firms, other than to refer to the good repute of management and key staff within firms.

3.9 Funeral plan firms should refer to this guide to understand the impact of the Threshold Conditions in more detail. As these are set out in FSMA we are not consulting on the Threshold Conditions themselves, but we welcome any comments on the application of COND to funeral plan firms.

Systems and controls

- 3.10** We propose to apply most of our rules and guidance about systems and controls to all funeral plan providers and intermediaries. These are set out in SYSC and explain how funeral plan providers and intermediaries should organise and manage their affairs. We are also proposing that the guidance in 'Financial Crime: a guide for firms' should apply to all funeral plan providers.
- 3.11** The rules and guidance in SYSC expand on Principle 3: 'A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems'. They describe what we will expect from funeral plan providers and intermediaries in order to comply with Principle 3. Those in charge of the firm should take responsibility for how it carries on its business, including acting in a way that enables us to monitor its business properly and that it conducts its affairs responsibly.
- 3.12** The table below provides a summary of the key rules that will apply to funeral plan providers and intermediaries. It is not a comprehensive list and providers should familiarise themselves with the detail of SYSC and what it requires.

Sourcebook chapter	Key provision and references
SYSC 4 General organisational requirements	A firm must have robust governance arrangements. (SYSC 4.1.1R) The senior personnel of a firm should be of sufficiently good repute and sufficiently experienced to ensure the sound and prudent management of the firm. (SYSC 4.2.1R, SYSC 4.2.1AG) A firm must allocate responsibility for ensuring that the firm complies with the regulatory system to those who direct the business. (SYSC 4.3.1R)
SYSC 5 Employees, agents and other relevant persons	A firm must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them. (SYSC 5.1.1R) A management company should ensure that the performance of multiple functions by its relevant persons does not and is not likely to prevent those persons from discharging any particular functions soundly, honestly and professionally. (SYSC 5.1.6R, SYSC 5.1.7AG)
SYSC 6 Compliance, internal audit and financial crime	A firm must have policies and procedures sufficient to ensure compliance of the firm with the regulatory system and to counter the risk that the firm might be used to further financial crime. (SYSC 6.1.1R)
SYSC 7 Risk assessment	A firm should establish, implement and maintain adequate risk management policies and procedures, including effective procedures for risk assessment, which identifies the risks relating to the firm's activities, processes and system, and where appropriate, set the level of risk tolerated by the firm. (SYSC 7.1.2R, SYSC 7.1.2AG)
SYSC 8 Outsourcing	A firm is responsible for the compliance of its outsourced operations. (SYSC 8.1.6R)
SYSC 9 Record-keeping	A firm must keep orderly records of its business to enable the FCA to monitor the firm's compliance. (SYSC 9.1.1R)

Sourcebook chapter	Key provision and references
SYSC 10 Conflicts of interest	A firm must take appropriate steps to identify and to prevent or manage conflicts of interest between the firm and a client, or between two clients. (SYSC 10.1.3R) A firm must have arrangements to prevent these conflicts of interest from adversely affecting the interest of its clients. (SYSC 10.1.7R) If the preventative arrangements are not sufficient to manage the risks of damage, the firm must disclose the conflicts of interest to the client before undertaking business for them. (SYSC 10.1.8R)
SYSC 18 Whistleblowing	The FCA would regard as a serious matter any evidence that a firm had acted to the detriment of a whistle-blower. (SYSC 18.3.9G)
SYSC 19	A firm must not be remunerated in a way that conflicts with its duty to comply with the customer's best interests rule (SYSC 19F.3.2R). This is discussed further in chapter 5.
SYSC 28A	A firm must ensure that all the persons in its management structure and any staff directly involved in regulated funeral plan activities are of good repute (SYSC 28A.2.1R).

3.13 The senior management of a funeral plan provider must ensure their staff are able to do their jobs competently. Our proposed Training and Competence sourcebook (TC) rules require firms to assess this competence annually, and for employees to undertake at least 15 hours of training and development a year. Our proposed rules are not prescriptive about the nature of this training, and it can include both structured and unstructured learning. However, the requirements do apply broadly to all employees involved in, or managing, funeral plan activities. This includes appointed representatives of firms we directly authorise. We discuss appointed representatives in Chapter 9.

3.14 Providers will also be required to identify and prevent conflicts between internal and external stakeholders, and to manage them properly to reduce the consumer harm these cause.

3.15 We do not expect a small funeral plan provider dealing with a low number of consumers to have the same systems and controls as a large provider. We do expect the same outcome regardless of firm size. As SYSC 4 sets out, providers must have internal control mechanisms to ensure they implement decisions taken and procedures established at the firm, and the nature and range of the services and activities undertaken in the course of that business.

General Provisions

3.16 We propose to apply our General Provisions (GEN) to funeral plan providers and intermediaries. GEN contains rules covering the administrative duties that apply to the firms we regulate. The intention of these rules is to make sure consumers are not misled, that all firms operate on a level playing field and that firms are transparent about their regulatory status.

3.17 GEN contains:

- the ban on firms claiming or implying that we have endorsed their business
- steps firms should take in situations when they cannot comply with our rules in an emergency

- guidance on how to interpret our Handbook of rules and guidance
- rules on how firms authorised by us must describe their regulatory status: 'status disclosure'
- restrictions on using our name and our logo
- the ban on taking out indemnity insurance against the risk of having to pay financial penalties
- the ban on firms charging a consumer more than a basic rate to call its telephone line where it has entered into a contract with the consumer

3.18 Please note this is not a complete list and we expect funeral plan providers and intermediaries to familiarise themselves with GEN more broadly.

Q2: Do you agree with our proposal for applying high-level standards to funeral plan firms?

4 Trust and insurance risk transfers and prudential requirements

- 4.1** In this chapter, we set out our proposals for the trust and insurance related arrangements that must be put in place by funeral plan providers, restrictions on handling of monies paid by consumers for funeral services, and our prudential requirements for funeral plan firms. These rules will be set out in our Funeral Plan: Conduct of Business sourcebook (FPCOB).
- 4.2** Through these rules we are seeking to ensure that funeral plan providers are able to deliver the funeral services sold to consumers on an ongoing basis. This will affect how much funding would be available in case of a firm failure. This is explored further in Chapter 7.
- 4.3** These rules build upon Principle 4, 'A firm must maintain adequate financial resources'.
- 4.4** The main harms and risks that these rules are intended to address are:
- The risk that funds are not available to provide for funeral services due to holding insufficient monies on trust or being available through an insurance contract
 - Trusts being poorly managed with insufficient independent oversight
 - Plan providers having insufficient financial resources to be able to:
 - wind down their operations and/or transfer their back books (their previously sold plans) to another firm without significant market disruption (currently FPA members have an agreement to work together if a member becomes insolvent to achieve this)
 - pay redress if complaints are made and upheld
 - return money if a consumer wants to cancel their plan
- 4.5** We have designed these rules in a way that allows for the continuation of existing business models, albeit on an enhanced basis (explored further under Plan Governance below). Our product structure rules keep, and build on, the structures which form the basis of existing products. This means that funeral plan providers can maintain trust or life insurance arrangements to back the business they have written.
- 4.6** Where appropriate, we are proposing additional requirements on how trusts or life insurance arrangements should work. These are intended to help deliver our ultimate objective of ensuring that firms have enough funds to honour the contracts they have written.
- 4.7** In addition, our prudential standards seek to ensure that the funeral plan provider has adequate financial resources for contingencies, such as operational and compliance failures and to pay redress. They are also intended to reduce the possibility of a shortfall in available funds for the delivery of funeral services in line with consumers' expectations. They provide a buffer against disruption if the firm ceases to trade.
- 4.8** Our view is that prudential standards also help to drive the right kind of behaviour and ensure that firms have adequate resources to put things right when they go wrong.

Application to existing plans

- 4.9** For new plans sold after our regulation takes effect the entirety of this chapter should be considered.
- 4.10** For plans sold prior to this date, firms are permitted to keep existing contractual arrangements in place.
- 4.11** However, firms must comply with certain standards in this chapter in relation to all plans, including those sold before our regulation takes effect, eg around maintaining and reporting on trust solvency, and holding adequate prudential resources.

Plan governance

- 4.12** At present funeral plan contracts are excluded from regulation where sums paid by a consumer under the contract are applied towards a whole of life insurance contract on the consumer's life, or held in a trust which meets certain conditions. Any funeral plan contract in which sums are managed in another way (eg retained by the provider) would not currently meet these exclusions and would already be subject to our regulation.
- 4.13** The effect of this exclusion has been that, to date, all funeral plan providers adopt one of these two business models, which provide a degree of protection for consumers by ensuring transfer of risk to either the trust or the insurer. Trusts can also have the secondary benefit of producing investment returns which can cover unexpected costs.
- 4.14** We consider that requiring firms to back plans with a trust or insurance arrangement helps meet our objective of ensuring firms have adequate risk transfer mechanisms in place to protect consumers. It safeguards monies paid for funeral services and allows for ongoing provision of funeral services as they fall due in line with consumer needs and expectations.
- 4.15** We are not aware of other current product structures in the market, or any demand for new structures. We see potentially significant risks associated with alternatives, for example, the risk that monies won't be properly protected. There is also the potential for significant market disruption if the market had to transition to a new structure, which may create additional risks to consumers.
- 4.16** We propose to require firms to back funeral plans with an adequate trust or insurance arrangement for the primary purpose of providing funeral services and not for other primary purposes, such as generating investment returns. Trust and insurance arrangements must be sufficiently well-funded for the purposes of providing funerals as sold to consumers.
- 4.17** For each funeral plan contract entered into firms must either purchase a life insurance policy that is sufficient for the purpose of providing the agreed funeral, or arrange for sums sufficient for the provision of the agreed funeral to be held on trust using actuarial assumptions. This is intended to mitigate the risk that firms only protect funds which are insufficient for the purposes of providing the agreed funeral.

4.18 In addition, firms must have systems and controls in place to ensure that they are able to meet our standards to have sufficient funds available to cover the agreed funeral services. This includes systems and controls concerning the adequacy of trust or insurance arrangements, and whether the firm's pricing is likely to lead to risks of insufficient funding.

Q3: Do you agree with our proposal to require firms to back funeral plan contracts with a trust or insurance arrangement going forward?

Safeguarding

- 4.19** We propose a number of requirements around safeguarding to ensure monies are held for the purposes of providing consumers with funeral services, and help protect consumers from the risks of disorderly wind-down or fraudulent activity.
- 4.20** When monies are paid to a funeral plan provider we will expect them to act as soon as possible to either place those monies into the trust or apply them towards an insurance contract. Similarly, when the consumer dies, the firm must provide a death certificate to the trustee or insurer, and monies from the trust or insurance contract must be paid towards provision of the funeral or to the relevant funeral director as soon as practicable. We are proposing that firms also return funds as soon as reasonably practicable if a customer cancels their contract.
- 4.21** We propose to ban intermediaries from holding monies paid by consumers for funeral plans. Intermediaries will need to ensure that consumers pay these monies directly to the plan provider or, on the provider's instruction, to the insurer or trust. Firms will also need to ensure that their appointed representatives distributing plans comply with this restriction. This is intended to manage the risk of intermediary firms going into administration while in possession of monies paid by consumers. In the absence of a ban, we would have to design extensive rules to ensure intermediaries can adequately safeguard monies, which we consider disproportionate.
- 4.22** We have seen a number of trust deeds and funeral plan contracts which do not make clear who the beneficiaries of the underlying trust or insurance contract are. This could be the plan provider, funeral directors or consumers.
- 4.23** We propose that for new trust-backed plans sold the trust arrangements must make clear that the assets are held on trust for the benefit of planholders. In addition trust arrangements must ensure that the trust assets are kept segregated from the funeral plan provider's assets, and that the circumstances in which a funeral plan provider can make a claim against the trust assets are limited to where funds are needed to deliver a covered individual's funeral, provide a refund (where requested by a customer) or to discharge the firm's contractual obligation to promptly reimburse customers, in the event that funeral plan contracts will not continue to be carried out.
- 4.24** These proposals, together with our proposed rules on the design of trust arrangements (see FPCOB 3.1.9R in the draft rules) are intended to ensure that funeral services are delivered, or monies will be available to consumers for cancellations or in the event of a plan provider failing. We want to deliver clear and certain outcomes for consumers, and to address the risk that if a plan provider fails an insolvency

practitioner may claim trust assets for the benefit of creditors of the funeral plan provider, at the expense of planholders.

- 4.25** For insurance-backed plans we intend to achieve the same clear and certain outcomes for consumers. Although we do not require consumers to be named as the policyholder of the insurance, we do propose to restrict the circumstances in which the policyholder (whether that is the funeral plan provider, a trustee or the consumer) can make a claim under the policy. As with trust-backed plans, we are proposing that a policyholder should only be able to claim under the policy where a claim is being made in order to deliver a covered individual's funeral, provide a customer refund (where requested by a customer) or to discharge the firm's contractual obligation to promptly reimburse customers, in the event that funeral plan contracts will not continue to be carried out. See FPCOB 3.1.8R in our draft rules. We are also proposing that the contract of insurance must be capable of delivering our resolution objectives set out in Chapter 7.
- 4.26** In addition, in a situation when a funeral plan provider receives money at the point of sale we will require the funeral plan provider to make arrangements to ensure that monies received are not, at any stage, including insolvency, assets of the funeral plan provider. We are also proposing for similar safeguarding arrangements to be put in place in circumstances where the funeral plan provider receives money pursuant to a contract of insurance prior to delivering an agreed funeral or before providing a refund that is owed to the customer. These and other proposed rules on safeguarding can be found in FPCOB 3.1.11R of the draft rules.
- 4.27** We would welcome views from stakeholders on whether our proposed approach will help deliver our resolution objectives set out in Chapter 7.

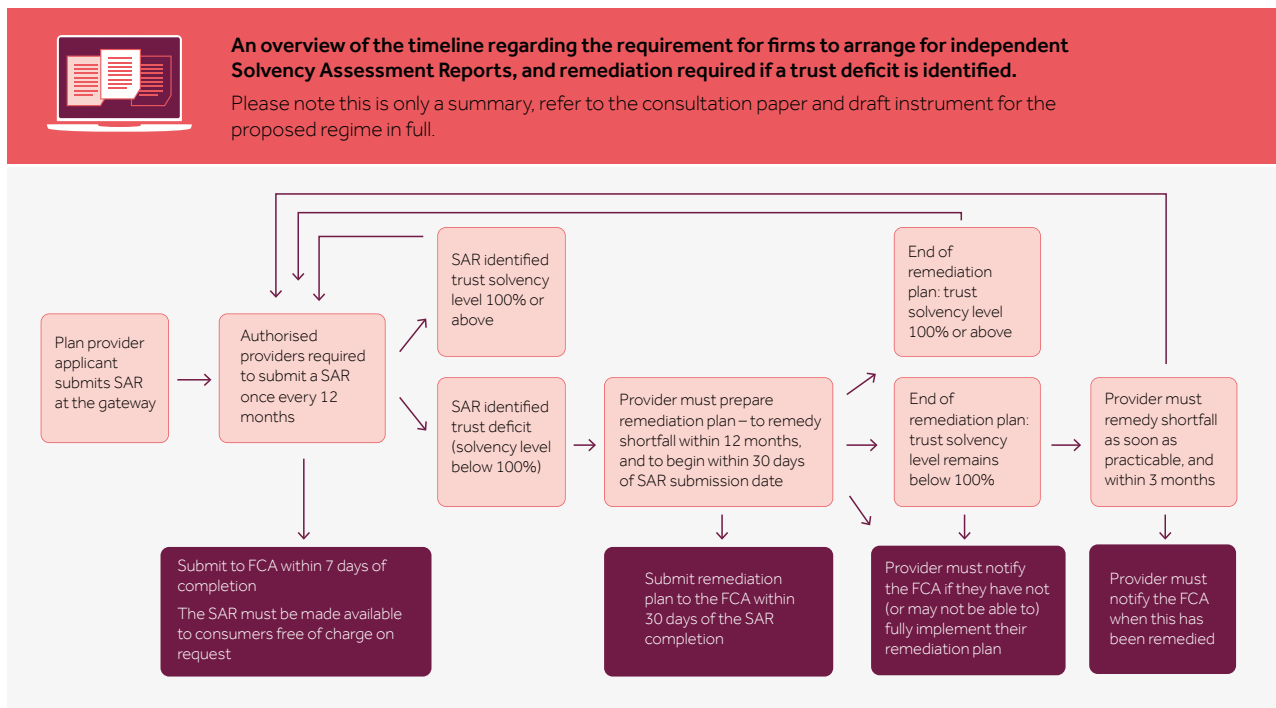
Additional requirements concerning trusts

- 4.28** We also propose a number of rules to ensure that firms have robust trust arrangements. These build upon the RAO's current requirements for trust arrangements and FPA rules for member firms.
- 4.29** As currently, we propose that trusts must be established by written instrument, with a majority of independent trustees, an independent fund manager, and with annual accounts prepared by a statutory auditor.
- 4.30** We also propose that funeral plan providers must arrange for a solvency assessment report (SAR) to be produced on an annual basis by an actuary who is a fellow of the Institute and Faculty of Actuaries (IoFA). This report must calculate and verify the trust's assets and liabilities and provide information on the solvency status of the trust, meaning how far it is estimated to be able to meet future funeral costs. This applies to all plans a firm has entered into, including prior to our regulation taking effect.
- 4.31** Providers must send the solvency assessment report to us and make it available to consumers free of charge on request.
- 4.32** Funeral plan providers who hold money on trust must be able to identify the balance of money paid into the trust for each funeral plan contract.

Q4: Do you agree with our proposed rules on trust arrangements?

Trust solvency

- 4.33** We propose that a firm can only deduct surpluses from the trust if the trust's solvency level is above 110% and this is signed off by the trust actuary. 110% solvency is calibrated to be, on average, equivalent to having resilience to all stress events other than a 1:200 years event. An individual firm's circumstances may mean that the firm's actuary considers a higher level of trust solvency is appropriate before money can be deducted from the trust.
- 4.34** Where a solvency assessment report reveals that a trust has fallen into deficit, funeral plan providers would be required to draw up a remediation plan to be signed off by the trust actuary. This would set out how they plan to remedy the shortfall within the next 12 months.
- 4.35** If, after the remediation plan period, the trust remains below the required minimum solvency level, the funeral plan provider must rectify the deficit. This includes by using its own financial resources to pay extra money into the trust.
- 4.36** In assessing trust solvency firms must consider all funeral plan contracts entered into by the firm, including those entered into prior to our regulation taking effect, which may well have different contractual terms.



- 4.37** Expectations for what a trust would be able to repay in case of a firm failure are also relevant to the solvency calculation. Please refer to Chapter 7.

Q5: Do you agree with our proposals for trust solvency and how trust solvency should be assessed?

Prudential requirements for funeral plan providers & intermediaries

General solvency requirement

- 4.38** All firms to which our prudential rules apply will have to meet a general solvency requirement. This means that the firm must, at all times, ensure that it is able to meet its liabilities as they fall due. Firms must document in their records how they meet the general solvency requirement.
- 4.39** In common with our approach for other sectors, we also explain in guidance in the proposed rules that as part of our day-to-day supervision of firms we may, in accordance with *SUP* 9.3, give a firm individual capital guidance, individual liquidity guidance, or both, on the amount or quality of capital or liquidity that we think a firm needs to hold to meet its general solvency requirement.
- 4.40** The guidance also explains that if we are unable to agree with a firm on the level of capital or liquidity that it needs to hold to meet the general solvency requirement we may instead use our power to set these by requirement.

Core capital resources requirement

- 4.41** To ensure that firms hold a minimum level of capital to meet their liabilities, we also propose to introduce core capital resources requirements that are proportionate to the size, risk profile and complexity of a funeral plan firm's business activities.
- 4.42** Firms must hold prudential resources that are sufficient to meet their core capital resources requirement. We have defined the eligible prudential resources to meet the requirement in our rules, in addition to certain mandatory deductions for items that must be excluded from the calculation. This is based on analysis of firm's financial information, and is intended to protect firms against costs from contingent risks such as future redress payments.
- 4.43** The core capital resources requirement increases with the size of the firm's business. For a firm that carries on funeral plan activity other than funeral plan distribution the core prudential resources requirement is the higher of:
- £20,000 or
 - 2.5% of the firm's annual income or
 - The sum of:
 - For trust-backed plans: the number of undrawn plans, multiplied by the median of the amounts that would be paid from the trust fund(s) to the plan provider if a funeral were required on the day following the end of the previous reporting period, multiplied by a funeral plan scaling factor ($f = 0.5\%$). This calculation is not based on the accumulated value with investment returns or the pre-payment originally received, but the amount agreed for the delivery of the funeral purchased; and

- For insurance-backed plans: the number of undrawn plans, multiplied by the median of the amounts that would be payable to the firm under each policy if a funeral were required on the day following the end of the firm's previous reporting period, multiplied by a funeral plan scaling factor ($f = 0.5\%$).

4.44 For firms who only want to be authorised to administer (run off) their back books and not take on new business, this calculation will apply but annual income may be zero so they would need to use the higher of the other calculations. For a firm that undertakes distribution activities for a pre-paid funeral plan contract as an intermediary, the core prudential resources requirement, for the period until its next accounting reference date, is the higher of:

- £10,000 or
- 2.5% of the firm's annual income

4.45 Firms should also consider FG 20/1: [Our framework on assessing adequate financial resources](#).

Q6: Do you agree with our proposed prudential requirements on funeral plan providers and intermediaries?

5 Conduct standards

- 5.1** This chapter sets out our proposals for applying conduct of business rules to funeral plan firms. Most of the rules will be included in a sourcebook called 'Funeral Plan: Conduct of Business sourcebook' (FPCOB). The rules on product oversight and governance will be included as a new chapter in the Product Intervention and Product Governance sourcebook (PROD).
- 5.2** The purpose of these proposals is to raise standards across the funeral plans sector, and tackle harms such as consumers buying unsuitable products and plans not performing as consumers expect.
- 5.3** Our rules are intended to respond to the specific risks in the funeral plans sector. But we are also proposing to apply some rules in a similar way to those which currently apply to non-investment life insurance products, such as guaranteed over-50s plans (O50s plan). These rules come from the Insurance: Conduct of Business sourcebook (ICOBS), and from Chapter 4 of PROD. We propose to apply these rules to the funeral plans sector because:
- The way funeral plans are advertised suggests that they are marketed as direct alternatives to O50s plans. Although the products are different, they appear similar from a consumer's perspective.
 - The reasons that consumers buy funeral plans are likely to be very similar to their reasons for purchasing an O50s plans. As such we think it would be beneficial for information disclosures and sales processes to broadly align.
 - Like the insurance sector, the funeral plan market features a large number of sales by intermediaries. The insurance rules are designed in this way, with some rules being specifically for providers or distributors.
 - The conduct rules for life insurance business are well-established and cover most aspects of firms' services to consumers.
- 5.4** However, funeral plans are not insurance products, and they have some features which create a unique risk of harm to consumers. Because of this, we are proposing a number of rules to mitigate these particular harms. We set out a summary of the proposed rules which will apply to funeral plan providers and intermediaries below.
- 5.5** Our conduct of business rules generally apply only to new funeral plan contracts sold after our regulation takes effect. However, there are some rules which will apply to existing contracts in addition to new plans sold after 29 July 2022. We discuss this at the end of this chapter.
- 5.6** Most pre-paid funeral plan contracts are taken out by a customer to provide their own funeral at the time of need. In some cases, a customer buys a funeral plan contract to provide for the funeral of someone else. To account for this, we will define the 'customer' as the individual who enters into a contract for a pre-paid funeral plan with a funeral plan provider, and who is party to the contract. If different, the individual whose funeral is to be provided will be referred to as the 'covered individual'. We understand that most providers have provisions in place to deal with this scenario.

- 5.7** Most of the conduct of business rules are about how funeral plan firms deal with the customer. There are a small number of rules where firms will need to take account of the covered individual's circumstances as well. For example, when determining if a funeral plan meets the customer's demands and needs, firms will need to establish whether the covered individual has already made provision for their funeral.
- 5.8** We are proposing that the rules in FPCOB should apply to regulated funeral plan activities whether or not that activity is carried on from an establishment in the UK. This ensures that our rules apply, for example, to firms which may have non-UK branches which arrange plans for funerals in the UK.
- 5.9** We also propose a rule to make clear that where an appointed representative is engaged in funeral plan distribution activities (including on behalf of a provider as its principal), the principal firm must ensure that the appointed representative complies with the rules in FPCOB as they apply to authorised firms doing funeral plan distribution.

Q7: Do you agree with the way we propose to apply our FPCOB rules?

- 5.10** The table below summarises the conduct of business requirements.

We propose that funeral plan providers must:

- Comply with the customer's best interests rule. This means that providers will need to 'act honestly, fairly and professionally' in accordance with the best interests of their customers.
- Design products that meet the needs of a clearly defined target market, ensuring that the products offer fair value to consumers. Products must be designed so that they deliver the expected funeral regardless of whether or not the consumer has paid all the instalments at the time of death.
- Select appropriate distribution channels to ensure plans are marketed and sold properly.
- Not receive remuneration which would conflict with the duty to act in the customer's best interests.
- Not remunerate or performance manage their employees in a way that would conflict with the customer's best interests.
- Not pay commission to distributors.
- Regularly review their products, and how they are distributed, and take actions to mitigate any issues they find.
- Produce clear product summary documents which set out the main features, exclusions and limitations of their plans.
- Send the customer annual statements setting out key information about their plan.
- Provide information about the plan to the customer's representatives.
- Nominate a local funeral director to carry out the funeral.
- Make sure that the funeral is provided to a satisfactory quality in line with the plan.
- Comply with the customer's best interests rule. This means that firms will need to 'act honestly, fairly and professionally' in accordance with the best interests of their customers. Firms must not remunerate or performance manage their employees in a way that would conflict with this duty.

We propose that funeral plan distributors must:

- Not receive commission or any other remuneration for their distribution services, other than fees paid directly to them by customers.
- Provide the customer clear information about their services.
- Provide the customer with clear information about the features, exclusions and limitations of the plan or plans which they distribute.
- Ensure that any products they offer are consistent with the customer's needs.

General conduct of business rules

5.11 In many regulated sectors, we have introduced a requirement for firms to act honestly, fairly and professionally in accordance with the best interests of their customers (the *customer's best interests rule*). We consider this a key statement of firms' overarching obligation to treat customers fairly and resolve conflicts appropriately, and we propose to apply this to all funeral plan firms.

5.12 In applying this rule, we propose that firms will need to consider the interests of both the customer and the covered individual where these are different. We also propose that this requirement should apply in relation to customers under plans entered into prior to regulation taking effect, as well as new plans.

5.13 We are proposing two additional linked requirements:

- Firms will need to ensure that any remuneration they receive does not conflict with the duty to act in the customer's best interests. This applies to any remuneration the firm receives, including payments from the trust or insurance provider backing the plan.
- Firms will also need to ensure they do not remunerate or performance manage their employees in a way that would conflict with the customer's best interests. This includes remuneration or performance management that incentivises the sale of plans which may not meet the customer's needs. Examples of the types of practices that we envisage would be prohibited by this rule include:
 - Paying higher commission or bonuses based on the price of the plans sold (ie a higher bonus for selling more expensive plans).
 - Bonus structures based predominantly on sales volumes or value.

Marketing and communications

5.14 We propose rules that will apply both to financial promotions for funeral plans and firms' (providers and intermediaries) communications with customers. We propose that firms must communicate in a way which is clear, fair and not misleading, including ensuring that marketing materials are clearly identifiable as such. These rules will apply to all firms operating in the funeral plan market.

5.15 We have seen a significant issue with firms operating as lead generators through websites which appear to be offering price comparison services. These websites suggest that they will provide the consumer with a comparison of different funeral plans. However, once the consumer has entered their details, no comparison is shown. Instead, the consumer receives a sales call. This type of practice is misleading and

would breach our proposed rules on marketing. Using the consumer's details in this way would also breach our proposed ban on cold calling (below).

Q8: Do you agree with our proposed general conduct of business standards for funeral plans?

Commission and other remuneration

- 5.16** As noted above, we propose that the remuneration a firm receives, and the way it remunerates or performance manages its employees, must not conflict with the duty to act in the customer's best interests. The definition of remuneration is very broad. It includes commission, fees, charges or other payment, including an economic benefit of any kind or any other financial advantage or incentive offered or given in respect of the funeral plan activity. All remuneration has the potential to influence firms' conduct and to cause harm to consumers.
- 5.17** To inform our decisions in regards to the funeral plans sector, we conducted two surveys of firms. These were done in 2019 and 2020. Data from these surveys shows that the majority (56%) of funeral plans are sold by intermediaries who are separate from the plan provider. Many of these are funeral directors who sell plans alongside their day-to-day business of delivering funerals. More than half of plans sold by intermediaries are sold by funeral directors. There are other types of intermediaries also selling funeral plans. These include vertically integrated firms, firms who sell plans alongside other relevant services (such as will writers) and also direct marketing firms. We set out further details of our market analysis in paragraph 12 of Annex 1.
- 5.18** Commission plays a significant part in how many funeral plan intermediaries make money. Information from the sector indicates that plan providers pay intermediaries (other than funeral directors) commission for selling their plans. Based on our data collection and research, we have found that approximately 41% of sales involve the payment of commission to an intermediary, with an average of approximately £550 being paid per plan sold. This is compared to the average cost of a funeral of £4100 – £4600. These commissions are usually paid upfront in a single payment, either taken from the money the customer pays for the plan, or from the trust backing the plan.
- 5.19** There is significant variation in commission levels, with some firms paying several hundreds of pounds more than others. Commission is usually higher for more expensive plans.
- 5.20** Most firms have told us that they do not pay commission to funeral directors, and those that do pay significantly lower amounts (less than £100 on average). Instead, funeral directors are paid by plan providers to deliver the funeral services, and this is how they make money from plans. Other intermediaries are paid commission, and the amounts are much higher than those paid to funeral directors. We have seen other intermediaries being paid up to £900 per plan sold.
- 5.21** We have identified 2 harms which are likely to arise due to commission in the funeral plan sector:
- Commission creates a mis-match of incentives between firms and consumers. Consumers want to buy fair value products that meet their needs, but commission incentivises firms to sell products that will generate the highest commission, and

so the most profit for them. We have seen evidence of poor practice involving commissions in the funeral plan sector. This includes:

- Commission being paid on a sliding scale based on the price of the plan sold, incentivising intermediaries to sell the most expensive plan available.
- The total commission being paid up-front, with limited ability for firms to claw it back if the consumer cancels. Robust claw back arrangements incentivise good sales practices, because firms (and their employees) are penalised if plans are not sold properly.
- Although disguised by the headline price of the plan, the customer pays the commission. High commissions can lead to two different harms to consumers:
 - We have seen examples of funeral plan prices which include high commission but still enable firms to pay more into the trust than is needed to cover the cost of the funeral. In essence, this means the amount the customer is paying for their plan is significantly more than the benefits it provides.
 - Conversely, we have also seen examples of firms whose trusts appear to be significantly underfunded paying some of the highest commissions. This suggests that the amount of commission being extracted from the customer's payment is creating a risk that the provider will not be able to meet its liabilities to pay for funerals when needed (i.e. the consumer's money is going towards the commission payment, not their funeral).

5.22 The most common type of intermediary selling funeral plans are funeral directors. Firms have told us that funeral directors typically do not receive commission for selling plans. Instead, they are paid when they provide the funeral services. Firms have told us that they also use a wide variety of other third-party intermediaries, such as will writers, financial planners and marketing companies (including lead generators). Unlike funeral directors, these third-party intermediaries have no ongoing involvement in the provision of the funeral and are less likely to have any ongoing relationship with the consumer or their family. They are also less likely to have relevant expertise which would enable them to advise customers about important aspects of funeral provision. It is striking, therefore, that these third-party intermediaries receive the highest levels of commission and we do not think these payments represent any material value to the consumer.

5.23 Although most funeral directors do not receive commission for selling plans, we consider that funeral directors may still have a mis-match of incentives where the guarantee of future income could lead them to sell plans which are not in the consumer's best interests. It is also possible that the amount paid by plan providers to funeral directors could be higher than the cost or retail price of an equivalent at-need funeral. We are aware of some providers who pay a portion of the funeral directors' fees immediately following the plan sale; a practice which could be akin to paying commission.

5.24 Most firms have told us that intermediaries distribute plans from a single provider. We have seen no evidence of any intermediaries providing advice, comparison or broker services likely to be of benefit to consumers (they don't 'shop around' on the consumer's behalf as one might see in other sectors).

5.25 These issues are particularly important in the funeral plans sector because we think that there are likely to be a higher numbers of vulnerable consumers buying funeral plans than some other financial products.

- Data provided to us shows that funeral directors make more than half of funeral plan sales. Firms have told us that it is very common for a plan to be sold following a bereavement, where the family initially contact the funeral director to buy an at-need funeral. Consumers arranging funerals for a loved one are clearly more likely than normal to be susceptible to suggestions that they buy a plan for themselves.
- We consider that a key motivation for their customers buying plans is to protect their loved ones from the financial strain of arranging and paying for their funeral. This is reflected in the fact that a great deal of funeral plan marketing focuses on the increasing cost of at-need funerals, and the benefits of protecting loved ones from financial and emotional burden. Such motivations indicate a potential lack of ability to withstand financial shocks.

5.26 We consider these vulnerabilities are likely to increase the risk of harm to consumers. The mis-matched incentives caused by commission are more likely to lead to vulnerable consumers buying an unsuitable plan, or feeling pressured to buy a plan at all.

5.27 To protect consumers from the harms identified, we propose a ban on commission paid to intermediaries, including to firms outside our regulation and to appointed representatives of the provider. Our proposed rules will mean distributors must not be remunerated for their activities through any means other than fees paid directly to them by funeral plan consumers (advice/arrangement fees) which need to be clearly disclosed. In addition, these fees must be consistent with the duty to act in the customer's best interests. Some intermediaries (such as will writers) are already charging fees for their services. We consider it likely that they would be able to continue distributing funeral plans on this basis.

5.28 We know that some distributors (particularly funeral directors) are part of the same group of companies as the funeral plan provider. Our proposed rules will apply to these distributors as well. Firms will need to ensure that the level of payment made to the group's in-house funeral director is in line with the cost that would be charged were the plan provider not part of the same group, and that any advisor/arrangement charges paid by the customer reflect charges as they would be if another funeral director were conducting the funeral.

5.29 Our rules will not prohibit the early payment of a proportion of the funeral director's fees. However, firms will need to ensure that this does not become a way of avoiding the intention of the proposed commission ban; for example, by increasing the overall amount paid to the funeral director without reference to factors such as a general increase in costs or the price of at-need funerals.

5.30 The proposed ban will apply to remuneration paid in connection with funeral plan distribution activities carried out once our regulation applies. Firms will be permitted to receive remuneration after this date that is due to them for activities carried out before our rules applied.

5.31 We have considered whether these harms can be tackled through alternative approaches, and have concluded that a ban is the most effective option:

- We considered mandating full commission disclosure. This would improve transparency and enable consumers to make a judgement about whether the proposed arrangements were meeting their needs. However, we decided not to adopt this approach as it is unclear whether consumers would be sufficiently engaged or feel confident enough to challenge firms on their commission levels.

(particularly if, for example, they are in the midst of arranging a funeral for a loved one). Commission disclosure is required in some other sectors we regulate, but we recognise that there are limits to the level of protection that disclosure can deliver. In Annex 1 we note additional evidence suggesting disclosure may not fully reduce the harms we are seeking to address.

- We considered managing the risks by requiring firms to assess whether their remuneration was offering fair value to consumers, and to amend their practices if they were not providing fair value. This is the approach we take in some other sectors such as insurance. However, on balance, we consider that this is not sufficiently robust to tackle the particular harms that intermediary commission creates in the funeral plan sector. This is because it would continue to permit the payment of commission to increase the price of plans to consumers. This approach would also not reflect our conclusion that intermediaries are providing little or no benefit to consumers; unlike in the insurance sector where many intermediaries provide advising or broking services which benefit consumers.
- We also considered an approach similar to the rules on inducements that derive from the Markets in Financial Instruments Directive (MiFID II), and in particular the rules in COBS 2.3A. In summary, this is essentially a restriction on the payment or acceptance of fees and commissions and on the provision or receipt of non-monetary benefits in relation to investment business carried on for a client. Such 'inducements' are only permitted if the firm can show that they do not impair compliance with the firm's duty to act in the best interests of the client, are designed to enhance the quality of service to the client and are properly disclosed. However, we do not currently consider this to be the best approach. As set out above, our view is that commission in the funeral plan sector is unlikely ever to enhance the quality of service and would conflict with the duty to act in the customer's best interests; meaning that the conditions for making and receiving payments would likely be redundant. Adopting this approach would increase the complexity of the rules, making them more difficult to comply with and supervise, without delivering more benefit than the proposed ban.

5.32 We think a commission ban is justified because of the potential harm to consumers which can result from commission payments, as described above and in paragraphs 126-134 of Annex 1). We consider that customers' best interests would be best served by a sector that did not feature commission-based distribution structures. By prohibiting intermediaries from receiving commission from funeral plan providers we directly address the following harms:

- The current mismatch of incentives between firms and consumers. We consider that this is particularly important, given the increased likelihood of vulnerable customers being impacted.
- The impact that high commissions have on prices.

5.33 However, we recognise that such a proposal has the potential to have a significant impact on the business models of some firms. We therefore welcome firms' views and, in particular, responses from providers which pay, and intermediaries which receive, commissions to enable us to understand how commission models might add value to consumers and how the risks that we have identified can be appropriately managed. At present, we consider that commission payments are leading to consumers paying for a service which is not of benefit, and which is risking them paying either an excessive price for their plan or their being insufficient funds to cover their funeral.

5.34 We welcome feedback on this point and have asked a number of questions below. In particular we welcome feedback from the industry about the way that current commission levels impact prices and consumer outcomes within the sector. In the event that respondents are able to demonstrate that an outright ban on commission is not required then we are minded to pursue an approach based on the MiFID II rules (described above).

Q9: Do you agree with our proposed ban on intermediaries receiving remuneration other than advice or arrangement fees from the customer?

Q10: Do you agree with our assessment that commissions are leading to mis-matched incentives and conflicts of interests between firms and customers in the funeral plan market? If you disagree, it would be helpful to explain why by reference to current commission structures and practices you are aware of in the market and, in particular, why you do not consider these to risk creating mis-matched incentives and conflicts of interests.

Q11: Do you agree with our assessment that commissions are leading to customers paying prices which are too high relative to the benefits the funeral plan provides?

Q12: Do you agree with our assessment that intermediaries receiving commission are providing little or no benefit to customers? If you disagree, it would be helpful to explain why by reference to current commission structures and intermediary services you are aware of in the market and, in particular, how you think they provide benefit to customers.

Q13: Do you have any comments on the alternative approaches to tackling the harms caused by commission? In particular, do you have any comments on the alternative option we would be minded to follow if we conclude that a ban is not required?

5.35 Even where there is no initial commission payment, firms must consider whether remuneration they receive in the longer term could influence their conduct. For example, a funeral director who receives no commission may still be incentivised to sell a more expensive plan on the basis that they will make more money in the future when they provide the funeral services.

5.36 Most funeral plan providers receive remuneration from the trust or insurance firm backing the plan. We have not seen evidence to suggest that the payments which providers receive in relation to the provision of their services are particularly high or creating a significant risk of harm. However, we propose that the remuneration arrangements of funeral plan providers must not conflict with the duty to act in the customer's best interests. Some of the factors firms will need to consider are the impact their remuneration has on prices, and whether it risks incentivising them to enter into plans with customers whose best interests would be served by alternative

arrangements. Firms should also note that their remuneration will be subject to our proposed product governance rules; in particular, those relating to fair value.

Q14: Do you agree that with our proposals for remuneration of plan providers?

Pre-contract disclosures

5.37 It is important that consumers are given clear information before they decide whether to purchase a funeral plan. We are proposing a number of requirements to ensure that consumers are given the information they need.

Information about the firm and its services

5.38 We propose that both funeral plan providers and intermediaries should be required to set out clearly the scope of the services they offer, as well as key information about their firm. This information should be provided to the customer early in the sales process, to enable them to understand who they are dealing with and what services they are being offered. The information covers:

- the firm's details, regulatory status, and complaints process
- whether the firm provides advice
- the fees that customers may need to pay

5.39 In line with the *customer's best interests rule*, it is important that firms consider how they make information meaningful to consumers. Firms should make sure that the information is provided at an appropriate time and through the right channels. Our work on Smarter Consumer Communications has shown that different people engage with information in different ways, and that information alone is not always enough to empower consumers to make informed choices. Firms' communication is vital to help consumers make decisions but it is only effective when consumers pay attention to the information, have the capacity to interpret it, and are willing to incorporate it in their decision-making process.

Information about the product

5.40 We propose that firms should be required to provide consumers with appropriate and timely information about the product, to enable the consumer to make an informed purchase decision. Our analysis of the current market suggests that, whilst the information about the product benefits is generally plentiful, this is not the case with information about a product's limitations and exclusions. Often these are contained only within the products terms and conditions, which can be complex and difficult for consumers to understand. Firms will need to ensure the disclosures are communicated clearly, and provide fair and objective information, bearing in mind that their consumers may well be vulnerable.

Main disclosure requirements throughout the customer journey

This graphic sets out the main information disclosures that funeral plan providers and intermediaries would be required to make at different stages of a contract being taken out. In general, a funeral plan provider would be responsible for producing the documents.



Pre-contract

Funeral Plan summary

Firms would need to provide a two page funeral plan summary setting out important product information, to help customers make an informed decision. This would need to be provided by the intermediary, or the provider if there is no intermediary.

Other pre-contract disclosure

Additional, more detailed information would also need to be provided – such as terms and conditions and clear price information.



Post-contract

Disclosure to customer's representative

Firms would be required to contact the customer's representative within 5 business days of the date of conclusion of the contract, unless the customer expressly opted out, to ensure they are aware of the plan and the procedure for making a claim at the time of need. This would need to be provided by the funeral plan provider.

Nomination of a funeral director

Firms would be required to nominate a funeral director to a funeral plan contract within 30 days of the plan purchase and notify the customer.



Ongoing disclosure

Annual Statement

An annual statement would need to be provided to the customer to ensure they can keep the arrangements under review, to remind them of how they can make changes and to include information about their payments. This would need to be provided by the funeral plan provider.



5.41 We propose that important information should be provided to the customer and their nominated representative in two short standalone documents. The key points the document will need to cover are:

- An explanation of the services and products the plan provides
- An explanation of any services and products which are not fully covered by the plan (such as where the plan only provides an allowance towards a burial plot)
- An explanation of services and products commonly related to funerals but which are not covered by the plan (such as catering costs)
- If applicable, information on what will happen if the consumer dies before the plan is fully paid
- If applicable, information on what happens if the consumer misses a payment
- Whether changes can be made to the plan, and the costs involved
- An explanation of the consumer's right to cancel the plan
- Details of the firm's complaints policy, and the FSCS

- 5.42** We propose that plan providers will be responsible for producing these documents. Depending on how the plan is being sold, they will need to be provided to the consumer by either the intermediary or the provider in good time before the consumer purchases a plan.

Information about the price

- 5.43** We propose that firms should be required to disclose clear information about the price of the plan. The price of a funeral plan will vary significantly depending on the different services included in the funeral, and firms may not always be able to disclose the price in a standardised document for consumers. Therefore, where this is not possible, we expect firms to signpost to where consumers can get a quote tailored to their specific needs. Where plans are sold on instalments firms will need to ensure they:

- Clearly state if paying through instalments will mean the overall cost of the plan will be higher than paying in one lump-sum
- Do not present prices in a way that suggests the total amount paid by instalments is the same as the up-front price (unless that is true). An example of a disclosure which would breach this requirement is "Our plan costs £X,XXX or £XX.XX per month'.

Means of providing information

- 5.44** We propose that this information should be provided to the consumer in writing. Firms will be able to use electronic communications (such as email or a secure consumer web-portal) as long as the consumer is given the option of having the documents on paper as an alternative. If the consumer selects to receive paper documents, these must be provided free of charge.

- 5.45** We appreciate that sending documents on paper is more expensive than electronic communications and has more environmental consequences. Firms may use electronic communications as their *default* option, as long as the consumer is given a clear and prominent way to select paper documents. For example, a firm could pre-tick the box indicating electronic documents as long as the tick box for paper documents was the same size and given the same prominence.

Distance communications

- 5.46** In common with other sectors which we regulate, we are proposing to apply specific disclosure rules to firms which are relevant to firms engaged in distance marketing and e-commerce activity.

Q15: Do you agree with our proposals for pre-contract disclosures?

Plans paid through instalments

- 5.47** It has been widely stated that the primary purpose of consumers purchasing plans is to remove the burden of arranging and paying for their funeral from their bereaved loved ones at what is inevitably a difficult time. However, currently over 30% of plans being sold risk not meeting this expectation because the consumer dies before the full instalments are paid.

- 5.48** We have concerns around plans sold with instalment payments. Whilst some may provide the funeral regardless of whether the plan is 'fully-paid', there are many that do not. This leaves families needing to make alternative arrangements at a time of acute distress and vulnerability, and they may face high cancellation fees if they are unable to make up the shortfall in payments.
- 5.49** We do not consider that plans which fail to provide the expected funeral are delivering good outcomes for consumers; nor do we consider the return of payments to be an acceptable outcome. Customers purchase funeral plans with the intention of providing for their funeral. Merely returning the customer's payments does not meet this intention.
- 5.50** We therefore propose to prohibit the sale of plans on instalments, unless they will provide the expected funeral following the consumer's death without any further payments being required, and regardless of whether or not the consumer has paid all their instalments. We also propose to prohibit firms from seeking further money from the consumer's estate following their death. The proposed rules will allow firms to impose a moratorium period covering death up to 12 months from the sale of the plan, in which the funeral would not need to be provided except in the case of accidental death. In that situation, all of the payments made would be required to be returned in full.
- 5.51** Firms will need to ensure that they have sufficient financial resources to meet this requirement. We do not propose to prescribe how firms do this. Two options available to firms are to purchase supplementary insurance or increase the money held in trusts or insurance policies backing the plans. We acknowledge that this proposal may result in some price increases, although we consider that it will also improve the quality of plans available in the market. Firms should consider how they can meet our proposed requirements to ensure delivery of funerals whilst complying with the proposed prudential rules (e.g. the requirement to maintain trust solvency).
- 5.52** The proposed rules would apply to new plan sales only. However, we encourage firms to consider whether their existing plans are delivering the good outcomes to consumers we set out above, and whether changes would be beneficial to consumers.
- 5.53** We accept that any changes to existing plans could impact the financial position of trusts. When making product changes, firms should ensure they have fully assessed the financial impact and are complying with our rules in that respect.

Q16: Do you agree with our proposals for plans sold through instalments?

Sales standards

- 5.54** One of the harms that have been identified in the funeral plans market is the way that plans are sold. We are concerned that consumers may be purchasing plans which are not appropriate for their requirements. Whilst improving the information consumers receive about plans is part of this, relying solely on disclosure means that all the responsibility is placed on the consumer. As in other sectors, we consider that firms should have some responsibility for ensuring that the consumer is offered appropriate products. We propose a range of rules to improve the standard of sales practices in the sector and reduce the harm to consumers from purchasing inappropriate products.

5.55 We are proposing rules for both advised and non-advised sales. Currently there is no distinction made between these in the funeral plans sector, although our expectation is that the majority of firms will operate on a non-advised basis once they are authorised. If firms wish to provide advice, they will need to ensure that they have the correct permission to allow this. There is always a risk with telephone and face-to-face sales that they can inadvertently slip into giving advice. Not only would this mean the firm would need to comply with the standards for advised sales, but without the appropriate permission, it may be a breach of relevant provisions of FSMA. Either may make the firm liable to enforcement action, or to legal action by the customer. Firms will need to put in place robust oversight and monitoring processes to ensure this does not happen.

Cold calling

5.56 We are proposing to ban cold calling by all firms involved in funeral plans. Firms will only be able to contact customers (or potential customers) for the purposes of interactive marketing (e.g. by phone or in person) where they already have an established client relationship with them. Examples of existing relationships include where the consumer already has a product with the firm. Our proposed cold calling rules would not apply to the scenario in which a potential customer had initiated the relevant dialogue and made an express request to be contacted.

5.57 As well as the direct prohibition on cold calling for all funeral plan firms, we are also proposing a rule in PROD which will require plan providers to take reasonable steps to ensure that they are not using an intermediary to distribute their products through cold calls.

Standards for non-advised sales

5.58 Broadly, we propose to apply the ICOBS standards for non-advised sales of funeral plans. This means that firms will need to:

- Ask the customer questions to identify both their demands and their needs
- Conduct an assessment of those demands and needs
- Limit the products they propose to the customer to only those products which they assess as being consistent with those demands and needs. If the firm does not have any products which are consistent with the customer's needs, they cannot offer the consumer anything
- Clearly state to the customer the demands and needs they have identified

5.59 The purpose of the demands and needs assessment is to assist the consumer in making an informed decision, and to reduce the risk of the them purchasing an inappropriate product. Firms should therefore identify demands and needs early on in the sales process and take this into account when designing their consumer journeys.

5.60 We recognise the need to retain a clear distinction between advised and non-advised sales. In relation to non-advised retail sales, we do not expect firms to carry out a detailed investigation of the customer's circumstances. However, they should ask questions which will obtain key information about the customer's circumstances (such as age, general health, and basic financial circumstances) as well about what the consumer is seeking to purchase. Firms should then consider these circumstances in relation to the key features, exclusions and limitations of the plans they offer.

- 5.61** Firms should consider whether the customer has alternative means of funeral provision available to them. For plans paid through instalments or ongoing monthly payments, firms should consider the length of the payment term and any moratorium period under which a funeral will not be provided. Whilst we would not expect firms to conduct detailed medical screenings, they should consider whether some basic enquiries about the customer's health may be appropriate.

Standards for advised sales

- 5.62** We are proposing different rules for firms who give advice. Firms who go beyond providing information, and who recommend products to customers, will need to consider whether they are providing advice. Giving advice carries an additional responsibility, because customers are entitled to rely on the firm's judgement. In order to give advice on funeral plans, firms will need to consider whether they need permission to carry out the regulated activity of advising. The rules that will apply depend on what permissions the firm has:
- Firms which provide personal recommendations in relation to funeral plan contracts will need to ensure that the product they recommend is the one that best meets the customer's needs. This will need to be based on a fair and personal analysis of the funeral plans market. Firms must also provide a personalised explanation why the proposed product best meets the customer's demands and needs.
 - Firms whose only regulated activity is advising, will need to ensure that the advice they give is suitable. This includes considering all the customer's requirements and ensuring that the funeral plans they offer are suitable for the customer's needs. If they provide personal recommendations, then they will also need to comply with the rules set out above.

Q17: Do you agree with our proposed sales standards?

Cancellation rights and fees

- 5.63** Cancellation rights are key to ensuring that consumers have time to reflect on their purchase. It is also important that consumers are not unfairly penalised for changing their mind, or where their circumstances change.

Cooling-off period

- 5.64** Subject to what we propose below in relation to instalment plans, we propose that all funeral plans should have a 30-day period following purchase in which the customer can cancel their plan without any penalty. If customers choose to cancel their plan within this period they must receive a full refund of all money paid.
- 5.65** To ensure that customers are able to freely exercise their right to cancel, we propose that providers will be required to accept notification of cancellation through any contact channel by which they sell their plans. We expect that this will largely require providers to allow consumer to cancel by telephone, in writing or electronically. Where providers sell through intermediaries (particularly funeral directors), they will need to ensure that the intermediary is able to receive the notification.

Cancellation of plans paid by instalments

5.66 Our main proposals concerning plans sold through instalments are set out in paragraphs 5.47 to 5.52. In line with those proposals, if a customer cancels their plan or dies within the moratorium period (the period of a time after the plan is sold within which if the consumer dies they will not receive a funeral limited at 12 months) we propose that a firm be required to return all their payments to them without any cancellation fee, unless it is agreed that the customer's estate will pay the remaining instalments and the provider will deliver the funeral.

5.67 Firms will need to ensure that the cancellation terms are clearly and prominently disclosed to the customer before the plan is purchased.

5.68 We also propose that firms should be required to act fairly if the customer misses an instalment payment. This includes:

- Clearly informing the customer of the consequences of failing to bring their payments back up to date (after two missed payments)
- Allowing the customer at least 14 days after their second missed payment to bring their payments back up to date
- Not charging any form of late payment or administration fee
- Only cancelling the plan if the customer fails to bring their payments up to date more than 14 days after their second missed payment
- If the firm exercises its right to cancel the plan following a second missed payment within the moratorium period, the firms will be required to return the customer's payments in full.

5.69 We recognise that funeral plans are sometimes backed by insurance policies which are paid on an ongoing monthly basis. In these cases, our proposals are likely to impact both the funeral plan contract and the insurance contract:

- Plan providers will need to ensure that the insurance contracts allow for the return of all payments, if the customer dies during the moratorium period. We understand this is current market practice, and so is unlikely to cause any difficulties.
- It is likely plan providers will need to ensure that the insurance company takes the same approach to missed payments as they do, to ensure that the insurance contract remains in place so long as the funeral plan contract does.

Fees generally

5.70 We are proposing that all fees should be reflective solely of the costs the firm incurs and must not include a profit. In this context, *fees* refers to sums charged in addition to the price of the funeral plan. For example, if a firm charges an administration fee for making changes to a plan, this fee must be a genuine reflection of the administrative cost the firm incurs in dealing with the change.

5.71 We are aware that many firms charge an instalment fee if the consumer chooses to pay over a period longer than 12 months. This fee is intended to reflect the loss of investment return that the firm (or the underlying trust) suffers due to not having the full plan payment available to invest, and the risk the firm takes on if the funeral provision is guaranteed. We are not proposing to prevent firms charging such fees, as we consider that firms should be able to make provision for the reduced investment returns which are an important component of the trust's ability to fund funerals. However, firms must ensure their fees do not result in customers who pay by

instalments being systemically more profitable than those who make a single, up-front payment. We are proposing to apply our rules on instalment fees to both trust-backed and insurance-backed funeral plans. This is because we understand there are some insurance-backed plans which involve the customer paying an instalment fee.

Q18: Do you agree with our proposed approach to cancellation rights and other fees?

Q19: Do you have any comments on whether our proposals are likely to impact the relationship between funeral plan contracts and underlying insurance contracts?

Post-contract actions

5.72 We are proposing three rules which are intended to mitigate harms particular to the funeral plan sector.

Nomination of a funeral director

5.73 It is very important that the consumer and their family know which funeral director will be conducting the funeral. In their work on the at-need funeral market, the CMA identified that "it was the proximity to the deceased's 'home area' that largely defined decision-making." Arranging a funeral that was local to where the deceased had lived for a large proportion of their life was important, even if family members had subsequently moved away. We consider this is likely to be a very important factor in a consumer's decision about their funeral plan as well.

5.74 Where a funeral director is not nominated until the consumer's death, this increases the risk that there will be no local director willing to conduct the services at a price the provider will pay. It also increases the risk of a delay whilst a suitable funeral director is found.

5.75 We propose that funeral plan providers will be required to nominate a funeral director within a reasonable distance of the customer's home to carry out the funeral. This nomination must be within 30 days of the plan being purchased and must be notified to the customer. The plan provider must put in place contractual arrangements to ensure that the funeral director will deliver the funeral as set out in the plan, without any additional payment from the customer or their estate. Providers will need to regularly review their arrangements with funeral directors to ensure that funerals will be delivered. We propose guidance that this should be done at least every twelve months.

5.76 In general, we would not expect the nominated funeral director to change during the plan. However, we acknowledge that this may sometimes be necessary:

- Where the nominated funeral director becomes unable to provide the funeral (for example, due to insolvency) the plan provider must nominate a different funeral director within a reasonable distance of the customer's home, and notify the customer. The plan provider must not make any additional charge to the customer.
- Where the customer wishes to change the funeral director (for example, because they have moved to a new home) the provider may charge a fee solely to cover its costs in moving the plan to another funeral director.

Q20: Do you agree with our proposal to require plan providers to nominate a funeral director within 30 days of the plan being purchased?

Post-contract disclosure to the consumer's representative

- 5.77** An analysis based on the survey of funeral plan providers we conducted indicates that 4-5% of plans go unclaimed. There is a particular risk in relation to funeral plans because there is usually a very short period of time between the consumer dying and funeral arrangements being made. Unlike with a life insurance policy, if the consumer's family subsequently discover a funeral plan having already paid for the funeral, the plan is worthless.
- 5.78** We propose that plan providers should send a letter to the customer's representative within five business days of the plan being taken out. The purpose of this is to ensure that the customer representative is aware of the plan, what it covers and (most crucially) the procedure for making a claim following the consumer's death.
- 5.79** As the customer's representative is likely be an *eligible complainant*, the letter will also include details of the plan provider's complaints process.
- 5.80** Although sending this letter should be the default option, the customer should be able to opt out of having this letter sent to their representative. For example, in circumstances where the customer is not the 'covered individual' it may be that there is no need for any other representatives to be made aware of the plan.

Q21: Do you agree with our proposal to require plan providers to send a letter to the customer's representative once a plan has been purchased?

Ongoing annual disclosure

- 5.81** By their nature, funeral plans are long term products. It is likely that consumers' circumstances will change during the term of the plan. We think it is important that consumers are given the opportunity to keep their plan arrangements under review, and to make changes if they are necessary.
- 5.82** We propose to require providers to send customers an annual letter setting out important information about their plan. This will include information about the plan features, the customer's payments, cancellation terms, and the complaints process. The letter will also include a prominent warning that the customer should read the details and consider whether the plan continues to meet their requirements.

Q22: Do you agree with our proposal to require plan providers to send an annual letter to consumers?

Plan redemption

- 5.83** We propose that firms should be required to handle the redemption of a funeral plan fairly and promptly. This is likely to be distressing situation for the consumer's family

and friends, and it is important that the funeral is arranged in a timely manner in line with what the plan provides.

5.84 Providers may use in-house funeral directors or can separately contract with independent funeral directors to provide the funeral services. However, our proposed rules are clear that the provider retains full responsibility for ensuring delivery of the plan even where certain services have been subcontracted. Our systems and controls rules prohibit firms from outsourcing their regulatory responsibilities to other firms. We propose that providers will be required to regularly review their arrangements with funeral directors to ensure that the funeral directors remain in a position to provide the services in time. We are not proposing to be prescriptive about how often firms conduct these reviews, although firms should note our intention is to avoid a scenario in which a commercial dispute between the provider and funeral director impacts the delivery of funeral services. Such disputes should not impact the customer or their family and friends.

5.85 In addition, we propose rules that:

- Require providers to ensure that funerals are delivered to a satisfactory quality and standard and in line with the agreed plan services
- Prohibit plan providers from requesting further money from the customer's estate, either before or after the funeral has taken place unless this is permitted under the terms of the funeral plan contract
- Require providers to ensure the nominated funeral director does not ask for additional payment from the customer's estate, other than for products/services which are outside the scope of the plan

5.86 Providers should be aware that the customer's representative may be eligible to pursue complaints about the provision of plan services through the Financial Ombudsman Service. Given the importance of timely provision of the funeral, we expect plan providers to ensure that complaints and disputes do not delay the funeral.

Q23: Do you agree with our proposed rules for plan redemption?

Application of rules to existing plans

5.87 As noted above, most of the rules we are proposing will only apply to funeral plans which are distributed or entered into on or after 29 July 2022. However, there are some rules which we are proposing to apply to all funeral plans which are unredeemed, regardless of when they were entered in to. These are:

- The general principles including the requirement to act honestly, fairly and professionally in the customer's best interests
- The requirements concerning customer communications and financial promotions
- The requirements relating to post-contractual changes
- The requirement to provide the customer with an annual statement
- The rules on handling plan redemptions

5.88 For existing contracts, firms will need to consider whether the customer's representative is likely to have sufficient information to enable them to make use of

the plan when the time comes. If the firm has the nominated representative's details, and consent from the customer to communicate with them, they must provide the nominated representative's disclosure to them within good time of our rules coming into force.

5.89 We are also proposing guidance that a firm should consider whether its funeral arrangements for existing unredeemed plans would meet the purpose of our requirements, and what steps it might make regarding these arrangements. This includes making notifications to existing customers (and their nominated representatives) regarding the appointed funeral director. We do not anticipate this process to be unduly burdensome on the firm.

Q24: Do you agree with our proposals for rules to apply to plans entered into before 29 July 2022?

6 Product governance

- 6.1** In this chapter we set out our proposed rules on product oversight and governance in relation to funeral plans. These proposals are designed to ensure firms' behaviour is focused on delivering fair value products which meet the needs of consumers, and that firms have strong governance and oversight arrangements in place to support this.

Background

- 6.2** Across a range of sectors the FCA has long been concerned with how firms design and distribute their products. The Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD) guidance was introduced in 2007 to set out our expectations of firms under the Principles for Businesses and other detailed rules. This included guidance on the respective responsibilities of providers and distributors under the Principles during the product life cycle or while the service is provided. This guidance applied to all sectors regulated by the FCA.
- 6.3** For some sectors we regulate – for example as a result of implementing MiFID II and IDD – there are now more detailed rules in the Product Intervention and Product Governance sourcebook (PROD) instead of RPPD. This includes products such as whole of life insurance plans which may be considered as alternatives to funeral plans.

Product governance requirements for funeral plans

- 6.4** We propose to apply product governance requirements to all firms in the funeral plan sector based on the product governance requirements for insurance products in PROD 4; taking into account proposed changes to those rules in FCA CP20/19. By product governance we mean the systems and controls firms will need to have in place for the design, approval, marketing and ongoing management of products throughout their lifecycle.
- 6.5** The requirements will depend on firms' roles in relation to funeral plans. In PROD, firms are categorised as either:
- Manufacturers (see glossary, PROD 1.7.3G and PROD 1.7.4R) – those responsible for creating, developing, designing funeral plans, and/or entering into or carrying out a funeral plan contract as a provider.
 - Distributors (see glossary) – those who advise on or propose funeral plan contracts, which they do not manufacture.
- 6.6** The product governance rules will generally apply at the product level rather than to individual funeral plan contracts. They will apply to both new and existing products (that is, products designed prior to 29 July 2022). However, there are some differences in how the rules apply to existing products which are not subject to significant adaptations or changes.

Manufacturer requirements

6.7 In summary, we propose that manufacturers are required to:

- Maintain, operate and review a product approval process applying to:
 - funeral plan products manufactured prior to 29 July 2022 that remain available for distribution/marketing from the date the rules will apply
 - The approval of all new products, or significant adaptation to existing products, before they are marketed/made available for distribution.
- Specify a sufficiently granular, defined target market for each product, including identifying groups of consumers for whom the product is generally not compatible.
- Design products to be compatible with the needs, interests, characteristics and objectives of the target market. This should include ensuring that plans are designed to deliver funerals and are sufficiently funded to achieve this outcome.
- Ensure that products provide fair value to consumers. Products which do not provide fair value cannot be approved for marketing or distribution.
- Select distribution channels that are consistent with the target market and take steps to ensure that the product is distributed to the target market. This includes providing sufficient information to the distributor to enable them to set up an appropriate distribution strategy.
- Review all products at least once every twelve months to ensure they are continuing to meet the needs of customers in the target market, are delivering fair value to them, and to ensure that the distribution strategy remains appropriate. This must be done considering all relevant information including performance data.
- We propose that the rules should apply to existing products as well as new products. Where products do not meet the requirements, firms will need to take remedial action to improve the quality of the product or amend the distribution strategy, or cease offering them for distribution.

6.8 We are proposing requirements that will apply to products manufactured prior to 29 July 2022 as well as products newly manufactured or significantly adapted after that time. Where these existing funeral plan products do not meet the requirements, firms should not be offering them for distribution once PROD applies. If necessary, firms may need to take remedial action which could include making changes to their products.

6.9 We have also proposed that funeral plan providers will need to have adequate product governance requirements in place to ensure that legacy funeral plans deliver the intended benefits.

Q25: Do you agree with our proposed product oversight and governance requirements for funeral plan manufacturers?

Distributor requirements

6.10 In summary, we are proposing rules to ensure that distributors have adequate product distribution arrangements in place for any funeral plan products they distribute. Our proposals will require distributors to:

- Fully understand the manufacturer's identified target market
- Set up a distribution strategy which ensure that plans are only distributed to consumers within that target market
- Ensure that their actions do not adversely impact the value offered by the product

- Report any identified issues with the product to the manufacturer, in order to assist with their ongoing product reviews
- Provide manufacturers with information on their distribution process, in order to assist with the manufacturer's product reviews.

6.11 Although the PROD requirements for distributors are concerned with the systems and controls around the firm's distribution arrangements generally, rather than the sale of each individual funeral plan contract, there is a clear relationship between PROD and the sales standards set out in Chapter 5. For example, distributors are required to ensure that plans offered are consistent with the customer's demands and needs. This will not be the case if the customer is outside of the identified target market. Where a firm has established robust product distribution arrangements that properly consider the intended target market and how the involvement of the firm contributes to delivering fair value, this will reduce the risk of mis-selling.

Q26: Do you agree with our proposed product oversight and governance requirements for funeral plan distributors?

Fair value

6.12 Our proposed PROD rules will require funeral plan manufacturers to ensure that their plans are intended to provide fair value. Although this is primarily a responsibility of the manufacturer, distributors will also need to consider the effects their distribution arrangements could have the product's value.

6.13 Firms will need to consider the relationship between the total price to the customer and the quality of the product (and any other services provided) when identifying whether a funeral plan product offers fair value. This will include considering all elements that go into determining the total price of the funeral plan product, including the costs that will be incurred in providing the plan and the cost of delivering the funeral plan contract. Some other factors which firms should consider are:

- The benefits the product is intended to provide to the consumers
- The difference between the cost of delivering the funeral plan contract obligations and the price paid by the customer
- Any differences between the price of the plan and the price of an equivalent 'at-need' funeral
- Whether the distribution arrangements (including remuneration) or any parties involved could adversely impact the value of the product.

6.14 Where firms identify that products are not providing fair value to consumers, they must make changes to ensure the product provides fair value, or cease offering it for sale.

6.15 Responsibility for compliance with the PROD requirements, including ensuring plans are fair value, sits with the firm's governing body (normally its Board of Directors). This body should have effective control and oversight over the process and be responsible for product governance.

Q27: Do you agree with our proposed rules on fair value for funeral plans?

7 Resolution and compensation

- 7.1** As detailed in Chapter 2, we are concerned about risks to consumers that would arise if authorised funeral plan firms were to become insolvent and in particular if authorised funeral plan providers were to enter into insolvency and therefore no longer able to carry out funeral plan contracts.
- 7.2** In this section, we set out our proposals in relation to both resolution arrangements that firms are required to have in place to mitigate harm from firm failure, and the framework to allow the Financial Services Compensation Scheme (FSCS) to compensate customers of failed firms which are not able to meet liabilities against them. We are not aware of any firm failures in this sector but it is prudent and customary for regulated firms to have in place contingency plans to deal with the scenario of their failure.
- 7.3** Our resolution and compensation proposals in this consultation cover:
- Resolution arrangements that firms are required to have in place to protect customers on firm failure (ie in the event that the firm enters into insolvency proceedings).
 - The introduction of FSCS protection for certain funeral plan activities in relation to firms that become insolvent, and for acts or omissions arising, from the date the FCA takes on regulation of the funeral plan activity.
- 7.4** Resolution scenarios are inevitably complex, and situation-specific. In an ideal orderly failure scenario, there is a minimal impact on the end consumer. In this sector, the impact on the consumer will depend on whether the funeral can be delivered independently of the success of the provider, and/or whether the consumer is put in a position where they can access a replacement plan. Whether that is financially possible will be directly linked to the amounts held in trust/insured by the provider firm.
- 7.5** Where funds are inadequate, liabilities may fall to the FSCS, and it is desirable to design the trust/insurance requirements in a manner that minimises costs to the industry levy payers that fund the FSCS. Clearly such requirements need to be carefully calibrated.
- 7.6** In light of this, we are still considering the following aspects of our regulatory regime in relation to resolution and compensation:
- Precise options for the repayment of funeral plan monies to consumers in the event of firm failure if funeral plans cannot continue to be carried out by another provider that assumes the responsibilities of the failed firm, along with consequences for trust or insurance adequacy
 - Implications of the above for the amount of compensation payable by FSCS
 - Possible further rule changes in light of any future legislative changes that are introduced in relation to FSCS and funeral plans
- 7.7** In the event that further rule changes are required in relation to any of the above, the changes will be consulted on in a future consultation paper.

Mitigating the harm from firm failures

- 7.8** The Treasury's Call for Evidence noted that some providers may hold insufficient assets to meet liabilities, and we have observed that it is not always clear how funeral plan contracts will be administered in the event of firm failure. This could result in the risk of consumers losing money or not receiving funeral services.
- 7.9** We think a good outcome for a consumer in these circumstances would be for their funeral plans to continue to be carried out by another provider that assumes the responsibilities of the failed firm. This would allow consumers to receive a funeral that is the same, or similar to, the one originally agreed. In the interim, insolvency practitioners can step into the shoes of the firm and work with trustees or insurers to continue to meet obligations under the plan, as appropriate.
- 7.10** However, it may not always be possible, or desirable, for another funeral plan provider to take on carrying out the contracts in the longer term. We think that consumers should receive a prompt reimbursement if the firm is not able or intending to provide contracted funeral services, or is not and will not attempt to transfer the contract. If the reimbursement amount is adequate, the consumer can then choose to make alternative arrangements, supported by the reimbursement received.
- 7.11** Although we have not put forward rules for consultation on the amount or funding of this reimbursement, we describe some initial considerations below. We will issue a further consultation to clarify our proposals on this, along with associated costs and benefits. We seek views on what amount should be considered adequate, an amount equal to an equivalent funeral plan purchased on a retail basis, or an amount linked to the monies paid by the consumer and applied towards a contract of insurance or paid into a trust. We are also interested in the likely differential between these amounts (as set out in question 31).
- 7.12** We also propose to protect consumers through the FSCS, which could provide compensation in the event that funeral plan firms fail which are not able to meet their liabilities. However, our overall aim is for firms to make arrangements to ensure customers are protected in the event of firm failure, therefore mitigating potential calls on the FSCS.

Resolution arrangements for consultation

- 7.13** To help achieve these good consumer outcomes, in this consultation we propose to require firms to make arrangements in respect of new plans that they enter into to ensure that, in the event of their failure, there is a reasonable likelihood that the relevant funeral plan contracts will continue to be carried out by another firm which has the appropriate permission. Firms must also have arrangements to ensure that, in the event that funeral plan contracts will not continue to be carried out, consumers receive a prompt reimbursement. The contracts the firm has with trustees or insurers must make appropriate provision for and not frustrate these outcomes. Firms should also consider whether arrangements in respect of existing plans would meet these requirements, and what changes it could make to bring them into line.
- 7.14** Firms may also consider entering into arrangements with another firm that has the appropriate permissions and can take over its obligations. However, we do not require this, and contractual and other arrangements should not limit a transfer only to a

particular firm. Insolvency practitioners can work with trustees or insurers to meet the firm's obligations up until the point of transfer.

- 7.15** New funeral plan contracts must also provide consumers with the right to a prompt reimbursement in the event of failure where neither the firm nor another provider will continue to carry out the plans. This mandatory contract term will ensure that each consumer will have a claim in insolvency proceedings that the insolvency practitioner appointed to the firm would have to take into account under general insolvency law. As part of entering into any new contracts with consumers, firms must obtain pre-consent from consumers for the potential future transfer of their plan on the same terms, and trustees or insurers should not unreasonably withhold consent to transfer to another provider.
- 7.16** To facilitate transfers and reimbursements, we also propose that firms maintain a central record containing pertinent information and documents relating to each new funeral plan contract under which it has any undischarged obligations. This would identify the contracts that could be transferred, the payment obligations of the firm, the details of the customer, covered individual (if different) and nominated representative, and the amount paid by consumers that has been applied towards an insurance contract or paid into a trust.
- 7.17** Trust assets and monies payable under an insurance policy should be safeguarded such that they cannot be claimed by general creditors in the event of insolvency. If a plan provider fails, claims by insolvency practitioners should only be for delivery of consumers' funerals or repaying consumers. Please refer to the discussion in Chapter 4 for more detail on how our product structure proposals help to achieve these objectives.
- 7.18** If a plan provider fails where trust arrangements are being used, our proposals allow an insolvency practitioner to claim against the assets of the trust, in priority to other claims against those assets, to meet the costs properly attributable to causing the firm to continue providing or arranging funerals under existing funeral plan contracts, or effecting a transfer of those contracts to a new provider.
- 7.19** For both new contracts and those entered into prior to FCA authorisation we propose that firms have a resolution manual in place to assist in resolving their business should they fail.
- 7.20** We propose to require firms to disclose, at the point of sale, information to the consumer and their nominated representative on the arrangements in place and risks associated with their insolvency, as well as availability of access to the FSCS.
- 7.21** Funeral plan providers will also need to notify the FCA in respect of events that relate to insolvency.

Q28: Do you agree with our proposed resolution rules?

Reimbursement – request for views ahead of future consultation

- 7.22** We would expect consumers to be able to receive a prompt reimbursement if, in the event of failure, the firm is not attempting to transfer its obligations for carrying out the contract to another provider with appropriate permissions or is not able to continue to meet these obligations itself. Our reimbursement proposals aim not to

interfere with attempts by firms to transfer their obligations, which can provide a good outcome for consumers if they receive a similar funeral to that originally agreed.

- 7.23** As noted above we have not put forward rules for consultation on the reimbursement amount or funding in this consultation document, but will issue a further consultation to set out our proposals for this later in the year. However, we discuss some of our initial considerations below, and welcome any evidence that can be provided to inform our proposals in this area.
- 7.24** In determining an appropriate reimbursement amount, currently referred to in the legal instrument as the 'funeral plan customer balance', we have a number of desired outcomes in mind. First, we consider that consumers should, ideally, be put in a position to be able to purchase a replacement plan of a similar specification on a retail basis. Second, we are keen to minimise potential calls on and costs to FSCS levy payers. Third, while we consider that the reimbursement costs should be met as far as possible by firms, so that costs are not externalised to consumers or the FSCS, we are also mindful of the potential commercial implications, including prudentially. This includes how firms put themselves in a position to be able to cover such costs in the event that they arise, and what can be considered an adequate trust or insurance arrangement. Finally, we consider that the ability for consumers to receive a reasonable reimbursement should not be affected by whether their funeral plan contract is backed by monies held in a trust or by a whole of life insurance contract.
- 7.25** These outcomes, and their trade-offs, lead us to two main options. The first option is for firms to reimburse consumers such that they are able (or close to being able) to purchase a replacement plan. This would provide benefits, but would impose costs on firms. An alternative, second option, would be for consumers to receive a lesser reimbursement from firms. We consider that this should, in general, at least be the amount that they have paid that has been applied towards a contract of insurance or paid into a trust. This option would have less of a commercial impact for firms, but clearly carries trade-offs in terms of consumer protection. Clearly, there are also other options that fall between reimbursing on a replacement plan basis (option 1) and an amount linked to monies paid in by the consumer (option 2).
- 7.26** For trust-backed plans, in current arrangements we have observed differences in the reimbursement amounts that funeral plan providers make available to consumers. Our initial analysis has led us to consider that an appropriate reimbursement should at least include sums paid by the consumer under the funeral plan contract that have been paid into a trust, plus a pro-rated share of the remainder of the trust assets should there be any. In other words, consumers should receive a share of the investment returns made, protecting them to some degree from inflation in the cost of funerals if they then need to buy a replacement plan from another provider. We welcome evidence of the costs and benefits of reimbursing on this basis versus current practice.
- 7.27** We are also aware that such reimbursement may not fully cover the expected cost to consumers of replacing their plans on a retail basis. We would therefore welcome any evidence on the potential extent of this gap, and the capacity, cost and commercial implications for firms to cover this.
- 7.28** Options for reimbursement with insurance-backed plans also vary. For example, some firms indicate that they are able to make payments on the back of policy cancellation/surrender, while others indicate that they could pay a lump sum to the consumer's

estate on death. The type of insurance-product can affect the availability and amount of reimbursement, including provisions and fees relating to policy cancellation/surrender.

- 7.29** We consider that for insurance-backed plans, consumers should, in general, receive at least what they paid in, to help to support the costs associated with finding alternative arrangements. However, we would also like to explore the costs, benefits and commercial feasibility of reimbursing consumers such that they can purchase a replacement plan of a similar specification on a retail basis. We welcome any evidence that can be provided on this. Separately, we consider that consumers should not be exposed to excessive surrender charges. We also see merit to payments being made promptly once it is clear that neither the firm nor another provider will continue to carry out the plans. This will enable consumers, rather than their estate, to arrange alternative funeral service cover.
- 7.30** We welcome thoughts on the outcomes and options outlined above. In particular, we welcome responses and evidence on the amount of reimbursement, and capacity and options for firms regarding funding this eg from the trust or insurance policy (eg amount payable on cancellation/surrender); from firm's own resources; from separate insurance, or from a combination of funding sources. It should be noted that any reimbursement proposals are likely to only apply to contracts entered into after authorisation, although firms should consider what changes they could make to bring arrangements for pre-existing contracts more into line with any requirements made subsequently.
- 7.31** We will consult in a subsequent consultation paper on any additional rules that we propose in this area, as well as associated costs and benefits. This includes any consequential changes that might be needed to the existing proposals, such as the structure and prudential rules set out in chapter 4.

- Q29:** Do you have any views on reimbursement and what amount should be considered adequate noting option 1 (to reimburse an amount equal to the retail cost of an equivalent replacement plan), option 2 (an amount linked to monies paid by the consumer), and other options that sit between these eg sums paid by the consumer that have been paid into a trust plus a pro-rated share of the remainder of the trust assets?
- Q30:** Do you have any views on how these reimbursement options could be funded? In particular, how could funeral plan arrangements be structured in such a way as to ensure that the funeral plan provider's obligations could be met at all times?
- Q31:** Do you have any views and evidence on the costs and benefits of these options, including relating to consumer protection and commercial impact on firms? We also welcome any evidence on the likely differential between the amounts relating to options 1 and 2, and between these amounts and the amount available from trust and insurance arrangements.

Access to the Financial Services Compensation Scheme (FSCS) – proposals for consultation

- 7.32** In this section, we set out proposals for protection for funeral plans business under the FSCS.
- 7.33** FSCS is the UK's statutory compensation scheme of last resort. In the financial year 2019/20, FSCS paid out £527 million to over 258,000 consumers of failed financial services firms. FSCS's protection covers deposits, insurance provision and distribution, investment business, home finance advice and debt management and it plays a critical role in protecting consumers and ensuring they can have confidence in the financial services market. Firms from across the financial services industry pay levies to fund both the FSCS's operating costs and the compensation it pays out.
- 7.34** Under the Financial Services and Markets Act 2000 (Financial Services Compensation Scheme) Order 2013, the FCA and Prudential Regulation Authority (PRA) are each responsible for making rules in relation to the FSCS. In particular, the FCA and the PRA have responsibility for making rules concerning compensation made by the FSCS and the levies which fund the FSCS. The PRA is responsible for rules relating to claims in connection with deposits, insurance provision and dormant accounts; the FCA is responsible for claims in connection with all other relevant types of financial services activities that are protected under the FSCS. The scope of FCA's responsibilities includes setting the framework in relation to potential FSCS protection in relation to funeral plans business.

Should funeral plan activities be covered by the FSCS?

- 7.35** Considering the potential harms that exist in the market (as set out in Chapter 2), we consider it is appropriate that FSCS protection for funeral plans is introduced upon commencement of FCA's regulation of the sector. In particular, there is the risk that a customer of a funeral plan provider or distributor – who may be elderly or vulnerable – could suffer financial harm if the firm they dealt with went out of business and owed the consumer money.
- 7.36** Examples of harms which could occur relevant to FSCS protection include:
- Upon the failure of a funeral plan provider, there are insufficient funds (in whole or in part) or arrangements in place to satisfy the provider's obligations under the funeral plan contract. This could include obligations arising at the time of a consumer's death resulting in the funeral having to be funded at the time of need by the deceased's relatives or estate, rather than by the funeral plan as expected.
 - Following the failure of a funeral plan distributor which is not able to meet claims against it, consumers suffer financial loss due to the negligent advice or actions of the firm.
- 7.37** To address these potential harms, we consider that FSCS should be able to consider claims for compensation in relation to funeral plan business conducted from the point that our regulation of the funeral plan sector commences. We propose that protection will apply where the firm is declared "in default"¹ by FSCS and where the act or omission giving rise to the claim for which compensation is to be paid occurs following the commencement of regulation. FSCS would therefore, for example, not pay compensation in relation to claims that arose before the date of regulation but could however consider claims against a failed provider in relation to funeral plans which commenced pre-regulation, as long as the liability arises after that date.

1 The status of being in default following a determination made under COMP 6.3.1 R.

7.38 We consider FSCS protection for funeral plans is necessary and that – considering the harms identified – not having protection is not a viable option.

Q32: Do you agree with the proposal to introduce FSCS protection for certain funeral plan activities in relation to firms that are declared “in default” by FSCS, and for acts or omission arising, from the date FCA takes on regulation of the funeral plan activity?

Proposed scope of FSCS cover for funeral plan activities

7.39 FSCS pays compensation where all the qualifying conditions are satisfied. These include that the claimant is an eligible claimant (i.e. a person who is eligible to bring a claim for compensation) and that the claim is a protected type of claim (i.e. covered by the FSCS).

7.40 We propose to introduce FSCS protection for certain claims for funeral plan activity by adding a new category of protected claim into our Compensation Sourcebook (COMP) for funeral plan activity. This would cover claims relating to the following regulated activities carried on in relation to a funeral plan contract:

- a.** dealing in investments as agent (article 21 RAO);
- b.** arranging (bringing about) deals in investments (article 25(1) RAO);
- c.** making arrangements with a view to transactions in investments (article 25(2) RAO);
- d.** managing investments (article 37 RAO);
- e.** safeguarding and administering investments (article 40 RAO);
- f.** sending dematerialised instructions (article 45(1) RAO);
- g.** causing dematerialised instructions to be sent (article 45(2) RAO);
- h.** advising on investments (article 53(1) RAO);
- i.** entering as provider into a funeral plan contract (article 59(1) RAO);
- j.** carrying out a funeral plan contract as provider (article 59(1A) RAO); and
- k.** agreeing to carry on a regulated activity in a) to j) (article 64 RAO).

7.41 We only propose to provide protection for consumers of funeral plan contracts sold by providers and distributors which operate from a UK establishment.

Q33: Do you agree with the scope of proposed FSCS coverage?

How should loss be quantified and what compensation limit will apply?

7.42 Under the rules set out in COMP in connection with certain existing categories of claim (such as protected investment business), FSCS is required to pay compensation to the extent that the FSCS considers that the payment of compensation is essential in order to provide the claimant with fair compensation. FSCS has discretion on how to quantify the compensation due for individual claims, which it will quantify under its own quantification policies. We propose to introduce similar rules for funeral plan claims.

7.43 We also propose to allow FSCS to pay compensation direct to a third-party in certain circumstances, if considered appropriate by FSCS (as is permitted under the COMP rules for certain other categories of claim). For example, where the consumer dies around the time of the failure of their plan provider, FSCS may make payment to a funeral director to cover the cost of a funeral in certain circumstances, rather than pay cash compensation to the claimant's estate.

7.44 It is proposed that the compensation limit for funeral plan claims should be £85,000. This aligns with the current compensation limits applicable to deposit, home finance, debt management and certain investment claims. This helps to maintain consistency across compensation limits for different types of FSCS claim, making it easier for consumers to understand the level of FSCS protection that they may be entitled to. However, as the average cost of a funeral plan is typically between £2,500 to £5,000², we consider that it is very unlikely that funeral plan claims will exceed this limit in any event.

7.45 As explained at paragraph 7.31, we are seeking further views on options for firms repaying consumers in the event of firm failure. Once our proposals have been finalised in relation to reimbursements there may be implications for FSCS's rules relating to the quantification of loss. In so far as further rule changes are required these will be subject to a further consultation.

Q34: Do you agree with the proposed approach to FSCS quantification, the payment of compensation and the compensation limit?

How should FSCS coverage of funeral plans be funded?

7.46 FSCS costs (including compensation costs and management expenses) are apportioned to different funding classes so that, as far as possible, firms are paying for the cost of the failure of firms carrying out similar business. A firm's compensation costs levy or management expenses levy³ for a funding class is calculated with reference to the size of its annual eligible income (i.e. the firm's income for the previous financial year in relation to a firm, class and category under the FEES rules) and the amount of FSCS compensation that its individual funding class will have to pay.

7.47 FSCS funding arrangements are currently split into three PRA classes and six FCA classes, each with a levy limit, representing the maximum aggregate amount of compensation costs and specific costs that may be allocated to a particular class or category in one financial year:

PRA classes	
Class	Levy Limit
1. Deposits	£1,500m
2. Life Insurance Provision	£690m
3. General Insurance Provision	£600m

² HM Treasury, Regulation of pre-paid funeral plans: consultation of a policy proposal, June 2019

³ The FSCS is funded by the collection of two levies from the financial services industry. The first is a management expenses levy. This encompasses 'base costs', such as fixed running costs, and 'specific costs', such as claims handling costs and other expenses related to paying claims. The second is a compensation costs levy which covers actual or expected compensation payments. Compensation costs and specific costs can vary significantly from year to year, depending on the number of firms that fail and the extent of any liabilities that they leave behind.

FCA classes	
Class	Levy Limit
1. General Insurance Distribution	£410m (including provider contribution of £100m) *
2. Life Distribution and Investment Intermediation	£330m (including provider contribution of £90m) *
3. Investment Provision	£200m
4. Home Finance Intermediation	£55m (including provider contribution of £15m) *
5. Debt Management	£20m
6. Deposit Acceptors	£105m (only if the retail pool is triggered)

* Since 1 April 2019, product providers are required to contribute approximately 25% of the levies falling to the FCA intermediation classes.

- 7.48** Firms undertaking the activity of “entering as provider into a funeral plan contract” are currently required to contribute to the FCA funding class relating to contributions from the Life Insurance Provision class to the Investment Intermediation Claims class. However, as there are currently no firms with permission to enter into a funeral plan as provider, no levies have been imposed under this provision to date. We now propose to introduce a new combined funding class for funeral plan claims, which will cover both funeral plan provision and distribution activities. This class, which we propose will contribute to the management expenses levy (including base costs and specific costs) and the compensation costs levy (including contributions to the retail pool if required), will be funded by FCA regulated funeral plan providers and distributors based on the total amount of relevant business conducted. The annual income (tariff base) will be based on the firm’s net income in relation to funeral plan business, including commission and fees.
- 7.49** We have proposed a new funeral plans funding class because, based on our current understanding of the sector, we do not consider that funeral plan business directly aligns with the activities covered under other existing funding classes. Although funeral plans may be backed by a trust or insurance policy, which may potentially be provided by an authorised firm, there does not otherwise appear to be a clear connection between the activities of funeral plan providers and distributors and the members of other funding classes to justify allocating funeral plans to any of those funding classes.
- 7.50** The rationale for having a combined funeral plans funding class made up of both funeral plan providers and distributors is that contributing firms will be involved in vertically aligned business in connection with funeral plans, recognising that funeral plan providers and distributors benefit from each other’s business and have a mutual interest in ensuring appropriate protection is in place. Combining the two types of firm into one class also aids the sustainability of the class allowing the costs to be shared by a larger pool of firms.
- 7.51** We also aim to ensure that the class is affordable and sustainable, so that we have comfort that the costs can be borne by the levy payers which will meet the costs falling to the class. In the case of funeral plan firms, as there is no history of failures or compensation liabilities arising, we are not able to quantify or speculate as to what liabilities are likely to fall to the class in the future. Furthermore, we currently have limited information about which firms will ultimately become authorised, or the finances of those firms, from which to conduct a full analysis of what level of costs will be affordable.

7.52 Accordingly, we propose that the initial threshold for the new funeral plan funding class will be £5 million. This would represent the maximum amount of FSCS compensation and specific costs the firms contributing to the new funeral plan class (i.e. funeral plan firms) are required to cover before the retail pool is required to contribute (in the event that the levy limit for a funding class is reached, costs above the limit will be shared across other funding classes which contribute to the 'retail pool'). This is set at a relatively modest level (in contrast, the limit for Debt Management is £20 million and Home Finance intermediation is £55 million) and reflects the uncertainty as to what costs could fall to the class and the firms' ability to meet those costs. In the absence of comprehensive data to enable us to model the ability of firms to meet these costs, our expectation is that funeral plan firms should be able to meet the costs up to the class threshold.

7.53 Given the uncertainty, it is proposed that, at least one year after regulation commences, a review is carried out to consider whether the funding class limit for this funding class should be revised, in light of the better information that would then be available in relation to the potential liabilities which could arise and the ability of firms which fund the class to meet costs.

7.54 Our Cost Benefit Analysis at Annex 1 includes further information about the costs and benefits of introducing FSCS protection for funeral plans. This includes, at paragraph 201 of the Cost Benefit Analysis, an illustration of the potential compensation costs which could fall to funeral plan firms based on the initial funding class limit of £5 million.

Q35: Do you agree with the proposal to introduce a new funeral plan activity FSCS funding class as set out above? If not, please set out an alternative funding approach with justification.

Q36: Do you agree that an initial class limit of £5 million for the new funeral plan activity FSCS funding class would be appropriate, on the basis that this limit will be reviewed at least one year after regulation commences?

Ongoing consideration by Government in relation to FSCS and funeral plans

7.55 The Government is considering whether further legislative changes are required to ensure that the compensation scheme would operate effectively for consumers if it were extended to include funeral plans. Any changes would likely relate to the FCA's rule-making powers and the duties of insolvency practitioners, and would seek to enhance the FSCS's ability to effectively compensate consumers and seek recoveries in certain scenarios. The FCA would need to consult separately on further rules in light of any future legislative changes that may be introduced.

Draft rules in relation to FSCS for consultation

7.56 We have drafted the amendments we need to make to COMP and FEES to give effect to the proposals in relation to FSCS. The draft amendments proposed are in Appendix 1.

Q37: Do you have any other comments on the proposals in relation to FSCS?

8 The Senior Managers & Certification Regime

- 8.1** The rules we have explored in this CP so far largely focused on the firms. In this chapter, we set out requirements that are designed to encourage greater individual accountability and set a new standard of personal conduct. The chapter describes the Senior Managers and Certification Regime (SM&CR), and sets out our proposals for applying it to funeral plan firms. It describes the SM&CR for firms that only do funeral plan business. Firms that provide other financial services and are already authorised, should be familiar with the SM&CR rules.
- 8.2** We present below a summary of the SM&CR rules. The requirements of this regime span multiple sourcebooks, and SYSC 23.3.3 provides a list of the rules that apply and where they can be found in the Handbook. Firms should consult these rules and relevant guides, for example, [our guide for FCA solo-regulated firms](#).

What is the Senior Managers & Certification Regime?

- 8.3** The SM&CR is a set of rules and guidance that sets standards relating to professionalism, conduct and governance and holding senior members of a firm to account. The aim of SM&CR is to reduce harm to consumers and strengthen market integrity by making individuals more accountable for their conduct and competence. These rules also mean that, if an individual or a firm have broken our rules, it is easier for the firm and for the FCA to hold them to account.
- 8.4** In general, the SM&CR rules aim to ensure:
- people take responsibility for their actions
 - there is good conduct at all levels
 - it's easy to understand who does what
- 8.5** There are three key parts to the SM&CR:
- the Senior Managers Regime – rules that relate to individuals in certain senior roles, to ensure that they are fit and proper to perform these roles, and that certain prescribed responsibilities are allocated to these senior managers
 - the Certification Regime – rules that require firms to ensure that individuals who perform certain functions within the firm (and are not 'Senior Managers'), are fit and proper to do their jobs
 - the Conduct Rules – these are high-level standards of behaviour that apply to almost all employees who do regulated activities within financial services firms

Each of these parts are explained in more detail below.

- 8.6** The SM&CR applies to almost every firm the FCA regulates, but there are differences in the requirements for firms, depending on the size and complexity of the firm and

the potential harm to consumers arising from its business. Firms can be classified as Limited Scope, Core or Enhanced.

8.7 In most cases, the Certification Regime and the Conduct Rules apply in the same way to all types of firms⁴. For the Senior Managers Regime for solo-regulated firms there is a distinction in the rules that apply depending on whether a firm is classified as Limited Scope, Core or Enhanced. There are additional requirements for a small number (fewer than 1%) of solo-regulated firms whose size, complexity and potential impact on consumers warrant more attention – these additions are called the ‘enhanced regime’. Some firms, that we consider pose smaller risks of harm, are classed as Limited Scope and have fewer SMR requirements. The firms falling into these categories are defined in our rules.

What are our key proposals?

8.8 We are proposing to treat funeral plan firms (that have no other regulatory permissions) as Core SM&CR firms, except for intermediaries whose primary business is not funeral plan intermediation and who only have permission to carry on funeral plan mediation activity, which we propose would be Limited Scope. We propose that sole traders, would be Limited Scope SM&CR firms as well, as per the existing exemption in the SM&CR rules.

8.9 The following elements would apply to all funeral plan firms, both Core and Limited Scope firms:

- **the Senior Managers Regime** – these rules relate to individuals in certain senior roles ('Senior Managers'). The main elements are:
 - firms need to identify 'Senior Management Functions'. These are roles, held by the most senior people in a firm, that have the greatest potential to cause harm or impact upon market integrity, and assign them to Senior Managers
 - Senior Managers must be approved by us before carrying out their role
 - firms must assess whether the Senior Managers are fit and proper before approval, and on an ongoing basis
 - all Senior Managers need to have a Statement of Responsibilities
 - the firm needs to allocate Prescribed Responsibilities (explained below) to its most appropriate Senior Managers
- **Certification Regime** – these rules apply to individuals whose job meets the definition of being a 'Certification Function'. Under the certification regime:
 - firms would need to make sure that those performing Certified Functions are fit and proper to do their job
 - these individuals would not need our approval (unlike Senior Managers)
 - individuals performing Certification Functions will appear on the FCA Register
- **Conduct Rules** – these high-level standards of behaviour ('Conduct Rules') would apply to almost all employees who do regulated or financial activities in a funeral plan firm. Additional Conduct Rules apply to Senior Managers

⁴ There are some exceptions to this, for e.g. for benchmark administrators, but for most firms these will apply in the same way.

- 8.10 Limited Scope SM&CR firms would be subject to the same elements of the regime as Core firms, but would need to identify fewer Senior Management Functions.
- 8.11 If a funeral plan firm is already performing other regulated activities and has been authorised by the FCA for these, its classification as a Core or Enhanced firm would not change (unless a Core firm subsequently meets the threshold of being an “Enhanced” firm). If a funeral plan firm is already authorised and regulated by the FCA and is classed as Limited Scope, it would now be classed as a Core Firm.
- 8.12 As with our regime for other firms, we propose to allow funeral plan firms to opt-up into the Enhanced tier of the SM&CR.

Senior Managers Regime

Senior Management Functions

- 8.13 Some senior roles are classed as ‘Senior Management Functions’ (SMFs). These are roles, held by the most senior people in a firm, that have the greatest potential to cause harm or impact upon market integrity. The SMFs are listed and defined in Chapter 10C of the Supervision Manual.
- 8.14 We require firms to identify which individuals within the firm are undertaking specific SMFs, and ensure that the FCA knows who a firm’s most senior decision makers are and that they are fit and proper to do their role.

Approval of individuals performing Senior Management Functions

- 8.15 People performing SMFs need to be approved by the FCA before starting their role.
- 8.16 Funeral plan firms becoming regulated would therefore need to identify who their Senior Managers are and have them approved by the FCA. As part of the firm’s application, applications (a Form A and a Statement of Responsibilities (“SOR”)) for all those individuals that will hold a SMF will need to be submitted at the same time. These forms request information about each individual, and firms will need to demonstrate the individual’s fitness and propriety (including undertaking a criminal records check) and competence to perform the role.
- 8.17 Once approved, firms need to assess all their Senior Managers at least once a year, to make sure they remain ‘fit and proper’ to do their jobs. We describe our rules around fitness and propriety below.
- 8.18 If a firm subsequently wants to appoint new Senior Managers, they cannot start their jobs until approved by the FCA.

Roles classed as Senior Management Functions for Core firms

- 8.19 We propose that SMFs in funeral plan firms are consistent with those in other Core SM&CR firms in different markets. This means that the following roles are classed as SMFs:

- SMF 1 – Chief Executive Function
This is the person(s) with responsibility, under the immediate authority of the governing body, for the conduct of the whole of the business (or relevant activities).
- SMF3 – Executive Director
A director of a firm, other than a Non-Executive Director.
- SMF27 – Partner
A partner in a firm, other than a limited partner in a partnership registered under the Limited Partnership Act 1907.
- SMF9 – Chair
The person with responsibility for chairing, and overseeing the performance of the role of, the governing body of the firm.

8.20 The roles detailed above are known as 'governing functions'. But the SM&CR does not require firms to change their governance structure or hire new people to fill these roles. Core funeral plan firms are required to have a compliance Oversight function in SYSC 6 of our Handbook. We propose that they are required to have the following corresponding SMF:

- SMF16 – Compliance Oversight
This is the person responsible for the compliance function in the firm and reporting to the governing body on this.

8.21 Funeral plan firms are not required to have a Money Laundering Reporting Officer, and SMF17 – Money Laundering Reporting Officer – will not apply to them.

8.22 It is possible for one individual to hold more than one SMF. Any person in the firm who performs one or more of these roles, would need to be approved by the FCA, and be assessed by the firm on an on-going basis (see paragraph 8.17 above).

Roles classed as Senior Management Functions for Limited Scope firms

8.23 We propose that Limited Scope funeral plan firms would be required to allocate the SMF29 – Limited Scope Function to a Senior Manager. This is similar to how this function applies to Limited Scope firms in other markets.

8.24 We propose that Limited Scope funeral plan firms will not be required to have the SMF16 – Compliance Oversight function. As is the case for Core firms, they will also not be required to have an MLRO or SMF17.

Statement of Responsibilities

8.25 Every Senior Manager in a firm will need to have a 'Statement of Responsibilities'.

8.26 The Statement of Responsibilities is a single document that clearly sets out the Senior Manager's role and what they are responsible for. It's an important document for the firm, the individual and the FCA, as it helps everyone understand who is accountable for what, at the most senior level.

8.27 Funeral plan firms will need to submit a Senior Manager’s Statement of Responsibilities to us when applying for a Senior Manager to be approved. After we have approved a Senior Manager, the firm will need to:

- update and resubmit the ‘Statement of Responsibilities’ whenever there is a significant change to a senior manager’s responsibilities, and
- assess, at least once a year, that all their senior managers are ‘fit and proper’ to carry out their jobs

Forms

8.28 Firms will need to use different forms in relation to the SM&CR. Forms are needed, for example, to have senior managers approved to perform a specified SMF, to make notification to us of changes (such as changes in personal information), and notify us of significant changes in responsibilities of a Senior Manager.

8.29 Annex 3 of the [Senior Managers and Certification Regime: Guide for FCA solo-regulated firms](#), provides a list of the relevant regulatory forms.

8.30 Firms should use our [Connect system](#) to complete and submit the relevant forms.

Duty of responsibility and Prescribed Responsibilities

8.31 Senior Managers have a ‘duty of responsibility’. This means that if a firm breaks one of our rules, we can hold the responsible senior manager accountable if they did not take ‘reasonable steps’ to prevent or stop the breach. Our approach to Enforcement is detailed in Chapter 11. The burden of proof lies with us to show that the senior manager did not take steps to avoid the breach.

8.32 The FCA has defined a list of responsibilities that must be allocated to appropriate Senior Managers. We call these Prescribed Responsibilities. We prescribe these responsibilities to make sure a Senior Manager is accountable for key conduct and prudential risks and potential harms. In addition to these, firms would still identify other responsibilities Senior Managers hold and set these out clearly on their Statement of Responsibilities. In most cases, a Prescribed Responsibility should be allocated to a single individual, but they can be divided or shared in limited circumstances, for example, in a job share (see SYSC 24.3).

8.33 Core firms must decide which Senior Managers should be responsible for the following Prescribed Responsibilities. These are explained in more detail in [SYSC 24](#) of our Handbook. Limited Scope funeral plan providers do not need to allocate any Prescribed Responsibilities.

Handbook PR Ref.	Description
(a)	Performance by the firm of its obligations under the SMR, including implementation and oversight
(b)	Performance by the firm of its obligations under the Certification Regime
(b-1)	Performance by the firm of its obligations in respect of notifications and training of the Conduct Rules
(d)	Responsibility for the firm’s policies and procedures for countering the risk that the firm might be used to further financial crime

8.34 There are also specific Conduct Rules that apply to Senior Managers. We explain these below.

Overseas Senior Managers

8.35 There is no territorial limitation on the Senior Managers Regime. This means that it will apply to anyone who performs a Senior Manager role, whether they are based in the UK or overseas.

Certification Regime

8.36 We consider that some risks of harm in funeral plan firms are similar to those of firms in other markets we regulate, and that these can be mitigated by applying the Certification Regime. We propose to apply the Certification Regime to funeral plan firms, as it applies to all other regulated firms.

What is the Certification Regime?

8.37 The 'Certification Regime' applies to people who perform certain roles, known as 'Certification Functions'. These are not SMFs (but in certain circumstances, individuals who perform 'Certification Functions' can also be Senior Managers. E.g. in smaller firms where someone is both a Senior Manager and a Certification employee). They are people who are involved in aspects of a firm's business that involve, or might involve, a risk of significant harm to the firm or its consumers. These roles are detailed in [SYSC 27.8](#).

8.38 The Certification Regime is a set of rules that require firms to make sure that these key people are fit and proper to do their jobs. It also means that Senior Managers must have appropriate systems of management and governance to oversee them. An appropriate Senior Manager at the firm should be allocated a Prescribed Responsibility for ensuring that the firm has checked and ensured that only people who are fit and proper to do a certain role have been certified as such.

8.39 We set out the Certification Functions in SYSC 27.7.3 in our Handbook. Firms would need to read [SYSC 27.7](#) in our Handbook and decide whether any individuals in their firm should be classed as Certified Staff, because their job match the description of one or more of the functions.

8.40 The relevant Certification Functions include:

- the Significant Management Function
- anyone who supervises or manages a Certification Function (directly or indirectly), but who is not a Senior Manager

8.41 An individual working at a firm can perform more than one Certification Function. In such cases, the firm would need to ensure that the individual is fit and proper to perform each of the functions. It is also possible to hold both an SMF and Certification Functions where both rules apply.

8.42 The same list of Certification Functions applies to all firms in scope of SM&CR. However, the functions only apply where the firm has people in these roles. This means that it is possible that in very small firms, there would be no Certified Staff. For example, if a sole trader has no employees, then the Certification Regime won't apply to them.

Certifying that people performing Certification Functions are fit and proper

8.43 Funeral plan firms would need to make sure that anyone doing a Certification Function has been certified.

8.44 Certifying someone means assessing whether the person is fit and proper to do a particular role. Firms need to do this assessment either at the point of recruitment or before a person performs a Certification Function if they are already employed.

8.45 If the firm considers the person to be fit and proper for the role, it would need to issue them with a certificate. The firm would need to re-assess whether the person is fit and proper to perform the role at least once a year, and if the person is continuing to perform the function must renew the certificate.

8.46 As described above, it is possible for a person to hold more than one SMF, and it is also possible for an individual to hold both an SMF and Certification Function where both rules apply.

8.47 The certificate needs to state:

- that the firm is satisfied that the person is a fit and proper person to perform the function the certificate sets out, and
- what aspect of the firm's affairs the person will be involved in as part of performing their function

8.48 We describe the 'fit and proper' assessment in more detail later in this chapter.

8.49 If a firm does a 'fit and proper' assessment on an employee, and then decides not to issue a certificate, the employee must cease to perform the Certification Function. The firm must notify the person, in writing, of:

- the decision not to reissue the certificate
- what steps (if any) the firm proposes to take about the person as a result of the decision, and
- the reasons for proposing these steps

Territorial limitation of the Certification Regime

8.50 For UK firms, the Certification Regime is limited to people performing a Certification Function who are either based in the UK or, if based outside the UK, are dealing with (i.e. have contact with) UK consumers. We call this the 'territorial limitation'. This means that if a person based overseas does not deal with UK consumers, but would otherwise have been carrying out one of the functions listed in our rules, the Certification Regime may not apply to them. There are exceptions to this, for example where a firm has other permissions, including those relating to making investments.

Fit and proper requirements

- 8.51** A key feature of the SM&CR is to ensure that firms take responsibility for their staff being 'fit and proper' to do their jobs. We propose applying the fit and proper requirements to funeral plan firms. These apply to all other regulated firms subject to the SM&CR.
- 8.52** Firms would need to ensure that anyone performing a SMF or a 'Certification Function' is fit and proper to do so. Firms would also need to assess people in these roles on an ongoing basis, and at least once a year.
- 8.53** When making these 'fit and proper' assessments, firms must have regard to any general rules that we have about the qualifications, training, competence and personal characteristics required of an individual for that role.
- 8.54** Guidance in our Handbook⁵ sets out the factors that firms should look at when assessing people as fit and proper. This includes factors like a person's honesty, integrity and reputation; their competence and capability; and their financial soundness.

Evidence requirements

- 8.55** As part of the fit and proper requirements under the SM&CR, we require firms to collect certain evidence when assessing candidates for Senior Manager roles and Certification Functions. This evidence includes criminal record checks and references from previous employers.

Criminal record checks for Senior Managers

- 8.56** As with other firms in the SM&CR, we propose requiring funeral plan firms to undertake a criminal record check as part of each Senior Manager's application for approval.
- 8.57** The Disclosure and Barring Service (DBS)⁶, and the equivalent agencies in Scotland and Northern Ireland, run these criminal record checks. Funeral plan firms would have to register with the DBS. Smaller funeral plan firms may need to use an umbrella organisation to carry out checks on their behalf.
- 8.58** We also propose that, where a candidate has spent a considerable amount of time working or living outside the UK, funeral plan firms should consider undertaking an equivalent check with the appropriate overseas regulatory body where available.
- 8.59** We do not propose requiring firms to undertake criminal record checks for Certification Functions, but funeral plan firms may choose to conduct these checks for other staff where they are legally allowed to do so – this is for the funeral plan firms to decide.

5 'FIT' - The Fit and Proper test for Approved Persons and specified significant-harm functions

6 The DBS is a non-departmental public body of the Home Office

Regulatory references for Senior Managers and Certification Functions

8.60 Firms are also required to request a reference from Senior Manager and Certification Function candidates' past employers – known as 'regulatory references'.

8.61 These references would help firms to make better informed decisions about candidates. The proposed rules require firms to:

- request a reference from all previous employers in the past six years for people applying for Senior Manager and Certification roles
- share information between firms in a standard template
- disclose certain information going back six years, including details of any disciplinary action taken due to breaches of the Conduct Rules and any findings that the person was not fit and proper
- disclose any other information relevant to assessing whether a candidate is fit and proper, such as the number of complaints which have been upheld. This information must cover the previous six years – unless it relates to serious misconduct, which has no time limit – and firms would need to use their judgement when considering what is relevant, on a case-by-case basis
- retain records of all disciplinary and fit and proper findings going back six years
- not enter into arrangements that conflict with their disclosure obligations, such as non-disclosure agreements

8.62 Firms would also need to update their regulatory references where new, significant information comes to light.

8.63 A firm's compliance with the regulatory referencing requirements would also need to be consistent with its common law duties and other relevant legislation, such as those about the rehabilitation of offenders and spent convictions.

Directory of Certified and Assessed Persons in the Financial Services Register

8.64 The FCA publishes and maintains a directory of 'certified and assessed persons' on the Financial Services Register, so consumers and professionals can check the details of key individuals working in financial services. Firms must submit details about the following individuals to us:

- all Certified staff
- directors who are not performing Senior Manager Functions (SMFs) – both executive and non-executive
- other individuals who are sole traders or Appointed Representatives (ARs), or employees of ARs, where they are undertaking business with clients and require a qualification to do so (see [TC App 1.1](#))

8.65 We then publish the names (and any previous names) of those individuals, along with details of their roles and activities undertaken.

8.66 For consumer-facing roles requiring a qualification, we also publish details of consumer engagement methods, workplace location (where relevant) and memberships of professional bodies.

- 8.67** Once published, firms need to keep their information up to date, and confirm annually that their data is accurate if they don't otherwise make any changes to it.

Conduct Rules

- 8.68** We propose to apply our conduct rules in COCON to funeral plan providers and intermediaries. These are rules that relate to the conduct of certain persons working in funeral plans firms.
- 8.69** A key part of the SM&CR is the application of conduct rules to a broad range of staff. This set of enforceable rules set basic standards of good personal conduct, against which we can hold people to account. They can be found in the COCON chapter of our Handbook. This is aimed at creating and maintaining high standards of individual behaviour in regulated firms, and individual accountability and awareness of conduct issues.
- 8.70** We propose to apply the Conduct Rules to funeral plan firms. These apply to all other regulated firms subject to the SM&CR.

Key conduct rules

- 8.71** There are two tiers of Conduct Rules that apply to all firms. The first is a general set of rules that applies to most employees and directors in a firm. The second tier consists of rules that only apply to Senior Managers. There is also one Senior Manager rule, SC4, that applies to all non-executive and executive directors as well as to Senior Managers.
- 8.72** The table below sets out the key conduct rules that would apply.

First Tier – Individual Conduct Rules	
1.	You must act with integrity
2.	You must act with due care, skill and diligence
3.	You must be open and cooperative with the FCA, the PRA and other regulators
4.	You must pay due regard to the interests of consumers and treat them fairly
5.	You must observe proper standards of market conduct
Second Tier – Senior Manager Conduct Rules	
SC1.	You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively
SC2.	You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system
SC3.	You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively
SC4.	You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice

8.73 Firms would need to:

- train individuals who are subject to the Conduct Rules on how the rules apply to them
- notify us if:
 - an individual has breached a Conduct Rule; and
 - they have taken disciplinary action (i.e. a formal written warning, suspension, dismissal or reduction/recovery of their remuneration) as a result

Who do the conduct rules apply to?

8.74 As in other firms that are subject to the SM&CR, we propose to apply the Conduct Rules to:

- all Senior Managers
- all Certified Persons
- all directors, whether executive or non-executive, who are not Senior Managers (these individuals would be subject to the individual Conduct Rules and SC4 – the Senior Manager Conduct Rule to 'disclose appropriately any information of which the FCA or PRA would reasonably expect notice'), and
- all other employees, except people who are listed in paragraph 8.76 below

8.75 The Conduct Rules would apply to the majority of employees working in firms. This is important, as it ensures firms and the FCA can hold people accountable to ensure we are able to protect consumers and ensure market integrity.

8.76 There are some roles however, that we consider it would not be proportionate to apply the Conduct Rules. These are:

- receptionists
- switchboard operators
- post room staff
- reprographics/print room staff
- property/facilities management
- events management
- security guards
- invoice processing
- audio-visual technicians
- vending machine staff
- medical staff
- archive records management
- drivers
- Corporate Social Responsibility staff
- data controllers and processors under the Data Protection Act
- cleaners
- catering staff
- personal assistants and secretaries
- Information Technology Support (ie helpdesk)
- Human Resources administrators/processors

8.77 People in these roles may also deal with sensitive information and activities, but they are subject to other rules and laws governing their behaviour, such as laws relating to fraud or insider trading. Due to the nature of these roles, we consider those other rules sufficient.

Breaching conduct rules and reporting breaches

- 8.78** We provide guidance and examples of when we would consider someone to have breached a Conduct Rule in COCON 4.
- 8.79** When deciding whether to report misconduct, firms should also consider the nature of the behaviour and where the behaviour occurred. For example, if the misconduct relates to the firm's regulated activities, or an activity carried out in connection with a regulated activity would most likely be considered a breach of the rules.
- 8.80** In cases in which an incident clearly has nothing to do with the provision of a regulated activity (directly or indirectly) but happened in the workplace, it could still be considered a Conduct Rule breach, for example in the case of sexual harassment in the workplace. If the activity was unrelated to the regulated activity and happened outside of the workplace, it could be a fitness and propriety issue for certification or approval but might not be a Conduct Rule breach.
- 8.81** For Senior Managers, we propose that firms notify us of Conduct Rule breaches within seven business days of the firm becoming aware of the matter. For other individuals, we propose the notification is made every year.
- 8.82** A firm has wider reporting obligations about its Senior Managers. If a firm becomes aware of information which would reasonably be material to the assessment of the fitness and propriety of one of its Senior Managers, it must notify the FCA.

When will the SM&CR rules apply?

- 8.83** The new SM&CR rules would apply to firms once they become authorised.
- 8.84** By the time of Commencement, firms would need to have:
- submitted Form A applications for all individuals who will perform a Senior Management Function at least 3 months prior to Commencement, to ensure their Senior Managers have received approval by the time the regime commences
 - identified individuals who would be subject to the Certification Regime and Conduct Rules and provided training
 - have certified all Certified Persons as fit and proper and issued them a certificate
 - submitted information about Directory Persons to the Register
 - be ready to comply with all other regime requirements

Q38: Do you agree with our proposal to apply the SM&CR to funeral plan providers?

Q39: Do you agree with our proposals to treat funeral plan firms (that have no other regulatory permissions) as Core firms, except for intermediaries whose primary business is not funeral plan intermediation and who only have permission to carry on funeral plan mediation activity, which we propose would be Limited Scope?

- Q40:** Do you agree with our proposed fit and proper requirements, including criminal record checks and regulatory references?

- Q41:** Do you agree with our proposed approach to applying the Conduct Rules to funeral plan firms?

9 The Appointed Representatives regime

Background and summary of our proposals

- 9.1** This chapter describes the Appointed Representative (AR) regime, and sets out our proposals for applying it to funeral plan firms.
- 9.2** The Treasury is extending the use of Appointed Representatives to funeral plan firms through amendments made to FSMA. We believe that some providers will choose to have appointed representatives, and that firms such as funeral directors may choose to become appointed representatives. We want to ensure that there is appropriate oversight of the ARs by the firms appointing them.
- 9.3** We are proposing to apply to funeral plan firms our existing general rules and guidance in relation to ARs (but not the rules which specifically relate to the implementation of specific EU-derived regimes).
- 9.4** We are also proposing an additional requirement for funeral plan principal firms, to notify us of significant changes in relation to their ARs.
- 9.5** We are not consulting on the AR rules generally, which are already in place and apply to firms in other financial markets. We are only consulting on the proposal that these rules be applied to funeral plan firms and on the proposed extension to the regime in relation to notifications, as we set out below.
- 9.6** The rules in relation to ARs are set out in detail in [SUP 12](#) of our Handbook. The main purpose of these rules is to place responsibility on a firm for seeking to ensure that:
1. its ARs are fit and proper to deal with clients in its name;
 2. clients dealing with its ARs are afforded the same level of protection as if they had dealt with the firm itself.
- 9.7** We also explain in this chapter how the Approved Persons Regime applies to ARs.
- 9.8** We provide below a summary of these rules, to help firms navigate them. Firms should consult the relevant Handbook sections for further detail.

What is the Appointed Representatives regime?

- 9.9** An AR is an organisation or person that acts on behalf of a firm the FCA directly authorises. The AR is not authorised by the FCA directly, but if certain conditions are met it can carry out regulated activities, such as:
- it has a written contract with the authorised firm, and

- the authorised firm takes regulatory responsibility for the AR and its actions and ensures that it complies with our rules. We explain what this means in practice below.

- 9.10** The regime is established by section 39 of the FSMA and the Appointed Representatives Regulations 2001. The FCA's rules, and guidance on FSMA requirements, are set out in SUP 12 (the Appointed Representatives chapter of our Handbook).
- 9.11** The AR regime allows unauthorised persons to carry on certain regulated activities under the responsibility of a principal firm which has permission for those activities. For certain types of firm, becoming an appointed representative of a principal firm may represent an appropriate alternative to seeking authorisation.
- 9.12** The AR regime aims to ensure that ARs are adequately overseen by the firms which appoint them. Any regulated activities which are carried on by the AR under an AR arrangement are the responsibility of the principal firm. The principal must therefore satisfy itself that any proposed AR is suitable to act for it.
- 9.13** The FCA regulates firms and takes action against them where they fail to meet the expected standard. As we detail below we can also take action against principal firms for actions and omissions of their ARs.

Applying the AR regime to the funeral plans market

- 9.14** To ensure that adequate oversight arrangements of ARs exist in the funeral plan market, we are proposing to extend our rules and guidance in relation to ARs to funeral plan firms.
- 9.15** We also want to ensure that we have clear information on those firms which wish to engage ARs in relation to funeral plan activity. This will allow us to ensure that we are able to properly oversee the arrangements that firms have in place to monitor and control the activities of their ARs as part of our Supervision work.
- 9.16** To this end, we are proposing to require funeral plan firms who want to appoint ARs to notify us of any significant changes they are planning in relation to ARs, before the appointment is made. We consider that this is particularly important in the funeral plans sector, since firms operating in this market will be regulated by the FCA for the first time, and there may be numerous firms who decide to become ARs.

What can an Appointed Representative do?

- 9.17** An AR can only carry on certain prescribed regulated activities and these must be activities which either fall within the principal's scope of permission or which are excluded from being regulated activities when carried on by the principal. We've detailed the full list of activities ARs can do in SUP 12.2.7G.
- 9.18** For funeral plans it will not be possible for appointed representatives to engage in the regulated activities of entering into, or carrying out, contracts. ARs will, however, be able to engage in funeral plan distribution activities.

- 9.19** An AR can represent more than one principal, if it chooses to, except in relation to certain activities listed under SUP 12.5.6AR (Prohibition of multiple principals for certain activities and subject to the terms of its agreement with its principal).

Appointing an AR

Ensuring that the AR is fit and proper and that it complies with our rules

- 9.20** Firms that wish to appoint an AR need to ensure that the AR is fit and proper, and that the AR is not already regulated by the FCA or is a Limited Permission Consumer Credit company (LPCC).
- 9.21** The authorised principal must ensure that it has the resources necessary to ensure the AR complies with our rules in relation to the activities for which the firm has accepted responsibility. We explain the checks they should undertake (before appointing an AR and on an ongoing basis) below.

Entering into a contract with the AR

- 9.22** To appoint an organisation or a person as an AR, the authorised firm must have entered into a contract with them.
- 9.23** The Appointed Representatives Regulations set out what must be included in the contract. This includes permitting or requiring the AR to carry out a certain regulated activity, complying with the requirement set out in the AR Regulations, and if the contract does not prohibit the representative from acting for persons other than his principal, it must contain provision allowing the principal to prohibit him from doing so, or to restrict the extent to which he can do so. The principal firm must accept responsibility, in writing, for the authorised activities of the person in carrying on the whole, or part, of the business specified in the contract. We provide guidance on this in SUP 12.5.
- 9.24** If an AR chooses to represent more than one principal, it must have a separate AR agreement with each authorised firm. There should also be in place a "multiple principal agreement" between all the authorised firms to ensure that the interests of clients are protected, including introducing the concept of a lead principal so it is clear who a client can complain to. We explain this in SUP 12.4.5 (Multiple principals).

Our supervision of AR arrangements

- 9.25** Our Review of principal firms in the investment management sector identified concerns about the way in which AR arrangements were being employed, which was leading to harm to consumers. Recent years have seen the growth of principals in the sector describing themselves as 'Regulatory Host' firms. These are networks which allow small businesses, which would otherwise require authorisation, to operate as ARs under the regulatory umbrella of the principal without necessarily having any relationship with that principal in terms of selling its products or services.
- 9.26** Our Review found that some ARs operating under 'regulatory hosts' were conducting activities outside their principal's core areas of expertise. Some principals were overseeing a wide variety of business models operated by their ARs without putting

in place sufficient resources to do so, including enough appropriately skilled and experienced people. This often led to weaknesses in the principal firms' ability to oversee the AR, including having appropriate control and risk management frameworks. This in turn led to poor conduct resulting in harms to consumers.

- 9.27** To avoid such a situation arising in the funeral plan market, we are proposing to require principal firms to notify us if they are planning to diversify the scope of business of their ARs for which they accept responsibility either to include regulated funeral plan activity, or beyond such activity, for the first time." This notification will allow us to assess, if needed, whether the principal firm has the appropriate oversight arrangements in place, including adequate processes and controls to oversee their ARs. We provide more detail of this proposal below.

What are the responsibilities of the principal firm?

Principal firms are responsible for the AR's acts and omissions

- 9.28** A principal firm accepts responsibility for the activities of its AR under the principal-AR agreement. An act or omission of the AR, in carrying on the business the principal has accepted responsibility for, is treated as an act or omission of the principal firm itself. Regardless of any supplementary commercial arrangements with the AR, the principal firm has full responsibility (including for any liabilities that might arise) for ensuring that the AR complies with our rules: a breach by the AR is a breach by the principal firm. For example, if we find misconduct within an AR, we contact the principal firm during any regulatory intervention.

Principal firms must effectively oversee and govern the ARs

- 9.29** Firms wishing to be principal firms and use AR arrangements would have to make sure they are able to effectively oversee and control any ARs. This includes having in place appropriate governance arrangements, effective risk frameworks, internal controls and adequate resources.

- 9.30** A principal firm is referred to as a 'network' if it appoints five or more Appointed Representatives (not counting introducer Appointed Representatives) or if it appoints fewer than five Appointed Representatives (again, not counting Introducer Appointed Representatives) which have, between them, 26 or more representatives. Networks will have to show that they have appropriate systems and controls to effectively monitor and govern their ARs. As the size and / or complexity of the network's activity increases, the network needs to ensure its ability to identify and manage any risks and to adequately oversee and govern the AR.

- 9.31** When firms apply to us for authorisation, they need to detail such arrangements (or intended arrangements). We will assess the arrangements of the firm applying to become a principal firm, and if we consider that it does not have the right resources to effectively supervise their ARs, we will not approve its application. As we explain below, we propose that principal firms must also notify us of any significant changes in relation to ARs, so that we can assess whether it has the proper arrangements in place.

9.32 Principal firms are also responsible for submitting applications and notifications to the FCA relating to Approved Persons. Details on this can be found in paragraph 9.63 onwards below.

Recruiting an AR

9.33 Principal firms have to conduct checks on prospective ARs, to make sure that:

- the principal firm will continue to meet our Threshold Conditions after appointing the AR (see Chapter 12). Appointing an AR brings risk to a principal firm; principal firms should evaluate that risk before appointment
- the prospective AR is solvent
- the prospective AR is suitable to act for the firm. There should be no close links or conflicts of interest that could prevent it being effectively supervised⁷
- the prospective AR is fit and proper to act on behalf of the principal firm. We provide guidance on the information principal firms should obtain and verify in SUP 12 Annex 2. It includes investigating the AR's professional reputation, such as whether the AR has ever been publicly censured by the FCA
- the controllers, directors, partners, proprietors and managers of the AR are fit and proper and of good financial standing
- they have identified which individuals at the AR perform a controlled function under the Approved Persons Regime and have applied for those individuals to be approved by the FCA (explained further below)

9.34 Before appointing an AR, principal firms must also check that they have adequate:

- controls over the regulated activity they will be allowing the AR to undertake on their behalf. These include appropriate governance arrangements and risk management frameworks
- resources to monitor whether the AR is complying with our rules and, if it isn't the ability to enforce compliance

9.35 Principal firms are responsible for recording how they completed these checks and verified the information. They must also retain those records for future inspection. We may ask, for example, how a principal firm verified the financial information disclosed by the prospective AR or the competence of the staff in the AR.

9.36 An important area to consider before taking on an AR is the relationships the AR has with other directly authorised firms. If an AR works for more than one authorised firm, a Multiple Principal Arrangement needs to be in place. The Multiple Principal Agreement must contain all the provisions which are necessary or desirable to set out the relationship between the principals of that AR, and to protect the interests of clients. Further details on multiple principals can be found in SUP 12.4.5B R onwards.

9.37 If a principal firm proposes to appoint an AR, but not to prohibit its appointment by any other principal firms, the principal firm should check whether the AR is already appointed by one or more other principal firms. This includes checking the Financial Services Register.

⁷ We explain what we mean by 'close links' in COND 2.3

Monitoring ARs

- 9.38** If at any time a principal firm has grounds to believe that the conditions in paragraphs 9.33 and 9.34 are not satisfied, or are likely not to be satisfied, the principal firm must:
- take immediate steps to rectify the matter; or
 - terminate its contract with the AR, and notify the FCA of this.
- 9.39** In addition to the controls and monitoring described above, we normally expect principal firms to check their AR's financial position at least once a year. An appropriately experienced person (for example, a financial accountant) should carry out these checks, and consider factors such as whether the type of accounts obtained is appropriate to the type of AR; whether the accounts have been prepared on a timely basis; investigate fully any unusual items; and critically review the accounts to ensure that the AR is financially stable.
- 9.40** Principal firms should be able to demonstrate that they have rigorous management information to allow close and continuous supervision and monitoring of ARs. Monitoring key performance indicators and discussing these at regular intervals with ARs helps spot trends and enables principals to take appropriate action. For example, information on sales and complaints can help principal firms determine if there are any conduct of business issues they need to address.
- 9.41** Principal firms must be able to demonstrate that their checks on ARs include the suitability of the advice given to consumers and whether ARs are treating consumers fairly. Any remedial action that is required should be clearly documented with a clear audit trail for future reference. Principal firms must also check the suitability of the AR on an ongoing basis.

Terminating a relationship with an AR

- 9.42** If a contract with an AR is terminated, or if it is amended in a way which no longer meets the requirements contained or referred to in the contract between the principal firm and the AR (see SUP 12.8.1R and SUP 12.5), a principal firm must take all reasonable steps to ensure that:
- if the termination is by the principal firm, the AR is notified in writing and informed that it will no longer be able to conduct regulated activities through an arrangement with the principal
 - consumers are treated fairly; any obligations to consumers should be fulfilled
 - where appropriate, clients are informed of any relevant changes
 - all the other principal firms of the AR are notified.

Record keeping

- 9.43** Principal firms have to keep the following records and provide these if requested. Records should be retained for at least three years from the date of termination or the amendment of the contract, and include:
- the AR's name
 - a copy of the original contract and any amendments
 - the date and reason for terminating or amending its contract with the AR
 - any multiple principal arrangements
 - the financial position of the business it carries on in its capacity as the principals' AR
 - any individuals who are Approved Persons or require a qualification (as explained above)
- 9.44** The principal firm should have full access to the AR's records in respect of the information detailed in SUP 12.9.3.

Q42: Do you agree with our proposal above to extend the rules and guidance for ARs to funeral plan firms?

The Approved Persons Regime

- 9.45** The FCA has rules in place that aim to reduce harm to consumers and strengthen market integrity by setting out the roles requiring FCA approval, so that we can ensure candidates are fit and proper to hold important roles within firms.
- 9.46** Senior managers at ARs, who perform controlled functions, are subject to the Approved Persons Regime (APR). We propose to apply the APR to ARs of funeral plan firms.
- 9.47** The APR rules are detailed in SUP 10A of the FCA Handbook⁸, and we provide detail on some of the main rules below.
- 9.48** An 'approved person' is an individual who we approve to do one or more activities that are called 'controlled functions'. This person has to know and meet our regulatory requirements, as well as understand how we apply them.
- 9.49** When a principal firm appoints an AR, it is the principal firm's responsibility to identify which individuals within the AR are performing a 'controlled function', and ensure that the APR rules are followed.

⁸ Most firms, including principal firms, are subject to the Senior Managers and Certification Regime (see chapter 8, for details on the regime and how it applies to firms). ARs are not subject to the SMCR but are subject to the APR.

9.50 Controlled functions at ARs are detailed in the table below. All persons performing these 'controlled functions' must be approved by us (details below):

Controlled functions		
Governing functions		
CF1	Director function	Described in SUP 10A.6.7R and SUP 10A.6.8R
CF2	Non-executive director function	Described in SUP 10A.6.12R and SUP 10A.6.13R
CF3	Chief executive	Described in SUP 10A.6.17R
CF4	Partner	Described in SUP 10A.6.23R to SUP 10A.6.27R
CF5	Director of unincorporated association function	Described in SUP 10A.6.29
Consumer-dealing function		
CF30	Consumer function	Described in SUP 10A.10.7

FCA approval for persons performing controlled functions at ARs

9.51 Anyone performing a controlled function at an AR has to be approved by the FCA.

9.52 The principal firm has to assess that the individual is fit and proper to be an 'Approved Person' and submit a Form A to us to approve the individual⁹.

9.53 We only approve people who we are satisfied are fit and proper to perform the controlled function they apply for. The FCA has given guidance on the Fit and Proper test for Employees and Senior Personnel in [FIT](#).

Requirements of Approved Persons

9.54 Approved Persons have to understand, and meet, our regulatory requirements, as well as understand how we apply them. They must:

- meet and abide by the rules of our [fit and proper test](#)
- comply with the [Statements of Principle](#) (detailed below) and with the provisions of the [Code of Practice for Approved Persons](#). These explain the behaviours we expect of people we approve

9.55 The Principle firm also needs to report anything that could affect the ongoing suitability of the AR to us, [via Form D](#).

9.56 Approved Persons are subject to rules of conduct. These are called Statements of Principle under the APR (see details below), supported by guidance called the [Code of Practice for Approved Persons](#). The relevant forms relating to FCA-Approved Persons are detailed in SUP 10A.12.2 G.

9.57 An Approved Person is subject to the following Statements of Principle (see details in APER 2: The Statements of Principle for Approved Persons). Statements of Principle 1 to 4 apply to all Approved Persons. A person performing an accountable higher management function is also subject to the additional requirements set out in Statements of Principle 5 to 7 in performing that accountable function.

9 This applies differently to IARs and LPCCs

Statement of Principle 1: An Approved Person must act with integrity in carrying out his accountable functions.

Statement of Principle 2: An approved person must act with due skill, care and diligence in carrying out his accountable functions.

Statement of Principle 3: An Approved Person must observe proper standards of market conduct in carrying out his accountable functions.

Statement of Principle 4: An Approved Person must deal with the FCA, the PRA and other regulators in an open and cooperative way and must disclose appropriately any information of which the FCA or the PRA would reasonably expect notice.

Statement of Principle 5: An Approved Person performing an accountable higher management function must take reasonable steps to ensure that the business of the firm for which they are responsible in their accountable function is organised so that it can be controlled effectively.

Statement of Principle 6: An Approved Person performing an accountable higher management function must exercise due skill, care and diligence in managing the business of the firm for which they are responsible in their accountable function.

Statement of Principle 7: An Approved Person performing an accountable higher management function must take reasonable steps to ensure that the business of the firm for which they are responsible in their accountable function complies with the relevant requirements and standards of the regulatory system.

Non-compliance

9.58 We may take disciplinary action against Approved Persons who:

- act in a way that is inconsistent with the rules for controlled functions
- knowingly work together to breach their firm's rules

9.59 Our actions include financial penalties, suspensions of approval, imposing restriction and issuing a public statement about the misconduct.

Reporting changes in relation to Approved Persons

9.60 Changes made to an Approved Person's role or responsibilities should be reported to us. These include, ceasing to perform a controlled function, moving roles within a firm, and changes to an Approved Person's personal details. See SUP 10A.14 for additional details.

9.61 The principal firm is also responsible for reporting information which would reasonably be material to the assessment of an FCA Approved Person's, or a FCA candidate's, fitness and propriety.

9.62 We can take enforcement action against both the principal firm and the Approved Persons if the person performs an FCA controlled function without approval, and if we suspect they are involved in misconduct.

Q43: Do you agree with our proposal above to apply the existing Approved Persons Regime to funeral plan firms?

Notification requirements in relation to ARs

9.63 We require principals to notify us when they appoint an AR and when the relationship is terminated. We provide the Appointed Representative appointment form in Connect for firms to submit the following details:

- the name of the principal firm's new AR
- any trading name under which the principal firm's new AR carries on a regulated activity in that capacity
- a description of the regulated activities which the AR is permitted or required to carry on and for which the principal firm has accepted responsibility
- any restrictions imposed on the regulated activities for which the principal firm has accepted responsibility

9.64 Principals are also responsible for submitting the following applications and notifications to us relating to Approved Persons. Principals should use Connect to make notifications and submit forms.

Form Name	Purpose
Form A (Long) – Application to perform controlled functions	For appointed representatives only, an application for an individual to perform a controlled function
Form A (Short) – Application to perform controlled functions ¹⁰	
Form C – Notice of ceasing to perform controlled functions	An application to cancel an individual approval
Form D – Changes to personal information/ application details and conduct breaches/ disciplinary action related to conduct	Used to notify the FCA of issues in fitness and propriety, disciplinary action taken and changes to personal information
Form E – Internal transfer of a person performing a controlled function	An application for an individual to change the approved function being performed

Notifying the FCA of significant changes relating to ARs

9.65 Firms already need to tell us about significant changes to their business, such as proposed restructuring, reorganisation or business expansion, that could have a significant impact on the firm's risk profile or resources¹¹.

9.66 We propose to make a rule to require funeral plan principal firms to notify us of their intention to make significant changes in relation to ARs. This is in addition to the requirement detailed above to notify us of appointing an AR and providing their details, which is aimed at providing the FCA data on ARs operating in the market.

9.67 We propose that the notification in relation to ARs would need to be made before the appointment of the ARs. This will ensure that, if needed, the FCA can check whether the appropriate oversight arrangements have been put into place.

¹⁰ There are two types of Form A; a Long Form A and a Short Form A. The key difference is that the Long Form A requires detailed information about the fitness and propriety of the candidate. If you are using Connect to complete a Form A it will ask you some initial questions to determine the sections you need to complete.

¹¹ For example, Principle 11 states that 'a firm must deal with its regulators in an open and cooperative way, and must disclose to the FCA appropriately anything relating to the firm of which that regulator would reasonably expect notice'.

9.68 We propose to require principal firms to make a notification in relation to ARs in the following instances:

- First appointing an AR – If at the point of authorisation, the principal firm did not declare its intention to appoint ARs, and at a later date decides to do so, it would be required to notify the FCA of its intention to appoint an AR to carry on regulated funeral plan activity for the first time. Such notification will allow the FCA to decide whether it needs to request information about the arrangements that the principal has in place to oversee its ARs.
- Significant increases in the number of ARs a principal firm intends to have – Large increases in the number of ARs a principal firm plans to have, may require the principal firm to adjust its oversight arrangements. We propose that the principal firm would be required to notify us of its intention to appoint ARs when the number of ARs it intends to have will increase as follows:
 - From fewer than 25 to 25 or more;
 - From fewer than 50 to 50 or more;
 - From fewer 75 to 75 or more;
 - From fewer 100 to 100 or more;
 - From fewer 200 to 200 or more;
 - From fewer 500 to 500 or more; and
- When a principal firm intends to diversify the activities of its ARs – as detailed above, the AR regime is intended to enable unauthorised persons to carry on certain regulated activities for and on behalf of the principal firm. Where firms intend to diversify the scope of business of ARs for which they accept responsibility, we propose to require firms to notify us. This proposal would apply where firms which might already have ARs propose to permit an AR to carry on funeral plan business for the first time. It would also apply where a firm with ARs undertaking funeral plan business proposes to accept responsibility for non-funeral plan-related business for the first time.

Q44: Do you agree with our proposal to require funeral plan principal firms to notify us of changes in relation to their ARs as detailed above?

10 Dispute resolution

- 10.1** This chapter sets out the rules in our 'Dispute resolution: Complaints' sourcebook (DISP) which we propose to apply to all funeral plan providers and intermediaries (for example appointed representatives) that will fall within the regulatory perimeter once FCA regulation starts. The rules in DISP cover how firms should handle complaints and when complaints must be referred to the Financial Ombudsman Service (ombudsman service). This chapter also includes a discussion about the changes that are necessary to DISP in order for it to apply to those firms that will fall within our regulatory perimeter.
- 10.2** The FCA is responsible for setting the rules for the complaints under the 'compulsory jurisdiction' (CJ) of the ombudsman service. Having robust, fair procedures for dealing with complaints will help to reduce harms in the funeral plan sector. The ombudsman service also has its own voluntary jurisdiction (VJ) which covers some types of complaint not covered by the CJ and which financial service firms may choose to participate in and which it oversees. In addition to mirroring our proposed changes to the CJ in the VJ, the ombudsman service is also consulting on a proposal for the VJ to be available to firms who offer funeral plans sold where the funeral is to take place outside of the UK, and will therefore not be covered by the CJ. As such, this part of the consultation is issued jointly by the FCA and the ombudsman service.
- 10.3** The ombudsman service is an independent third party set up by Parliament to resolve complaints between consumers and businesses that provide financial services and claims management services in a fair and impartial way. Having the ombudsman service consider complaints helps to build eligible complainants' trust that they will get a fair outcome when they complain.

What are our key proposals?

- 10.4** We propose to:
- bring funeral plan providers and intermediaries within the CJ of the ombudsman service where the plan provides for a funeral to take place in the UK
 - apply our complaint handling requirements in DISP to ensure that complaints are dealt with promptly, consistently and fairly
 - enable the ombudsman service to deal with complaints about certain acts or omissions of funeral plan providers that occurred before FCA regulation comes into force if the funeral plan provider was a member of the FPA at the time the act or omission being complained about occurred.
 - give funeral plan providers selling plans for a funeral to take place outside of the UK, the opportunity to join the VJ so that a greater range of consumers have access to a dispute resolution service.

The Financial Ombudsman Service

- 10.5** The ombudsman service has a statutory duty to resolve disputes 'quickly and with minimum formality', offering an alternative to the Courts. Its decisions are based on what, in its opinion, is fair and reasonable in all the circumstances of the case.
- 10.6** The ombudsman service is free for complainants. When the ombudsman service decides to uphold a complaint, it can order the firm to make a monetary award to the complainant for an amount it considers gives fair compensation for the loss or damage suffered. The ombudsman service can also direct the firm to take such steps in relation to the complaint that it considers 'just and appropriate'.
- 10.7** The ombudsman service has a statutory award limit of £160,000 for complaints about acts or omissions that occurred before 1 April 2019 or up to £355,000 for complaints about acts or omissions on or after 1 April 2019 (which are referred to the ombudsman service on or after 1 April 2020). On 1 April each year, for complaints referred to the ombudsman service on or after this date up to and including 31 March in the following year, the limits referred to above are adjusted by applying the percentage increase in CPI between January 2019 and January of that year and rounding down to the nearest £5,000. Awards of redress up to the relevant statutory award limit are binding on firms if they are accepted by the complainant. While the ombudsman service can recommend that a firm pay an amount of redress in excess of the statutory award limit, this is not binding on a firm and it is up to a firm whether or not it pays a higher amount.

Compulsory jurisdiction of the ombudsman service and complaint handling rules

- 10.8** We propose to apply our complaint handling rules and guidance in DISP to all funeral plan providers and intermediaries we authorise. We expect most intermediaries to apply to become appointed representatives. The CJ covers complaints about the activities of a firm, including its appointed representatives. However, intermediaries may become authorised in their own right and if they do, they will, as funeral plan providers, fall within the CJ of the ombudsman service.
- 10.9** DISP Chapter 1 contains rules and guidance on how firms should deal promptly and fairly with complaints. The table below summarises the key sections of DISP 1 that we propose applying to funeral plan providers and intermediaries, in line with the other firms we regulate.

Sourcebook chapter	Summary of chapter
DISP 1.2 Consumer awareness rules	Firms must publish information about internal procedures for handling complaints about the ombudsman service
DISP 1.3 Complaints handling rules	Firms must have procedures in place to reasonably and promptly handle complaints and firms must ensure that complaints can be made free of charge The procedures should recognise that complaints require resolution. The procedures should ensure that lessons are learned from complaints. Firms must take steps to address any recurring or systemic problems. A firm must appoint an individual at the firm to have responsibility for oversight of the firm's compliance with DISP.

Sourcebook chapter	Summary of chapter
DISP 1.4 Complaints resolution rules	Complaints must be investigated competently, diligently and impartially. They must be assessed fairly, consistently and promptly and resolved at the earliest possible opportunity. Redress must be offered where appropriate, and a clear explanation must be given about the assessment of the complaint.
DISP 1.5 Complaints resolved by close of the third business day	When a complaint has been resolved by close of the third business day following receipt of the complaint a 'summary resolution communication' must be sent to the complainant. This must refer to the availability of the ombudsman service and indicate whether the firm agrees to waive any relevant time limit.
DISP 1.6 Complaints time limit rules	A firm must send a prompt written acknowledgement of the complaint and keep the complainant informed thereafter. The firm must, by the end of eight weeks after receiving the complaint: <ul style="list-style-type: none"> • send a 'final response' which offers redress of remedial action where appropriate or clearly explains why the complaint has been rejected, or • send a written response which explains why the firm has been unable to provide a final response and when it expects to provide one, and • in either case, send information about referral rights to the ombudsman service together with an explanatory leaflet.
DISP 1.7 Complaints forwarding rules	If a firm considers another firm is solely or jointly responsible for the matter being complained about, a firm should forward the complaint to the responsible party, if known.
DISP 1.8 Complaints time barring rules	A firm may reject a complaint received outside the relevant time limits but it must explain its decision to do so in a final response letter. The time limits are generally 6 years after the event or, if later, 3 years from the date when the complainant became aware (or ought reasonably to have become aware) of the cause for complaint.
DISP 1.9 Complaints record rules	A firm must retain records of complaints for 3 years from the date the complaint was received.
DISP 1.10 Complaints reporting rules	A firm must submit a report of complaints to the FCA annually.

10.10 The above table is not an exhaustive of all the DISP rules that we propose applying to funeral plan providers and their intermediaries; the table contains a list of the key obligations that we propose applying to funeral plan providers and their intermediaries. Firms should familiarise themselves with DISP more generally, including DISP 2: Jurisdiction of the Financial Ombudsman Service and DISP 3: Complaints handling procedures of the Financial Ombudsman Service.

Q45: Do you agree with our approach to apply our complaint handling rules and guidance in DISP, including the compulsory jurisdiction of the ombudsman service, to all authorised funeral plan providers and which will also apply to intermediaries (e.g. appointed representatives)?

Complaints about acts or omissions that took place before FCA regulation starts

10.11 The Treasury's legislation allows the ombudsman service to deal with complaints against authorised firms about acts or omissions that occurred before FCA regulation comes into force, as long as the firm was a member of the FPA at the time the act or

omission occurred (and even if it ceased to be a member of the FPA subsequently). It also allows the ombudsman service to deal with complaints about a provider that does not become authorised, but which was a member of the FPA at the time the act or omission being complained about occurred (even if the firm ceased to be a member of the FPA subsequently).

- 10.12** To facilitate the above we propose to include transitional arrangements in DISP that will allow a consumer to complain to the ombudsman service about an act or an omission by a provider that occurred before FCA regulation comes into force. Such a complaint will be possible if the firm being complained about was a member of the FPA at the time of the act or omission that is subject of the complaint, even if it ceased to be a member of the FPA subsequently (and even if it has not subsequently become authorised). In our draft rules we refer to this type of complaint as a "relevant transitional funeral plan complaint".
- 10.13** As set out in paragraph 4.35 of The Treasury's consultation on the regulation of pre-paid funeral plans, any complaint referred to the FPA but not determined before the introduction of FCA regulation, will be resolved by the FPA rather than transferred to the ombudsman service for determination. The ombudsman will not be able to consider complaints which have previously been referred to the FPA.
- 10.14** If a consumer complains about a provider about an act or omission that occurred before FCA regulation starts but where the provider was not a member of the FPA at the time of the act or omission, the ombudsman service will not be able to consider the complaint. In such cases the consumer might still be able to use the complaint schemes provided by the National Association of Funeral Directors (NAFD) or the Society of Allied and Independent Funeral Directors (SAIF), if the firm is a member of either association.
- 10.15** It is unlikely a consumer would be able to use the complaints schemes for NAFD or SAIF and then have the same complaint considered by the ombudsman service, even if it was eligible to be considered by the ombudsman service. This is because the ombudsman is able to dismiss a complaint without considering the merits if the ombudsman considers that the subject matter of the complaint has been dealt with, or is being dealt with, by a comparable ADR entity.

Q46: Do you think there are any gaps in ombudsman service coverage in the scenarios discussed above or are there any other issues you have identified? If so, please provide details.

Eligible complainants

- 10.16** Due the nature of the product we expect that complaints will arise following the death of the person the funeral is to be provided for. We want to ensure that a complaint about the plan can still be made to the ombudsman service in circumstances where that person has died.
- 10.17** For a complaint to be dealt with by the ombudsman service it must be made by an 'eligible complainant' as defined in DISP 2.7. DISP 2.7.2R makes clear that a complaint may also be brought on behalf of an 'eligible complainant' (or a deceased person who would have been an 'eligible complainant') by a person authorised by the 'eligible

complainant' or authorised by law. It is immaterial whether the person authorised to act on behalf of an eligible complainant is himself an eligible complainant.

10.18 On the basis of these existing rules, we are satisfied that it will be possible for a complaint to be made to the ombudsman service in circumstances where the person who purchased the plan has died. We expect the usual scenario will be that a person has bought a funeral plan for themselves and, when they die, a complaint can be brought to the ombudsman service on their behalf by their personal representative, subject to certain evidence such as a grant of probate or letters of administration being provided where they are required by the ombudsman service. However, where a person has bought a funeral plan for another person (the covered individual), under the current rules, only the person who bought the funeral plan would be eligible to complain to the ombudsman service, not the covered individual. As the person who bought the plan will be able to complain, we do not think we need to amend the existing rules to also allow a complaint about the same plan to be brought by the covered individual (or their estate). As such, we do not propose to make any changes to existing complainant eligibility rules.

Q47: Do you agree with our assessment that it is not necessary to make any changes to the rules on eligible complainants?

Redress

10.19 As part of existing rules within DISP 3.7, where a complaint is determined in favour of the complainant, the ombudsman can order the firm pays redress in one or more of the following ways:

1. a money award against the respondent
2. an interest award against the respondent
3. a costs award against the respondent
4. a direction to the respondent

10.20 We propose to enable the ombudsman service to be able to make all the above awards if a funeral plan related complaint is upheld. We currently think these types of outcomes cover all the different types of awards an ombudsman would need to make in order to resolve a funeral plan related complaint.

Q48: Do you agree that this covers all likely forms of redress? If you consider further categories are needed please provide details in your response.

Voluntary jurisdiction of the ombudsman service

10.21 While we make the rules which state that the complaints in respect of which jurisdiction of the ombudsman service is compulsory, the ombudsman service has its own VJ which financial service firms and claims management providers may choose to participate in.

10.22 For the purposes of the RAO, the definition of a funeral plan contract applies only to a funeral that is to be provided in the UK. This means that where a plan is purchased for the funeral to be provided outside the UK, the consumer will not have access to the ombudsman service under the CJ.

- 10.23** The VJ has a different territorial scope to that of the CJ (see DISP 2.6.1 for the territorial scope of the CJ and DISP 2.6.4 for the territorial scope of the VJ). In particular, while the CJ will only cover the activities of funeral plan providers and intermediaries which are carried on from an establishment in the UK, the VJ will also cover complaints about activities of VJ participants which are carried on from an establishment in the EEA or Gibraltar (subject to the other conditions in DISP 2.6.4).
- 10.24** In addition to the above, given that customers will not have access to the ombudsman service under the CJ where a plan is purchased for a funeral to be provided outside the UK, the ombudsman service considers it is appropriate to expand the scope of the VJ to cover activities in relation to plans where the funeral is to be provided outside the UK. In any case, it will be for individual funeral plan providers and intermediaries to determine whether they wish to apply to become VJ participants.

Q49: Do you agree with the ombudsman service's proposal to expand the scope of the voluntary jurisdiction in this manner?

Ombudsman service general levy and case fee

- 10.25** In this section, we explain how the ombudsman service is funded and how we propose the funding arrangements will apply to funeral plan providers and intermediaries.
- 10.26** The fees and levy rules that apply to firms currently covered by the ombudsman service are contained in Chapter 5 of the FEES manual in the FCA Handbook. The key rules are summarised in the table below, along with how we propose to apply them to funeral plan providers and intermediaries.
- 10.27** The powers to make rules on funding the ombudsman service are shared between the FCA and the ombudsman service. The FCA makes rules on the amount of the ombudsman service annual budget that will be raised by way of the CJ general levy. The ombudsman service makes rules on the payment of fees ('case fees') by firms in relation to cases referred to the ombudsman service (currently £650), including the number of cases that are handled each year without a fee being charged (currently 25), as well as the fee rules on the payment of the annual levy in relation to VJ participants.
- 10.28** Funeral plan providers and intermediaries will begin to pay the CJ general levy and case fees from 2022/23. The FCA will be consulting on the tariff rate in its 2022/23 fees & levies consultation.

Sourcebook Chapter	Key Rules	Proposal
Fees 5.3 and Fees 5 Annex 1R	Businesses that are covered by the ombudsman service are required to pay a general levy to fund its operating costs.	<p>We propose to create a new Funeral plan provider and intermediary industry block. We propose that the tariff base will be based on annual income subject to a minimum fee.</p> <p>Industry blocks are based on a broad grouping of permissions. This keeps the structure simple.</p> <p>We considered setting up separate industry blocks for different Funeral plan provider and Intermediary permissions, or for firms which limit their activity to a single permission, but concluded that this would have limited benefits and could unnecessarily complicate the structure.</p> <p>The tariff base is intended to be an objective, transparent and simple measure that can be consistently applied across the fee block to ensure a fair distribution of cost recovery. The most common tariff measure is income. Our experience is that most firms support income as a fair indicator of size and therefore market impact, and it can be reported consistently and easily from annual accounts.</p> <p>The amount to be raised from each industry block will be based on the budgeted costs and numbers of ombudsman service staff required to deal with the volume of complaints which the ombudsman service expects to receive about the firms in each industry block.</p>
FEES 5.7 Payment of the general levy	The general levy will be collected on or after 1 April each year. The FCA consults on the amount of the general levy that will be collected from Funeral plan providers and Intermediaries in the industry block on an annual basis (as well as all the other industry blocks).	<p>Funeral plan providers and Intermediaries firms must pay the general levy annually on or before the later of 1 April and 30 calendar days after the date when the invoice is issued by the FCA.</p>
FEES 5.8 and 5.5B.24R Joining and leaving the Financial Ombudsman Service	A firm which becomes subject to the ombudsman service part way through a financial year must pay a rateable proportion of the general levy as specified in the formula set out in FEES 4.2.7ER.	<p>If a funeral plan firm ceases to be authorised or wishes to close its business part way through a financial year it will remain liable to pay case fees in respect of cases within the jurisdiction of the ombudsman service and a rateable portion of the general levy.</p>
FEES 5.4 Information requirements	A firm must provide the FCA each year (or, if the firm has become subject to the ombudsman service part way through the financial year, by the date requested by the FCA) with a statement of the total amount of relevant business which it conducted.	<p>Funeral plan providers and intermediaries are required to provide the FCA with information annually to enable the FCA to calculate fees. Failure to provide may lead to financial penalties.</p>

Sourcebook Chapter	Key Rules	Proposal
FEES 5.5 and FEES 5 Annex 3R Case fees	<p>Businesses covered by the Financial Ombudsman Service (who are not part of the group charging arrangements) currently pay £650 per case after the permitted 25 free cases per year.</p> <p>The case fee rules set out penalties for late payment of case fees and enable the Financial Ombudsman Service to refund, reduce or waive case fees in certain circumstances.</p>	<p>It is likely that similar rules will apply to funeral plan firms. The Financial Ombudsman Service expects to consult on its proposals for funeral plan firms as part of the annual plan and budget consultation in the 2022/2023 financial year.</p>

How is the Financial Ombudsman Service funded?

10.29 The ombudsman service is free for consumers to use. The businesses it covers pay a combination of:

- case fees – which are usually invoiced and collected by the ombudsman service once cases have been resolved.
- annual fees (levies) which are collected by the FCA for the CJ and by the ombudsman service for the VJ.

10.30 In each of the ombudsman service's jurisdictions, the annual budget reflects the total expected to be raised by levies, plus the total expected to be raised by case fees for the relevant financial year.

Voluntary jurisdiction (VJ)

10.31 As part of this consultation the ombudsman service is consulting on a proposal for the VJ to be available where the funeral is to take place outside of the UK. For Funeral plan providers and intermediaries that decide to join the voluntary jurisdiction (VJ), the industry blocks and tariff rates for firms in the VJ are set out in FEES 5 Annex 2R. If the ombudsman service decides to make its VJ available it expects to consult on the rates for Funeral providers and intermediaries that join the VJ as part of its annual plan and budget consultation for 2022/23.

Q50: **Do you have any comments on the proposals in the above table on the application of our FEES rules and guidance to Funeral plan providers and intermediaries, in particular the proposal to create a new funeral plan provider and intermediary industry block with the tariff base based on annual income subject to a minimum fee?**

11 Supervision and enforcement

Supervision and reporting

11.1 This section sets out the rules we propose to help us supervise funeral plan firms. This includes firms' obligations to report key information, events and changes to us both on a regular and one-off basis.

11.2 In line with the Supervisory approach set out in our Supervision manual (SUP), we will adopt a proactive approach built on analysing available data to identify poor conduct, weak financial resilience and areas of operation of funeral plan firms that could result in harm to consumers and markets. Where we see indicators of systematic harm, we will move quickly and we have a range of supervisory tools to intervene and stop the harm occurring. We then work to ensure that the firm addresses the cause of the harm to prevent a recurrence. Supervising the sector effectively will help to address the harms identified in this market.

11.3 We propose:

- applying the relevant sections of our Supervision manual (SUP) to funeral plan firms.
- requiring funeral plan firms to notify us of significant changes in their business.
- requiring funeral plan providers to report important data about their business to us every three months in respect of sales activity, every 6 months for prudential information and annually in respect of complaints.
- requiring funeral plan intermediaries to report important data about their business 6 monthly, for prudential information, and annually in respect of complaints.

11.4 The table below summarises the key sections of SUP that we propose applying to funeral plan firms in line with the other firms that we regulate. It then goes on to give more detail on the main proposals.

SUP chapter	Key rule and references
SUP 1A The FCA's approach to supervision	Sets out the relationship between the FCA and authorised firms, the 'three pillar' supervision model and the supervision tools we can use.
SUP 2 Information gathering by the FCA or PRA on its own initiative	The FCA can gather information in multiple ways: through meetings with firms, visits, information requests or mystery shopping. SUP 2 also explains the limitations of the FCA's powers when accessing protected items or those subject to specific confidentiality. A firm must take reasonable steps to ensure that outsourced suppliers are open and co-operative with the FCA's information gathering work.
SUP 5 Reports by skilled persons	The FCA may appoint or require the appointment of a skilled person to provide it with a report. If a firm appoints a skilled person, they must require that person to co-operate with the FCA and waive any duty of confidentiality.

SUP chapter	Key rule and references
SUP 6 Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements	Explains: <ul style="list-style-type: none"> • How a firm might apply to vary or cancel its permissions; • How a firm can apply to have a new requirement imposed on it or to vary or cancel a requirement; • How the FCA will assess such applications.
SUP 7 Individual requirements	The FCA can vary a firm's permission to carry out a regulated activity and the FCA can set individual requirements and limitations on its own initiative.
SUP 8 Waiver and modification of rules	The FCA can waive or modify rules for firms, if they have applied for or consented to those changes. This explains the procedure firms and the FCA must follow to do this.
SUP 9 Individual guidance	The FCA can give individual guidance to a firm. This chapter sets out the procedure for firms to obtain such guidance.
SUP 15 Notifications to the FCA	Firms must notify the FCA either orally, in writing, or using a form (depending on the notification) about significant changes in business.
SUP 16 Reporting requirements	Sets out the information a firm should report to us on a regular basis.

Q51: Do you agree with our proposed application of the existing SUP rules to funeral plan firms?

Notification of significant changes in business

11.5 We propose applying our notification requirements to funeral plan firms. This means that firms will have to notify the FCA when there is a significant change in their business. The table below sets out each notification requirement.

Sup provision number	Notification reason	Notification method/timing
15.3.1R	Matters having a serious regulatory impact e.g. failure to satisfy a Threshold Condition or any matter affecting the firm's ability to provide adequate provision of services which could result in serious detriment to the consumer.	Using the Notification Form, or if appropriate, telephone, as soon as the funeral plan firm is aware that event has or may have occurred or that it might occur in the future.
15.3.8G (Principle 11)	Anything relating to the firm of which the FCA would reasonably expect notice, such as business restructuring or a significant failure in systems or controls.	Orally or in writing within a time period depending on the event, but before making any internal or external commitments.
15.3.11R	Significant breach of a rule or requirements in or under the Act.	Using the Notification Form as soon as the firm is aware, or has information which reasonably suggests, that such an event has, may have or might occur.
15.3.15R	Civil, criminal or disciplinary proceedings brought against firm.	Immediately.
15.3.17R	A significant event involving fraud, errors or other irregularities.	Immediately.
15.3.21R	Event related to insolvency, bankruptcy and winding up.	Immediately.

Sup provision number	Notification reason	Notification method/timing
15.3.32R	Significant infringement of any applicable competition law.	Immediately on awareness or information reasonably suggesting infringement using Notification Form.
15.5.1R- 15.5.6R	Change in name, address and telephone number.	Reasonable advance notice using Notification Form.

11.6 All the data that should be included in notifications can be given in the formats set out in SUP 15 Annex 4 and using the methods set out in SUP 15 Annex 4. All regulatory reporting (ie that reporting which is required regularly and are not driven by a specific event occurring) will need to be sent to us via the appropriate online system.

Q52: Do you agree with the notification requirements and guidance we are introducing into SUP 15?

Ongoing reporting requirements

11.7 In addition to the overarching obligations of Principle 11, we are proposing a set of specific data reporting obligations for funeral plan providers and intermediaries, which we set out in the table below. The information we request through this will help us understand and monitor the sector. We are interested to understand how these metrics compare to metrics firms use for their own purposes.

Data	Information required	Handbook location of requirement	Frequency	Submission
Conduct data (FP001)	Includes number of funeral plan sales, details of top five Appointed Representatives or Authorised Intermediaries or unregulated introducers, number of funeral plans fulfilled and cancelled, fees and charges and remuneration paid to firm's employees.	SUP 16 with guidance in the accompanying Annexes. See link below	Quarterly	Within 15 business days after the quarter end.
Funeral Plan - Complaints Data	Includes the number of complaints, reason for complaint and any redress paid to consumers.	DISP 1.10 and DISP 1 Annex 1B	Annually	Within 30 business days of the firm's ARD.

Data	Information required	Handbook location of requirement	Frequency	Submission
Prudential Data (FP003a and FP003b)	Includes financial statement information, profit and loss account information, a Solvency Assessment Report for trust backed funeral plans, prudential resource requirement information, annual report and accounts and revenue data information about Funeral Plan sales conducted by Appointed Representatives.	SUP 16 with guidance in the accompanying Annexes. See link below.	6 Monthly	Within 80 business days of a calendar half year.
Standing Data	Basic firm details, such as the firm's postal and website addresses and contact details.	SUP 16.10.4R	An annual check and update the FCA if the information is incorrect.	Within 60 business days of the firm's ARD.
Data from Authorised Intermediaries	We propose that Intermediaries will be required to submit reporting data to the FCA. This will include Complaints, Prudential and Standing Data as above, but not Conduct data.			

11.8 We are also consulting on Guidance Notes to help firms complete these reporting requirements. The proposed reporting templates and instructions on how to complete them are available at <https://www.fca.org.uk/publication/consultation/funeral-plan-providers-quarterly-conduct-return.pdf> and <https://www.fca.org.uk/publication/consultation/funeral-plan-providers-intermediaries-prudential-half-yearly-return.pdf>

Timing and method for collecting data

11.9 We propose that the regular reporting requirements for funeral plan firms will be completed quarterly, half-annually and annually, depending on the type of information required (as set out in table 11.7 above). In addition, standing data requirements should be updated when changes occur and checked at least once a year.

11.10 We propose that the regular reporting requirements for funeral plan firms will be completed electronically using RegData, our data collection platform. We have a resource page containing user guides and explainer videos to guide firms through every aspect of the new system. Further information about RegData is available at <https://www.fca.org.uk/firms/regdata>

Administration fee

11.11 As for all the firms we regulate, we propose to apply a late submission administration fee of £250 for the reporting requirements covered in this chapter. We may also take enforcement action against a firm if the information it provides is incomplete or inaccurate.

Q53: Do you have any comments on the reporting requirements set out in this CP?

Q54: Do you agree with the proposal for the FCA to impose an administration fee on funeral plan firms for late submission?

Our approach to enforcement

- 11.12** This section explains why and how we enforce our rules. It outlines our powers, processes and the enforcement action we can take.
- 11.13** Our enforcement work is intended to ensure there are real and meaningful consequences for firms and individuals who do not follow our rules and who cause actual or potential harm to consumers, many of whom may be in vulnerable circumstances. Our enforcement staff work closely with our authorisation and supervision functions, as well as with other regulators and law enforcement agencies to detect misconduct and unauthorised business.
- 11.14** FSMA sets out our enforcement powers, so we are not consulting on them. But we will apply the same approach to funeral plan firms when carrying out enforcement investigations, using sanctions and decision-making, as we do with all other regulated firms.

Our proposals

Opening an investigation

We intend to:

- apply our Enforcement Guide (EG) to funeral plans firms
- apply our Decision Procedure and Penalties Manual (DEPP) to funeral plans firms

- 11.15** We will open an investigation if we suspect there has been serious misconduct. When we open an investigation, we do not assume there has been serious misconduct or that anyone involved in the investigation is guilty of misconduct. The purpose of the investigation is to get a clear understanding of the facts so that we can make a decision about whether, and if so, what kind of action may be needed.
- 11.16** We have investigation powers which enable us to compel firms and individuals to give us information. These powers are set out in FSMA, and include the ability to:
- require firms and individuals to give us information and documents
 - get a search warrant to search and seize documents
 - require individuals to give information in an interview
- 11.17** You can find more information about these powers in Chapter 3 of EG (see 'More information about our enforcement' below).

11.18 When we have completed our investigation, we will determine whether there has been misconduct on the part of a firm and/or individuals. Based on this, we will then consider the appropriate response. We can use a range of measures to best address a firm's or individual's wrongdoing.

11.19 Examples of our powers include the ability to:

- censure firms and individuals through public statements
- impose financial penalties
- apply to the Court for an injunction to stop certain conduct or to freeze assets
- seek an order requiring redress or restitution where the misconduct has caused harm to consumers
- prosecute¹² firms and individuals who carry out regulated activities without authorisation
- withdraw a firm's authorisation, preventing it from operating in financial services

How we make decisions and impose penalties

11.20 DEPP¹³ sets out our policy and decision-making procedure for giving statutory notices. These are warning notices, decision notices and supervisory notices, and they set out our reasons for proposing and deciding to take action.

11.21 DEPP also sets out the framework we use to decide whether to impose a financial penalty and how we calculate the amount of penalty. There is no upper cap on the amount of the penalty we can impose. DEPP also sets out our policy on suspensions, restrictions and prohibitions (such as banning someone from holding any role in financial services). There is more information on these topics in Chapter 6 and 6A of DEPP.

Resolving and contesting cases

11.22 The FCA resolves many enforcement cases by settlement and we explain the settlement process in Chapter 5 of DEPP. In addition, we have a process in which a firm can contest some aspects of our case but still be able to get some discount on the amount of our proposed penalty. This involves the firm entering into a 'focused resolution agreement'; this is explained further in Chapter 5 of DEPP. Generally, decisions on resolution will be taken by the Executive Directors in the FCA ('settlement decision makers'), and our Regulatory Decisions Committee (the RDC) will decide any contested issues.

11.23 The RDC is a committee of the FCA's Board, but is separate from our executive management structure. Apart from the Chairman, the members of the RDC are not employed by the FCA and none of them will have been involved in the enforcement investigation. If the firm or individual disagrees with the RDC's decision they can refer a case to the Upper Tribunal (Tax and Chancery Chamber), and that Tribunal (which is entirely independent from us) will consider it afresh. We give more information about the RDC in Chapter 3 of DEPP.

12 The FCA is empowered to bring criminal prosecutions in England in Wales. However, in Scotland, the FCA's role is limited to being a "specialist reporting agency", with the Crown Office and Procurator Fiscal Service (COPFS) being the responsible body for taking forward the prosecution of crime.

13 <https://www.handbook.fca.org.uk/handbook/DEPP/>

More information about our enforcement

11.24 Our Enforcement Guide¹⁴ – This sets out our approach to enforcement and how we use our powers of investigation, gather information and conduct an investigation. It also sets out our approach to imposing financial penalties and other disciplinary sanctions, varying or cancelling a firm's permissions, imposing prohibition orders on individuals, seeking injunctions, and redress. It explains how we will use our powers under the Consumer Rights Act 2015 against unfair terms and consumer notices, and how we will use our powers under other consumer protection legislation.

11.25 Explaining our approach to enforcement – in March 2018 we published our 'Approach to Enforcement' document.¹⁵ This explains how we address harm and add public value through our statutory powers to investigate, take relevant civil, criminal and/or disciplinary action. It also explains how this approach aligns with our Mission.¹⁶

11.26 We have also published a short enforcement information guide.¹⁷ It includes a flowchart that shows the process of a typical FCA enforcement case where we take action under FSMA for a breach of our Principles for Businesses and our Handbook rules. It sets out the options to contest or resolve a case, the opportunities to make representations, and who the decision-makers are.

Q55: Do you have any comments on our proposal to apply the same approach to enforcement investigations and actions to funeral Plan firms as we do to other regulated firms, as set out in EG?

Q56: Do you have any comments on our proposal to follow the same procedures for decision-making and imposing penalties in relation to funeral plan firms and individuals set out in DEPP?

14 <https://www.handbook.fca.org.uk/handbook/EG/>

15 <https://www.fca.org.uk/publications/corporate-documents/our-approach-enforcement>

16 <https://www.fca.org.uk/publication/corporate/our-mission-2017.pdf>

17 <https://www.fca.org.uk/publication/corporate/enforcement-information-guide.pdf>

12 Authorisations

It is important that all Funeral Plan firms are aware of what they need to do and by when. The key elements are:

- All funeral plan providers that wish to continue doing so, will need to apply to the FCA
- Firms that sell funeral plans (and do not provide or administer them) can apply for direct FCA authorisation as an intermediary or become an Appointed Representative (AR) of a principal firm. The principal is responsible for the conduct of the AR. The Principal firm is required to notify the FCA in advance if they intend to appoint ARs
- The authorisations gateway for applications (explained in point 12.3) is planned to open in September 2021 and firms need to ensure they are authorised before the regulation takes effect on 29 July 2022
- Applications for authorisation and supporting documentation should be submitted as *soon as possible* after we open the applications gateway. If not submitted as soon as possible firms may not have sufficient time to demonstrate they meet the Threshold Conditions before the rules take effect on 29 July 2022
- Firms currently trading that submit their applications after 1 November 2021, may incur a late application fee. Note: paying a late application fee does not guarantee that an application will be approved or determined before July 2022
- When submitting an application, all firms need to demonstrate how they meet the minimum standards, known as Threshold Conditions, both at the time of authorisation and on an ongoing basis. These are the minimum standards that all FCA regulated firms must meet, to be able to undertake the regulated activities they want to carry on
- If funeral plan firms, particularly those who provide or administer funeral plans, do not intend to be authorised, they should take appropriate steps to ensure they cease regulated activities and wind down/sell their book prior to 29 July 2022. Conducting regulated activities without authorisation is a criminal offence and doing so may result in prosecution
- Funeral plan providers that are currently trading should let the FCA know if they do not intend to apply for authorisation
- AR notifications should be submitted after the principal firm is authorised

12.1 This chapter sets out information regarding our proposed approach to the authorisation of funeral plan firms.

12.2 Our aim is to determine applications as soon as possible, in recognition that if firms are to continue their activities uninterrupted after the start date of FCA regulation, applications must be approved ready for this date. However, approval is not guaranteed. It is dependent on firms submitting good quality applications at the start of the authorisations gateway window and demonstrating they meet the FCA's minimum standards required for authorisation. The FCA's minimum standards are set out in its Threshold Conditions which can be found in the COND chapter of the FCA's Handbook.

- 12.3** Authorisations gateway is an assessment process firms go through in order to become FCA authorised. Firms should ensure that they have started work to prepare their business for FCA regulation and their application for authorisation in good time, so that it can be submitted as soon as possible after the gateway opens. This is important because, in our experience, it takes time for a firm new to statutory regulation to adapt to the new regulatory standards and prepare an application, and this is particularly so in the case of firms that are large and/or the business model is complex.
- 12.4** A delay in submitting an application may not allow sufficient time for the firm to demonstrate that it meets the TCs to enable the FCA to make a decision to authorise the firm ready for the start of regulation. If a firm has not obtained authorisation by the time FCA regulation comes into force on 29 July 2022, the firm will have to cease funeral plan activities. This means that funeral plan providers not authorised by this date will have to stop servicing existing plans and stop selling new ones, and if necessary will have to sell or wind down their books prior to this date.
- 12.5** Those firms that undertake to administer funeral plans and have not obtained authorisation by the 29 July, will also have to stop servicing those plans, and if necessary, wind down its administration of funeral plans activity before the 29 July 2022.
- 12.6** We expect that the majority of funeral plan firms that apply for authorisation will submit their applications electronically to the FCA. We are proposing to create a tailored application form to make it simpler for firms to provide the information we need to assess their applications. We will make this form available as early as possible prior to the gateway opening in September 2021. We are consulting on the draft application form that is included in this CP and can be found at <https://www.fca.org.uk/publication/forms/funeral-plan-authorisation-form.pdf>.
- 12.7** The application form is important as the information supplied, and documents submitted with it, form the basis on which the FCA makes its assessment of the firm's readiness for authorisation and will contribute to a decision whether or not to authorise the firm. It is important that firms make sure they provide all the information requested to help avoid delays in progressing the application.
- 12.8** A key piece of information that will be reviewed as part of the FCA's assessment of an application is the firm's business plan. Its purpose is to provide the FCA with detailed information about such aspects as what business the firm proposes to carry out, the key regulatory, operational and other risks involved, how the firm will mitigate these risks and comply with its regulatory obligations on an ongoing basis. The implementation of FCA regulation will naturally have an impact on businesses and their plans. Business plans will need to explain how the firm has considered this impact, what changes have been made to adjust to this and demonstrate how the firm remains viable.
- 12.9** For provider firms, a key area of focus for the FCA will be the financial positions of both the firm and any trusts underpinning its funeral plans. If firms are to be authorised, they will need to demonstrate they are solvent and financially viable. To assist the FCA in its assessment of this area, in addition to balance sheet, profit and loss, and cash flow statements, a range of supporting information is to be provided, including a report of the solvency position of each trust and an Asset Adequacy Report, both conducted in the last 12 months. It will be important for firms to take steps as soon as possible to ensure they are able to provide in their application up to date reports on solvency and asset adequacy.

- 12.10** Another important aspect we will be looking at are the arrangements the firm has put into place for its resolution, in the event the firm fails. Firms must have appropriate resolution arrangements in place to appropriately safeguard the interests of customers. We will assess carefully how firms have considered their resolution arrangements and taken appropriate steps to bring them into line with our proposed requirements.
- 12.11** How firms control and oversee the sales of pre-paid funeral plans will also form a key part of the FCA's assessment. In particular, the FCA will look at those firms wishing to operate a network of agents, known as appointed representatives ("AR"). We will want to see that these AR networks are well controlled and deliver good outcomes for customers. If you get approved to act as a principal firm, you will also need to submit notification and the appropriate controlled function application forms for each agent you propose to make an appointed representative. You will be able to do this once you are authorised.
- 12.12** As set out in Chapter 8, we intend for the Senior Managers and Certification Regime ('SM&CR') to apply to funeral plan firms. Under the SM&CR, those who hold senior manager positions within the firm will need to be individually approved by the FCA, as part of the application for authorisation, and will be accountable for their actions in their capacity as a Senior Manager. These applications should be made at the same time as the firm's application for authorisation. Individuals applying for Senior Manager Functions ('SMF') will need to demonstrate they have relevant skills and knowledge to conduct their role. It is also important that they disclose all relevant information as part of their application.
- 12.13** Once authorised, if a firm wishes to carry out additional regulated activities that it doesn't have the necessary permission for, it will need to submit a Variation of Permission application. Similarly, if a firm ceases to carry out a regulated activity, it should apply to vary its permissions to remove this particular activity.
- 12.14** Additionally, if the ownership (control) of a firm is to change, the FCA must be notified via a Change in Control application. The FCA can object to a change or increase in control on various grounds, including the reputation, knowledge, skills and experience of the proposed controller who will direct or have influence over the firm, if it is deemed unsuitable.
- 12.15** We recognise that many firms will be new to regulation and will provide information to support firms and individuals with understanding the changes necessary to obtain authorisation. However the gateway assessment process is not an open-ended process. Firms need to be prepared to engage substantively with the process from the moment their application is submitted having a clear vision of how their business will function post authorisation and have commensurate controls in place. Firms will need to demonstrate they are ready, willing and organised to commence regulated activities. We will reach out to firms during and post the consultation to answer questions and explain our standards processes, to support their preparations for authorisation.
- 12.16** In our experience it is likely that some firms will not be able to meet the conditions for authorisation. Firms should consider if they are in that position and, if so, make the necessary changes before the application gateway opens, or not apply for authorisation. Firms that apply but are not able to demonstrate they meet Threshold Conditions will be formally refused authorisation.

Annex 1

Cost benefit analysis

Introduction

1. FSMA, as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made' and 'an estimate of those costs and of those benefits.' Section 138I also provides that if, in our opinion, the costs or benefits cannot reasonably be estimated or it is not reasonably practicable to produce an estimate, the cost benefit analysis need not estimate them; in that case, the CBA must include a statement of our opinion and an explanation of it.
2. Our CBA presents estimates of the significant impacts of our proposal. We provide monetary values for the impacts where we believe it is reasonably practicable to do so. For others, we provide an analysis of outcomes in other dimensions. Our proposals are based on carefully weighing up these multiple dimensions and reaching a judgement about the appropriate level of consumer protection.

Problem and rationale for intervention

The harm

3. Chapter 2 of the consultation paper sets out the harms we have seen in the funeral plans market:
 - Firms using high pressure sales tactics and misleading information, and commissions which may be incentivising poor sales practice, resulting in consumers purchasing plans which are not suitable for their needs
 - Consumers are paying prices which are high relative to the benefits they provide. This is potentially driven by a disconnect between the cost of providing the funeral and the price of the plan. This could be as a result of commission paid to intermediaries which provides little or no benefit to consumers
 - Poor governance and controls within firms, with a lack of oversight to deter poor practices
 - Some plans in the market do not deliver in line with consumers' needs or expectations and plans are often not redeemed as the consumer's family is not aware of them
 - Poor financial management of firms, or the extraction of large commissions from the money paid by customers, means that sufficient funds may not be available to cover funeral liabilities. This leads to the risk that consumers may not receive their funeral

Drivers of harm

4. We consider that the harm in the prepaid funeral plan market is a result of a number of market failures. These are:

- Complexity and difficulty of accessing information for consumers (also known as 'asymmetric information')
- Mismatches between the interests and incentives of firms and consumers, as it may be in the interests of firms to sell as many plans as possible, regardless of whether or not they meet the consumer's needs. This is particularly likely to occur where plans are sold by third-party intermediaries who have no further involvement with (or responsibility to) the consumer once the plan is sold. This can lead to poor and misleading sales practices by firms
- Behavioural distortions which affect how consumers make decisions
- Presence of externalities

Complexity and difficulty accessing product information

5. Information asymmetry between consumers and firms may reduce consumers' ability to assess whether their purchase is appropriate. Although funeral plans are purchased for the single purpose of providing a funeral, a range of factors mean they are relatively complex products.

- In its [Provisional Decision Report](#) the CMA identified fourteen different aspects of a standard funeral service; most of which need to be pre-specified in a funeral plan (such as type of coffin, and number of vehicles)
- Of the services covered, funeral plans cover some costs in full (such as the funeral director's fee) but usually only offer a contribution towards other costs (such as the burial plot, the cost of which varies significantly across the UK)
- Most funeral plans offer multiple different payment options, which the consumer needs to consider. Some options carry the risk that, where the plan is not fully paid for at the time of death, the consumer's family may be required to make a significant payment before the funeral is provided. Some may also lead to the consumer paying significantly more than the headline price of the plan
- All funeral plans are currently backed by a trust or insurance policy independent of the provider. While this structure is designed to facilitate the operation of the product, consumers may find it difficult to compare products in terms of their ability to deliver services.
- Funeral plans can include a number of additional charges. In those cases where the plan concludes with the return of the consumer's payments rather than a funeral, firms will typically deduct a cancellation fee. Commission and administration fees may also be removed from upfront payments

6. Paragraph 34 below sets out the market research we have undertaken. Our research has indicated that any pre-contract information is generally focused on the plan benefits, and rarely gives equal prominence to information about limits and exclusions, nor to the risk that the consumer's family may need to make additional payments. Full plan terms and conditions are often hard to locate on providers' websites, and sometimes are not available at all.

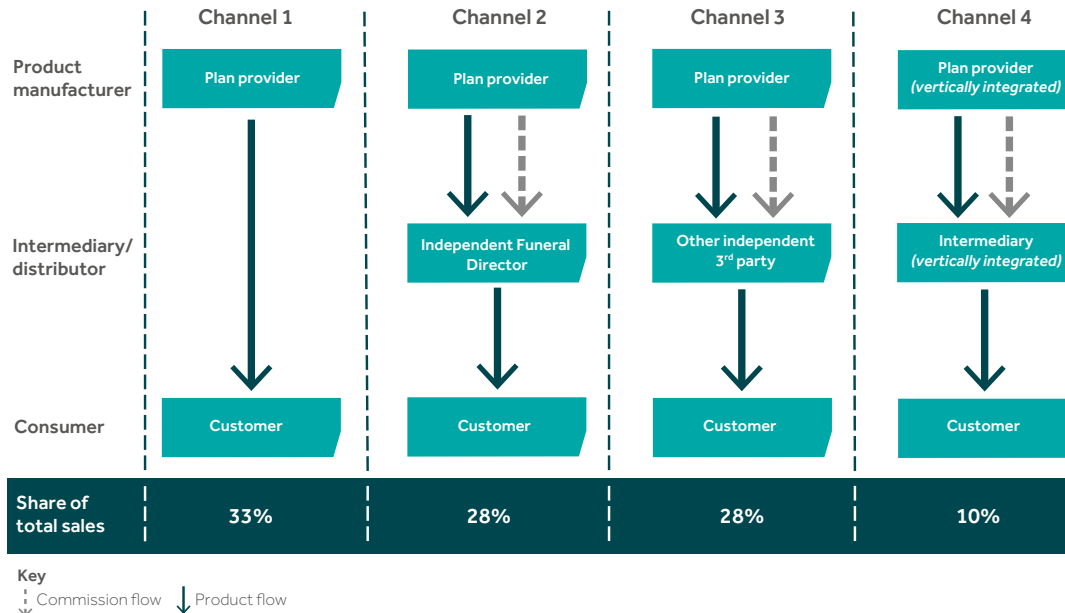
7. Additionally, there are no genuine comparison services operating in this market, nor any intermediaries selling plans representing the whole of the market. This makes it difficult for consumers to effectively compare between providers and shop around, weakening demand-side pressure. Consequently, there is a significant risk that consumers will not obtain the product that best meets their needs.

- 8. The Fairer Finance report cites evidence that a substantial proportion (42%) of consumers believe that all of their funeral costs would be covered by the plan, even though no funeral plan currently covers all the costs typically associated with a funeral. A further 21% of consumers did not know whether all their funeral costs would be covered.
- 9. Specifically related to longer term instalment plans, our survey of funeral plan firms, conducted in August 2019, found that some firms have sold plans with long instalment periods where up to a third of the plans do not result in a funeral being provided.

Mismatches between consumers' interests and firms' incentives

- 10. Consumers' interests may not align with firms' interests, particularly where the firm is incentivised to make a short-term profit on the sale of the plan, whereas the consumer is looking at the longer-term provision of their funeral. This can incentivise plan sales irrespective of whether they meet the consumer's needs and/or may lead to high prices.
- 11. Our firm surveys identified four distribution channels and commission arrangements: 1) direct to consumer, 2) through an independent funeral director, 3) through an independent third-party and 4) through a vertically integrated intermediary (see figure 1). We use the term 'intermediary' to cover all firms who distribute funeral plans but do not enter into the plans themselves.

Figure 1: distribution channels and commission arrangements



Source: FCA analysis of information gathered from a combination of: i) FPA statistics; ii) Firm surveys in 2019 and 2020; iii) Firm meetings; & iv) other intelligence. As such the information and conclusions reached should be treated as best estimates under uncertainty.

- 12. Based on these distribution channels and commission arrangements, as well as the nature of the product itself, we have identified a number of specific features that generate a mismatch in interests and appear to exacerbate the risk of harm in the market:
 - Third party intermediaries have no further involvement with (or responsibility to) the consumer once the plan is sold. They will typically receive commission for each sale they make. Data provided by firms in both our 2019 and 2020 surveys

shows the average third party commission to be approximately £550. We have seen evidence that high up-front commissions of up to £900 are being paid to intermediaries. These rates are typically on a sliding scale, with firms receiving higher commission for selling more expensive plans. Information we have received from firms indicates there are relatively weak arrangements in place to claw back commission where the product has been sold incorrectly or the consumer cancels the plan. These factors mean that firms are incentivised to sell more expensive plans regardless of whether they meet the consumer's needs, and there is limited disincentive to them in using poor sales tactics to maximise their profits.

- Even though funeral directors typically do not receive commission for selling plans, they may still be incentivised to sell in a way that isn't aligned with the consumer's interests on the basis that they are guaranteed to receive the income from providing the funeral at a later date. Funeral directors deliver funerals and are paid as part of that service for doing so. The amount they are paid may increase with inflation. However, there is a risk that if funeral directors are paid higher prices to deliver funeral plan funerals than they would otherwise receive from delivering comparable at-need funerals. This difference in price would be akin to a form of commission and could incentivise them to sell plans which do not meet customers' needs.
- There is evidence of high-pressure sales tactics such as persistent contact, which can cause consumers to feel distressed. Fairer Finance cites survey evidence that 30% of people contacted about funeral plans felt they were being pushed to take out the plan. Consumers' willingness to shop around may be influenced by sales practices.
- The consumer is always deceased at the point where the plan is fulfilled. This can be many years after the plan was purchased. Family members are likely to be less aware than the consumer of the plan features, or any assurances given at the point of sale. This reduces the likelihood of the provider receiving complaints over the use of poor or misleading sales tactics and therefore their incentive to ensure suitability.

Behavioural distortions which affect how consumers make decisions

- 13.** Behavioural biases can prevent consumers from choosing the best course of action. These biases may be particularly prevalent among people purchasing a funeral plan given the emotive nature of the purchase. Our understanding from industry engagement is that it is common for consumers to contact funeral directors about arranging a funeral for a loved one who recently died, and to then purchase a funeral plan for themselves as a result of this (an 'at need' funeral).
- 14.** Biases that may affect consumers' decisions about the purchase of a funeral plan include:
- **Reference dependence and loss aversion:** Consumers' decisions may vary depending on how an alternative scenario is presented. For example, a decision not to purchase a plan may be framed by the seller as a potential loss if the alternative is a situation where the consumer has to pay higher prices in the future.
 - **Framing, salience and limited attention:** Consumers typically focus their attention on a few points (e.g. the price) to the detriment of other important information (e.g. plan exclusions or cancellation fees). This may also drive how providers or intermediaries present information, which may exacerbate the excessive focus on particular aspects of a product. This is a particular issue in the funeral plan market, because an inappropriate focus on the monthly price may lead to consumers purchasing plans which are longer in duration but have lower monthly prices. This

creates the risk that the consumer does not complete payments for their plan before they die and increase the likelihood that their relatives will be required to make additional payments before the funeral is provided.

- **Regret aversion and emotions:** Consumers can worry that not making a purchase now may lead to regret later in life. This may put pressure on a consumer to make a quick purchase decision. There are two key drivers of this emotion in this market:
 - As with other financial products, sales conduct by firms may lead to consumers feeling pressured into making a purchase. Fairer Finance cites several examples of salespeople emphasising that an offer is temporary and has to be taken up now, creating higher regret aversion.
 - Consumer choices may also be influenced by the strong emotions brought about by the nature of funeral plan products. Our review of the current marketing of funeral plans shows a strong focus on the idea of protecting loved ones. Consumers may fear being a burden on their relatives after their death if they do not purchase a plan in good time before they might die.
- **Social influence:** The perceived trustworthiness of a salesperson may distort judgement and become a substitute for a reasoned judgement. This may be a particular factor with regards to the sale of funeral plans to elderly vulnerable consumers.

15. The combination of behavioural biases and asymmetric information, especially if targeted through firms' sales practices, reduces a consumer's ability to assess the value of funeral plans, and to compare products and charges across different funeral plan providers.

16. As well as directly impacting a consumer's ability to choose a suitable product, these factors indirectly hinder effective competition in the market for funeral plans. They contribute to the harms around consumers purchasing unsuitable products and paying higher prices than they otherwise would do in an effective market.

Presence of externalities

17. A negative externality occurs when the social cost of producing a good or service is higher than the private cost. If firms are not subject to the full cost of their actions, that good or service may be over-produced relative to the socially optimal level.

18. In the case of funeral plans, externalities may exist in the form of firms operating in a riskier manner than is optimal. Firms may be incentivised to focus on short term profits at the cost of not sufficiently investing in the stability of their business. For instance, firms may use more aggressive investment strategies to increase profits and put a lower proportion of the revenue from plans into trusts. We have seen examples of firms incentivising high sales volumes through the use of high commissions, to the detriment of their trust's solvency. Such an approach comes with an increased risk of trust insolvency and therefore firm failure. If such a failure occurs the owners, who have limited liability, would incur private costs in terms of lost future profits. However, the failure also generates a negative externality in the form of additional social costs for:

- Consumers of the failed firm who do not receive a funeral and/or some or all of their money back
- Other firms who must pay for compensation to the affected consumers (indirectly, through the FSCS levy) or who lose business due to consumers' damaged confidence and lack of participation in the market.

19. We are not aware of any plan providers having gone out of business. However, in the context of the other harms we have identified, this is not surprising. We are concerned that there are some practices in the sector that might increase the probability of a failure and the potential impact of failure on plan holders; especially once our regulation is brought in.
20. These concerns particularly apply to trust-based models. We are concerned about the opacity of trusts' performance and solvency positions. The limited information we have seen suggests that some plan providers may be meeting current costs of funerals through unsustainable sales growth, and some trusts may not have sufficient resources to meet their future liabilities. Some firms have failed to respond to our requests for information regarding the financial position of their trusts.

Overview of our proposed intervention

21. We propose to apply rules to providers and intermediaries in the funeral plan market which are similar to those for over-50s insurance products in the Insurance Conduct of Business Sourcebook (ICOBS). Alongside this we have identified a number of areas where we consider that there is justification to apply additional rules, specific to the funeral plans market.

How we intend to address consumers buying unsuitable products or without awareness of product features

22. To address this harm, we propose to:
- Improve consumer awareness of plan features by enhancing disclosure at the point of sale, and with an annual statement
 - Improve awareness of plan features for the consumer's family by providing them with important information shortly after the sale
 - Require firms to act honestly, fairly, and professionally, as well as requiring financial communications and promotions to be clear, fair, and not misleading, and clearly identifiable as marketing material
 - Prohibit remuneration and performance management of employees that conflicts with the customer's best interests and may incentivise poor sales practices
 - Improve sales standards by requiring firms to ensure that the plan they are offering is consistent with the consumer's demands and needs. Where firms are offering advice, they will need to ensure this is suitable and that the plan being offered is the one that best meets the consumer's needs
 - Prohibit commission payments to intermediaries, with the aim of removing incentives to use poor sales practices. Intermediaries will be permitted to charge separate advice or arrangement fees, which would need to be clearly disclosed
23. All of these proposals will interact with our proposals to apply our Product Governance sourcebook (PROD), which would mean plan providers must consider a range of factors when designing a product and ensure that the product is appropriate for its intended target market. They will also need to select distribution channels which ensure their plans are only sold to those within the defined target market
24. We consider that these requirements, taken together, would also lead to an improvement in the quality and prices of plans on the market, as well as fewer

unexpected costs or exclusions at point of claim. The mechanisms through which we expect this to occur are set out in the causal chain and in the benefits section.

How we intend to address high prices and improve the quality of plans

25. To address this harm directly, in addition to the indirect effect of the measures above, we propose to require plan providers to implement a comprehensive product design and approval process. The key points are:

- Plans will need to be designed and regularly reviewed to ensure that they are consistent with the needs, objectives and characteristics of a defined target market. This includes ensuring that the price of the plan provides fair value; that there is a reasonable relationship between the price, and the quality and benefits provided by the plan
- Firms must not manufacture plans that risk not providing a funeral if the consumer dies without completing their instalment payments
- Providers will need to ensure that their own remuneration does not conflict with their duty to act in the customer's best interests
- Providers will need to select distribution channels which ensure their plans are only sold to consumers in the target market
- Providers will be prevented from paying a commission to intermediaries. This will reduce the impact of commission on prices, and prevent customers indirectly paying for an intermediary service that provides them with little or no value

26. The rules will also impose requirements on plan distributors. The key points are:

- Distributors will need to ensure they understand the plan's target market and distribute the product accordingly.
- Intermediaries will be prohibited from receiving a commission or other payment for distributing funeral plans, other than directly from the consumer. This will ensure that commission does not lead to a high price that lacks a fair relationship to the cost of the funeral and the quality of the services provided.

27. In addition, we propose to ban the sale of plans with an instalment period unless they provide a guarantee that the funeral will be provided without further contribution from the consumer's estate. We also propose to ban cancellation fees in situations where they would amount to a payment for no beneficial service, and a requirement that all other fees be reflective of costs.

28. Currently, while the majority of providers distribute plans through multiple channels (e.g. direct and through intermediaries), most intermediaries sell plans from only a single provider. This is likely to lead to inflation of commission, as providers compete to be able to place business through that intermediary.

How we intend to address the risk of firms having insufficient funds to meet their liabilities

29. Our proposed rules will require firms to have sufficient money within the trust or insurance arrangements backing their plans to meeting 100% of their liabilities. Firms will be prevented from withdrawing money from trusts (other than for funerals) unless the trust solvency level is at a minimum of 110%.

- 30. The prudential rules aim to ensure that firms hold sufficient high-quality capital to continue operating their business and meet their liabilities and other contingencies. In addition, our resolution requirements and the introduction of FSCS protection help ensure that consumers are protected in the event of firm failures.
- 31. The mechanisms through which we expect this to occur are set out in the causal chain and in the benefits section.

How we expect our rules to reduce harm in the Funeral Plan market

- 32. The causal chains in this section set out how the proposed regime will reduce the harms identified. These harms are explained in detail in the Consultation Paper.

Figure 2: Expected impact of our proposed rules concerning distribution commission and remuneration

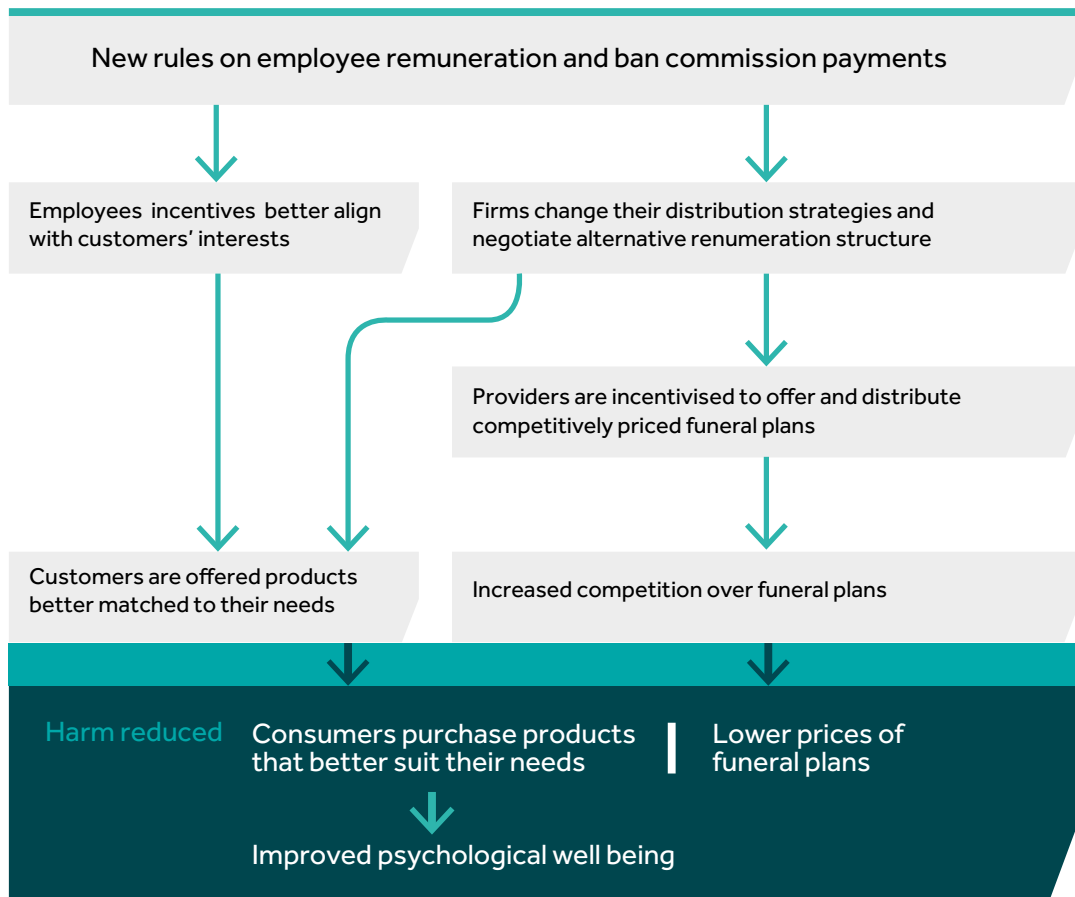


Figure 3: Expected impact of our rules concerning sales standards, cancellation and disclosure

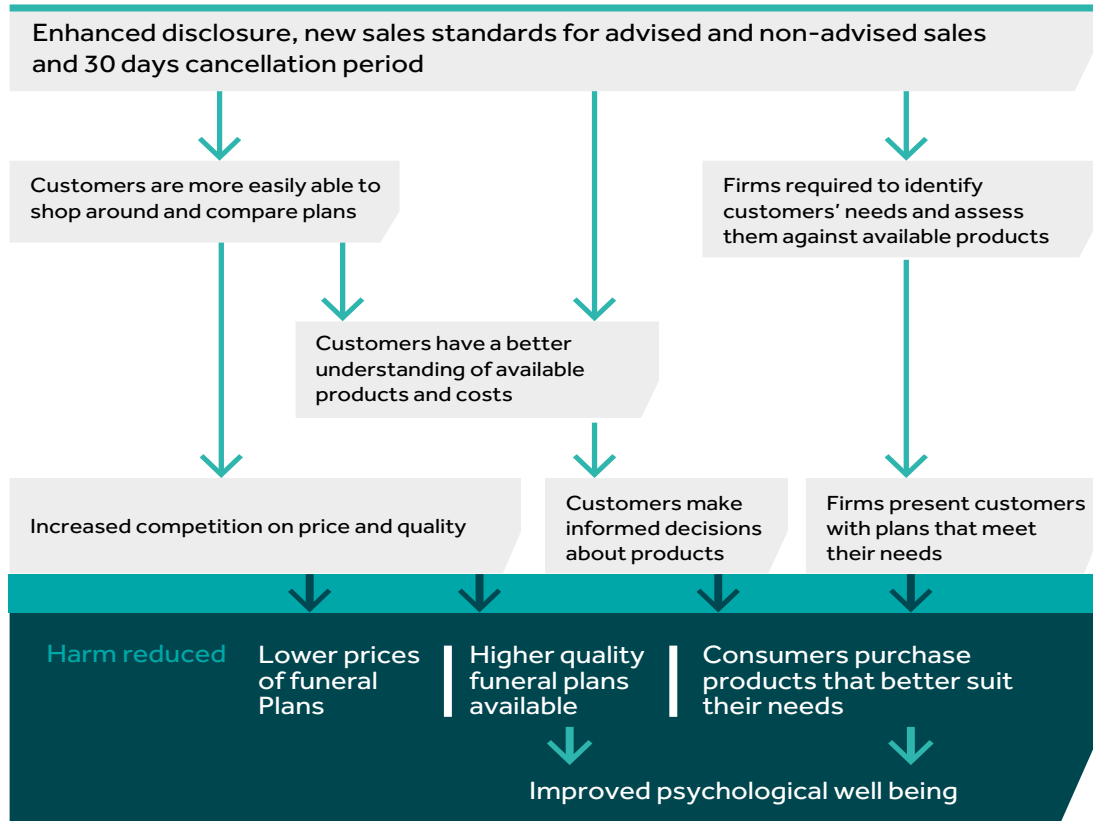


Figure 4: Expected impact of our proposed rules concerning other communications

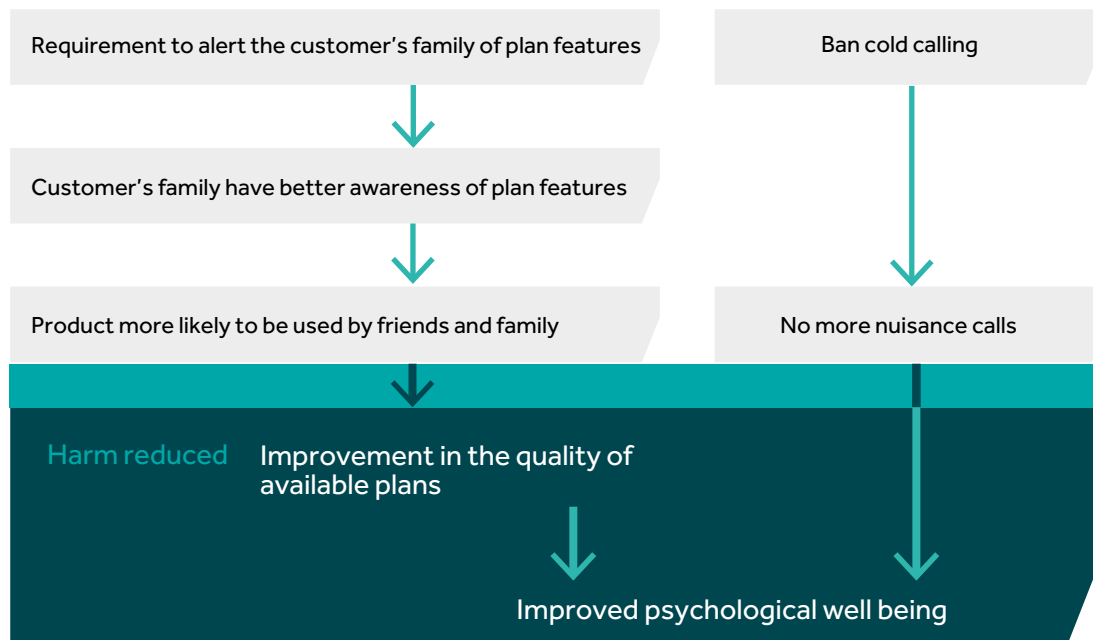


Figure 5: Expected impact of our proposed rules concerning funeral plan design

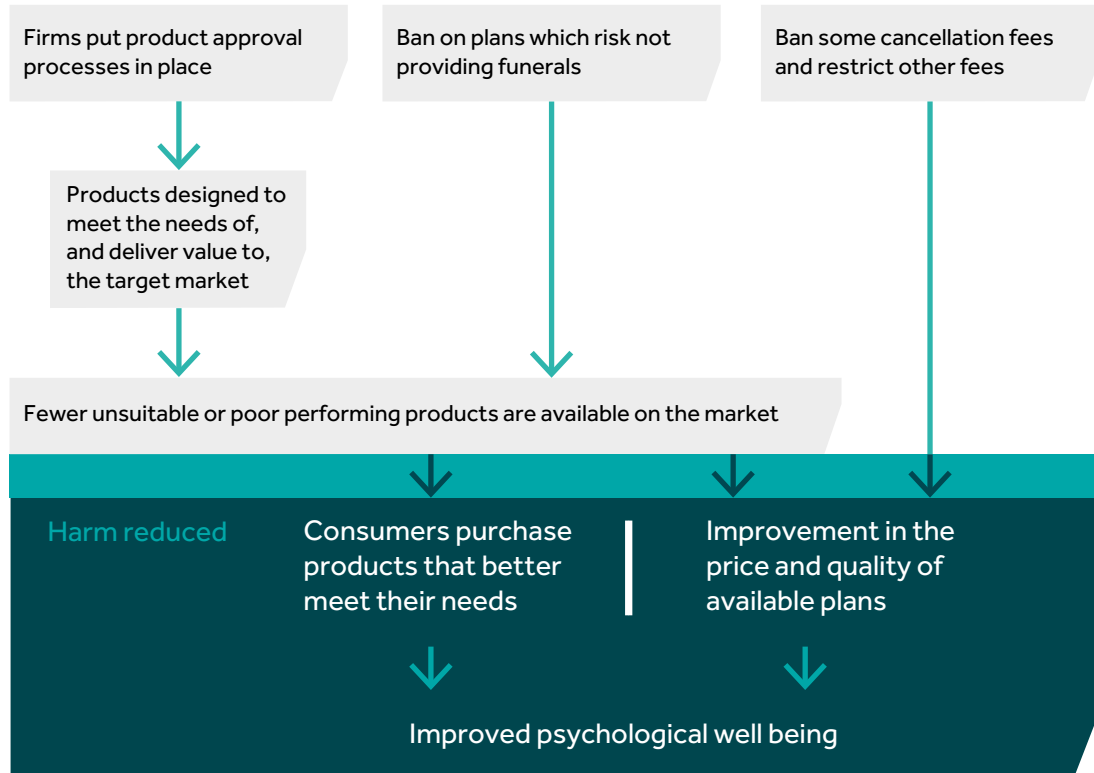
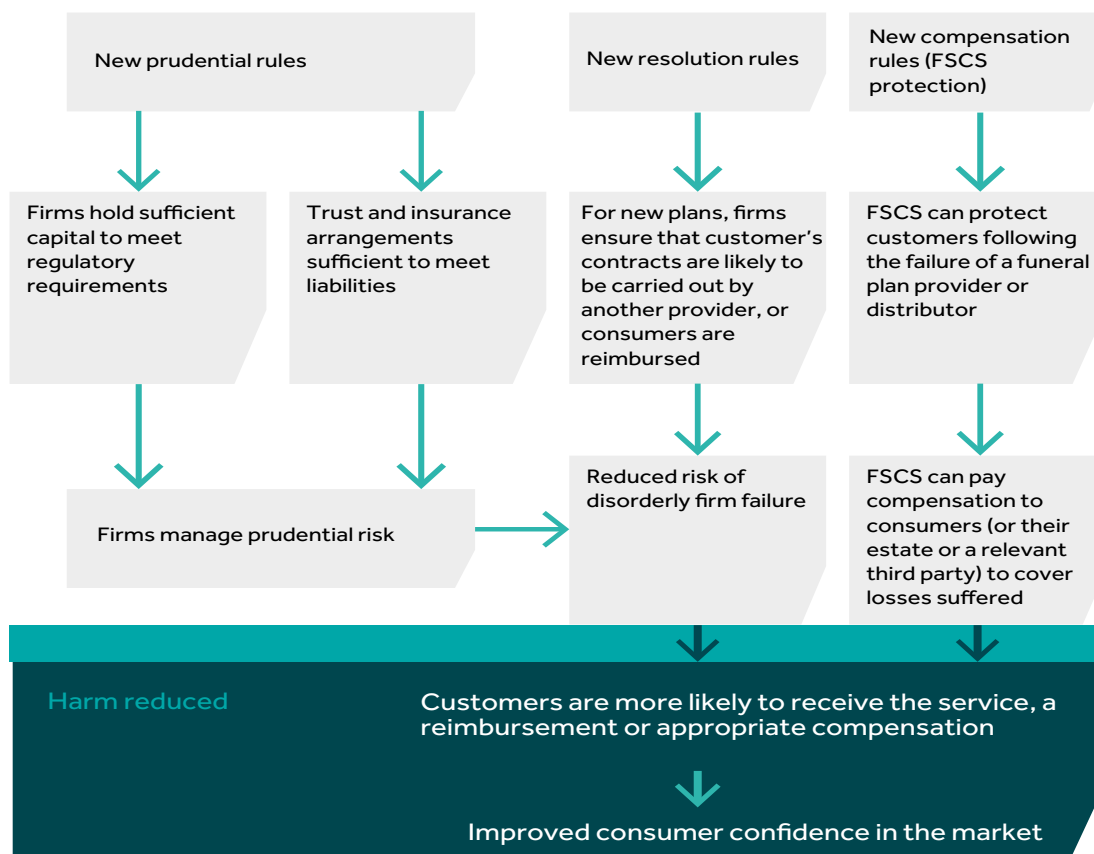


Figure 6: Expected impact of rules prudential requirements, resolution and compensation rules



Our analytical approach

- 33.** This CBA looks at the following elements to understand the potential impact of our proposed approach to regulating funeral plan providers and intermediaries:
- the likely costs to firms
 - the elements of our proposals that may increase costs to consumers
 - the likely benefits to consumers
- 34.** We have produced the analysis in this Annex based on evidence from the following sources:
- A survey undertaken in **July 2019**. This covered **31** funeral plan providers and **300** intermediaries (our 'funeral plan survey'). We received 19 responses from plan providers, and 50 responses from intermediaries, although response rates to individual questions varied significantly. Based on sales volumes, we estimate the survey covered approximately 75% of the market. Where this did not provide us with sufficient data to generate an estimate of costs, for some types of firm, we supplemented this with other data and market intelligence
 - To assess the potential costs and benefits of our proposals on long term instalment plans, in **June 2020** we undertook a survey of **11** funeral plan providers about their use of long-term instalment plans. We received 11 responses, although response rates to individual questions varied. We estimate this survey covered approximately 35% of the market
 - Views and insight gathered as part of our engagement with industry in between July and November 2020
 - Data from other sources, including the Treasury's consultation, and reports published by consumer groups ('the Fairer Finance report') and providers of funeral plans ('the Dignity report')
 - Our experience and wider knowledge of the costs associated with regulation, including using our Standardised Cost Model

Baseline and key assumptions

- 35.** This CBA considers the impacts of our proposals for the regulation of funeral plan providers and intermediaries.
- 36.** The Funeral Planning Authority (FPA) is the current industry-established regulator of funeral plan providers. It publishes Rules and a Code of Practice for member providers. The FPA does not regulate intermediaries.
- 37.** The FPA published a revised set of rules in January 2020. The new FPA rules cover cancellation periods, improved disclosure of costs during a sales process, and producing a document summarising those costs. By the time the FCA takes over regulation of funeral plans, these rules will be over two years old. Whilst the FPA is not a statutory regulator, and it is possible for firms to operate outside its scope, just over 60% of providers are members. However, it is estimated that around 95% of funeral plans are sold by FPA members, indicating that providers who are not members are likely to be small firms. Therefore, in our baseline we assume the January 2020 rules are already embedded into the conduct of the largest provider firms. We assume that the non-FPA regulated providers who represent 5% of the market as well as intermediaries will incur additional costs. We assume that the FPA regulated providers

incur additional costs only where our proposed rules intend to deliver different outcomes to the FPA 2020 Code.

- 38.** There is no current comprehensive register of plan providers or intermediaries in the funeral plan market. We have therefore estimated the current size of the market from available data, including the CMA [market study](#) on funerals and our engagement with the industry.
- 39.** We estimate that there are 48 providers and 2,348 intermediaries expected to be engaging in regulated activities and in scope of our proposals. Some providers may choose not to apply. Of the intermediaries, based on responses to the survey, we expect that approximately three quarters of these will choose to become Appointed Representatives (ARs) rather than be directly regulated. Of those that responded to the funeral plan survey, no plan providers and only 4% of intermediaries said they would not seek FCA authorisation or AR status. For the purposes of this CBA we have assumed that all firms who apply will be successful in their applications and will continue to take on new business.
- 40.** We are expecting a significant number of plan providers to become principal firms to ARs. For the purposes of this CBA, we considered whether the costs are likely to be borne by the AR directly or by the principal firm and have allocated the costs accordingly.
- 41.** We anticipate that firms of different sizes will incur different costs. We have therefore developed the following assumptions of plan providers of different sizes that will remain in the regulated market based on responses to our survey and wider market intelligence, including from the CMA's [work](#) on funeral plans. We have used these assumptions when calculating the compliance costs to firms. We have not separated intermediaries by size as the low number of responses to questions about cost would not enable us to generate estimates if we split the sample, although we recognise that there will be some variation.

Table 1: Assumptions of number of firms by size and type used for our estimates

Firm type	Estimated number
Provider – large	2
Provider – medium	6
Provider – small	40
Intermediary (authorised)	610
Appointed Representatives	1,738

- 42.** All of the large and medium providers in our survey were members of the FPA. Though the FPA's members together sell 95% of funeral plans, the information we have received indicates that 70-80% of plans are sold by the three largest providers.
- 43.** In our CBA:
- Unless stated otherwise, all references to 'average' are the mean average
 - All price estimates are in nominal terms
 - When estimating net present value of costs and benefits we use a 3.5% discount rate as per [The Treasury's Green Book](#)
 - We assume that all firms will fully comply with the rules we implement

- 44.** Unless otherwise stated, our estimates of cost are based on the average costs estimated by respondents to our funeral plan survey. An average is created for each firm size and type, and multiplied by the anticipated number of firms in that category shown in Table 1. Adding these estimates together provides us with an estimate of market-wide costs.
- 45.** It is important to note that our per-firm estimates set out in this CBA have been generated purely to increase the robustness of industry-level estimates. Per-firm cost estimates correspond to the mean cost, and do not capture the potentially wide range of costs that a particular firm may incur. For the avoidance of doubt, individual funeral plan providers or intermediaries may in practice bear costs greater or lesser than the per-firm averages used to estimate overall costs to the industry. This will depend, among other things, on the firm's individual size, makeup, and current practices. Firms should consider our proposals in relation to their specific operation and provide feedback on this basis, supported by evidence where they believe costs differ.
- 46.** We received responses regarding costs from a small proportion of the estimated number of intermediary firms. Our estimates of the total costs to the market are based upon those responses that we received.
- 47.** The CBA does not include an assessment of the direct impacts of the Government's decision to amend the Regulated Activities Order to remove the exemption for funeral plans. The Treasury has produced its own impact assessment (IA) for this. This includes the application of the Threshold Conditions which will be relevant to firms seeking authorisation as a result of amendments to the RAO.
- 48.** Similarly, where there are further requirements under separate whistle-blowing legislation (the Public Interest Disclosure Act 1998), we have not included these impacts in the CBA.
- 49.** We have also not included in this CBA our proposed application of The Fees Manual (FEES). Under section 138I of FSMA, the FCA is exempt from the requirement to carry out and publish a cost benefit analysis for such proposals.
- 50.** Most of our proposed conduct rules will only apply to plans distributed or entered into from 29 July 2022 onwards. We have assessed their impact on that basis. Where rules are proposed to apply to existing funeral plans, we have accounted for this in our analysis.
- 51.** In the last 12 months the coronavirus situation has had an unprecedented impact on UK public health, the global macroeconomy and specific financial markets. How long such conditions will continue, and their effects, are currently highly uncertain. However, such effects will likely have lasting impacts for the Funeral Plans market in terms of sales, operations and plan drawdown. This has implications for our CBA, which has been produced during 2020 and early 2021 and draws in part on data collected in 2019. Principally, it significantly increases the uncertainty around the counterfactual against which we have assessed the impact of our policies. For example:
- The latest data from the FPA shows that plan sales by FPA members for the first half of 2020 were 74,600, which is significantly less than half of the sales for every preceding year back to 2013. For context, there were 165,200 sales in 2019, 177,000 sales in 2018 and 207,700 sales in 2017. Approximately 5% of all sales in the market are made by non-FPA members. The FPA figures have been adjusted

to reflect this. For example, for 2019 the adjusted total sales figure is 173,895. We use comparable figures wherever possible. The data from the 2019 survey covered the year 2018, so we use 2018 sales figures. Total sales used throughout this CBA varies according to the date of the corresponding survey year.

- At the same time, plan redemptions were at 67,300 for the first half of 2020. If this is replicated in the second half, it would mean that 2020 had almost 30,000 more redemptions than any other year. Data from the CMA¹⁸ implies that approximately 99,000 funerals were pre-paid through funeral plans in 2018. We use this figure in the rest of the CBA.
- It has not been reasonably practicable to estimate certain benefits and costs relating to changes in firm revenue or profits. Where this is the case it is made clear throughout this document and further explanations are provided where relevant. In many cases it is due to the uncertainty of the counterfactual generated by the impact of Covid-19. Any estimates provided make use of best available information from the sources outlined above.

Summary of costs and benefits

52. The total costs we estimate to the funeral plans sector are set out in table 2. Where we have been unable to provide a single estimate, we have provided a range to reflect our estimates of the highest and lowest costs which may result from our proposals.
53. Our rules will address market failures and make the funeral plan sector work better for consumers. We expect to see improvements in sales standards and product quality. We expect consumers to gain from funeral plans being better designed and targeted to ensure that they meet the needs of consumers and are priced in a way that offers fair value, primarily by ensuring that they are provided with the agreed funeral services.
54. In addition, we expect the following benefits:
- an end to nuisance calls, because our proposals will prohibit firms from making unsolicited contact with consumers
 - reduced risks of disorderly funeral plan provider failure that would result in plan holders being unable to recover funds
 - an increase in the psychological benefits that a funeral plan can provide to both consumers and their family/friends, through greater confidence that the plan will provide the expected service, and a reduction in cases where the consumer's estate is required to deal with practical or financial issues relating to the funeral
55. Due to the practical challenges associated with monetising and quantifying these benefits (particularly those relating to psychological and wellbeing factors), we consider it not reasonably practicable to produce monetary estimates for the benefits of a number of our proposals and provide an explanation as to why that is the case.
56. We have produced a breakeven analysis to provide an indication of the overall scale of the anticipated benefits. This estimates the benefits which will need to be realised for the proposed package to be net beneficial given the compliance costs incurred by firms. The breakeven analysis excludes the costs for policies whose benefits are a direct transfer from firms to consumers. We estimate total one off costs of **£40m – £41.5m** and total ongoing

18 See paragraph 2.16 https://assets.publishing.service.gov.uk/media/5fdb557e8fa8f54d5733f5a1/Funerals_-_Final_report.pdf

annual costs of **£16.8m – £25.3m** (see table 2 for detailed breakdown). Most of the benefits are unquantified (except for about £820k-£4m benefits related to conduct rules) but we estimate that for our intervention to be net beneficial in monetary terms, the average existing plan holder would need to realise between £52 and £66 in benefits (or 1.1% – 1.6% of the average plan price) and the average new consumer would need to realise between £62 and £95 in benefits (or 1.4% – 2.3% of the average plan price).

Costs to firms

57. In line with our analytical approach, baseline and assumptions set out above, we have assessed the following costs shown in table 2 below. Rows shown in italics indicate that we expect some or all of the costs to be a direct transfer from firms to consumers:

Table 2: Detailed total costs of the proposed package of interventions

	One-off costs	Ongoing costs
Familiarisation costs	£1.8m	None
High-level standards	£1.2m – £1.4m	£8.7m – £12m
Principles for Businesses	Not quantified	Not quantified
Systems and Control	£1.2m – £1.4m	£8.7m – £12m
General Provisions	Minimal significance	Minimal significance
Conduct Rules	£4.9m – £6m	£1.4m – £5.1m
Customer's best interest rule	Not quantified	Not quantified
Consumer communications and marketing	£100k – £1.3m	Minimal significance
Ongoing post-contractual disclosure	£434k	£0-£173k
Pre-contract disclosure	£434k	Minimal significance
Information about firms and services	£3.1m	Minimal significance
Disclosure to the consumer's representative	£434k	£0 – £173k
Sales standards	£266k	£1.2m
Nomination of a funeral director	Minimal significance	Minimal significance
<i>Cancellation rights</i>	<i>£7k</i>	<i>Not quantified</i>
<i>Fees</i>	<i>Minimal significance</i>	<i>£124k – £249k</i>
Remuneration of intermediaries	£117K	Not quantified
Handling plan redemptions	Minimal significance	Minimal significance
<i>Prohibition on some instalment plans</i>	<i>Minimal significance</i>	<i>£212k – £3.5m¹⁹</i>
Product governance	£502k	£1.2m
Implementation Costs	£502k	£1.2m
Product changes	Not quantified	Not quantified
Senior Managers and Certification Regime	£14.9m – £15.1	£4.6m – £6.1m
SC&MR	£7.7m – £7.8m	£2.2m – £3.1m

19 We estimate a potential consumer benefit of £1.69m - £2m, based on the deceased person's estate no longer being required to make up any outstanding instalment payments. The cost to firms will depend on how firms opt to comply with our proposed rules

	One-off costs	Ongoing costs
Approved persons regime	£7.2m – £7.3m	£2.4m – £3m
Prudential rules	£15.2m	£718k
Rules on use of trust or insurance model	Minimal significance	Minimal significance
Prudential requirements	£15.2m	£718k
Other handbook rules	£1.5m	£153k – £237k
Resolution	£1.3m	£153k – £237k quantified
FSCS	£150k	Not quantified
Dispute resolution	Not quantified	£394
Supervision and reporting	Not quantified	Not quantified
Total	£40m – £41.5m	£16.8m – £25.3m

Familiarisation costs

58. We expect firms affected by our intervention will read relevant changes put forward as part of the proposals in this consultation paper and will familiarise themselves with the detailed requirements of the proposed rules and guidance.
59. We have estimated the costs of this to firms based on assumptions on the time required to read the 180 pages-long consultation paper. We assume that there are 300 words per page and reading speed is 100 words per minute. This means that the document would take 3.5 hours to read. We convert this into a monetary value by applying an estimate of the cost of time to firms, as set out in Table 3.
60. Table 3 outlines the total familiarisation costs by firm size as well as the main assumptions used to estimate these costs. In total, we estimate that the one-off industry cost of familiarisation would be **£775k**.

Table 3: Familiarisation cost staff numbers and hourly salaries assumptions

Firm category	Number of staff required to read the consultation paper	Hourly staff salary (£)	Total familiarisation costs
Large-sized funeral plan providers	20	59	£8k
Medium-sized funeral plan providers	5	63	£7k
Small-sized funeral plan providers, intermediaries and ARs	2	45	£760k

Sources: [FCA approach to CBA](#)

61. Following familiarisation with the proposals put forward, we expect firms to conduct a legal review of the proposals and a gap analysis to check their current practices against expectations.
62. We have estimated this cost to firms based on assumptions on the time required to read the 177 pages-long legal text, taking 8.1 hours to read.
63. Table 4 outlines the total legal review costs by firm size as well as the main assumptions used to estimate these costs. In total, the one-off industry cost of the legal review is estimated to be **£1.1m**.

Table 4: Legal review cost staff numbers and hourly salaries assumptions

Firm category	Number of legal staff required to conduct the review	Hours per team member required to read 50 pages of legal text	Hourly staff salary (£)	Total legal review cost
Large funeral plan providers	4	2.5	69	£4k
Medium funeral plan providers	2	2.5	69	£7k
Small funeral plan providers, intermediaries and ARs	1	2.5	55	£1.1m

Source: FCA approach to CBA

High-level standards

64. In taking on the regulation of funeral plan providers and intermediaries, we are proposing to apply our high-level standards. For example, the Principles for Businesses (PRIN), the Systems and Control requirements (SYSC), and the General Provisions (GEN) will apply to funeral plan providers and intermediaries.
65. These high-level standards provide funeral plan providers and intermediaries with a clear statement of the standards of behaviour we expect of FCA-regulated firms.

Principles for Businesses

66. Our Principles for Businesses (known as PRIN) are a general statement of the fundamental obligations that FCA-regulated funeral plan providers and intermediaries must comply with at all times.
67. We consider that most of the requirements in PRIN are in line with the FPA Principles of Business introduced in January 2020. FPA member firms should therefore already be meeting these standards.
68. We recognise that funeral plan providers and intermediaries that are not members of the FPA may not be currently meeting these standards, and so may incur costs of complying with PRIN.
69. We do not consider it reasonably practicable to estimate the costs and benefits of complying with the Principles generally. This is because:
- As the Principles are high-level statements of requirements on firms from which most other rules stem, we do not consider it reasonably practicable to estimate the costs of complying with PRIN alone, as these costs are inextricably linked to the costs of complying with the more detailed rules.
 - Complying with PRIN may in some cases require firms to take different actions with regards to different consumers. It is not possible to provide an estimate of these costs *ex ante*.

Systems and Controls

70. Our high-level rules on systems and controls (known as SYSC) set out how firms should organise and manage their affairs. The main requirements of SYSC are:

- Having in place appropriate measures to manage the wide range of risks to the firm's business (e.g. financial, operation, regulatory)
- Ensuring proper compliance, internal audit and financial crime controls
- Managing conflicts of interest
- Having proper controls over outsourced providers and others (such as appointed representatives)

71. An important part of SYSC is that firms ensure their employees have the appropriate knowledge and competence to perform their roles. We also propose to require firms to assess that their staff members are of good repute, and that they provide a minimum of 15 hours of training and development per year. This is consistent with our requirements on insurance firms and other regulated sectors.

72. The FPA already has high-level requirements that firms must have:

- Adequate organisational and risk management systems
- Proper management of conflicts of interest

73. However, these requirements are not as detailed as the rules in SYSC. Furthermore, they do not cover areas such as due diligence over outsourcing partners and appointed representatives. As such, we believe there will be some additional costs in reviewing the SYSC requirements and setting up the necessary processes. Our estimated costs are set out in table 5 below.

Table 5: SYSC set-up cost to Firms

Firm category	Full time equivalent time required to set up procedures – per firm	Wage cost per hour (£)	Total costs
Large-sized funeral plan providers	5 days	59	£4k
Medium-sized funeral plan providers	5 days	63	£14k
Small-sized funeral plan providers and intermediaries	1 day	45	£806k
Market-wide costs			£824k

Source: [FCA approach to CBA, CP18/15](#)

74. We asked firms to provide estimates of the costs they would incur in meeting our requirements for staff knowledge and competence; including the requirement to provide 15 hours of training and development per year. Most providers responded to these questions. However, most intermediaries who responded to our survey were unable to tell us whether they expected to incur additional training costs or not, although some indicated clearly whether they would or would not. We have, therefore, assumed a range of possible market-wide costs, based on responses to our 2019 survey. The lower estimate is based solely on those intermediaries who told us they would incur costs (863 firms). The upper estimate is based on all intermediaries whose survey responses indicated they may incur costs (1,869 firms). The figures for intermediaries include appointed representatives.

Table 6: Training Costs

Firm category	One-Off Costs by firm type (total £)	Ongoing Costs by firm type (total £)
Large-sized funeral plan providers	£85k	£120k
Medium-sized funeral plan providers	£4k	£190k
Small-sized funeral plan providers	£98k	£1.1m
Intermediaries	£192k-£416k	£548k-£1,187k
Market-wide Costs	£379k – £603k	£2.0m – £2.6m

Source: FCA approach to CBA

75. We also asked firms about whether they currently conduct checks on their staff, and the costs incurred. Just under 57% of firms do not currently do so and we have reflected this in the market-wide cost estimate at Table 7. Some intermediaries provided us with estimates of the total costs they would incur, whereas others told us the cost per staff member. As we do not know exactly how many staff members these firms have, we have provided a range of costs, based on responses to our 2019 survey. The lower estimate assumes that firms have 10 employees. The high estimate assumes they have 50.

Table 7: Costs of the good repute requirements

Firm category	Ongoing Costs by firm type (total £)
Large-sized funeral plan providers	£20k
Medium-sized funeral plan providers	£143k
Small-sized funeral plan providers	£505k
Intermediaries	£6m – £8.6m
Market-wide Costs	£6.7m – £9.3m

Source: FCA approach to CBA

76. These costs will be offset to some extent by the benefits that firms will receive from having a better trained workforce. However, it is not reasonably practicable to more broadly estimate the benefits for the same reasons as outlined in the Principles section above.
77. Aspects of SYSC that relate to the Senior Manager and Certification Regime are considered in a separate section.

General Provisions

78. Our General Provisions (known as GEN) contain rules that mainly cover the administrative duties that apply to all the firms we regulate. These rules aim to make sure consumers are not misled, that all firms operate on a level playing field, and that firms are transparent about their regulatory status.
79. They also ban firms from taking out indemnity insurance to cover any financial penalties they pay for not complying with our rules. This will be a new requirement for funeral plan providers and intermediaries. However, as there is currently no statutory regulator of the funeral plans sector, no firm has any reason to hold such insurance. As such, we do not consider that complying with this requirement will have any costs for firms beyond familiarisation, which are already captured above.

80. We also propose that funeral plan providers and intermediaries provide a basic rate telephone line for consumers in relation to contracts entered in to with the provider or intermediary. This is a general requirement for all other FCA-authorized firms. To our knowledge there are no providers or intermediaries that currently use premium rate telephone lines, so we do not expect there to be any costs for firms beyond familiarisation, which are already captured above.

Conduct rules

81. In the areas where we are introducing notable extra requirements compared to the FPA's standards, we discuss the costs and benefits from our interventions below.

The customer's best interests rule

82. We propose to require firms to act honestly, fairly and professionally in their customer's best interests. We have similar rules in several other sectors that we regulate. As with the Principles, we do not consider it is reasonably practicable to provide a general estimate of costs. This is because:

- Costs are inextricably linked to the costs of complying with the more detailed rules.
- Acting in the customer's best interests may depend on particular circumstances and may in some cases require firms to take different actions with regards to different customers, for which a general estimate of costs cannot be given *ex ante*.

Customer communications and marketing

83. We propose to require that all communications be clear, fair and not misleading. We also propose that any adverts must be identifiable as such (rather than, for example, an advertorial). Most firms told us they would not incur costs of doing this, either because they currently comply with these requirements or because they would update their marketing 'naturally' over time. We note that the FPA has similar requirements in relation to marketing being clear, fair and not misleading.
84. Only a small number of intermediaries told us that they would be impacted by this proposal. However, approximately half of respondents did not reply to the questions we asked about it, and only two provided us with estimates of the cost the proposal would have. Because of the very limited responses we received, we cannot provide a single figure for the total cost firms will incur. If the only intermediaries who incur costs are the proportion who specifically told us they would, then we estimate the costs across the market to be **£100k**. However, if we include the proportion of firms who did not answer our questions, we estimate the costs across the industry would be **£1.3m**. The figures for intermediaries include appointed representatives.

Pre-contract disclosure

Product information disclosure

85. We propose to require funeral plan providers to produce a short summary document before entering into an agreement with the consumer. Where an intermediary sells a plan, they will need to provide this document to the customer during the sales process. The current FPA standards already require providers to issue a plan summary document, although these standards are not as prescriptive and detailed as the rules we are proposing. As such, we have assumed that all providers will incur additional

costs in developing this new product information document. Based on the information in our survey, we expect these to be one-off costs of £40,000 for large providers, £30,000 for medium-sized providers, and £4,400 for smaller providers. This gives a total one-off cost of **£434k** across the industry. Firms are already required to provide product disclosure documents to customers, so we do not expect there to be any additional ongoing costs.

- 86.** In our survey, only one intermediary indicated that providing a new disclosure document to customers would involve additional costs, which they estimated would be £1,000. As such, we consider that any costs will be of minimal significance.
- 87.** The information must be given either in paper or through an electronic durable medium²⁰; with the customer able to opt for paper copies free of charge. Most firms have told us that they already provide paper copies as a matter of course, and none indicated that there would be any additional cost for meeting this requirement.
- 88.** As we have found that a number of customers are unclear about what their plan does and, crucially, does not cover, it is possible that improving the information disclosure could lead to a reduction in sales. This is because customers may better understand the limitations of the plan being offered, and could decide that there are other products available which are more suitable for them. The literature on disclosure remedies point at large variations in terms of impact on consumer behaviour. Both positive, neutral and negative effects have been found on consumer engagement as a result of disclosure interventions in financial services and other markets. Estimating the impact of our proposals would require specific and detailed information related to our intervention and the affected population. As such we do not consider it is reasonably practicable to estimate the impact that better information disclosure will have on customers' decision-making in this instance.

Information about the firm and its services

- 89.** We are proposing that both providers and intermediaries will need to disclose important information about their firm and the scope of the services they provide. This includes information about whether they provide advice, their complaints process and, for intermediaries, whether they represent a limited number of providers or the whole market. Firms will also be required to make some disclosures concerning their remuneration.
- 90.** We expect the majority of firms to do this through a standardised disclosure document (similar to an initial disclosure document for investment business). Given the standardised nature and typical length of such documents, we consider the one-off costs to plan providers to be broadly the same as the costs of producing the product disclosure document; i.e. **£434k** across the industry. We only expect minimal, if any, ongoing costs as a result of this proposal. Firms already provide documents to their customers; this proposal is to standardise and enhance the content of the documents, rather than increase them.
- 91.** The obligations will also apply to intermediaries, who will need to produce their own disclosure documents. We have assumed their costs will be similar to those of a small plan provider, so have used the average cost indicated by small firms (£4,400) as a proxy for intermediaries' costs in our calculations. We have not included the expected

20 any instrument which enables the recipient to store information addressed personally to the recipient in a way accessible for future reference and for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

1,738 appointed representatives in the figures, because we expect their disclosure documents will be developed by their principal. On that basis, we expect the one-off cost to all intermediaries to be **£2.7m**. In practice, this could turn out to be a significant overestimate because:

- We anticipate that plan providers will develop standardised documents on behalf of many of the intermediaries they use, reducing the need for each intermediary to individually develop their own documents.
- Some intermediaries are already authorised for other business activities, and so are already complying with similar requirements.

92. We have not assumed any ongoing costs, because firms already have these costs in providing the documents required by the FPA rules. Our 2019 survey did not indicate that intermediaries were likely to incur ongoing costs in making these disclosures.

Disclosure to the customer's representative and ongoing post-contractual disclosure

93. We are proposing to require plan providers to write to the customer's nominated representative within 5 days of the plan being purchased. The letter will contain key information about the plan and, most importantly, what to do when the customer dies. We are also proposing to require funeral plan firms to provide each customer with an annual statement setting out certain key information about their plan. For each proposal, we expect the costs of setting up these letters to be broadly the same as developing the standardised document, meaning one-off costs of **£434k**. On that basis, we estimate the total one-off costs across the industry to be **£868k**. In practice, we expect these figures to be overestimates because most firms will benefit from efficiency savings of making multiple IT and document changes through a single project.

94. In addition, there will be ongoing costs of distributing the letters. Firms will be able to do this either electronically or on paper; although this must be driven by the customer's choice. We expect the typical cost of sending these letters by post to be £1 per letter, with a negligible cost to sending them electronically. Based on the average yearly number of new plans sold from 2018-2020 as indicated by the FPA (172,400), the disclosure to the customer's representative will lead to ongoing costs of **£0 to £173k** and the post-contractual disclosure (annual statements) to ongoing costs of **£0 to £173k** per year. We expect the actual cost to be towards the lower end of this range, because firms are likely to send more documents electronically.

Sales standards

95. We propose to require providers and intermediaries to assess whether a plan meets the demands and needs of a customer. If firms are giving a personal recommendation, they will need to ensure this is suitable and that the product recommended best meets the customer's needs. Where firms do not already do this, this would involve a one-off cost to amend the sales process and an ongoing cost to apply the process.

96. To comply with these requirements, firms may need to amend their sales processes and enhance the level of compliance monitoring they have in place. We expect the costs to be higher where a firm is providing advice. We cannot fully account for this difference in our estimates, because there is currently no distinction in the market between advised and non-advised sales; meaning we do not know how many firms will be giving *regulated advice*.

- 97.** Based on the responses we received to our survey, we have produced estimates of the costs that firms will incur in complying with these requirements. There is a risk of 'double counting' if the costs of amending the sales process generally are accounted for elsewhere, for example in the cost of complying with PROD or our disclosure requirements. However, to avoid underestimating the costs we have included all costs reported by firms unless they specifically stated that the cost had been counted elsewhere. A significant number of respondents indicated that they could not estimate their costs, so our estimates involve a degree of uncertainty.
- 98.** Firms told us they would incur average one-off costs of £7,250 and average ongoing costs of £58,833. The figures were lower for small providers: £5,750 and £14,500 respectively. Based on this, we estimate the total one-off costs of amending the sales process to assess whether a plan meets the demands and needs of a consumer to be **£266k** for providers. On an ongoing basis, we estimate these costs as **£1.2m** for providers. Only one intermediary gave us estimated figures for their costs in our survey. As such, we cannot provide a reasonable estimate for the costs to intermediaries. However, where they are required to amend their sales processes, we expect they would incur similar costs per firm as small plan providers.
- 99.** We also propose to prohibit cold calls unless the recipient of the call has an existing relationship which would lead them to envisage receiving calls. We note that the FPA has banned unsolicited telephone calls, so we do not expect there to be significant additional costs from complying with our rules. We do not believe it is reasonably practicable to estimate costs for the 5% of non-FPA members for two reasons. First, we do not know how many non-FPA funeral plan providers use cold-calling to sell their plans. Second, of those that do use cold-calling, we do not know what percentage of their total sales is done via cold-calling.
- 100.** These requirements are also likely to lead to costs from reduced sales of products. Currently, there is no requirement to ensure products meet customer needs, and no enhanced requirements when giving advice. Some firms may no longer be able to sell as many plans as they do currently. We do not consider it is reasonably practicable to establish the impact on sales volumes, as we would need to know the extent to which current funeral plan sales are being mis-sold under the rules proposed here. This would require us to conduct a detailed review of current sales practices; most likely including significant observation of plans being sold.

Requirement to nominate a funeral director

- 101.** We propose to require plan providers to, shortly after the plan is taken out, nominate a funeral director who will carry out the funeral, and put in place contractual agreements to ensure the funeral is delivered. FPA-member firms are already required to identify the director that will carry out the funeral within four weeks of the plan being purchased. While for other firms this may be a new requirement, the primary effect of this will be to move the point at which a funeral director is attached to a particular plan forward in time, rather than require firms to carry out activity that they would not have otherwise. We therefore consider that any costs of this requirement will be of minimal significance.

Cancellation rights

- 102.** We propose to require funeral plan providers to offer a 30-day free cancellation period for a plan. This is in line with current FPA standards, but higher than the requirements

of the previous FPA standards. To comply with this, firms may need to amend marketing material or terms and conditions, and make changes to their systems to prevent cancellation charges being levied between 14 and 30 days. There may also be some staff training costs to ensure staff are aware of this change.

- 103.** We therefore consider that non-FPA member plan providers may incur one-off costs in meeting this requirement. Based on survey responses we estimate that this will be an average of £2,914 for the 5% of providers in the market who are non-FPA members; giving a total cost of **£7k**.
- 104.** It is possible that some firms may have additional, ongoing, costs due to being unable to retain any of the customer's money where they cancel on days 15-30. In practice, we do not consider these costs to be of more than minimal significance. This is because most providers already provide a 30-day cancellation period, and providers also told us that they have very few cancellations during this period.

Fees

- 105.** Currently, the vast majority of the funeral plan market charge fees in certain circumstances. The main two types of fees we have seen are cancellation fees and instalment fees; although we have seen a small number of providers levying fees for other types of administration activities (such as making changes to the plan). Our proposals are:
- To prohibit cancellation fees in cases where a planholder dies or cancels during any moratorium period under which no funeral is provided
 - To limit all other fees to reflect the cost the firm incurs (which can include loss of investment profit, in the case of instalment fees)
- 106.** In relation to cancellation fees, firms have told us that they charge between £100 and £1,024. The average across the firms we surveyed was £331 per plan. These fees are payable if the customer cancels the plan, but also where the customer dies during the instalment period and their estate opts to have the money returned rather than make up the shortfall. Providers have told us that the large majority of cancellations happen within the 30-day cooling off period. We do not know how many cancellations occur after this period, but within 12 months of the sale. From the survey we can estimate around 37,000 cancellations a year across the whole market. We have assumed that only 1-2% of cancellations (375-750) will be impacted by the prohibition on cancellation fees. This gives a cost to firms of between **£125k – £249k** as a result of no longer charging cancellation fees. We expect the cost to be towards the lower end of this estimate, as most firms have told us that they have very low rates of cancellation and of plans resulting in money being returned after the customer's death. The costs will be a direct transfer to consumers. We consider this transfer a direct benefit to consumers as we think that there is no justification for these fees.
- 107.** As our rules on cancellation fees will lead to a loss of revenue for some firms, it is possible that they may seek to recover this through other means (for example, by increasing plan prices). Whether firms decide to do this will be based on a range of factors, such as their financial position and the impact that a price increase would have on their competitive position in the market. It is not reasonably practicable for us to quantify this effect robustly due to the dynamic nature of firms' responses to our new rules.

108. We do not consider that limiting other fees to reflect the cost the firm incurs is likely to have significant costs to the industry. This is because:

- Firms have stated that their instalment fees reflect costs in the form of lower investment returns, so this should not result in significant changes to the current fees.
- We have not seen evidence of other fees being charged.

109. Firms may incur some limited costs in re-assessing their instalment fees, and in changing product literature to reflect the new fee regime. However, we consider that the additional one-off costs will be of minimal significance to those already being incurred by firms.

Remuneration of intermediaries

110. We are proposing that intermediaries will no longer be able to receive commission or other types of payments from plan providers. Intermediaries must only be remunerated for funeral plan distribution through fees that are paid to them directly by the customer. These fees would be for advising or arranging services and would need to be paid separately from the price of the funeral plan as well as being clearly disclosed to the customer.

111. The rules will also apply to intermediaries who are part of the same group as funeral plan providers (“vertically integrated firms”). In particular, where a vertically integrated firm’s funeral director both sells the plan and delivers the funeral, firms will need to ensure the amount paid for the funeral services is not higher than it would be if the plan was sold by a different firm. This is to prevent firms avoiding the proposed rules by inflating the amount paid for the funeral.

Implementation costs

112. We anticipate that providers will need to redesign their distribution arrangements. Based on our firm survey, we assume that all providers use intermediaries as one of their distribution channels. Using our Standardised Cost Model, we estimate that this remedy will require a “small change project” to implement and be a one-off cost of **£117k**. Table 8 sets out the assumptions behind this estimate.

Table 8: Costs of implementing the rules on remuneration

Firm category	One-off cost by firm type
Large funeral plan providers	£37K
Medium funeral plan providers	£41K
Small funeral plan providers	£40K
Market-wide Costs	£117K

Source: FCA approach to CBA

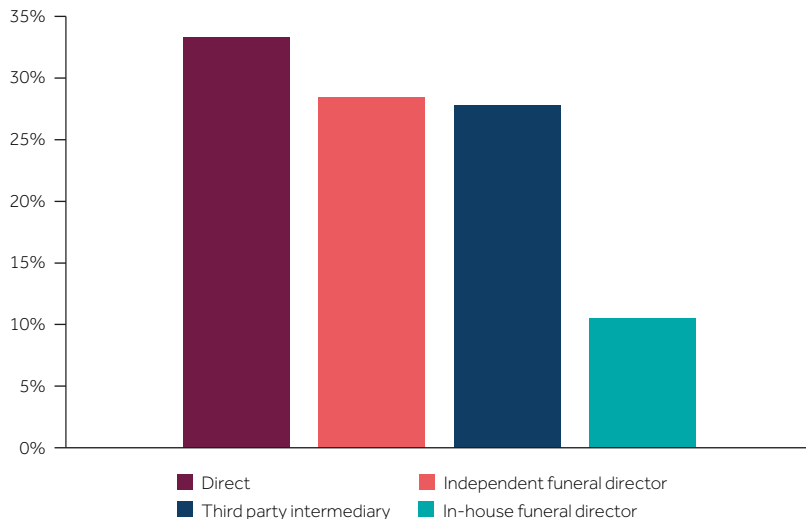
113. We do not consider it reasonably practicable to estimate the implementation costs for intermediaries because it is hard to predict how intermediaries will respond to these regulations. We expect some to exit the funeral plans market (as discussed below).

Impacts on funeral plan providers

114. Based on the data from our 2019 survey, we estimate that 56% of plans are currently sold by intermediaries who are not part of vertically integrated firms. These plans are

split almost evenly between sales by independent funeral directors and sales by other intermediaries ('third party intermediaries'), as shown in figure 7.

Figure 7 – Sales by distribution channel



115. The impact of our proposals on these firms is likely to vary depending on the extent to which they rely on these commission-based sales, and whether they have other distribution channels available. Not all firms sell through intermediaries, and not all pay commission to sell their plans:

- 10 of the 17 providers in our survey paid commission for less than 15% of their sales, with 5 providers paying no commission at all. However, 4 of those providers rely heavily on distribution through vertically integrated funeral directors.
- 3 of the 17 providers paid commission for more than 75% of sales.

116. However, every firm we are aware of that uses third party intermediaries pays commission. Based on the data reported to us in our 2019 survey and the sales figures for 2018 published by the FPA, we estimate that 41% of sales (just over 60,000 per year) involve commission payments.

117. Although commission arrangements vary between providers, firms have told us that most do not pay commission to funeral directors, because the funeral director is remunerated through the ultimate provision of the funeral service. We are only aware of a very small number of firms who pay commission to funeral directors, and these range from £85 to £270, which is significantly lower than the average of £550 paid to third party intermediaries.

118. We expect our proposals to impact funeral plan providers in a number of ways:

- Providers who distribute through independent funeral directors are the least likely to be impacted. However, they may need to make some amendments to how they remunerate those funeral directors. We understand that the vast majority of funeral directors only distribute plans from a single provider. Our proposals could lead to increased competition between plan providers seeking to obtain funeral directors as distributors. While this could increase the costs that providers incur, it is also likely to lead to increased competition between funeral providers to offer the best plans for funeral directors to sell to their customers.

- Vertically integrated firms have greater flexibility on the structure of their payments and the distribution of costs to different entities within their group. However, our rules will prevent these firms from adopting practices which incorporate into the payment for funeral services something which would otherwise be a commission to the funeral director selling the plan. We have not seen evidence to suggest that this practice is widespread, so we cannot assess the extent of the impact of our proposals. However, it is likely that some payment and cost structures within those firms will need to be amended, which could result in loss of income.
- The prohibition on commission is likely to impact the number of distributors active in the market, as they will lose a significant incentive to sell funeral plans. This is likely to reduce the number of new plan sales, which will result in reduced revenues for plan providers.
- Providers who are reliant on third party intermediaries are the most impacted. They are likely to try and change their distribution processes in response to our proposals. For example, providers may seek to increase distribution through independent funeral directors, or in-house sales staff. These providers may not be successful in recouping the sales lost through no longer using third party intermediaries.
- Some providers may decide to exit the funeral plans market. This is most likely if they are currently dependent on the use of intermediaries to sell their plans and are unable to find alternative distribution channels. This could reduce competition and consumer choice.

119. We cannot reasonably estimate these costs because they depend on firms' dynamic response to regulation, and their ability to establish alternative distribution channels.

Impacts on funeral plan distributors

120. As stated above, our survey data show that over half of funeral plans are currently sold through intermediaries, although just over half of those are through funeral directors who generally do not receive commission.

121. Most firms selling through third party intermediaries pay variable amounts of commission based on the type of plan sold. Our 2019 survey indicates average commission of £543 for each plan sold. This is calculated based on the number of reported sales through each distribution channel²¹, and the rates of commission firms told us they paid to each distribution channel. Our second survey in 2020 indicated that the average commission for firms' bestselling plans is £550. This is usually paid in a single lump sum shortly after the plan is sold. Our 2019 survey gathered evidence from just over 145,000 sales which represented 78% of the total sales in 2018. We found that around 60,000 of these sales paid a total of around £25.6m commission to intermediaries. From this, we estimated the total value of commission being paid annually to intermediaries as £32.8m. Of this total, over 80% (£27m) was paid to third party intermediaries. Almost all the remaining commission comes from firms paying commission to funeral directors.

122. We think it is likely that many third-party intermediaries may withdraw from the funeral plan market if our proposals are brought into force. This is because they will lose some if not all of the above revenue stream. We do not expect that all third-party intermediaries will cease their funeral plan activities, for the following reasons:

21 In our survey, we asked firms to provide a split of their annual sales for 2018 through different distribution channels. The distribution channels we asked for were: direct to customer (telephone and web), vertically integrated intermediaries funeral directors, other vertically integrated intermediaries, independent funeral directors, and independent intermediaries.

- Firms may attempt to recoup some of this lost revenue through changing to an *advisor/arranger charging*²² model. However, we do not consider this will be viable for most firms as consumers may not be willing to pay a fee for these services.
- We are aware that there are a number of intermediaries selling funeral plans alongside other services which consumers pay for. These include financial advisors/planners, will writers, and equity release advisors. Although they could no longer receive commission for selling funeral plans, these firms may continue to offer them to their customers as part of their broader services.

123. Where some third-party intermediaries do exit the funeral plans market, we do not expect this to adversely impact competition or be detrimental to consumers' interests. This is because we expect our intervention to reduce competition driven by high commissions and shift it to being on parameters of quality and price of the plan.

124. We do not consider it is reasonably practicable for us to quantify the impact on third party intermediaries because this will partly depend on their dynamic response to regulation, and the extent to which they are willing to continue distributing funeral plans as part of their services.

125. Our proposals are expected to have a minimal impact on independent funeral directors, as they are generally remunerated for providing the funeral services rather than through commission for distributing plans. Where commission is paid, the information from our 2019 survey indicates that it is much lower than the commission paid to third party intermediaries (around £85 compared to the market average of £550). The loss of this income is unlikely to deter funeral directors from continuing to distribute funeral plans. The proposals could impact vertically integrated funeral directors. Such firms have told us that they generally do not receive commission from the plan provider, but we do not know the extent to which they could be receiving additional remuneration within the sums allocated to them to pay for the funeral services.

Alternatives to a commission ban considered and proportionality assessment

126. We recognise that our proposed ban on intermediary commission is a significant intervention in the funeral plans market. We have considered whether our intervention is proportionate to the harms identified and whether similar benefits could be obtained with less intrusive remedies.

127. In Chapter 5, we outline alternative policy responses to this harm:

- Introducing full commission disclosure requirements for funeral plans
- Requiring firms to assess whether their remuneration offers fair value to consumers, and to amend their practices if they are not providing fair value
- Prohibiting remuneration unless it enhances the quality of service and does not conflict with the customer's best interests

128. Our analysis finds that these options are unlikely to be as beneficial as the proposed intervention.

129. First, by prohibiting intermediaries from receiving commission from funeral plan providers we directly address the current mismatch of incentives between firms and

²² Where the customer pays the intermediary a fee for their advising or arranging services. This fee would be completely separate from the payment for the funeral plan.

consumers. This conflict of interest may incentivise firms to sell as many plans as possible, or more expensive plans, regardless of whether they meet the consumer's needs. The other policies considered may lead to a reduction in commission fees paid by consumers but would address the current conflict of interests between firms and consumers only indirectly and so customers may still be sold unsuitable products.

- 130.** Second, by prohibiting intermediaries from receiving commission from funeral plan providers we directly address the impact that high commissions have on prices. We have found little evidence that intermediaries provide added value to consumers. As such, commissions are leading to consumers paying prices which are too high relative to the benefits they receive. Two of the alternative options may mitigate this harm but are less transparent and harder to monitor, and so the outcome is more uncertain.
- 131.** Third, as Fletcher (2016) notes, while disclosure requirements can have valuable positive impacts on consumers' decision-making, there is also evidence of these requirements being ineffective or even harmful:
- Consumers may still have limited awareness of the disclosure. For example, OFT's ex-post evaluation of a disclosure remedy in the Care home market found that care homes had improved in terms of providing information on prices. Nevertheless, consumers were found to have only limited awareness of fees and the evaluation found no evidence of downward pressure being exerted on fees due to increased transparency.
 - Where consumers do engage with the disclosures, they may place too much weight on this in their decision making (and not on total costs). The US Federal Trade Commission (FTC) conducted an experiment to examine the impact of requiring mortgage brokers to reveal their commission. It found that disclosing the existence and level of the broker commission increased customer take-up of the more expensive mortgage by 22 per cent on average.
 - Providers may seek to work around the remedy, in order to make it less effective.
- 132.** Fourth, we consider that vulnerability as a result of life events and resilience may be common amongst funeral plan customers:
- Data provided to us shows that more than half of funeral plan sales are made by funeral directors. Firms have told us that it is very common for a plan to be sold following a bereavement, where the family initially contact the funeral director to purchase an at-need funeral.
 - As is stated in chapter 5, it has been broadly stated that a key motivation for their customers purchasing plans is to protect their loved ones from the financial strain of arranging and paying for their funeral. We note that a great deal of funeral plan marketing focuses on the increasing cost of at-need funerals, and the benefits of protecting loved ones from financial and emotional burden. Such motivations may indicate concerns over ability to withstand financial shocks.
- 133.** The presence of vulnerability suggests that stronger action is justified to protect these consumers from the harms identified.
- 134.** The above suggests that, although the costs of the alternatives may be lower, there is much more uncertainty over whether they would reduce the harm we have identified, compared to a ban. As such, we believe the net benefit of a ban would be higher than any of the alternatives.

Handling Plan Redemptions

135. We are proposing a number of rules which are intended to ensure funeral services are provided in a timely manner, and with sufficient care and skill. We consider these rules are likely to result in costs of minimal significance to firms, because:

- The rules are similar to existing FPA requirements
- The rules are based on ensuring that providers meet their contractual obligations to customers

Product governance

136. In addition to the rules concerning plans which risk not providing funeral services (considered below), we propose to apply a broad range of product governance (PROD) rules to funeral plan providers. These will be based primarily on the PROD rules for insurance products, including the changes on which we consulted in CP20/19²³. We are proposing to make a number of amendments to ensure the rules are appropriate for funeral plans.

137. Under the rules, plan providers (and intermediaries who are involved in manufacturing plans), will need to ensure their products are designed to meet the needs of a defined target market. This includes ensuring that the price of the plan is providing fair value to customers.

138. Firms will need to consider all the features of their plans. This means not just looking at the key benefits and exclusions, but also other features such as how the customer pays for the plan, how it is distributed, and the levels of commission that providers and intermediaries receive.

139. Firms will need to put in a place a documented product approval process, and ensure that all products are reviewed regularly. They will need to take remedial action where products are not meeting customers' needs.

Implementation costs

140. Firms are likely to incur costs implementing the requirements, as they will need to set up product approval processes and potentially hire new staff to conduct product reviews. Large firms told us that on average they would incur up-front costs of £25,000 on changing their systems to incorporate these design changes. Medium firms told us this would be £2,000, and small firms £11,000. On an ongoing basis, these costs were £316,000 for large firms, £37,500 for medium firms, and £8,071 for small firms.

141. Taken in conjunction with our firm population assumptions, this leads to total one-off costs of **£502k**, and ongoing annual costs of **£1.2m**.

142. We do not consider it is reasonably practicable to fully assess the quantitative impact of the product oversight and governance regime as a whole. This is because we cannot fully assess the extent to which firms are currently selling products which are not fair value, or not meeting the needs of a defined target market. However, we expect that the rules would lead to plans being aligned better to customers' needs. This could result in fewer plan sales, and an increase in costs to providers as plans are fully provided more often.

23 <https://www.fca.org.uk/publication/consultation/cp20-19.pdf>

143. We anticipate that providers will also need to increase the oversight they have of their distributors. Currently providers do an average of 13 hours of due diligence before agreeing to permit a third party to distribute their products. The proposed product oversight and governance rules do not set a minimum requirement, but we consider it likely that firms may need to increase their due diligence in order to ensure that the distributor meets the requirements of the PROD and SYSC rules. It is not reasonably practicable for us to estimate how much additional due diligence will be required because it will depend on a range of factors, such as the risk of harm posed by the distributor, and the amount of work the provider already undertakes. We also expect that the number of third-party distributors operating in the market may change as a result of our regulation, which could significantly impact the costs of due diligence. It is not reasonably practicable to predict the exact extent of these changes.

Costs of expected product changes

144. The proposed PROD rules will require firms to ensure their plans provide fair value to plan holders. This means a fair relationship between the price of the plan and the benefits it provides. We have compared the current price and benefits of insurance-backed funeral plans with the *sum assured* provided by an equivalent insurance product. For life insurance-backed funeral plans, the average *sum assured* of the underlying insurance policy (i.e. the amount which is used to pay for the funeral services) is £7k and the average instalment payment is £28 per month. For a similar monthly payment, a customer could buy a whole of life insurance policy with an average benefit amount of £8,379. Whilst we recognise that funeral plans provide the additional (non-financial) benefit of allowing customers to pre-arrange their affairs and save their representatives from hassle and distress, this gap in the financial value of the benefits provided may be significant to some consumers.

145. We are aware that the funeral plan provider is usually paid a commission by the insurance company providing the policy that backs the plan. The plan provider may also pay commission to an intermediary who sold the plan. We consider that these may explain some of the differences highlighted in paragraph 145. Commission paid to an intermediary by the insurance company that backs the plan would also be subject to the commission ban.

146. It is not possible to do a similar analysis for trust-backed funeral plans, because there is no direct comparison product on which it could be based. However, we are aware that both trust and insurance backed funeral plan prices usually include remuneration received by the plan provider. The requirement to ensure that plans offer fair value is likely to lead to a reduction in this remuneration, which could lead to a loss of profit to plan providers. This may be offset to some extent by a reduced acquisition cost if the providers are no longer paying commission to intermediaries.

147. Overall, we expect the product governance rules to lead to a reduction in:

- The difference between the benefit amount of the Whole of Life insurance and the cost to the plan provider of providing the plan services. This will lead to prices going down.
- The amount of money firms extract from trusts in order to pay remuneration to the plan provider.

148. As a result of the above changes funeral plan providers may see a reduction in revenue and profit due to lower sales. We do not think it is reasonably practicable to estimate this loss in revenue and profit. This is because:

- As noted above, the impact of our proposals on intermediary remuneration cannot reasonably be estimated. Furthermore some actions may mitigate the effects of the remedies, such as distributors increasing base salaries to compensate for the lack of commissions.
- Firms may increase prices by passing compliance costs for the PROD and other regulatory proposals outlined in this document onto consumers. Disentangling and identifying effects on firm revenue from the proposals is not reasonably practicable.
- Our proposals may result in some changes in competitive pressure following regulation. For example, firms may compete more aggressively over the ability to distribute products through funeral directors. This will affect firms' ability to raise prices.
- The counterfactual scenario, ie what revenue and profits would have looked like absent our intervention, is unclear, especially following the impact of the coronavirus situation

Prohibition of plans that risk not providing the funeral services

149. We are proposing to prohibit firms from offering plans that do not provide the funeral services without additional payment, where the customer dies during the instalment period. Firms will still be able to sell funeral plans with instalments, but the funeral must be provided even if the customer dies before making all their payments. This will be achieved by three separate rules:

- A rule banning all firms from entering into such funeral plans
- A rule preventing firms from manufacturing such products, and requiring that existing products cease being distributed
- A rule preventing firms from seeking additional sums from the customer's estate after their death

150. Given our cost estimates of the broader PROD implementation, we consider that the marginal implementation costs to implement and comply with the rules will be of minimal significance. However, we do believe the proposals could result in lost profits to firms.

151. Our survey found that, on average, 38% of plans are sold with an instalment period greater than 12 months; with 2 providers selling up to 70% of plans that way. More recent market data shows an increase in plans sold through instalments for a period greater than 12 months, with them now representing 41% of new sales. Although some firms already include provision for funerals for those who die during the instalment period in their plans, most firms do not. The data we have received suggests that 34% of all plan sales carry the risk that the expected funeral may not be provided unless the customer's estate makes additional payments. In what proportion of cases this risk will crystallise is unclear. Our survey data shows that across the market, the average number of instalment plans which end with a customer dying before payment is complete and therefore no funeral being delivered is 4.6%. However, evidence suggests that in some firms this figure can range from 20% to 32%.

Additional costs of paying for funerals, and loss of cancellation fees

152. In the event that a customer dies before completing their instalment payments, the relatives of the deceased currently typically have two options:

- Make additional payments to make up for the shortfall in payments and ensure funeral delivery
- Cancel the plan and have prior payments returned to them. Typically this will incur a cancellation fee

153. Under our new rules firms will be required to ensure funerals are delivered in the event that a customer dies before making all payments. Firms can comply with this rule either by:

- Directly making up the shortfall payment out of firm resources
- Insuring against the risk through a supplementary life insurance policy

154. To estimate the potential ongoing costs to firms we have used two alternative approaches here:

- Firms were unable to tell us the average amount outstanding where a customer dies during the instalment period. Given that customers are likely to die closer to the end of their instalment periods, we assume an average £500 shortfall per funeral in these instances, which is around 15% of an average funeral price based on CMA data. As some providers are already offering plans which will pay for the funeral regardless of whether the customer has paid all their instalments, we have assumed that our rules will only result in 75-90% of outstanding instalments no longer being recovered from the customer's estate. Using the average proportion of instalment plans which end with a customer dying before payment is complete (4.6%), we estimate that 3,400 and 4,000 plans would be affected²⁴. On that basis we estimate the ongoing potential costs to firms to be £1.7m – £2m per year.
- Another option for firms is to take out supplementary insurance to cover the risk of early death. If firms were to comply through purchasing supplementary insurance, we can estimate the ongoing costs incurred as the cost of the relevant insurance policy. We cannot accurately estimate this because insurance will depend on factors such as the customer's age. However, firms have told us that the insurance is usually 30p – £5 per month per plan. Based on the 2020 survey, approximately 34% of sales may not be delivered in the event a consumer dies before making the payments. Given total sales in 2019 from the FPA at 174,000 (adjusted) we estimate ongoing costs to firms of £212k – £3.5m.

155. We note that firms have the option to cover these additional costs through increasing the amount of money that is held in their trust, or through purchasing supplementary insurance, but not both. We know from conversations with firms that both of these two options are currently used in the market. It is possible that other alternatives may be developed in the future. The approach that firms select is likely to be influenced by multiple factors, such as their estimates of the risks and their trust's ability to absorb additional costs.

156. We note that some firms are already providing funerals to customers who die during the instalment period. To the extent that this already occurs in the market it will result in lower potential costs to firms than we have estimated above. Although we have tried

²⁴ The lower bound is based on the CMA estimate of 99,000 funerals that were pre-paid through funeral plans. If a policy dies before all the instalments have been paid, the representative may either make up the difference and redeem the plan or arrange a new funeral. The CMA figure may, therefore, be an underestimate of pre-paid funeral plans tried to be redeemed that year. To account for this our upper bound is based on this figure inflated by the average 4.6% of plans redeemed each year resulting in the consumer dying before all the instalments have been paid (104,000).

to account for this in our estimates, it is impossible to do this accurately as it depends on how long current funeral plan customers live.

- 157.** As such, we estimate the overall direct cost of our rules to firms to be in the range of **£212k – £3.5m**. This is based on the estimated insurance costs, although in practice the range captures any of the alternative estimates above.
- 158.** Our interactions with multiple firms across the sector indicate that firms are likely to adapt their pricing to account for the need to provide funerals in cases where the full instalments have not been paid. Of the firms that currently offer this, most do so through purchasing supplementary insurance on the customers' life. There are other ways the cost could be met, such as placing additional funds into the trust, but all approaches could potentially lead to price changes. The effective net costs to firms of our proposals may be lower than those estimated above. This will depend on the extent to which firms pass the additional costs on to customers through price increases. It is not reasonably practical for us to estimate the extent of this cost pass-through as it depends on firms' dynamic response to regulation and to other changes in competitive pressures in the market, which we cannot predict. If these factors lead to firms not passing on their costs, this will result in a direct transfer of benefit to customers.
- Loss of sales***
- 159.** In response to the rules we expect some consumers will purchase alternative products (such as over-50s life insurance). Others will simply opt to put their money into a savings account instead. This would represent a loss of demand and profit for the broader funeral plans market. Alternatively, consumers with the ability to afford it may opt to pay the increased price in order to purchase a plan that will provide a funeral should they die during the instalment period.
- 160.** Where customers decide not to purchase a funeral plan, this will impact firms who will lose the profits they would otherwise have made from the sale of the plan. Firms have told us that the profits they make are heavily linked to market fluctuations. There are also some firms who operate on a not-for-profit basis, or who profit primarily through the ultimate provision of the funeral rather than the sale of the plan.
- 161.** Furthermore, there is no data available to accurately show how customers will react once the rules come into force. However, we consider that the potential loss of profits will be mitigated to some extent by the following factors:
- A significant number of plans currently being sold through instalments already meet the requirements, and so will be unaffected by our rules.
 - The knowledge that their funeral is guaranteed to be provided may enable some customers who are unable to afford higher monthly prices to pay over a longer instalment period, where firms offer such longer plans. Data suggests that these plans can cost around £20 per month less; although customers will pay a greater total amount if they live to the end of the instalment period.
- 162.** The wide variation of business models, and the lack of data showing how consumers and firms might react to our proposed rules, means that it is not reasonably practicable for us to estimate the amount of profit firms are likely to lose from a reduction in sales.

Senior Managers and Certification Regime

- 163.** The Senior Managers and Certification Regime (SM&CR) sets out our expectations of the governance and oversight of regulated firms. The requirements of this regime span multiple sourcebooks, including SYSC, COCON, and FIT. The aim is to address the root cause of the harms discussed above, by improving the responsibility and accountability of senior managers in the funeral plan sector. The key aims of the SM&CR are to:
- encourage staff to take personal responsibility for their actions
 - improve conduct at all levels
 - make sure firms and staff clearly understand and can demonstrate who does what
- 164.** We propose to regulate funeral plan providers and intermediaries as 'core' firms for the purposes of the SM&CR.
- 165.** To calculate costs for this we used data collected for the cost benefit analysis²⁵ of the introduction of the SM&CR, which estimated a one-off cost to core firms of £13,880-£14,070, and ongoing costs of £3,870-£5,540. These estimates are based on the questionnaires sent to about 2,000 firms, on a legal entity level. The limitations of those CBAs apply also to this one. The estimates are subject to reporting inaccuracies and small sample size bias.
- 166.** Using these costs and our assumptions of firm sizes, we estimate one-off costs for providers to be **£666k – £675k** and ongoing costs of **£186k – £266k**.
- 167.** Recent engagement with the sector has indicated that approximately 17% of intermediaries are already either authorised by us for other activities or are appointed representatives. This means that these firms already have some exposure to the SM&CR, so we would reasonably expect the costs incurred to be lower than those stated. As such, the assumptions set out above suggest for intermediaries one-off costs of **£7m – £7.1m**, and ongoing costs of **£2.0m – £2.8m**.
- 168.** However, that cost benefit analysis was based on firms that were already subject to FCA regulation and operating under the Approved Persons Regime. Because most providers and authorised intermediaries operating in the prepaid funeral plan market will be entirely new to FCA regulation, there will also be a cost of introducing an individual authorisations regime for these firms. We do not consider it is reasonably practicable to estimate this as we do not know the exact composition (or skills and experience) of funeral plan firms' current senior management.
- Costs of the approved persons regime**
- 169.** As noted above, our expectation is that the majority of intermediaries selling funeral plans will do so as appointed representatives. These firms will not be subject to SM&CR, but we propose to require them to follow the Approved Persons Regime. We expect that this will require firms to make some one-off changes to their management structures (such as recruitment costs), as well as incurring some ongoing costs. We have based our cost assessments on our expected costs of complying with the limited scope SM&CR; namely £5,920-£5,980 for one off costs and £1,990 – £2,470 for ongoing costs per intermediary. However, we know that approximately 30% of intermediaries currently selling funeral plans are already appointed representatives. We

25 <https://www.fca.org.uk/publication/research/cba-extension-senior-managers-certification-regime.pdf>

do not expect these firms to have any additional costs. Based on this, we expect total one-off costs of **£7.2m** to **£7.3m**, and ongoing costs of **£2.4m** to **£3m**.

Prudential rules

- 170.** Once a person has purchased a pre-arranged funeral plan contract, the primary concern from a customer perspective is the situation that when they die the funeral plan provider will fulfil their obligation to deliver the pre-agreed funeral as per the funeral plan contract. This is true whether the funeral plan is backed by trust arrangements or a whole of life insurance policy.
- 171.** Our proposed rules will require plan providers to ensure that there is sufficient money held within their trusts to meeting at least 100% of their funeral liabilities, as assessed by an independent actuary at least annually. We are proposing similar requirements for insurance-backed plans. This is broadly similar to the existing FPA requirements and so we do not consider our proposals will have a more than minimal cost across the industry as a whole. There may be some firms whose trusts are currently insufficiently capitalised and who will need to secure additional funds to meet our requirements. We do not consider it reasonably practical for us to conduct a full actuarial assessment of every trust currently being used in the market; especially as we currently have no powers to compel the disclosure of information by funeral plan firms.
- 172.** We are also proposing that firms should not be permitted to withdraw funds from trusts (other than to pay for funerals) unless the trust is holding sufficient funds to meet 110% of the provider's liabilities. This may result in lower profits for providers if they are unable to extract funds which previously were available to them. We do not consider it reasonably practical for us to quantify this impact, for the same reasons as stated above.
- 173.** Prudential requirements aim to minimise the risk of harm to customers and mitigate market disruption. They play an important role in driving the right behaviour, including encouraging the firm to monitor and manage their business and financial risks.
- 174.** Through our Funeral Plans survey that was sent out to firms in the summer of 2019, a small sample of firms responded with their financial statement information that included their capital position, and annual income data.
- 175.** To provide a financial picture of the prepaid funeral plan sector, we supplemented this survey data with publicly available information from Companies House and further updated information provided by firms. We also asked a subset of funeral plan providers to provide further information regarding their number of undrawn funeral plans that are yet to be redeemed against a funeral.
- 176.** Of the 19 funeral plan providers that responded to our original survey (together with updated information provided by certain firms in terms of our engagement), 9 of them sold funeral plans backed by trust arrangements over the previous 12-month period. 10 providers sold insurance-backed plans during the same period. Our sample of firms includes the largest funeral plan providers that offer trust-backed and/or insurance-backed funeral plans. Therefore, we consider our sample covers the market well.

- 177.** We used the survey respondents' annual income, together with the number of undrawn plans yet to be redeemed against a funeral and the distribution of the amount that is due to be paid out when a funeral is required, to calculate an estimate of the *core capital resources requirement* for each funeral plan provider survey respondent.
- 178.** For funeral plan providers that are part of a wider group of companies, since financials may be produced on a consolidated basis, it is not always possible to separate out the funeral plans business from the rest of their business. Therefore, in a few cases, it was necessary to adopt certain assumptions with respect to proportioning income and capital resources when considering a firm that is part of a wider group of companies.
- 179.** To determine the incremental cost of the proposed prudential requirements it is necessary to examine the amount of eligible capital resources that is already held by firms. In our survey, we asked firms to provide items that would be found on their balance sheet, specifically, items which could be used to calculate the amount of eligible capital resources held by each funeral plan provider survey respondent. Comparing this against their *core capital resources requirement*, based on the proposed rules, it is possible to calculate the firm's capital surplus/deficit (relative to their existing capital resources).
- 180.** A deficit represents the amount that a firm would need to raise to meet the proposed capital resources requirement.
- 181.** In Table 9, we present a summary of the estimated average *core capital resources requirement* for funeral plan providers and the corresponding capital deficit that we estimate will exist per firm at the start of the new regulatory framework for the prepaid funeral plan sector. This average is based on a wide range of firms of different sizes. The individual requirements for firms will vary.

Table 9: Estimate of the average core capital resources requirement and average capital resources deficit per firm (rounded to the nearest thousand)

	Estimated average core capital resources requirement (per firm basis)	Estimated average capital resources deficit (per firm basis)
Funeral Plan Provider	£1,932,000	£316,000

- 182.** Based upon our estimates in Table 9 and under the assumption that it is representative of the pre-paid funeral plan sector, we can infer that the incremental increase in the capital resources required by funeral plan providers across the sector would amount to a one-off cost of **£15.2m**. The estimated figures are strongly influenced by the large Funeral plan providers. However, these firms do account for a significant share of the pre-arranged funeral plan market.
- 183.** Estimating the cost of the proposed prudential requirements, requires an evaluation of the opportunity cost of capital arising from the incremental adjustment that firms would need to make to their existing capital resources to meet their estimated *core capital resources requirement*. We used the Capital Asset Pricing Model (CAPM), where we consider the return that investors would require from an equity investment, conditional on that equity's sensitivity to overall market risk, the equity market risk

premium, and the risk-free rate.²⁶ The use of the CAPM, a commonly used model for estimating cost of capital, allows us to produce a reasonable proxy estimate under the assumptions outlined. Our estimate for the cost of capital for funeral plan providers is equal to 6.05%.

- 184.** Therefore, the estimated capital resource deficit for the funeral plan sector would correspond to an annual cost of **£718k**.

Resolution

- 185.** Our resolution proposals aim to provide consumers with protection if their funeral plan provider fails (ie enters into insolvency proceedings). The proposals predominantly affect funeral plans entered into from authorisation. However firms should consider whether its arrangements for existing contracts meet the new requirements, and what changes they could take to bring them more into line with these requirements.
- 186.** The key resolution-related proposals include for Funeral Plan providers to:
- have arrangements that ensure that, in the event of the funeral plan provider's failure, there is a reasonable likelihood that plans entered into after authorisation will continue to be carried out by another firm that has the relevant permission.
 - have arrangements to ensure that, if funeral plan contracts will not be carried out by the funeral plan provider or another firm, consumers will receive a prompt payment. This is to support the costs associated with funding alternative arrangements. We will be consulting on the amount and approach to funding such a payment in a second consultation.
 - provide consumers with a contractual right to a prompt reimbursement in the event of failure where neither the firm nor another provider will continue to carry out the plans. Prior and informed consent must be sought from consumers for the transfer of administration under the same contractual terms.
 - hold trust assets and insurance policies in relation to consumers' funerals, on both an ongoing and insolvent basis. This includes ensuring that such assets and policies cannot be claimed by general creditors in the event of insolvency.
 - produce and maintain a resolution manual, containing information that would assist with resolving the firm's business, which we propose to apply to both new and existing contracts.
 - maintain a central record of each new funeral plan contract to enable transfer or a prompt reimbursement to consumers. This should contain pertinent information and documentation, and enable identification of the contracts that could be transferred, the payment obligations of the firm, the details of the customer, covered individual (if different) and nominated representative, and the amount paid by consumers that has been applied towards an insurance contract or paid into a trust.
 - put in place trust or insurance related arrangements that will prevent the assets of the trust, or the proceeds of an insurance policy, from forming part of the funeral

26 This can be described by the following equation:

$$r_e = r_f + \beta r_m$$

Where r_e is the required return on equity, r_f is the risk-free rate, β is the sensitivity of the investment to overall market risk, and r_m is the market risk premium. We estimate the risk-free rate by adjusting long-term UK government bond yields for inflation, which is approximately equal to zero. We also set the equity market risk premium to be equal to 5.5% and the corresponding β equal to 1.1, under the assumption that equity for funeral plan providers is only marginally more sensitive to the market.

plan provider's assets. Such arrangements will help to ensure monies are available to consumers for reimbursements in the event of firm failure.

- 187.** As shown in Table 10, we have estimated the costs associated with implementing continuity and reimbursement arrangements (including a resolution manual) and a records ledger for transfer or reimbursement. The sections below set out how we have arrived at these estimates.

Table 10: Estimated cost of resolution requirements

Policy	One-off costs	Ongoing costs (per annum)
Continuity and reimbursement arrangements, including resolution manual	£1.1m	£42k – £126k
Records ledger for transfer or reimbursement	£126k	£111k
Total industry costs	£1.3m	£153.1k – £237.3k

Continuity and reimbursement arrangement (including a resolution manual) costs

- 188.** Firms will incur one off costs in amending arrangements in relation to new plans with respect to continuity and reimbursement, including contractual arrangements with trustees and insurers. Insurers and trustees are also expected to bear costs as the counterparty to these arrangements. We also expect there to be a cost of amending contracts that will be entered into with customers after authorisation, in particular to obtain pre-consent and to include a contractual right to continuity or a reimbursement.

- 189.** In considering the extent of these costs we note that:

- These requirements only apply in respect of plans taken out from authorisation, although, depending on their method of implementation, firms may also choose to apply the changes to existing plans. These choices would be discretionary to the firm. Firms may also consider obtaining professional advice on the adequacy of their arrangements, although this is not required.
- For trust-backed plans, firms may choose to comply either by updating trust deeds on existing trusts to reflect the new requirements or by establishing new trusts, where relevant. Firms may also choose to enter into arrangements with other firms to ensure a reasonable likelihood of continuity in administration, although this is not required. We would expect firms would be incentivised to choose the most efficient approach for their circumstances.
- The FPA rules require that "The terms of the trust make adequate provision for the administration of plan funds in the event that the Registered Provider becomes insolvent or ceases trading." In addition, FPA members agree to cooperate with the FPA's "Pledge to Customers", which sets out that "in the event of the insolvency of a Registered Provider, the other Registered Providers will examine ways in which the [FPA] might assist in arranging delivery of the funerals of customers of the insolvent Registered Provider." Consequently, FPA regulated firms will already have certain continuity arrangements in place which go at least some way to meeting our requirements. However, it is uncertain as to what extent such arrangements will comply with our new requirements given the degree of flexibility firms will have had in complying with the FPAs requirements. It is also uncertain what arrangements non-FPA members have in place.
- In terms of reimbursement, some firms already indicate that they have arrangements in place to provide reimbursements, while others will need to

establish these. On the trust-backed side, we are aware of reimbursements being paid out of funds held in trust. On the insurance-backed side, funeral plan providers have reported different ways of making payments to clients following their failure. We will be consulting on the amount and approach to funding reimbursements, and accompanying cost benefit analysis, in a second consultation.

- Some funeral plan providers have indicated that, on insolvency, trust assets and the benefit of insurance policies are already safeguarded and held in relation to consumers' funerals. In addition, FPA rules require trusts to ensure that in the event of a funeral plan provider's insolvency, "any liquidator/administrator or other person who may be appointed as a consequence of the insolvency has no claim against the trust fund or its assets for purposes other than the delivery of the clients' funeral." However, it is unclear how uniform such practice is, including for non-FPA members and in the case of insurance-backed plans. Firms may therefore incur costs associated with updating their arrangements, including contractually and operationally. This includes costs associated with our proposal for customers of new contracts to be the beneficiaries of trust assets. Depending on initial circumstances and given the above, whilst the marginal costs of implementation may be of relatively minimal significance for some firms, they could be more substantial for others.

190. Firms will also incur costs in establishing a resolution manual which contains information that would assist in resolving the firm's business. This includes explaining any steps that would need to be implemented under the new continuity and reimbursement arrangements. The scale of this manual will also depend on the size and complexity of the funeral plan provider's business. Some firms may already have something similar to a resolution manual in place to support their arrangements in the event of failure.

191. We expect firms will need to implement a 'minor' (as per the definition in our standardised cost model) change project to ensure a resolution manual, and both continuity and reimbursement arrangements, are in place. We have assumed all providers will incur costs to meet the new requirements. Using the assumptions for minor change projects in our standardised cost model, we have assumed small firms will take 10 project days to complete the change and medium and large firms will take 40 and 60 days respectively. Given the nature of the changes we have also accounted for board and executive review of the necessary changes. This gives a one-off cost of **£1.1m** across the 48 identified funeral plan providers.

192. We expect ongoing costs for an annual review of the continuity and reimbursement arrangements, including the resolution manual, following their initial implementation. Our assumption from previous CBAs (see CP13/13 on crowdfunding) is that it costs £704 per day for a director review of resolution arrangements, including the resolution manual. Adjusting for inflation, at an average compounded rate of 2.5% per annum from 2011 to 2020, suggests a 1 day review will cost £877 per firm in current prices. Based on the assumption this may take a funeral plan provider between 1 and 3 days for a review, we estimate annual ongoing industry costs of **£42k – £126k**.

Records ledger for transfer or reimbursements

193. The creation of a records ledger for funeral contracts to enable a transfer or reimbursement is likely to lead to costs that depend on the size of each firm. Many firms will already have systems for keeping records which they can modify, as appropriate. Using the standardised cost model, we assume this will sit between a small and minor IT project, taking 5, 20 and 30 project days for small, medium and large

firms, respectively. A per day cost of £287, £371 and £403 will be incurred for each small, medium and large firm respectively. Total one-off costs of implementing this aspect of the policy are estimated at **£126k**.

- 194.** We have assumed that maintenance of firms' records involves 0.5 days of compliance staff time per month, costing each firm on average £193 per month. We estimate ongoing costs for the industry of the records ledger of **£111k** per annum.

Disclosure costs

- 195.** Firms will incur one off costs in updating, where appropriate, the funeral plan summary and nominated representative disclosure documents for resolution specific disclosures. We consider such costs are incorporated into our disclosure requirements cost estimates presented earlier in this CBA.
- 196.** Marginal costs associated with notifying consumers and nominated representatives about any material changes to the information provided or of communicating with the FCA in respect of Principle 11 (Relations with regulators) are expected to be of minimal significance.

Financial Services Compensation Scheme

- 197.** We are proposing to extend FSCS protection to provide compensation of up to £85,000 to eligible claimants who have a valid claim against firms carrying out certain funeral plan contract regulated activities, where the firm is unable, or likely to be unable, to meet those claims against it. FSCS protection will apply from the date that regulation commences, for liabilities arising from that point onwards. Compensation costs would be funded by a new funding class made up of firms undertaking relevant regulated activities in relation to funeral plan contracts and will include providers and distributors of such contracts. We propose that the initial threshold for the new funeral plan funding class will be £5 million. This would represent the maximum FSCS compensation costs that the funeral plan firms contributing to the new funeral plan class are required to cover before the retail pool is required to contribute.
- 198.** FSCS has estimated that it would cost **£150,000** to make system changes to prepare for the introduction of FSCS protection for funeral plan. These management expenses will ultimately be passed on to firms through the levy. Set up costs for firms to introduce FSCS protection will likely be of minimal significance as FSCS levies are paid through the same processes as FCA fees.
- 199.** At this time, we are not able to robustly estimate the ongoing cost of potential FSCS compensation costs arising from the failure of funeral plan firms. In particular, we are not aware of any history of failures in the sector and so are unable to robustly forecast how many firms could fail or what liabilities may be protected by FSCS.
- 200.** However, we have estimated the costs to firms – based on notional ranges of eligible income – if compensation costs were to amount to £1 million and £5 million (£5 million being the proposed threshold for the new funding class). Although we have no evidence to indicate that FSCS liabilities could reach those levels in any given year, we consider this illustration will help firms understand the potential cost to them if FSCS liabilities were to arise (whether from funeral plan claims or exposure to the retail pool). The number of firms in each notional eligible income band has been estimated based

on our assumption of the profile of firms in the sector and we have based the notional eligible income bands on average income data from our firm survey conducted in 2019²⁷.

Table 11: Illustration of distribution of Compensation Cost levy based on hypothetical liabilities

Category	Notional eligible income	Cost per firm if compensation costs reached £1m	Total for category if costs reached £1m	Cost per firm if compensation costs totalled £5m (class limit)	Total for category if costs reached £5m
Provider – large (2 firms)	£15,000,000	£106,007	£212,014	£530,035	£1,060,071
Provider – medium (6 firms)	£2,000,000	£14,134	£84,806	£70,671	£424,028
Provider – small (40 firms)	£200,000	£1,413	£56,537	£7,067	£282,686
Authorised distributor (610 firms)	£150,000	£1,060	£646,643	£5,300	£3,233,216
658 firms			£1,000,000		£5,000,000

- 201.** For example, based on the profile of firms set out in the table, a small funeral plan provider which has an income from funeral plans of £200,000 would be required to pay a compensation cost levy of £1,413 if the overall levy in a given year was £1 million, and £7,067 if the overall levy was £5 million. However, these amounts will change depending on the number of firms who become authorised and contribute to the new Funeral Plan Claims funding class and the relevant income earned by those firms.
- 202.** If costs arising from funeral plan claims were to exceed the £5 million funding class limit, the wider retail pool of firms from other classes would be required to contribute. Due to the uncertainty about potential costs we have not speculated as to what that exposure could be (although liabilities would be limited to the class limit applicable to the relevant funding class).
- 203.** Funeral plan firms will also be required to contribute to FSCS's management expenses (including base costs and specific costs). Firms' contribution to FSCS's management expenses is in addition to the compensation costs set out at the above paragraph. We are not currently able to estimate the cost of the base cost element of management expenses for firms, but will provide further information when we publish our annual consultation on FCA fee-rates, which is due for publication early in April.
- 204.** In addition, FSCS has estimated that, in the event of a funeral plan failure, specific costs (i.e. FSCS costs which can be attributed to a funding class) of approximately £750,000 may be incurred. This is based on certain assumptions about how much it would cost FSCS to respond to the firm failure and process claims. However, as

²⁷ As explained above, a survey of funeral plan providers and intermediaries was conducted in 2019. The notional eligible income bands shown at Table 11 are derived from this survey data. However, the survey data represents a very small population of firms which is not necessarily representative of the ultimate population of funeral plan firms that will become authorised. The table therefore provides an illustration of how FSCS compensation costs could be apportioned between firms. Alternative sources of income data were considered (such as company accounts published on Companies House) but were discounted due to difficulties in establishing a consistent measure of relevant income across different types of firm.

explained above, we are not able to robustly predict what failures may arise. We are, therefore, not able to say when those specific costs may arise.

- 205.** Under our rules, a firm which becomes a participant firm part way through a financial year will not be liable to pay a share of a compensation costs levy or specific costs levy made in that year. Accordingly, assuming most funeral plan firms become regulated mid-way through 2022/23, they will not be required to meet any compensation or specific costs that arise during that first year when regulation of the funeral plans sector commences.

Other handbook rules

Dispute resolution

- 206.** We propose to apply our rules regarding complaints handling in our Dispute Resolution: Complaints sourcebook (DISP). This sets out rules for how firms should handle complaints, and when complaints must be referred to the Ombudsman Service. We are proposing to:
- Bring funeral plan providers and intermediaries within the compulsory jurisdiction of the Ombudsman Service
 - Apply our DISP complaints-handling standards to funeral plan providers and intermediaries to ensure that complaints are dealt with consistently, fairly, and promptly
- 207.** Most firms in our survey told us that they already have a complaint handling process. These processes typically meet our requirements for the timescales around investigating and handling complaints, and informing the customer about their right to pursue their complaint with an independent body (currently the FPA). We note also that the FPA's definition of a complaint is similar to ours. Respondents to the survey also told us that they already submit complaints data to the FPA, so there will be no additional cost in complying with our reporting requirements.
- 208.** The only significant difference between the current position and our rules is that the final response letter must also include the standard Financial Ombudsman Service explanatory leaflet, or a link to the leaflet if the complaint was made by email. Based on the number of complaints reported in our survey (78), and assumed cost of 20p per leaflet, we estimate a small total cost to the industry of **£394** per year.
- 209.** It is possible that there could be some changes to the outcomes of complaints once customers have the right to refer cases to the Financial Ombudsman Service. We cannot assess the impact of this as it is entirely dependent on the nature of the complaints made in the future.

Supervision and reporting

- 210.** In order to inform our supervision of firms in the prepaid funeral plan market, we are proposing to require that firms comply with the relevant sections of our Supervision (SUP) manual. Specifically, we are proposing that plan providers:
- Notify us of significant changes in their business

- Provide core data (postal address, key contacts, email address etc)

211. We are also proposing that firms will need to send us regular reports on conduct of business, the firm's financial position, and complaints

212. The costs of complying with SUP, including notification and reporting requirements, should be of minimal significance. Firms are already required to provide reports to the FPA, and we do not consider there are likely to be more than minimal costs in adapting their existing reporting processes to meet our proposed requirements.

Costs to consumers

213. Our proposed regime is intended to deliver benefits to consumers by improving funeral plan firms' conduct of business and financial soundness. However, we recognise that some of the proposals may result in additional costs to consumers.

Firm exit, product offering and market size

214. It is likely that some firms will decide to exit the funeral plans market. Where this is a result of the decision to bring the sector into our regulation, as opposed to specific choices related to the regulatory regime itself, we have not assessed this as part of our CBA.

215. The number of firms which may choose to exit as a result of The Treasury's decision to bring the sector into regulation and the proportion of sales and undrawn plans these firms represent is uncertain. However, some evidence has indicated the potential scale of exit:

- The FPA's submission to the House of Lords indicated that firms holding an estimated 0.4% – 4% of currently undrawn plans may not seek or obtain authorisation
- 4% of intermediaries responding to our firm survey stated they will exit the market as a result of the decision to bring the sector into our regulation

216. The actual levels of exit could be higher than this. There may be some providers and intermediaries who fail to meet the threshold conditions as a result of our approach to authorisations. Additionally, some firms may choose not to get authorised or, upon receiving authorisation, decide to exit the market as a result of the impacts of our regulatory framework on their business model. Specific situations where we think this could happen are:

- Providers and intermediaries may find that they are unable to make the same levels of profit as they did previously due to the commission rules. This will especially be the case where firms currently have a higher proportion of revenue derived from commission-led sales.
- Providers may find that their profit levels are reduced because of a potential decrease in sales or increase in operational costs
- Providers who rely more heavily on the sale of plans through instalments cannot find ways of ensuring the delivery of the funeral
- Capital requirements impact firm profitability, especially for intermediaries

- 217.** It is not reasonably practicable for us to estimate this potential additional exit rate due to the uncertainty around individual firms' responses to our proposals and how they may choose to adapt their business models. However, previous experience of new sectors coming into FCA regulation suggests that between 4% – 20% of firms may not receive authorisation. In addition, some firms may respond to our regulatory proposals by limiting their product offering or scaling back the size of their activities to allocate capital and firm resources to alternative business activities. This is likely to be particularly driven by proposals related to:
- The commission rules which impact how plans can be sold and may reduce incentives for distributors to sell products
 - Product governance, in particular those related to instalment plans, which place limitations on what types of products firms can sell
 - Capital requirements which directly reduce profitability operations and limit deployment of capital to more profitable activities
- 218.** Overall, we would expect the above factors to lead to a reduction in sales volumes. This reduced market size could negatively impact consumers in terms of access and how competition operates, which we consider below.
- Consumer access**
- 219.** Consumer access could be negatively impacted through two key mechanisms related to market size:
- Firm exit or scaling back of activity may reduce the overall supply of funeral plans to the market
 - Removal of certain product offerings by firms may disproportionately impact consumers who rely on those product types for access. For instance, consumers with limited assets and lower incomes may benefit from access through paying in instalments.
- 220.** Consumers may also face reduced access due to price increases, either due to cost pass-through (see 'Cost pass-through') or changes in competitive pressure within the market (see 'Impact on competition'). This may particularly impact consumers paying through instalments, who may face additional cost increases compared to other consumers due to our requirements to guarantee funeral plan provision.
- 221.** We do not consider it reasonably practicable to estimate the potential cost to consumers of loss of access, because it would require knowledge of consumers' valuation of future consumption decisions, as well as modelling of firms' potential response to the intervention.
- 222.** Based on the provider and intermediary exit rates outlined above, we do not consider access issues resulting from firm exit to be a significant risk. Potential access issues are more likely to come from reduced product offerings and higher prices, especially impacting lower income consumers. However, we would expect the potential harm of reduced access from these sources to be mitigated by three factors:
- Where consumers were accessing and purchasing unsuitable plans either as a result of mis-selling or product mismanagement, the actual value of the product to the consumer would be lower than the price paid for the plan. This would mean there is no cost to loss of access (rather a benefit).

- Poor value plans may generate additional harm beyond the value generated for the plan holder. For instance, the bereaved facing additional stress at the time of the funeral as a result of being required to make additional payments or not seeing a funeral plan delivered. Removing such products from the market may be overall net beneficial for consumers.
- Specifically relating to the potentially higher cost pass through for instalment plans as a result of our proposals to guarantee plan delivery, evidence gathered from firm meetings suggests that the marginal costs to provide this benefit is likely to be between 30p to £5 per month per plan. This is the additional cost to insure against the risk, either through an insurance contract or retaining own funds for the purpose. To put it in context, as an example, if this cost is fully passed onto consumers it represents an additional 0.4% to 6.5% price increase in the monthly payment for an average 5-year plan. This is a relatively small increase compared to cost, especially when accounting for the benefit of a guaranteed funeral and that consumers may be able to extend the payment period with such a guarantee. Therefore, such additional price increases could be relatively small compared to cost, especially when accounting for the benefit of a guaranteed funeral and that consumers may be able to extend the payment period with such a guarantee.

Impact on competition

223. Competition in the market may be negatively affected due to:

- Firm exit and reduced product offerings (as outlined above)
- Prospective entrants to the funeral plan market facing higher barriers to entry due to increased regulatory costs and reduced prospective profits
- The ability of larger firms to more easily absorb increased compliance than smaller firms
- Specific proposals on guaranteeing plans longer than 12 months which will likely impose greater costs and restrictions on those providers and distributors whose share of sales from instalment plans is relatively greater
- Potential advantages offered to vertically integrated firms, or firms with in-house sales teams in adapting to our commission rules. This maybe driven by:
 - The limited impact of the rules on business models for firms where sales involve no or little commission (including intra-group commission)
 - The comparative ease with which vertically integrated firms who do use intra-group commission can rearrange their payment structures and distribution strategy to become compliant
- A greater incentive for firms to vertically integrate in response to our commission ban rules, potentially resulting in firms:
 - Being incentivised to input foreclosure to give their group distributors a greater competitive advantage
 - Cross subsidising between their distribution and production operations in such a way that effective competition is impeded

224. The combined negative effects on competition of the above could ultimately result in increased prices, reduced quality and lower levels of innovation.

225. We do not consider it reasonably practicable to estimate these effects due to the dynamic nature and long-term impacts of competition and the uncertainty around firms becoming FCA authorised and how they will choose to comply with our rules and guidance.

226. We consider that the negative effects on competition and consumer outcomes could be mitigated by several factors:

- Various proposals, such as on disclosure and pressure selling, should improve clarity, reduce information asymmetry and make it easier to compare products between firms. Such proposals could improve consumer engagement and encourage shopping around. Such demand-side pressure should incentivise firms to focus competition on plan price and quality. Prior academic evidence, such as the *Which?* Report, suggests that whilst such impacts are generally small in scale, they can still be significant.
- Funeral plans are not the only option available to consumers looking to make provision for their funeral, and funeral plan providers will remain in competition with other products as outlined above. A significant rise in the price of funeral plans could make them uncompetitive compared to other products, such as over-50s life insurance or Whole of Life insurance. Although as noted above, such products are not perfect substitutes and do not offer the ultimate delivery of a funeral.
- The effects on competition could be limited by the scale of exit if the levels of provider and distributor market exit outlined earlier prove hold. Whilst a higher level of exit would increase the potential negative competition effects in the provider market, especially if one of the larger firms was to exit, the number of distributors and their relative diffusion suggests the negative effects could be more limited in the intermediary market.
- The regulatory framework contains numerous proposals related to improving product quality. In addition, any planned price increases will need to adequately consider our product governance rules and be justified relative to the value offered to consumers.

Cost pass-through

227. As outlined in the costs section of this CBA, our regulatory requirements will result in additional costs for firms in the funeral plans sector. It is likely that firms will adapt product pricing to pass some or all of these additional compliance costs onto consumers.

228. The following considerations could influence the rate of cost pass-through in the funeral plans market (for a review of the theory and empirical evidence on cost pass-through see [RBB economics, 2014](#)):

- Our regulatory requirements will result in an industry wide cost increase, although some firms may face higher costs than others either relative to their size as a result of some fixed cost component of compliance or due to undertaking certain types of activities, such as selling a high proportion of instalment plans as part of their product mix.
- The provider (upstream) market is fairly concentrated with the largest three firms holding 70-80% of market share whilst the distributor (downstream) market is less concentrated with a much larger number of participants.
- Two of the three largest firms are vertically integrated. Other vertical relationships between providers and distributors and horizontal relationships between distributors may exist but their strength is unclear.

229. Given the conditions outlined above we would expect some cost pass-through to consumers. The nature of the industry wide cost is likely to lead to a higher cost pass-through rate. However, as neither the provider or distributor markets are

perfectly competitive, we would expect such pass-through to be less than 100% because firms can absorb costs without becoming loss making. The structure of the Funeral Plans market and other relevant factors mean an assessment of the extent of cost pass-through is inconclusive and therefore not reasonably practicable to estimate.

- 230.** As noted in the preceding competition section, the scope of any price increases may be mitigated by a number of other factors due to our regulatory changes or the presence of substitute products.
- 231.** Specifically related to the requirement to provide funerals for customers who die during the instalment period, eg by purchasing additional insurance to cover the cost, firms have indicated that they are likely to pass some or all of this cost on to consumers. However, it should be noted that an increase in monthly prices does not mean that customers will pay more overall. The fact that plans guarantee provision of a funeral if the customer dies during the instalment period, may mean that customers opt to take plans with longer instalment periods (providing firms continue to offer them). A five-year difference in instalment length can equate to approximately £20 per month less, based on current prices. Whilst paying over a longer period would generally mean paying more overall, this will only be the case if the customers live throughout the instalment period.

Costs to FCA

- 232.** We anticipate that the proposed interventions may lead to additional material costs for the FCA. However, we are not currently in a position to assess these. We will set out further details in the fees proposals as part of our annual consultation on FCA fee rates, which is due for publication early in April.

Benefits to consumers

- 233.** Benefits to consumers should primarily be driven by our proposals reducing the identified harms. The first part of this section identifies and analyses how we expect these benefits will accrue. Some of our proposals are not focused on mitigating specific harms. However, in these cases they should improve overall conduct in the sector, ultimately benefitting consumers. Analysis of these policies is covered in the second part of this section.
- 234.** Where reasonably practicable we have sought to estimate the potential benefits of our proposals. In some cases, such estimates are indicative scenarios based on key assumptions around consumer or firm behaviour. However, in many cases we have not considered it reasonably practicable to robustly estimate benefits. Broadly this is as:
- This sector was previously self-regulated the quality and level of data available requires significant and generally untestable assumptions to be made for most benefits estimates.
 - The wide scope and scale of our package of remedies means:
 - It is methodologically complex or not possible to disentangle the effects of one specific element of our package from another, such that attributing some effects to a particular policy would be largely arbitrary.

- Certain elements of our package may have countervailing effects. For instance, as outlined earlier, the rules on commission may reduce access to (or awareness of) funeral plans if a large number of intermediaries decide to withdraw from the market. But we expect these rules also to lead to lower prices for consumers.
- It is unclear exactly how firms will choose to implement our requirements, especially where this concerns sales practices. Firms' responses will also be driven by how they perceive or observe their competitors responding. This generates significant uncertainty and complexity for any modelling.
- Given the nature of the product, a core benefit generated by our proposals is a reduction in psychological distress. Such benefits are intangible and therefore not reasonably practicable to estimate in terms of monetary values.
- The counterfactual scenario of what sales and firm behaviour would have looked like absent our interventions is uncertain, especially following the impact of the coronavirus situation which continues to affect the economy and financial markets.

235. Where we have not been able to estimate benefits, we have provided a qualitative analysis. In some cases, we provide additional, proposal-specific, reasoning as to why we are unable to provide estimates. We then produce an overall breakeven analysis to estimate how much in benefits would be required for such interventions to produce a net consumer benefit.

Suitability of purchases

236. In our harm section we outlined harms relating to products being purchased not meeting consumers' needs:

- Firms using high pressure sales tactics and misleading information, and commissions which may be incentivising poor sales practice, resulting in consumers purchasing plans which are not suitable for their needs. Some plans in the market do not deliver in line with consumers' needs or expectations.

237. Below we detail how a range of our proposals produce benefits for consumers in remedying these harms by:

- Increasing consumer awareness of plan features
- Improving firm incentives and practices around sales
- Ensuring plans deliver funerals

Increasing consumer awareness of plan features

238. We are proposing a range of disclosure measures. These will ensure that consumers are better aware of the features of their plan. Our intention is that the disclosure regime be comprehensive, covering the whole lifecycle of the plan.

239. First, we are proposing that all plan providers will be required to produce a short and standalone product disclosure document. This information is important because there are currently no plans on the market which cover all of the costs traditionally associated with a funeral. For example, we have not found any plans which cover the cost of venue hire or catering. We consider that better pre-contract information, especially about the limitations of plans, will benefit consumers by making it easier for them to understand what they are purchasing, and to decide whether the proposed plan is suitable for them. In addition, it should make it easier for consumers to compare funeral plans with other substitute products, such as Over 50s plans. These already have similar requirements for pre-contract disclosure.

- 240.** Second, we are proposing that plan providers will be required to send the consumer an annual statement. By requiring firms to actively contact existing consumers to make them aware of the plan details and give them the opportunity to review whether the plan remains suitable for them, we expect that some consumers will make changes to their plans. Some of these changes could result in savings to the consumer, for example:
- If the consumer decides to switch from instalment payments to a lump sum, this could save £500-£1000 in instalment fees (based on a consumer switching from a five-year instalment term). The exact amount will depend on the type of plan the consumer has, the original instalment term length, and the point at which the consumer makes the change.
 - If the consumer decides to cancel their plan because it no longer meets their needs, this will save them future payments and will often see their money returned.
- 241.** Finally, we are proposing that all firms will need to ensure that their advertising and communications are clear, fair and not misleading. This includes ensuring that marketing is clearly identifiable as such. The FPA requirements already have some similarity to our proposed rules. As such we expect minimal benefits from this relative to the baseline under the assumption of full compliance with the FPA requirements.
- 242.** Overall, we expect that such proposals will improve the suitability of purchases made by consumers as a result of being better informed about and more engaged with the products they are buying. In addition, we expect some marginal benefits in terms of downward pressure on prices and improved quality as a result of competition driven by:
- Increased comparability between different Funeral Plan providers, including as a result of increased ease with which aggregators and other intermediaries can provide comparison services
 - Increased comparability between Funeral plans and substitute products
- Improving firm incentives and practices around sales***
- 243.** In many situations, we have found that firms and their employees may be incentivised by commission or performance management practices, coupled with limited claw back arrangements. Such incentives potentially represent a conflict of interest, resulting in consumers purchasing unsuitable or poor value products. We seek to minimise this conflict of interest and improve firms' incentives and ultimately lead to more sales that meet consumers' needs through the following:
- all firms will need to act honestly, fairly and professionally in the best interests of the consumer.
 - intermediary commission will be prohibited, removing the incentive to sell products which do not meet the consumer's needs.
 - firms will be required to ensure they do not remunerate or performance manage their employees in a way which conflicts with the customer's best interests.
- 244.** Ultimately consumers receiving more suitable products that meet their needs will benefit from deriving greater value from them. This can be as a result of an increase in the monetary value of services received or because of a reduction in the psychological distress caused by unsuitable products.
- 245.** We do not consider it reasonably practicable to estimate these benefits for the reasons outlined at the beginning of this section. Prior to taking on regulatory

responsibility for funeral plans, we also cannot reasonably assess the extent to which plans are currently being mis-sold, and so we cannot provide a reliable estimate for the reduction in mis-sold products which these rules will produce. However, our analysis indicates that 41% of all funeral plan sales involve commission payments, with 35% of all sales (50,700 per year) resulting in commission being paid to a third party. It is likely that all of these sales will be impacted by our proposed rules on commission. Consumers who currently buy via intermediaries may still purchase funeral plans, but if they do, the plans are more likely to be better aligned to their needs and cheaper than current prices. Alternatively, these consumers may benefit by purchasing a different product which better meets their needs. We do not consider it is reasonably practicable to estimate the impact as it will depend on how firms adapt to our rules, and on the future decisions that consumers make. However, as noted above, Fairer Finance reported that 42% of consumers expected their plan would cover more than it actually did, and 30% felt pushed into purchasing their plan.

- 246.** We expect our proposals to reduce competition based on remuneration and focus it instead on price and quality. This is likely to benefit consumers as they are more likely to obtain a plan which meets their requirements.
- 247.** In addition, our proposed 30-day cancellation period will allow consumers time to reflect and reconsider their purchase decision. This should reduce the number of unsuitable sales by allowing consumers time to reconsider, and to cancel purchases which are unsuitable. As such unsuitable sales may have been driven by sales incentives, this proposal provides marginal benefits above the benefits outlined above. Our proposals will ensure consistency across the industry, and that the benefits of cancellation rights are retained.

Ensuring plans deliver funerals

- 248.** We are proposing to prohibit the manufacture and sale of plans which risk not providing a funeral if the consumer dies during the instalment period. Consumers purchase funeral plans with the belief that a funeral will be delivered on their death. This proposal increases the probability that the plan delivers in line with consumer expectations.
- 249.** The key consumer benefits generated by this proposal are:
- Increased product suitability through reductions in the probability that a funeral is not delivered by the plan, for instance in the event of death before instalment payments are completed
 - Savings to consumers who previously would have had to make additional payments to fully deliver a funeral which they believed to be paid for
 - Decreased psychological distress which being required to make additional payments or alternative arrangement can have at a such an emotionally sensitive time
- 250.** In paragraph 154, we set out our estimate of the costs to firms in meeting cost shortfalls. These costs represent a transfer and corresponding benefit to consumers, as they will no longer be required to pay the shortfall. We estimate this benefit at **£1.69m – £2m** per year²⁸. In practice, we expect this to be at the lower end of the estimate, because not all consumers will choose to pay the increased prices which

28 This estimate is based on the potential transfer of cost from the consumer's estate to plan providers in the absence of our proposal. The alternative method of calculating this cost to firms (the monthly insurance cost) does not represent a transfer to consumers because the payout from the insurance policy goes to the firm not the consumer.

could arise from firms protecting themselves by putting more money into their trusts, or purchasing supplementary insurance.

251. In addition, we propose that providers must, within 30 days of the sale, nominate a funeral director who will carry out the funeral services. This will give greater certainty to consumers and their representatives as to who will provide their services whilst removing the possibility of a firm being unable to identify a funeral director at the time of the claim. The following illustrate the benefits from these proposals:

- Not having a nominated funeral director can lead to delay in the funeral arrangements being made after the consumer dies, risking uncertainty and distress for the consumer's family at an already difficult time. Having a nominated funeral director appointed shortly after the sale will remove this uncertainty.
- Where the plan provider is only able to place the business with a funeral director whose place of business is not local to the consumer, it can cause additional travel burdens and costs on the consumer's relatives. Requiring the funeral director to be nominated shortly after the plan is taken out will prevent this from happening.

Consumers are paying high prices for plans which are not providing them with fair value

252. We have identified a number of issues which may lead to the price of funeral plans being too high, and plans (or plan features) not providing fair value to consumers:

- Plans may not be designed to meet the needs of consumers in the target market, and to provide funerals in all cases
- Commission arrangements may inflate the price of the plan
- Fees charged by firms may lead to consumers paying for services which represent no or limited benefit to them

253. The proposals outlined above aimed at improving product suitability should contribute to mitigating this harm by increasing the value to the consumer of the product they are purchasing. In addition, the proposals outlined below should remedy this harm either by putting downward pressure on prices or increasing the quality of the products. In either case this should increase the value of funeral plans relative to the price.

254. First, the proposal to prohibit commission should remove a significant component of the price paid by consumers. As noted above, we estimate that the total value of commissions being paid annually to intermediaries is £32.8m (see paragraph 122). This is extracted from the price paid by the consumer. We cannot reasonably estimate the extent to which the proposed ban will result in this amount being reduced, leading to benefits in the form of transfers from firms to consumers. This is because:

- We expect some intermediaries will operate on an advisor/arranger charging model. This means that customers will pay fees directly to the intermediary rather than commission.
- Were firms to adapt by changing their distribution strategies (for example, by creating in-house sales functions), this will lead to increased costs which will offset some of the savings from no longer paying commission to intermediaries.

255. However, the information from our 2019 survey indicates that the majority of plans are sold without high intermediary commissions being paid. This is either through funeral directors who typically receive no commission, or only a comparatively small amount,

or through in-house sales staff who receive comparatively small incentives for sales. Given that these other sales channels operate successfully without payment of large commissions, we consider it reasonable to expect that over time firms can achieve lower acquisition costs as a result of our commission ban. This should result in lower prices for consumers.

- 256.** Second, the proposed product oversight and governance regime will benefit consumers through improved assessment of target markets, distribution strategies and product reviews. This should lead to products that are better designed to meet the needs of consumers, and are distributed through appropriate distribution channels, in turn leading to the following benefits:
- Downward pressure on prices as a result of reductions in remuneration and other deductions from the headline price of a plan. In paragraphs 144 to 148 we have set out our assessment of the current levels of remuneration influencing plan prices. We consider that the benefit to consumers is likely to be a direct transfer from firms through a reduction in these elements of the price.
 - Reductions in psychological distress and additional funeral costs for the family or friends of consumers as the funeral will proceed as they expected. The emotional context of the circumstances when a plan is drawn means the benefit is likely to be substantial.
- 257.** Third, we propose to limit the circumstances in which firms can charge cancellation fees. This will produce benefits to consumers in the form of direct savings. Based on the costs to firms set out in paragraphs 103 and 106, we expect consumers to save **£125k – £249k** in no longer paying cancellation fees.
- 258.** Fourth, we are also proposing that all other fees should be limited to the cost the firm incurs. This will benefit consumers by removing the risk that consumers end up paying an excessive amount for the service they receive. Currently the only other fees that firms charge are instalment fees, which firms already state are purely intended to cover the costs of allowing the consumer to pay by instalments. However, we have seen a significant variation in the fees charged; ranging from 3% – 6%. This suggests that some fees are higher than the costs the firms incur, so there is likely to be a reduction in fees charged, which provides a direct transfer to consumers.
- 259.** Finally, due to the rules outlined above as well as those related to suitability of sales and consumer awareness, consumers may be encouraged or find it easier to compare funeral plans with lower priced substitute products, such as over-50s plans. As a result, some consumers may opt to purchase cheaper substitute products. To provide an indicative example of the effect of such substitution we consider the savings from purchasing an over-50s life insurance product instead of a funeral plan, though these products work in a different way so we recognise there may be other differences that need also to be accounted for. However, we have used data provided by firms to compare the cost of a funeral plan with a 25-year instalment period to the cost of an over-50s life insurance product for a consumer who pays it for 25 years based on current rates. This analysis shows that, to receive a benefit of equivalent monetary amount, the over-50s life insurance consumer would pay approximately £5 per month less. For illustrative purposes only, if 10% of consumers currently paying for funeral plans on instalments (with the risk of not receiving the funeral) switched onto a broadly equivalent over-50s life insurance product, we estimate there would be an annual saving of £355k – £1m.

260. We recognise the limitations of the analysis in paragraph 260.

- Consumers who take out over-50s life insurance products generally have to continue paying until they die, whereas longer-term instalment funeral plans stop when the consumer finishes paying. As such, the saving estimate reduces significantly if the consumer lives past the 25 years we have used for our analysis. However, over-50s products would pay out the same benefit amount if the consumer lived less than 25 years, so the saving could be significantly greater
- Over-50s life insurance simply pays a sum of money, whereas a funeral plan allows the consumer to specify the details of their funeral. Consumers may value the additional certainty and peace of mind that comes from this. We cannot reasonably practicably estimate the value of such psychological benefits in monetary terms as we are unable to infer the value consumers place on these features from the overall value of the policy. However, we recognise that it is a benefit of a funeral plan which is not offered by an Over-50s life insurance plan.

Poor governance and controls within firms

261. We think applying SM&CR to funeral plan providers and intermediaries will lead to benefits in the form of:

- driving up culture and standards through increased accountability at the senior level. This is supported by a new duty of responsibility on Senior Managers
- increasing the likelihood of instances of misconduct being identified, which should prevent or at least reduce harm to consumers, thanks to the application of Conduct Rules and associated reporting requirements, and firm-level assessment of fitness and propriety
- broadening the scope for the FCA to take disciplinary actions, which should provide incentives to improve behaviour
- encouraging better decision making within firms, through increased accountability and clarity about each individual's responsibilities
- advancing improved staff hiring processes and professionalism through regular fit and proper checks, conditional approvals and regulatory references
- encouraging improved trust in financial services, as all of the above will help raise public confidence in the industry, as well as clarify the FCA's expectations on firms

262. We do not consider it is reasonably practicable to estimate these benefits, as they depend on future changes in behaviour, for which we do not have comparable evidence. Additionally, this change will arise from a combination of factors, including the transfer of regulation to the FCA and the implementation of the new conduct rules proposed in this consultation paper. We cannot isolate the specific impact of SM&CR. We also note that some of the benefits cannot be easily expressed in monetary terms. This is particularly true for benefits relating to improvements in consumers' confidence in the funeral plans sector.

Plans are often not redeemed as the consumer's family is not aware of them

263. We are proposing that plan providers will be required to send a statement to the consumer's representative. This proposal is intended to reduce the likelihood of a funeral plan going unclaimed, ensuring that the consumer and their family receive the benefits of their purchase. Currently, families who are unaware their relative had a pre-paid funeral plan can incur unnecessary financial loss, as they may pay for a funeral.

This is a risk in the funeral plan sector because the costs will generally be incurred shortly after the consumer's death, so if a plan is discovered months later it is unlikely to be of use. This proposal is intended to reduce the incidence of this. As for other aspects of the proposed package, we expect this proposal will reduce additional stress on the bereaved, as they will know the plan details and how to claim it at the time of need.

264. It is not possible to know with certainty how many plans currently go unredeemed after the consumer dies because, by definition, the provider only knows that the consumer has died when a redemption is made. Some providers told us that they do periodic audits to try and identify these cases but could not give us conclusive figures. In our survey we asked plan providers to tell us how many undrawn plans they have where the consumer is over 90 years old. The average across the market was 5.4% of plans. We recognise that many of these consumers may well be alive. Assuming 9,396 new plans go unredeemed each year, we have calculated a range of benefits based on different reductions of unredeemed plans per year:

- Saving from a 1% reduction in unredeemed plans – **£352k** per year
- Saving from a 3% reduction in unredeemed plans – **£1m** per year
- Saving from a 5% reduction in unredeemed plans – **£1.7m** per year

265. As the disclosure requirement will only apply to new plan sales, we have based the figures on the potential future savings to families of consumers purchasing funeral plans from the time our rules come into force. Given the age of these new consumers, it will take a number of years before these benefits will be realised, because for some time the majority of redemptions will come from providers' existing plans. However, we are implementing guidance that firms should consider contacting the representatives of their existing consumers, where this can be done through reasonable steps. This may bring forward some of these benefits.

Poor financial management of firms means that sufficient funds may not be available to cover funeral liabilities

266. Our prudential rules seek to improve firm financial management through improved capital requirements which reduce the probability of firm failure. However, in the event that a firm does fail, our resolution rules and application of the FSCS will provide consumers with additional protection from losses. The nature of these benefits is outlined below.

Prudential rules

267. Our focus is to ensure that a firm has adequate capital resources, and adequate trust or insurance arrangements to absorb losses, and meet liabilities as they fall due (including meeting their obligations to deliver the pre-agreed funeral under a pre-arranged funeral plan contract), ensuring the firm is still a going concern and to prevent, as far as possible, a disorderly wind-down of its regulated activities.

268. Holding adequate capital resources, both in terms of quality and quantity, helps a firm to reduce the probability of financial distress and enables the firm to remain financially viable in the face of operational failures and unexpected shocks. It further signals to consumers the commitment of the firm's owners and the financial soundness of the entity, which allows consumers to have the confidence to engage with the firm and to form reasonable expectations that the firm will fulfil their obligations.

269. Our proposals outlined in chapter 4 should translate into an increase in the capital resources position of firms, which should help to build greater trust from consumers and other stakeholders that interact with funeral plan providers and funeral plans intermediaries. This increased confidence could result in greater participation in the market from consumers. It is not reasonably practicable to estimate the benefits of increased confidence due to the multitude of channels through which they take place and the dynamic nature of how increased confidence and participation could impact the market.

270. Firms can only make an orderly exit from the market if they have sufficient financial resources of the necessary quality to meet both the costs of winding-down and of continuing to run the business until it is wound down or its activities are restructured.

271. Our proposals provide benefits to consumers by reducing the probability of disorderly wind down on firm exit which may impact delivery of service to the consumer. It is not reasonably practicable to estimate the marginal effect of this benefit due to uncertainty around what a counterfactual scenario for firm exit and wind down would be without the imposition of our proposals.

Resolution and Financial Services Compensation Scheme

272. We consider that the resolution proposals will increase the likelihood of consumers receiving continuity in funeral service provision if their funeral plan provider fails. We also expect the proposals to increase the likelihood of consumers receiving a reimbursement from firms where continuity is not provided. Both of these outcomes are supported by safeguarding proposals which restrict the circumstances in which claims can be made on trust assets and insurance policies and safeguard them from general creditors in the event of insolvency. Funeral plan providers may already have some arrangements in place, but our requirements will ensure the arrangements apply more broadly, and more consistently.

273. There is the risk that a customer of a funeral plan provider or distributor could suffer financial harm if the firm went out of business and owed the customer money. Financial harm could include damages which are due to the consumer (e.g. following a claim for negligence or breach of contract) not being paid or funeral costs not being met upon the death of the consumer. In an extreme scenario, it may mean that the customer's estate does not have the funds to pay funeral costs. Providing FSCS protection for customers in relation to funeral plan contracts, in conjunction with reimbursements made by firms, is essential to ensure that consumers and their estates are protected in the event of the failure of their funeral plan provider or distributor. Accordingly, consumers and their estates will benefit from the availability of FSCS compensation in circumstances where they have a valid claim against a failed funeral plan firm which has been declared "in default" by FSCS.

274. Together, the resolution arrangements and FSCS protection will serve to mitigate harm from financial loss and/or psychological distress arising from the failure of a funeral plan firm. By mitigating against disorderly firm failure, the proposals will also increase consumer confidence in funeral plans and therefore potentially improve consumer participation in the market. Given the make-up of funeral consumers is disproportionately those who are elderly and/or potentially vulnerable, these benefits accrue to such groups. If such benefits occur, they will also accrue to the funeral plan sector in terms of higher sales.

275. Consumers will also benefit from disclosure on what resolution arrangements firms have in place, and particular risks that they may face. This will improve the ability for plan-holders to take decisions regarding funeral plans.

276. It is not reasonably practicable to quantify the value of these benefits, as we do not have sufficient evidence on past firm failure where harm might have arisen. It is therefore not practicable to robustly predict the harm avoided by the resolution and FSCS proposals.

Other benefits

High level standards

277. We expect consumers to receive benefits from a number of other proposals. These benefits are not specifically directed to remedy particular harms and are likely to manifest as general improvements to standards across the funeral plans sector. We do not believe it is reasonably practicable to calculate these benefits due to them being inextricably linked to a broad range of other rules and the intangible nature in which matters such as proper systems and controls, monitoring and training will translate into better consumer experience and more suitable sales.

- Firms will be required to comply with our Principles for Businesses, including the requirement to treat consumers fairly. These overarching requirements will benefit consumers.
- Preventing funeral plan providers and intermediaries from buying indemnity insurance against financial penalties is intended to ensure that regulatory enforcement action offers a genuine deterrent to poor practice by firms.
- The rules will prohibit the use of premium rate phone numbers. If any such numbers are currently used, this proposal will benefit consumers by saving them the cost of the call. Most of the systems and controls requirements are concerned with risk management and governance. We consider that consumers are generally likely to benefit from firms having improved monitoring and oversight processes in place to reduce instances of harm. In particular, we expect that consumers will benefit from firms having greater controls over outsourced providers.
- Consumers are likely to benefit from dealing with more highly trained employees, who are able to offer better advice and guidance.

Dispute resolution

278. Consumers will benefit from receiving the Ombudsman Service's standard explanatory leaflet in the final response to their complaint. They will be able to more easily gain an understanding of their rights to complain. Plan providers and intermediaries will also be more likely to focus on reducing the number of complaints because of having to report complaints annually to us, and potentially publishing this data if they receive a high volume of complaints. As a result, consumers should benefit from improved consumer service. In turn, this should bring benefits to plan providers and intermediaries through higher consumer satisfaction.

Average benefits that need to be realised for our proposals to be net beneficial

- 279.** For illustration, we have estimated the benefits for an average consumer that would need to be generated for our proposals to be net beneficial, given the compliance costs incurred by firms.
- 280.** To produce this estimate, we first group one-off and ongoing costs of our intervention into those affecting existing plan holders and new consumers and those affecting just new consumers, estimating totals for each group. We then estimate the total net present value (NPV) of costs for each group over a 10-year period, using the Treasury's Green Book discount rate of 3.5%. We produce these estimates for our low and high range cost estimates.
- 281.** We have not adjusted for the benefits we have already quantified in this analysis. This is because the benefits we have quantified are either direct transfers from firms to consumers or indicative only due to limitations in data which inform our assumptions. There is also uncertainty about the timing over which certain benefits will be realised. Finally, as previously noted, it is difficult to determine the marginal benefit of each proposed rule as our proposals interact with one another.
- 282.** We exclude from our breakeven analysis the costs for rules which lead to benefits to consumers in the form of transfers, as these will net each other out. As we have also not adjusted for the benefits we have already quantified, the estimates in this section reflect the highest possible benefits which need to be realised by consumers for the policies to be net beneficial.
- 283.** Based on the most recent sales data provided by the FPA, adjusted for the proportion of the market they represent, we estimate that 174,000 new consumers per year will be impacted by our proposals. This equates to 1.7 million new consumers over 10 years. Based on the same source and approach, we estimate that around 1.6 million existing plans could also be affected by our proposals. This suggests that, in total, around 3.3 million consumers could be affected by our interventions over a 10-year period.
- 284.** We estimate the total NPV of costs to be £173m – £219m for proposals affecting both existing and new consumers and £17m – £50m for those only affecting new consumers. To estimate the discounted cost per consumer, we divide the relevant total NPV of costs by the relevant number of affected consumers, based on which type of consumers it affects.
- 285.** We estimate that for the impacts of our intervention to breakeven in monetary terms, the average existing plan holder would need to realise between £52 – £66 in benefits and the average new consumer would need to realise between £62 – £95 in benefits. The higher figure for new consumers reflects the additional cost of rules which will only affect them, such as pre-purchase disclosure requirements.
- 286.** Using figures from our 2020 survey of providers, we estimate that the average price of a plan is £4,100 to £4,600. Dividing the average plan holder benefits required to breakeven by the average plan price range suggests that these figures only represent 1.1% – 1.6% of a plan price for an existing plan holder and 1.4% – 2.3% of a plan price for a new consumer. We note that as we utilise prevailing plan prices, where existing plans were purchased many years ago the relative proportion of plan price may be higher as

plan prices were likely lower. We are unable to produce an inflation adjusted estimate as we do not have sufficient data on such plans.

Table 12: Breakeven analysis

	New Customers	Existing Customers
Monetary benefit needed to breakeven	£62 – £95	£52 – £66
Monetary benefit needed to breakeven as % of average plan price	1.4% – 2.3%	1.1% – 1.6%

Benefits to industry

- 287.** We consider that our proposals will benefit both the funeral plans sector and others. By setting clear requirements for the funeral plans sector, we are ensuring that all firms meet a specified level of conduct. This removes the risk that firms who do not act properly receive a competitive advantage due to lower compliance costs and increases the likelihood of firms competing on quality of products and services. This should also lead to improved confidence in the sector, which may encourage more consumers to purchase funeral plan products. Funeral plan products compete with other products many of which are already regulated by the FCA. By ensuring consistency of standards, our proposals will create a more level playing field between competing products, with similar standards and compliance costs. This will benefit firms providing substitute products to funeral plans.

Q57: Do you have any comments on our cost benefit analysis?

Annex 2

Compatibility statement

Compliance with legal requirements

1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is (a) compatible with its general duty, under s. 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, and (b) its general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA. The FCA is also required by s. 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This Annex also sets out the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s. 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.
4. In addition, this Annex explains how we have considered the recommendations made by the Treasury under s. 1JA FSMA about aspects of the economic policy of Her Majesty's Government to which we should have regard in connection with our general duties.
5. This annex includes our assessment of the equality and diversity implications of these proposals.
6. Under the Legislative and Regulatory Reform Act 2006 (LRRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRRA.

The FCA's objectives and regulatory principles: Compatibility statement

Strategic objective

7. We consider these proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well because they will drive higher service standards, provide greater consumer protection and promote competition. For the purposes of the FCA's strategic objective, "relevant markets" are defined by s. 1F FSMA and include the markets for regulated financial services.

Operational objectives

8. The proposals set out in this consultation are primarily intended to advance the FCA's operational objective of consumer protection. They are also relevant to our objective of promoting competition in the interests of consumers.

Consumer Protection objective

9. The mandate of the FCA includes the requirement to secure an appropriate degree of protection for consumers. The FCA has in this consultation had regard to the 8 matters listed in s.1C(2)(a)-(h) FSMA on consumer protection.

10. We have considered the target market for funeral plan providers and how this may affect decision making and expectations. Our proposals for disclosure requirements will ensure firms provide plan holders, and their nominated representatives, with the necessary information to make clear and well-informed decisions. Firms will be required to ensure that their disclosure documents are clear, fair and not misleading which will help in clarifying the services that the plan holder and nominated representative will receive from their plan.

11. Our proposals on longer term instalment plans will also ensure that firms are selling products that better meet consumer needs and more closely align with consumer's expectations of the plans they purchase.

12. By ensuring both plan holders and their nominated representatives are eligible to complain to the FOS, this ensures greater protection for consumers where they feel they have been treated unfairly.

Competition objective and our Competition Duty

13. The mandate of the FCA includes the requirement to promote competition. The FCA has in this consultation had regard to the 5 matters listed in s.1E(2)(a)-(e) FSMA on promoting competition. For example, our proposals for disclosure will empower consumers to make informed choices in line with s.1E(2)(a). Furthermore, our proposals to ban cancellation fees where the consumer has not received any benefit will allow them to switch providers more easily in line with s.1E(2)(c).

14. These proposals also meet our competition duty under s.1(B)(4) as they will allow consumers to better compare products both in terms of the service they deliver and their value for money. Therefore, this should improve competition both on price and standard of service.

The FCA's regulatory principles

15. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s. 3B FSMA.

The need to use our resources in the most efficient and economic way

16. We have largely based our rules for funeral plans on those that already apply to non-investment life insurance products, such as guaranteed over-50s plans. Where we have identified harms specific to the funeral plan market, we have introduced additional measures. By focusing new proposals on these specific harms, we allow our resources to be used in the most efficient way.
17. Our approach to authorising firms will ensure we mitigate harm by identifying poor practice and bad actors at the gateway. This will ensure our supervisory resources are used efficiently as those firms who become authorised will already meet the threshold conditions and our wider expectations.

The principle that a burden or restriction should be proportionate to the benefits

18. We have considered the impact of proposals on both firms and consumers and have undertaken a cost-benefit analysis which is included in Annex 2 of this CP. We consider the costs are proportionate to the benefits.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

19. Our proposals have regard to the desirability of sustainable growth in the medium and long term. Those funeral plan providers authorised in the regulated market should be more sustainable due to our prudential requirements, and should provide a higher standard of service overall, due to our enhanced conduct regime.

The general principle that consumers should take responsibility for their decisions

20. Our proposals to require firms to provide plan holders with necessary information pre-sale, through the Funeral Plan Summary, will empower consumers to decide whether a funeral plan is the right product for them and more easily compare providers. Our proposals to require firms to provide an annual statement to plan holders will ensure consumers continue to review their plan and assess whether it still meets their needs.
21. Consumers will therefore remain responsible for their decisions on whether a funeral plan is the right product for them, and if so, which provider to use, and each of these decisions will be better-informed.

The responsibilities of senior management

22. Our proposals to apply the Senior Managers & Certification Regime to Funeral Plan Providers will ensure that firms and the FCA are able to hold individuals to account. This will help to:

- Encourage staff to take personal responsibility for their actions
- Improve conduct at all levels
- Make sure firms and staff clearly understand and are able to demonstrate who does what

The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation

23. Our proposals are not relevant for this field. Our proposals will not discriminate between different business models. This is intended to ensure a level playing field for all entities in the market.

The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information

24. Our proposals are not relevant for this field.

The principle that we should exercise of our functions as transparently as possible

25. We have engaged regularly with the Funeral Planning Authority, the current non-statutory regulator of the funeral plans market, as well as firms in the market. We have worked closely with those in the industry to understand how to shape our proposals and we will continue to do so as part of this consultation process.

Financial Crime

26. In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s. 1B(5)(b) FSMA). Funeral Plan providers authorised by the FCA will be required under our proposals to actively implement and maintain measures to counter the risk that the provider might be used to further financial crime (SYSC 6.1.1R).

Expected effect on mutual societies

27. The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies.

Treasury recommendations about economic policy

- 28.** In the remit letter published by the Chancellor of the Exchequer on 8 March 2017²⁹, the Chancellor affirms the FCA's role in ensuring that effective competition in financial services can create the right conditions for access to finance, which is part of the Government's economic objective to create strong, sustainable and balanced growth. The FCA has regard to this letter and the recommendations within. As set out in this Annex, we consider that our proposals are proportionate and will promote effective competition.

Equality and diversity

- 29.** We are required under the Equality Act 2010 in exercising our functions to 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, to and foster good relations between people who share a protected characteristic and those who do not.
- 30.** As part of this, we ensure the equality and diversity implications of any new policy proposals are considered. The outcome of our consideration in relation to these matters in this case is stated in Chapter 2.

29 <https://www.gov.uk/government/publications/recommendations-for-the-financial-conduct-authority-spring-budget-2017>

Annex 3

Questions in this paper

- Q1:** Do you agree that our proposed rules will not have a material impact on groups with protected characteristics?
- Q2:** Do you agree with our proposal for applying high-level standards to funeral plan firms?
- Q3:** Do you agree with our proposal to require firms to back funeral plan contracts with a trust or insurance arrangement going forward?
- Q4:** Do you agree with our proposed rules on trust arrangements?
- Q5:** Do you agree with our proposals for trust solvency and how trust solvency should be assessed?
- Q6:** Do you agree with our proposed prudential requirements on funeral plan providers and intermediaries?
- Q7:** Do you agree with the way we propose to apply our FPCOB rules?
- Q8:** Do you agree with our proposed general conduct of business standards for funeral plans?
- Q9:** Do you agree with our proposed ban on intermediaries receiving remuneration other than advice or arrangement fees from the customer?
- Q10:** Do you agree with our assessment that commissions are leading to mis-matched incentives and conflicts of interests between firms and customers in the funeral plan market? If you disagree, it would be helpful to explain why by reference to current commission structures and practices you are aware of in the market and, in particular, why you do not consider these to risk creating mis-matched incentives and conflicts of interests.
- Q11:** Do you agree with our assessment that commissions are leading to customers paying prices which are too high relative to the benefits the funeral plan provides?

- Q12:** Do you agree with our assessment that intermediaries receiving commission are providing little or no benefit to customers? If you disagree, it would be helpful to explain why by reference to current commission structures and intermediary services you are aware of in the market and, in particular, how you think they provide benefit to customers.
- Q13:** Do you have any comments on the alternative approaches to tackling the harms caused by commission? In particular, do you have any comments on the alternative option we would be minded to follow if we conclude that a ban is not required?
- Q14:** Do you agree that with our proposals for remuneration of plan providers?
- Q15:** Do you agree with our proposals for pre-contract disclosures?
- Q16:** Do you agree with our proposals for plans sold through instalments?
- Q17:** Do you agree with our proposed standards sales standards?
- Q18:** Do you agree with our proposed approach to cancellation rights and other fees?
- Q19:** Do you have any comments on whether our proposals are likely to impact the relationship between funeral plan contracts and underlying insurance contracts?
- Q20:** Do you agree with our proposal to require plan providers to nominate a funeral director within 30 days of the plan being purchased?
- Q21:** Do you agree with our proposal to require plan providers to send a letter to the customer's representative once a plan has been purchased?
- Q22:** Do you agree with our proposal to require plan providers to send an annual letter to consumers?
- Q23:** Do you agree with our proposed rules for plan redemption?
- Q24:** Do you agree with our proposals for rules to apply to plans entered into before 29 July 2022?
- Q25:** Do you agree with our proposed product oversight and governance requirements for funeral plan manufacturers?

- Q26:** Do you agree with our proposed product oversight and governance requirements for funeral plan distributors?
- Q27:** Do you agree with our proposed rules on fair value for funeral plans?
- Q28:** Do you agree with our proposed resolution rules?
- Q29:** Do you have any views on reimbursement and what amount should be considered adequate noting option 1 (to reimburse an amount equal to the retail cost of an equivalent replacement plan), option 2 (an amount linked to monies paid by the consumer), and other options that sit between these eg sums paid by the consumer that have been paid into a trust plus a pro-rated share of the remainder of the trust assets?
- Q30:** Do you have any views on how these reimbursement options could be funded? In particular, how could funeral plan arrangements be structured in such a way as to ensure that the funeral plan provider's obligations could be met at all times?
- Q31:** Do you have any views and evidence on the costs and benefits of these options, including relating to consumer protection and commercial impact on firms? We also welcome any evidence on the likely differential between the amounts relating to options 1 and 2, and between these amounts and the amount available from trust and insurance arrangements.
- Q32:** Do you agree with the proposal to introduce FSCS protection for certain funeral plan activities in relation to firms that are declared "in default" by FSCS, and for acts or omission arising, from the date FCA takes on regulation of the funeral plan activity?
- Q33:** Do you agree with the scope of proposed FSCS coverage?
- Q34:** Do you agree with the proposed approach to FSCS quantification, the payment of compensation and the compensation limit?
- Q35:** Do you agree with the proposal to introduce a new funeral plan activity FSCS funding class as set out above? If not, please set out an alternative funding approach with justification.
- Q36:** Do you agree that an initial class limit of £5 million for the new funeral plan activity FSCS funding class would be appropriate, on the basis that this limit will be reviewed at least one year after regulation commences?

- Q37:** Do you have any other comments on the proposals in relation to FSCS?
- Q38:** Do you agree with our proposal to apply the SM&CR to funeral plan providers?
- Q39:** Do you agree with our proposals to treat funeral plan firms (that have no other regulatory permissions) as Core firms, except for intermediaries whose primary business is not funeral plan intermediation and who only have permission to carry on funeral plan mediation activity, which we propose would be Limited Scope?
- Q40:** Do you agree with our proposed fit and proper requirements, including criminal record checks and regulatory references?
- Q41:** Do you agree with our proposed approach to applying the Conduct Rules to funeral plan firms?
- Q42:** Do you agree with our proposal above to extend the rules and guidance for ARs to funeral plan firms?
- Q43:** Do you agree with our proposal above to apply the existing Approved Persons Regime to funeral plan firms?
- Q44:** Do you agree with our proposal to require funeral plan principal firms to notify us of changes in relation to their ARs as detailed above?
- Q45:** Do you agree with our approach to apply our complaint handling rules and guidance in DISP, including the compulsory jurisdiction of the ombudsman service, to all authorised funeral plan providers and which will also apply to intermediaries (e.g. appointed representatives)?
- Q46:** Do you think there are any gaps in ombudsman service coverage in the scenarios discussed above or are there any other issues you have identified? If so, please provide details.
- Q47:** Do you agree with our assessment that it is not necessary to make any changes to the rules on eligible complainants?
- Q48:** Do you agree that this covers all likely forms of redress? If you consider further categories are needed please provide details in your response.
- Q49:** Do you agree with the ombudsman service's proposal to expand the scope of the voluntary jurisdiction in this manner?

- Q50:** Do you have any comments on the proposals in Table 1 on the application of our FEES rules and guidance to Funeral plan providers and intermediaries, in particular the proposal to create a new Funeral plan provider and Intermediary industry block with the tariff base based on annual income subject to a minimum fee?
- Q51:** Do you agree with our proposed application of the existing SUP rules to funeral plan firms?
- Q52:** Do you agree with the notification requirements and guidance we are introducing into SUP 15?
- Q53:** Do you have any comments on the reporting requirements set out in this CP?
- Q54:** Do you agree with the proposal for the FCA to impose an administration fee on funeral plan firms for late submission?
- Q55:** Do you have any comments on our proposal to apply the same approach to enforcement investigations and actions to funeral Plan firms as we do to other regulated firms, as set out in EG?
- Q56:** Do you have any comments on our proposal to follow the same procedures for decision-making and imposing penalties in relation to funeral plan firms and individuals set out in DEPP?
- Q57:** Do you have any comments on our cost benefit analysis?

Annex 4

Abbreviations used in this paper

FSMA	The Financial Services and Markets Act 2001
PRIN	Principles for Businesses
SYSC	Senior Management Arrangements, Systems and Controls sourcebook
COND	Threshold Conditions sourcebook
RAO	The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544)
FPA	Funeral Planning Authority
FCA	Financial Conduct Authority
FSCS	Financial Services Compensation Scheme
CP	Consultation paper
CBA	Cost benefit analysis
FPO	The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (SI 2005/1529)
TC	Training and Competence sourcebook
SUP	Supervision sourcebook
GEN	General Provisions sourcebook
FPCOB	Funeral Plans: Conduct of Business sourcebook
SAR	Solvency assessment report
IoFA	Institute and Faculty of Actuaries
O50s plan	Over 50s plans
ICOB5	Insurance: Conduct of Business sourcebook
RPPD	The Responsibilities of Providers and Distributors for the Fair Treatment of Customers guide
MiFID II	The Markets in Financial Instruments Directive (Directive 2014/65)

IDD	The Insurance Distribution Directive (Directive 2016/97)
PRA	The Prudential Regulation Authority
COMP	Compensation sourcebook
SM&CR	The Senior Managers and Certification regime
FOS	The Financial Ombudsman Service
CJ	Compulsory jurisdiction (of the Financial Ombudsman Service)
VJ	Voluntary jurisdiction (of the Financial Ombudsman Service)
EG	The Enforcement Guide
PERG	The Perimeter Guidance Manual
COCON	Code of Conduct
FIT	Fit and Proper test for Employees and Senior Personnel
AR	Appointed Representative
TCs	Threshold Conditions
IA	Impact Assessment
DISP	Dispute Resolution: Complaints
SAIF	Society of Allied and Independent Funeral Directors
NAFD	National Association of Funeral Directors
FEES	Fees Manual
NPV	Net Present Value
DEPP	Decision Procedure and Penalties Manual



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Appendix 1

Draft Handbook text

FUNERAL PLANS INSTRUMENT 2021

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes and amends the scheme rules and guidance relating to the complaints handling procedures of the Financial Ombudsman Service; makes and amends the rules and guidance for the Voluntary Jurisdiction; and fixes and varies the standard terms for Voluntary Jurisdiction participants, as set out in Annex A and Annex J to this instrument, in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary jurisdiction);
 - (2) paragraph 8 (Information, advice and guidance) of Schedule 17;
 - (3) paragraph 14 (Scheme operator’s rules) of Schedule 17;
 - (4) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
 - (5) paragraph 20 (Voluntary jurisdiction rules: procedure).
- B. The Financial Ombudsman Service Limited notes that, for the avoidance of doubt, the Transitional Provisions at TP 1.1 in Annex J to this instrument apply equally to the Voluntary Jurisdiction of the Financial Ombudsman Service and the Compulsory Jurisdiction.
- C. The making and amendment of the rules and guidance and the fixing and varying of the standard terms by the Financial Ombudsman Service, as set out at paragraph A above, is subject to the consent and approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- D. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in or under the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 59 (Approval for particular arrangements);
 - (2) section 60 (Applications for approval);
 - (3) section 60A (Vetting candidates by authorised persons);
 - (4) section 61 (Determination of applications);
 - (5) section 62 A (Changes to responsibilities of senior managers);
 - (6) section 63ZA (Variations of senior manager’s approval at request of authorised person);
 - (7) section 63ZD (Statement of policy relating to conditional approval and variation);
 - (8) section 63C (Statement of policy);
 - (9) section 63E (Certification of employees by authorised persons);
 - (10) section 63F (Issuing of certificates);
 - (11) section 64A (Rules of conduct);
 - (12) section 64C (Requirements for authorised persons to notify regulator of disciplinary action);
 - (13) section 69 (Statement of policy);

- (14) section 137A (The FCA’s general rules);
- (15) section 137D (FCA general rules: product intervention);
- (16) section 137H (General rules about remuneration);
- (17) section 137R (Financial promotion rules);
- (18) section 137T (General supplementary powers);
- (19) section 138C (Evidential provisions);
- (20) section 138D (Action for damages);
- (21) section 139A (Power of the FCA to give guidance);
- (22) section 213 (The compensation scheme);
- (23) section 214 (General);
- (24) section 215 (Rights of the scheme in insolvency);
- (25) section 226 (Compulsory jurisdiction);
- (26) section 332 (Rules in relation to persons to whom the general prohibition does not apply);
- (27) section 347 (The record of authorised persons etc);
- (28) section 395 (The FCA’s and PRA’s procedures);
- (29) paragraph 23 of Schedule 1ZA (Fees); and
- (30) paragraph 13 (FCA’s procedural rules) of Schedule 17.

- E. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.
- F. The Financial Conduct Authority consents to and approves the rules and guidance and standard terms made and amended and fixed and varied by the Financial Ombudsman Service Limited, as set out at Annex J.

Commencement

- G. This instrument comes into force on [29 July 2022].

Amendments to the Handbook

- H. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes in this instrument listed in column (2) below.

(1)	(2)
Glossary	Annex A
Principles for Businesses (PRIN)	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
Threshold Conditions (COND)	Annex D
Training and Competence (TC)	Annex E
Fees manual (FEES)	Annex F
Conduct of Business sourcebook (COBS)	Annex G
Product Intervention and Product Governance sourcebook (PROD)	Annex H
Supervision manual (SUP)	Annex I
Dispute Resolution: Complaints sourcebook (DISP)	Annex J
Compensation sourcebook (COMP)	Annex K

- I. The Financial Conduct Authority confirms and remakes in the Glossary of definitions the defined expressions relating to any UK legislation which has been amended further to Part 2 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2021.

Making the Funeral Plan: Conduct of Business sourcebook

- J. The Financial Conduct Authority makes the rules and gives the guidance in accordance with Annex L to this instrument.
- K. The Funeral Plan: Conduct of Business sourcebook (FPCOB) is added to the Business Standards block within the Handbook, immediately after the Claims Management: Conduct of Business sourcebook (CMCOB).

Amendments to material outside the Handbook

- L. The Perimeter Guidance manual (PERG) is amended in accordance with Annex M to this instrument.

Notes

- M. In the Annexes to this instrument, the “notes” shown as “*Editor’s note:*” and “**Note:**” are included for the convenience of readers, but do not form part of the legislative text.

Citation

- N. This instrument may be cited as the Funeral Plans Instrument 2021.

By order of the Board [of the Financial Ombudsman Service Limited]
[date]

By order of the Board [of the Financial Conduct Authority]
[date]

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>best estimate</i>	a best estimate valuation should reflect the actuary's expectation of future experience for each risk factor given all available, relevant experience and information pertaining to the assumption being estimated and set in such a manner that there is an equal likelihood of the actual value being greater than or less than the expected value.
<i>carrying out a funeral plan contract as provider</i>	the <i>regulated activity</i> , specified in article 59(1A) of the <i>Regulated Activities Order</i> , of carrying out a <i>funeral plan contract</i> as provider.
<i>core capital resources requirement</i>	<ol style="list-style-type: none">(1) for a <i>firm</i> to which <i>FPCOB 15</i> applies that also has a <i>Part 4A permission</i> to carry on other <i>regulated activities</i>, the requirement specified in <i>FPCOB 15.7.1R</i>;(2) for a <i>firm</i> with a <i>Part 4A permission</i> to carry on <i>funeral plan distribution activity</i> to which <i>FPCOB 15</i> applies and that does not also carry on any other <i>regulated funeral plan activity</i>, the requirement specified in <i>FPCOB 15.6.1R</i>; or(3) for a <i>firm</i> with a <i>Part 4A permission</i> to carry on any other <i>regulated funeral plan activity</i> to which <i>FPCOB 15</i> applies, the requirement specified in <i>FPCOB 15.5.1R</i>;
<i>covered individual</i>	the <i>individual</i> on whose death a funeral will be provided or secured under a <i>funeral plan contract</i> or prospective <i>funeral plan contract</i> .
<i>existing funeral plan product</i>	(for the purposes of <i>PROD 1.7</i> and <i>PROD 7</i>) a <i>funeral plan product</i> : <ol style="list-style-type: none">(1) that was <i>manufactured</i> prior to 29 July 2022;(2) is available to be marketed or <i>distributed to customers</i>.
<i>FPCOB</i>	the Funeral Plan: Conduct of Business sourcebook.
<i>FP distribution charge</i>	any form of charge payable by a <i>customer</i> to a <i>firm</i> in relation to the provision of a <i>funeral plan distribution activity</i> and agreed between the <i>firm</i> and the <i>customer</i> .
<i>funeral plan</i>	a <i>funeral plan contract</i> .

<i>Funeral Plans Authority</i>	the Funeral Planning Authority Community Interest Company.
<i>funeral plan customer balance</i>	[see paragraphs 7.22-7.31 of CP21/4 for a discussion on how this term should be proposed to be defined in the forthcoming FCA consultation paper]
<i>funeral plan distribution activity</i>	any of the following <i>regulated activities</i> carried on in relation to a <i>funeral plan contract</i> : <ul style="list-style-type: none">(a) <i>dealing in investments as agent</i> (article 21);(b) <i>arranging (bringing about) deals in investments</i> (article 25(1));(c) <i>making arrangements with a view to transactions in investments</i> (article 25(2));(d) <i>advising on investments (except P2P agreements)</i> (article 53(1)); and(e) <i>agreeing to carry on a regulated activity</i> in (a) to (d) (article 64).
<i>funeral plan intermediary</i>	a <i>firm</i> carrying on <i>funeral plan distribution activity</i> other than a <i>funeral plan provider</i> .
<i>Funeral Plans Order</i>	the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2021 (SI 2021/90).
<i>funeral plan product</i>	the product for distribution as a <i>funeral plan contract</i> to <i>customers</i> generally but not intended to refer to each individual <i>funeral plan contract</i> being sold or provided (unless the context indicates otherwise).
<i>funeral plan provider</i>	a <i>firm</i> with <i>permission</i> for one or both of the <i>regulated activities</i> of: <ul style="list-style-type: none">(a) <i>entering as provider into a funeral plan contract</i>;(b) <i>carrying out a funeral plan contract as provider</i>.
<i>funeral plan resolution manual</i>	the manual required by <i>FPCOB</i> 16.2.3R.
<i>funeral plan provision activity</i>	the <i>regulated activities</i> of: <ul style="list-style-type: none">(a) <i>entering as provider into a funeral plan contract</i>; and(b) <i>carrying out a funeral plan contract as provider</i>.
<i>funeral plan summary</i>	a summary of a <i>funeral plan contract</i> in the format and containing the information in <i>FPCOB</i> 9 Annex 1.

<i>general solvency requirement</i>	the requirement specified in <i>FPCOB</i> 15.2.1R.
<i>instalment payment fee</i>	a fee which is additional to the cost of the <i>funeral plan product</i> and is charged to a <i>customer</i> in connection with a <i>firm</i> accepting payments by one or more instalments in respect of an <i>instalment payment funeral plan</i> .
<i>instalment payment funeral plan</i>	a <i>funeral plan contract</i> under which the <i>customer</i> is required to make more than one payment/periodic payments to the funeral provider.
<i>legacy funeral plan contract</i>	a <i>funeral plan contract</i> entered into before 1 January 2002.
<i>moratorium period</i>	the period under a <i>funeral plan contract</i> during which the <i>funeral plan provider</i> is not obliged to provide, or secure the provision of, a funeral on the death of the <i>covered individual</i> .
<i>new funeral plan</i>	a <i>funeral plan contract</i> entered into on or after 29 July 2022.
<i>nominated representative document</i>	a <i>document</i> in the format and containing the information in <i>FPCOB</i> 9 Annex 2.
<i>primary purpose</i>	the purpose set out in <i>FPCOB</i> 3.1.5R.
<i>protected funeral plan business</i>	<i>regulated funeral plan activities</i> which are covered by the <i>compensation scheme</i> , as defined in <i>COMP</i> 5.9.
<i>regulated funeral plan activity</i>	any <i>regulated activity</i> carried on in relation to a <i>funeral plan contract</i> , that is: <ul style="list-style-type: none">(a) <i>dealing in investments as agent</i> (article 21);(b) <i>arranging (bringing about) deals in investments</i> (article 25(1));(c) <i>making arrangements with a view to transactions in investments</i> (article 25(2));(d) <i>managing investments</i> (article 37);(e) <i>safeguarding and administering investments</i> (article 40);(f) <i>sending dematerialised instructions</i> (article 45(1));(g) <i>causing dematerialised instructions to be sent</i> (article 45(2));(h) <i>advising on investments (except P2P agreements)</i> (article 53(1));

- (i) *entering as provider into a funeral plan contract* (article 59(1));
- (j) *carrying out a funeral plan contract as provider* (article 59(1A)); and
- (k) *agreeing to carry on a regulated activity* in (a) to (j) (article 64).

<i>relevant transitional funeral plan complaint</i>	a <i>complaint</i> in respect of which the <i>Financial Ombudsman Service</i> has jurisdiction by operation of article 7 of the <i>Funeral Plans Order</i> .
<i>remediation plan</i>	a plan that is produced in accordance with <i>FPCOB</i> 3.2.6R and <i>FPCOB</i> 3.2.7R (including any amendments agreed with the <i>FCA</i> or imposed by the <i>FCA</i> by <i>requirement</i>).
<i>resolution rules</i>	the <i>rules</i> in <i>FPCOB</i> 16.
<i>solvency assessment report</i>	a report produced in accordance with <i>FPCOB</i> 3.2.2R and <i>FPCOB</i> 3.2.3R.
<i>subsisting funeral plan</i>	a <i>funeral plan contract</i> that was entered into before 29 July 2022.
<i>trust arrangement</i>	<ul style="list-style-type: none"> (1) in relation to a <i>new funeral plan</i>, a trust meeting the requirements of <i>FPCOB</i> 3.1.9R; (2) in relation to a <i>subsisting funeral plan</i>, a trust that was established to meet the requirements of article 60(1)(b) of the <i>Regulated Activities Order</i>, as it applied at that time.
<i>whole of life insurance policy</i>	<ul style="list-style-type: none"> (1) in relation to a <i>new funeral plan</i>, a <i>contract of insurance</i> meeting the requirements of <i>FPCOB</i> 3.1.8R; (2) in relation to a <i>subsisting funeral plan</i>, a <i>contract of insurance</i> that was entered into to meet the requirements of article 60(1)(a) of the <i>Regulated Activities Order</i>, as it applied at that time.

Amend the following definitions as shown.

<i>annual income</i>	<ul style="list-style-type: none"> (1) (in <i>MIPRU</i>) the income referred to in <i>MIPRU</i> 4.3. (2) (in <i>IPRU(INV)</i> 13) the income referred to in <i>IPRU(INV)</i> 13.14 (Calculation of annual income). (3) <u>(in <i>FPCOB</i> 15) the income referred to in <i>FPCOB</i> 15.8 (Calculation of annual income).</u>
<i>client</i>	...

- (B) in the *FCA Handbook*:
- (1) (except in *PROF*, in relation to a *credit-related regulated activity*, in relation to regulated funeral plan activity, in relation to a *home finance transaction* and in relation to *insurance risk transformation* and activities directly arising from *insurance risk transformation*) ...
- ...
- (11) (in relation to regulated funeral plan activity) a customer.

contract of insurance

...

but not including a *funeral plan contract* (~~or a contract which would be a funeral plan contract but for the exclusion in article 60 of the *Regulated Activities Order* (Plans covered by insurance or trust arrangements)~~); in this definition “annuities on human life” does not include superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of *persons* engaged, or who have been engaged, in any particular profession, trade or employment, or of the dependants of such *persons*.

customer

...

- (B) in the *FCA Handbook*:
- (1) (except in relation to *SYSC 19F.2*, *ICOBS*, a *credit-related regulated activity*, *regulated claims management activity*, regulated funeral plan activity, *MCOB 3A*, an *MCD credit agreement*, *CASS 5*, *PRIN* in relation to *MiFID or equivalent third country business*, *DISP 1.1.10-BR*, *PROD 1.4* and *PROD 4*) and in relation to *payment services* and issuing *electronic money* (where not a *regulated activity*) a *client* who is not an *eligible counterparty* for the relevant purposes.
- ...
- (9) (in relation to regulated funeral plan activity):
- (a) (except in *PRIN*) the person referred to in article 59 (2)(a) of the *Regulated Activities Order* who makes, or will make, one or more payments to another person under a funeral plan contract or prospective funeral plan contract;
- (b) (in *PRIN*) a ‘customer’ in (a) and, if different in relation to a funeral plan contract or prospective funeral plan contract, a covered individual.

<i>customer's best interests rule</i>	<p>(1) <u>(in relation to regulated funeral plan activity) FPCOB 2.1.2R.</u></p> <p>(2) <u>(for all other purposes) ICOBS 2.5.-1R.</u></p>
<i>dealing in investments as agent</i>	<p>the regulated activity, specified in article 21 of the <i>Regulated Activities Order</i> (Dealing in investments as agent), which is in summary: <i>buying, selling, subscribing for or underwriting designated investments (other than P2P agreements), pure protection contracts, general insurance contracts, or structured deposits or funeral plan contracts</i> as agent.</p>
<i>distribute</i>	<p>...</p> <p>(4) <u>(in relation to PROD 1.7 and PROD 7) advising on or proposing a funeral plan contract.</u></p>
<i>distributor</i>	<p>...</p> <p>(3) <u>(in relation to PROD 1.7 and PROD 7) a firm which advises on or proposes funeral plan contracts which it does not manufacture.</u></p>
<i>employee</i>	<p>...</p> <p>(2) (for the purposes of:</p> <p>...</p> <p>(b) SUP 12 (Appointed representatives); and</p> <p>(c) TC <u>TC</u>; and</p> <p>(d) <u>SYSC 19F.3)</u></p> <p>...</p>
<i>entering as provider into a funeral plan contract</i>	<p>the regulated activity, specified in article 59 of the <i>Regulated Activities Order</i> (Funeral plan contracts) which comes into force on 1 January 2002, of entering as provider into a <i>funeral plan contract</i>.</p>
<i>fair, clear and not misleading rule</i>	<p>(1) COBS 4.2.1R or (in relation to regulated claims management activity and ancillary activity,) <u>CMCOB 3.2.1R.</u></p> <p>(2) <u>(in relation to regulated funeral plan activity) FPCOB 4.1.3R.</u></p> <p>(3) <u>(for all other purposes) COBS 4.2.1R.</u></p>
<i>fee</i>	<p>...</p> <p>(3) <u>(in FPCOB) remuneration payable directly by a customer in relation to a funeral plan contract that is not included in the price of the funeral plan.</u></p>

	...	
<i>financial promotion rules</i>	...	
	(7)	<u>(in relation to <i>FPCOB</i>) any or all of the rules in <i>FPCOB</i> 4, that impose requirements in relation to a <i>financial promotion</i> but only to the extent that they apply to a <i>financial promotion</i>.</u>
<i>firm</i>	(1)	...
	...	
	(10)	...
	(10A)	<u>(in <i>DISP</i> 2 and 3) includes, in accordance with the <i>Funeral Plans Order</i>, an <i>unauthorised person</i> subject to the <i>Compulsory Jurisdiction</i> in relation to a <i>relevant transitional funeral plan complaint</i>.</u>
<i>former scheme</i>	(1)	(except in relation to a <i>relevant transitional complaint</i> , or a <i>relevant claims management complaint</i> <u>or a <i>relevant transitional funeral plan complaint</i></u>) any of the following:
	(a)	...
	...	
	(4)	<u>(in relation to a <i>relevant transitional funeral plan complaint</i>) the complaints procedure which is contained in the <i>Funeral Plans Authority's Code of Practice and Rules</i> in force immediately before 29 July 2022.</u>
<i>funeral plan contract</i>		the <i>investment</i> , specified in articles 59(2), 60 and 87 of the <i>Regulated Activities Order</i> which comes into force on 1 January 2002 , which is in summary: rights under a contract which:
	...	
		unless, at the time of entering into the contract, the customer and the provider intend or expect the funeral to occur within one month; but excluding certain contracts under which sums paid will be applied towards a <i>contract of insurance</i> or will be held on trust.
<i>individual capital guidance</i>	(1)	<u>(other than in (2)) guidance given to a <i>firm</i> about the amount and quality of capital resources that the <i>appropriate regulator</i> thinks the <i>firm</i> should hold at all times under the <i>overall financial adequacy rule</i> as it applies on a solo level or a consolidated level.</u>
	(2)	<u>(in <i>FPCOB</i> 15) guidance given to a <i>firm</i> about the amount and quality of capital resources that the <i>FCA</i> thinks the <i>firm</i> should hold at all times under <i>FPCOB</i> 15.2.1R (<i>General solvency requirement</i>).</u>

<i>individual liquidity guidance</i>	<p>(1) <u>(other than in (2)) guidance given to a firm about the amount, quality and funding profile of liquidity resources that the appropriate regulator has asked the firm to maintain.</u></p> <p>(2) <u>(in FPCOB 15) guidance given to a firm about the amount, quality and funding profile of liquidity resources that the FCA thinks the firm should hold at all times under FPCOB 15.2.1R (General solvency requirement).</u></p>
<i>manufacture</i>	<p>...</p> <p>(4) <u>(in relation to PROD 1.7 and PROD 7) any of:</u></p> <p style="margin-left: 20px;">(a) <u>creating;</u></p> <p style="margin-left: 20px;">(b) <u>developing;</u></p> <p style="margin-left: 20px;">(c) <u>designing; and/or</u></p> <p style="margin-left: 20px;">(d) <u>entering as provider into a funeral plan contract and/or carrying out a funeral plan contract as provider,</u></p> <p style="margin-left: 20px;"><u>a funeral plan product.</u></p>
<i>manufacturer</i>	<p>...</p> <p>(3) <u>(in relation to PROD 1.7 and PROD 7) a firm which manufactures funeral plan products for sale to customers.</u></p>
<i>payment shortfall</i>	<p>...</p> <p>(3) <u>the total sum of periodic instalments towards the purchase price of a funeral plan that have become due under the terms of the funeral plan contract but which, in breach of those terms, remains unpaid.</u></p>
<i>regulated activity</i>	<p>(B) in the <i>FCA Handbook</i>: (in accordance with section 22 of the Act (Regulated activities)) the activities specified in Part II (Specified activities), Part 3A (Specified activities in relation to information) and Part 3B (Claims management activities in Great Britain) of the <i>Regulated Activities Order</i>, which are, in summary: ...</p> <p>...</p> <p style="margin-left: 20px;">(t) <u>entering as provider into a funeral plan contract (article 59(1));</u></p> <p style="margin-left: 20px;">(t-a) <u>carrying out a funeral plan contract as provider (article 59(1A));</u></p> <p>...</p>

<i>relevant complaint</i>	(1)	(in <i>DISP</i>) a <i>relevant existing complaint</i> , <i>relevant new complaint</i> , a <i>relevant transitional complaint</i> , and (in <i>DISP</i> and <i>FEES 5</i>) a <i>relevant claims management complaint</i> <u>and a relevant transitional funeral plan complaint</u> .
	...	
<i>remuneration</i>	...	
	(3)	(in <i>SYSC 19F.2</i> , <u><i>SYSC 19F.3</i></u> , <i>ICOBS</i> and, in relation to a <i>life policy</i> , in <i>COBS 6.1ZA</i>) any commission, <i>fee</i> , charge or other payment, including an economic benefit of any kind or any other financial or non-financial advantage or incentive offered or given in respect of <i>insurance distribution activities</i> , <u><i>funeral plan distribution activities</i></u> or <u><i>funeral plan provision activities</i></u> . [Note: article 2(1)(9) of the <i>IDD</i>]
<i>respondent</i>	(1)	...
	...	
	(7)	(in <i>DISP 2</i> and <i>3</i> and <i>FEES 5</i>) includes, in accordance with the <u><i>Funeral Plans Order</i></u> , an <u><i>unauthorised person</i></u> subject to the <u><i>Compulsory Jurisdiction</i></u> in relation to a <u><i>relevant transitional funeral plan complaint</i></u> .
<i>third party processor</i>	(1)	A <i>firm</i> (“Firm A”) which carries on <i>home finance activities</i> , <u><i>funeral plan distribution activities</i></u> or <i>insurance distribution activities</i> other than <i>advising on life policies</i> , or both <u>all of these</u> , for another <i>firm</i> (or an <i>appointed representative</i>) (“Firm B”) under a properly documented <i>outsourcing</i> agreement, the terms of which provide that when Firm A carries on any of these activities (“the outsourced activities”) for Firm B: ...
	(2)	A <i>firm</i> (“Firm C”) which carries on <i>home finance activities</i> , <u><i>funeral plan distribution activities</i></u> or <i>insurance distribution activities</i> other than <i>advising on life policies</i> , or both <u>all of these</u> , for a <i>third party processor</i> within (1) (“Firm A”), where:

Annex B

Amendments to the Principles for Businesses (PRIN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Introduction

...

1.2 Clients and the Principles

...

Approach to client categorisation

1.2.2 G ~~Principles 6, 8 and 9 and parts of Principle 7, as qualified by PRIN 3.4.1R, apply only in relation to customers. The approach that a firm (other than for credit related regulated activities, and regulated claims management activities, payment services and issuing electronic money (where not a regulated activity) in relation to which client categorisation does not apply) needs to take regarding categorisation of clients into customers and eligible counterparties will depend on whether the firm is carrying on designated investment business, insurance risk transformation and activities directly arising from insurance risk transformation, or other activities, as described in PRIN 1.2.3G. [deleted]~~

- 1.2.3 G (1) In relation to the carrying on of *designated investment business*, *insurance risk transformation* and activities directly arising from *insurance risk transformation*, a firm's categorisation of a *client* under the *COBS client* categorisation chapter (*COBS 3*) will be applicable for the purposes of *Principles 6, 7, 8 and 9*. [deleted]
- (1AA) In relation to the carrying on of *insurance risk transformation* and activities directly arising from *insurance risk transformation*, the *COBS client* categorisation chapter (*COBS 3*) applies as modified by *COBS 18.6A.3R*.
- (1A) ~~Client~~ categorisation under *COBS 3* or *PRIN 1 Annex 1* is not relevant to *credit related regulated activities* and therefore the guidance on *client* categorisation does not apply in relation to a *credit related regulated activity*. The definitions of *client* and *customer* in relation to those *regulated activities* reflect the modified meaning of "consumer" in articles 36J, 39M, 60LA, 60S and 89E of the *Regulated Activities Order*, as well as the definitions of "individual" and of "relevant recipient of credit" in that Order.
- (1AB) ~~Client~~ categorisation under *COBS 3* or *PRIN 1 Annex 1R* is not relevant to *regulated claims management activities* and therefore the

~~guidance on *client* categorisation does not apply in relation to a regulated claims management activity.~~

- (2) ~~The person to whom a firm gives basic advice on a stakeholder product will be a retail client for all purposes, including the purposes of Principles 6, 7, 8 and 9.~~
- (3) ~~In relation to carrying on activities other than designated investment business, insurance risk transformation or activities directly arising from insurance risk transformation (for example, general insurance business or accepting deposits) the firm may choose to comply with Principles 6, 7, 8 and 9 as if all its clients were customers. Alternatively, it may choose to distinguish between eligible counterparties and customers in complying with those Principles. If it chooses to make such a distinction, it must comply with PRIN 1 Annex 1 in determining whether that client is an eligible counterparty (see PRIN 3.4.2R). In doing so, the requirements in SYSC will apply, including the requirement to make and retain adequate records.~~
- (4) ~~In relation to carrying on activities that fall within both (1) and (3) (for example, mixed designated investment business and accepting deposits), a firm's categorisation of a client under the COBS client categorisation chapter (COBS 3) will be applicable for the purposes of Principles 6, 7, 8 and 9.~~

...

Acting through an agent

1.2.6 G ...

...

3 Rules about application

...

3.2 What?

3.2.1A R *PRIN* applies with respect to the carrying on of:

...

- (3) *ancillary activities in relation to designated investment business, home finance activity, regulated funeral plan activity, credit-related regulated activity, insurance distribution activity and accepting deposits; and*

...

...

3.2.2A R ~~*PRIN 1 Annex 1, PRIN 3.4.1R and PRIN 3.4.2R do not apply with respect to the carrying on of credit-related regulated activities or regulated claims management activities, or to the provision of payment services or the issuing of electronic money (where not a regulated activity).*~~ [deleted]

...

3.4 General

Clients and the Principles

3.4.-1 R *PRIN 3.4.1R, PRIN 3.4.2R and PRIN 1 Annex 1 do not apply with respect to:*

- (1) *credit-related regulated activities; or*
- (2) *regulated claims management activities; or*
- (3) *regulated funeral plan activities; or*
- (4) *payment services; or*
- (5) *the issuing of electronic money (where not a regulated activity).*

...

3.4.3 G (1) ~~*COBS 3 (Client categorisation) applies to a firm intending to conduct, or conducting, designated investment business (other than giving basic advice), ancillary activities relating to designated investment business and to a firm intending to carry on, or carrying on, insurance risk transformation and activities directly arising from insurance risk transformation. Any client categorisation established in relation to such business will be applicable for the purposes of Principles 6, 7, 8 and 9.*~~ [deleted]

(2) ~~*The person to whom a firm gives basic advice will be a retail client for all purposes including the purposes of Principles 6, 7, 8 and 9.*~~

(3) ~~*PRIN 3.4.1R and PRIN 3.4.2R do not apply with respect to the carrying on of credit-related regulated activities. Client categorisation does not apply in relation to carrying on a credit-related regulated activity. The definitions of client and customer in relation to those regulated activities reflect the modified meaning of “consumer” in articles 36J, 39M and 89E of the Regulated Activities Order, as well as the definitions of “individual” and of “relevant recipient of credit” in that Order.*~~

(4) ~~*PRIN 3.4.1R and PRIN 3.4.2R do not apply with respect to the carrying on of regulated claims management activities. Client categorisation does not apply in relation to carrying on a regulated claims management activity.*~~

- (5) ~~*PRIN 3.4.1R and PRIN 3.4.2R do not apply with respect to the provision of payment services or the issuing of electronic money where it is not a regulated activity. Client categorisation does not apply in relation to carrying on of those activities. The definitions of customer in relation to those activities reflects the scope of the corporate opt out under the Payment Services Regulations.*~~

...

Annex C

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

1 Application and purpose

...

1 Annex Detailed application of SYSC

1

...

Part 2		Application of the common platform requirements		
		Who?		
...				
		What?		
...				
2.11	R	The <i>common platform requirements on financial crime</i> apply as set out in SYSC 1 Annex 1 2.8R, except that they do not apply:		
		...		
		(2)	in relation to the following <i>regulated activities</i> :	
			...	
		(g)	<i>reversion activity; and</i>	
		(h)	<i>meeting of repayment claims and managing dormant account funds (including the investment of such funds); and</i>	
		(i)	<i>regulated funeral plan activities.</i>	
...				

...

Table A: Application of the common platform requirements in SYSC 4 to SYSC 10

...

Provision SYSC 10	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
<u>SYSC 10.1.5G</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Guidance in relation to funeral plan distribution activities</u>
...				
SYSC 10.1.4R	Not applicable	Rule, but not applicable in relation to <i>insurance distribution activities</i>	Not applicable	Guidance - but applies as a rule in relation to the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with <i>COBS 12.2</i> Not applicable in relation to <i>insurance distribution activities</i> or <i>funeral plan distribution activities</i>
SYSC 10.1.4AG	Not applicable	Not applicable	Not applicable	Guidance - but not applicable in relation to <i>insurance distribution activities</i> or <i>funeral plan distribution activities</i>
SYSC 10.1.4BR	Not applicable	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i> and <i>funeral plan distribution activities</i>

SYSC 10.1.4CR	Not applicable	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities and funeral plan distribution activities</i>
...				
SYSC 10.1.6R	Not applicable	Rule	Rule in relation to <i>insurance distribution activities</i> . Otherwise, not applicable	Guidance - but applies as a rule: (a) in relation to the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with <i>COBS 12.2</i> ; and (b) in relation to <i>insurance distribution activities and funeral plan distribution activities</i>
SYSC 10.1.6AG	Not applicable	Not applicable	Guidance - but not applicable in relation to <i>insurance distribution activities</i>	Guidance - but not applicable in relation to <i>insurance distribution activities or funeral plan distribution activities</i>
SYSC 10.1.6AAR	Not applicable	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities and funeral plan distribution activities</i>
...				
SYSC 10.1.9AR	Not applicable	Rule in relation to <i>insurance distribution activities</i> . Otherwise, not applicable	Rule in relation to <i>insurance distribution activities</i> . Otherwise, not applicable	Guidance - but applies as a rule in relation to <i>insurance distribution activities and funeral plan distribution activities</i>

SYSC 10.1.10R	Not applicable	Rule	Rule in relation to <i>insurance distribution activities</i> . Otherwise, not applicable	Guidance - but applies as a rule: (a) in relation to the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with <i>COBS 12.2</i> ; and (b) in relation to <i>insurance distribution activities and funeral plan distribution activities</i>
SYSC 10.1.11R	Not applicable	Rule	Rule in relation to <i>insurance distribution activities</i> . Otherwise, not applicable	Guidance - but applies as a rule: (a) in relation to the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with <i>COBS 12.2</i> ; and (b) in relation to <i>insurance distribution activities and funeral plan distribution activities</i>
SYSC 10.1.11AG	Not applicable	Not applicable	Guidance - but not applicable in relation to <i>insurance distribution activities</i>	Guidance - but not applicable in relation to <i>insurance distribution activities or funeral plan distribution activities</i>
SYSC 10.1.11AA R	Not applicable	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities</i>	Rule in relation to <i>insurance distribution activities and funeral plan distribution activities</i>
...				

...

Table B: Application of the common platform requirements in SYSC 4 to 10 to MiFID optional exemption firms and third country firms

...

Provision	COLUMN A MiFID optional exemption firms	COLUMN B Third country firms
...

SYSC 6.1.4CR	<u>SYSC 6.1.4CR(2)(c) and SYSC 6.1.4CR(3) apply</u> as specified in that rule <u>SYSC 6.1.4CR</u> Otherwise not applicable.	SYSC 6.1.4CR(3) applies as specified in that rule <u>SYSC 6.1.4CR</u> Otherwise not applicable
...		

...

4 General organisational requirements

...

4.4 Apportionment of responsibilities

...

Allocating functions of apportionment and oversight

...

4.4.6 G Frequently asked questions about allocation of functions in SYSC 4.4.5R

Question		Answer
1	Does an individual to whom a function is allocated under SYSC 4.4.5R need to be an <i>approved person</i> ?	Yes. They will be performing the <i>limited scope function</i> . However, the <i>limited scope function</i> does not apply to an <i>EEA SMCR firm</i> (except claims management and <u>funeral plan firms</u>) or an <i>authorised professional firm</i> that is a <i>core SMCR firm</i> .
...
12	How does the requirement to allocate the functions in SYSC 4.4.5R apply to an <i>EEA SMCR firm</i> other than a claims management or <u>funeral plan firm</u> ?	...
...

...

10 Conflicts of interest

10.1 Application

Application to funeral plan distribution activities

10.1.-5 G This section applies to a firm carrying on funeral plan distribution activities in accordance with the tables in Part 3 of SYSC 1 Annex 1.

Application to insurance intermediaries

...

Types of conflicts

...

10.1.4B R For the purposes of identifying the types of conflict of interest that arise, or may arise, in the course of carrying on *insurance distribution activities* or *funeral plan distribution activities* and whose existence may damage the interests of a *client* (“A”), a *firm* must assess whether:

- (1) the *firm* or a *relevant person*, or a *person* directly or indirectly linked by *control* to the *firm*; or
- (2) (in the case of conflicts between A and another *client*) the other *client*, has an interest in the outcome of the *insurance distribution activities* or *funeral plan distribution activities*, which meets the following criteria:
- (3) it is distinct from A’s interest in the outcome of the *insurance distribution activities* or *funeral plan distribution activities*; and

...

...

Record of conflicts

10.1.6 R A management company, and an insurance intermediary and a firm carrying on funeral plan distribution activities must keep and regularly update a record of the kinds of service or activity carried out by or on behalf of that *firm* in which a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.

[Note: article 20(1) of the *UCITS implementing Directive*]

...

10.1.6A R An insurance intermediary and firm carrying on funeral plan distribution activities must ensure that its management body receives on a frequent basis, and at least annually, written reports on all situations referred to in SYSC 10.1.6R.

...

Disclosure of conflicts

10.1.8 R ...

(2) The disclosure must:

...

(c) include specific description of the conflicts of interest that arise in the provision of *funeral plan distribution activities*, *insurance distribution activities*, *investment services* or *ancillary services*;

...

...

...

Conflicts policy

10.1.10 R (1) *A management company, and an insurance intermediary and a firm carrying on funeral plan distribution activities* must establish, implement and maintain an effective *conflicts of interest policy* that is set out in writing and is appropriate to the size and organisation of the *firm* and the nature, scale and complexity of its business.

(2) Where the *management company, insurance intermediary or firm carrying on funeral plan distribution activities* is a member of a *group*, the policy must also take into account any circumstances, of which the *firm* is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the *group*.

...

Contents of policy

10.1.11 R (1) The *conflicts of interest policy* must include the following content:

(a) it must identify in accordance with SYSC 10.1.3 R, SYSC 10.1.4 R, SYSC 10.1.4BR and SYSC 10.1.4CR (as applicable), by reference to the specific services and activities carried out by or on behalf of the *management company, insurance intermediary or firm carrying on funeral plan distribution activities*, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more *clients*; and

...

(2) ...

- (a)
- (aa) (for an *insurance intermediary* or a *firm carrying on funeral plan distribution activities*) be designed to ensure that the *insurance distribution activities* or *funeral plan distribution activities* are carried out in accordance with the best interests of the *client* and are not biased due to conflicting interests of the *insurance intermediary*, the firm carrying on funeral plan distribution activities or another *client*; and
- (b) include, for an *insurance intermediary* or a *firm carrying on funeral plan distribution activities*, where appropriate, the following, and for a *management company*, such of the following as are necessary and appropriate for the *management company* to ensure the requisite degree of independence:

...

- (vi) (for *insurance intermediaries* or *firms carrying on funeral plan distribution activities*) a gifts and benefits policy which determines clearly under which conditions gifts and benefits can be accepted or granted and which steps are to be taken when accepting and granting gifts and benefits.

(3) ...

- (4) If one or more of the measures and procedures in paragraph (2) is not appropriate for the purposes of paragraph (2)(aa), an *insurance intermediary* or a *firm carrying on funeral plan distribution activities* must adopt such alternative measures and procedures as are necessary and appropriate.

- (5) The procedures and measures provided for in paragraph (1)(b) must be appropriate to the size and activities of an insurance intermediary's or a firm carrying on funeral plan distribution activities ~~size and activities~~, the *group* to which it may belong and to the risk of damage to the interests of the *client*.

...

- 10.1.11 G Other *firms* (except *common platform firms*, *UCITS management companies*, ~~and~~ *insurance intermediaries* and *firms carrying on funeral plan distribution activities*) should take account of the *rules* relating to *conflicts of interest policies* (see SYSC 10.1.10R and SYSC 10.1.11R) in accordance with SYSC 1 Annex 1.3.2BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R.

10.1.11 R An insurance intermediary and firm carrying on funeral plan distribution
AA activities must assess and periodically review, on at least an annual basis,
the *conflicts of interest policy* established in accordance with SYSC
10.1.10R and SYSC 10.1.11R and should take all appropriate measures to
address any deficiencies (such as over reliance on disclosure of conflicts of
interest).

...

10.1.11 G A *firm* (other than a *common platform firm*, ~~and an~~ and an *insurance*
B intermediary and a firm carrying on funeral plan distribution activities)
should read SYSC 10.1.11AAR as if “should” appeared in that rule instead
of “must”.

...

After SYSC 19F.2 (IDD remuneration incentives) insert the following new section SYSC
19F.3. The text is not underlined.

19F.3 Funeral plan remuneration incentives

Application

19F.3.1 R This section applies to a *firm* carrying on *regulated funeral plan activities*.

Remuneration and the customer’s best interests

19F.3.2 R (1) A *firm* must not:

(a) be *remunerated*; or

(b) *remunerate* or assess the performance of its *employees*,

in a way that conflicts with its duty to comply with the *customer’s best interests rule*.

(2) In particular, a *firm* must not make any arrangements by way of *remuneration*, sales target or otherwise that could provide an incentive to itself or its *employees* to recommend or offer a particular *funeral plan contract* to a *customer* when the firm could offer a different *funeral plan contract* which would better meet the *customer’s* needs.

19F.3.3 G (1) A *firm* should consider *FPCOB* 6.4R and *FPCOB* 6.5R when making arrangements which concern *remuneration* or performance incentives.

(2) Examples of remuneration arrangements which may conflict with the *customer’s best interests rule* include:

- (a) arrangements which provide for higher levels of *remuneration* based on the price of the plan that is recommended or offered (i.e. higher remuneration for selling a more expensive plan);
- (b) arrangements for *remuneration* or performance management which are based primarily on the number of plans sold, or the price of plans sold; and
- (c) arrangements which do not have adequate provision for *remuneration* to be taken back if the customer cancels the plan.

Amend the following as shown.

...

23 Senior managers and certification regime: Introduction and classification

...

23.2 Definitions and types of firms

...

23.2.3 G Broadly speaking, *firms* covered by the senior managers and certification regime that are regulated by the *FCA* are divided into three categories:

...

(3) *Firms* whose business is limited to certain types. These are called “*limited scope SMCR firms*”. A large number of *firms* will be in this category. The main examples are:

...

(e) a *firm* that only has *regulated claims management activities* in its *permission*; ~~and~~

(f) a *firm* that only has *permission* for benchmark activities and has the benefit of a *waiver* treating it as a *limited scope SMCR firm* as described in SYSC 23 Annex 1 6.12R (Benchmark firms: Waiver applying limited scope status); and

(g) a *firm* that only has *permission* for *funeral plan distribution activities*.

...

23 Definition of SMCR firm and different types of SMCR firms

Annex 1

...

Part Six: Definition of limited scope SMCR firm

...

...

6.4 R Table: List of limited scope SMCR firms referred to in SYSC 23 Annex 1
6.3R

...	
(5)	...
(6)	<u>A firm that meets the following conditions:</u>
	(a) <u>it has permission for any funeral plan distribution activities; and</u>
	(b) <u>it does not have permission to carry on any other regulated activity.</u>

...

27 Senior managers and certification regime: Certification regime

...

27.8 Definitions of the FCA certification functions

...

Client-dealing function

...

27.8.19 R Table: Activities covered by the client-dealing FCA certification function

Activity	Comments
(1) The following activities: (a) ... (b) performing other functions related to this, such as <u>dealing, and arranging and (where the product is a contract) entering into and carrying it out;</u>	...

(2) ...	
<p>(3) If the <i>firm</i> does any of the following activities:</p> <p>(a) <i>dealing</i>, as principal or as agent; or</p> <p>(b) <i>arranging (bringing about) deals in investments</i>; <u>or</u></p> <p>(c) <u>a funeral plan distribution activity (but not advising on investments) or a funeral plan provision activity</u>;</p> <p>taking part in those activities is included.</p>	...
...	

...

After SYSC 28 (Insurance distribution: specific knowledge, ability and good repute requirements) insert the following new chapter SYSC 28A. The text is not underlined.

28A Regulated funeral plan activities: good repute requirements

28A.1 Application

28A.1.1 R This chapter applies to a *firm* with respect to *regulated funeral plan activities*.

28A.2 Good repute

Good repute requirements

28A.2.1 R A *firm* must ensure that all the *persons* in its management structure and any staff directly involved in the activities specified in SYSC 28A.1.1R are of good repute.

28A.2.2 G This includes but is not limited to those natural *persons*:

- (1) that are directly involved in the activities specified in SYSC 28A.1.1R; or
- (2) within the management structure responsible for the activities specified in SYSC 28A.1.1R; or

- (3) within the management structure responsible for any staff directly involved in the activities specified in SYSC 28A.1.1R.

28A.2.3 R In considering a *person's* repute the *firm* must at a minimum ensure that the *person*:

- (1) has a clean criminal record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities; and

- (2) has not previously been declared bankrupt,

unless they have been rehabilitated in accordance with national law.

28A.2.4 G (1) In the *United Kingdom* the following *persons* will be considered to have been rehabilitated:

- (a) in relation to a serious criminal offence, where the conviction is considered 'spent' under the *Rehabilitation of Offenders Act 1974*;

- (b) in relation to bankruptcy, where the bankruptcy has been discharged.

- (2) References to "serious criminal offences" are not restricted to offences considered to have been committed in or under the law of the *United Kingdom*.

- (3) A *firm* should give particular consideration to offences of dishonesty, fraud, financial crime or other offences under legislation relating to banking and financial services, companies, insurance and consumer protection.

28A.2.5 G A *firm's* systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it (see SYSC 5.1.2G). This includes, among other things, the assessment of an individual's honesty.

28A.3 Record keeping requirements

Record keeping requirements

28A.3.1 R A *firm* must:

- (1) establish, maintain and keep appropriate records to demonstrate compliance with this chapter; and

- (2) be in a position to provide to the *FCA*, on request, the name of the person responsible for the record-keeping requirement in (1).

- 28A.3.2 R A *firm* must not prevent any person from obtaining a copy of the records relating to them which are maintained by the *firm* for the purposes of SYSC 28A.3.1R.
- 28A.3.3 G The rules specified in SYSC 28A.3.1R relate to the requirements specified in SYSC 5.1.1R, SYSC 9.1.1R and SYSC 10.1.6R.

Amend the following as shown.

...

TP 7 Bank of England and Financial Services Act 2016: Certification and regulatory references

7.1 Application and purpose

...

7.1.3 G SYSC TP 7:

...

- (3) has certain other transitional provisions relating to the amendments made to the *FCA Handbook* by the Individual Accountability (Dual-Regulated Firms) Instrument 2018, the Individual Accountability (FCA-Authorised Firms) Instrument 2019 and the Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020; ~~and~~
- (4) is adjusted and supplemented by SYSC TP 8 in relation to certain claims management *firms*; ~~and~~
- (5) does not apply to a *firm* that becomes an *SMCR firm* after 31 March 2021 except that:
- (a) it may apply after then in relation to certain claims management firms covered by SYSC TP 8; and
- (b) the parts of SYSC TP 7 that are described in the table in SYSC TP 7.1.2R (Table: Application of SYSC TP 7) as applying to “All other *firms*” might apply although in practice the material about employment references will not normally apply because of the time period in which SYSC TP 7 operates as described in SYSC TP 7.1.4G.

...

Annex D

Amendments to the Threshold Conditions sourcebook (COND)

Underlining indicates new text and striking through indicates deleted text.

2 The threshold conditions

...

2.5 Suitability

...

Paragraph 3D to Schedule 6 of the Act

...

2.5.6 G Examples of the kind of particular considerations to which the *FCA* may have regard when assessing whether a *firm* will satisfy, and continue to satisfy, this *threshold condition* include, but are not limited to, whether:

...

(18 in the case of a *firm* that carries on *regulated funeral plan activities*:
A)

(a) all the *persons* in the *firm's* management structure and any staff directly involved in *regulated funeral plan activities* are of good repute (see SYSC 28A.2 (Good repute)); and

(19 ...
)

Annex E

Amendments to the Training and Competence sourcebook (TC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 Competence

2.1 Assessing and maintaining competence

...

2.1.23C ...

Continuing professional development for persons involved in regulated funeral plan activities

2.1.23D R In this section, relevant employees are employees and other persons:

- (1) directly involved in regulated funeral plan activities; or
- (2) within the management structure responsible for the firm's regulated funeral plan activities; or
- (3) responsible for the supervision of a relevant employee acting in the capacity as set out in (1).

2.1.23E R In this section 'employee':

- (1) is not restricted to an individual working under a contract of employment; and
- (2) includes (without limitation) any natural or legal person whose services are placed at the disposal of the firm, under an arrangement between the firm and a third party; and
- (3) also includes appointed representatives and their employees.

2.1.23F R A firm must ensure that each relevant employee who has been assessed as competent for the purposes of TC 2.1.1R remains competent by completing a minimum of 15 hours of appropriate continuing professional development in each 12 month period.

2.1.23G R The appropriate continuing professional development in SYSC 2.1.23FR is in addition to any other continuing professional development completed. Continuing professional development completed by a relevant employee in relation to activities other than regulated funeral plan activities must not be taken into account for the purpose of SYSC 2.1.23FR.

2.1.23H R For the purposes of SYSC 2.1.23FR, a firm must take into account the:

- (1) role and activity carried out by the relevant employee within the firm;
and
- (2) the nature of the products sold.

- 2.1.23I G (1) Appropriate continued professional development has the same meaning as given in TC 2.1.22G(1), (3) to (5). For this purpose, reference to *retail investment adviser* should be read as if it were a reference to a relevant employee.
- (2) In relation to SYSC 2.1.23FR, the 15 hours of appropriate continuing professional development can include structured and unstructured training and need not consist of only formal classroom-based learning. For examples of structured and unstructured professional development see TC 2.1.20G and TC 2.1.21G.

- 2.1.23J R TC 2.1.17R (suspending the continuing professional development requirement) and related *guidance* apply in relation to a relevant employee and references to:
- (1) TC 2.1.15R must be read as if it were a reference to TC 2.1.23FR; and
 - (2) a *retail investment adviser* must be read as if it were a reference to a relevant employee.

Continuing professional development record keeping

- 2.1.24 R A *firm* must, for the purposes of TC 3.1.1R (Record keeping), make and retain records of:

- (1) the continuing professional development completed by each:
...
- (b) *pension transfer specialist* (under TC 2.1.23AR);
- (c) relevant employee (under TC 2.1.23FR)

and

- (2) the dates of and reasons for any suspension of the continuing professional development requirements under TC 2.1.17R₂ or TC 2.1.23CR or TC 2.1.23JR.

- 2.1.25 R A *firm* must not prevent a *retail investment adviser*, ~~or a *pension transfer specialist*~~ or a relevant employee from obtaining a copy of the records relating to them which are maintained by the *firm* for the purposes of TC 2.1.24R.

...

App 1 Appendix 1

App 1.1 Activities and Products/Sectors to which TC applies subject to TC Appendices 2 and 3

App
1.1.1

R

Activity	Products/Sectors	Is there an appropriate qualification requirement?
...		
Overseeing an execution-only sale on a day-to-day basis	26 <i>Regulated sale and rent back agreements</i>	No
<i>Regulated funeral plan activity carried on for a customer</i>		
<i>Dealing in investments as agent</i>	27 <i>Funeral plan contracts</i>	No
<i>Arranging (bringing about) deals in investments</i>	28 <i>Funeral plan contracts</i>	No
<i>Making arrangements with a view to transactions in investments</i>	29 <i>Funeral plan contracts</i>	No
<i>Managing investments</i>	30 <i>Funeral plan contracts</i>	No
<i>Safeguarding and administering investments</i>	31 <i>Funeral plan contracts</i>	No
<i>Sending dematerialised instructions</i>	32 <i>Funeral plan contracts</i>	No
<i>Causing dematerialised instructions to be sent</i>	33 <i>Funeral plan contracts</i>	No
<i>Advising on investments</i>	34 <i>Funeral plan contracts</i>	No
<i>Entering as provider into a funeral plan contract</i>	35 <i>Funeral plan contracts</i>	No

<u>Carrying out a funeral plan contract as provider</u>	36	<u>Funeral plan contracts</u>	<u>No</u>
<u>Agreeing to carry on a regulated activity</u>	37	<u>Funeral plan contracts</u>	<u>No</u>
Notes:			
...			

...

Sch 1 Record keeping Requirements

-1.1

G

<i>TC 2.1.24R</i> provides:	
A <i>firm</i> must, for the purposes of <i>TC 3.1.1R</i> (Record keeping), make and retain records of:	
(1)	the continuing professional development completed by each <i>retail investment adviser</i> and relevant employee for the purposes of <u><i>regulated funeral plan activities</i></u> ; and
(2)	the dates of and reasons for any suspension of the continuing professional development requirements under <i>TC 2.1.17R</i> or <u><i>TC 2.1.23JR</i></u> .

...

Annex F

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text.

5 Financial Ombudsman Service Funding

...

5 Annex 1R Annual General Levy Payable in Relation to the Compulsory Jurisdiction for 2020/21

...

Compulsory jurisdiction - general levy

Industry block	Tariff base	General levy payable by firm
...
<u>25 – funeral plan intermediaries and funeral plan providers</u>	<u>Annual income</u>	[tbc]

6 Financial Services Compensation Scheme Funding

6.1 Application

...

6.1.7A G In order to allocate a share of the amount of *specific costs* and *compensation costs* to be funded by an individual *participant firm*, the funding arrangements are split into ~~six~~ seven *classes*: the General Insurance Distribution Claims *class*; the Investment Intermediation Claims *class*; the Investment Provision Claims *class*; the Home Finance Intermediation Claims *class*; the Debt Management Claims *class*; ~~and the deposit acceptors’ contribution class~~; and the Funeral Plans Claims class. The *permissions* held by a *participant firm* determine into which *class*, or *classes*, it falls.

...

6 Annex 2 Financial Services Compensation Scheme – annual levy limits

This table belongs to FEES 6.3.5R

Class	Category	Levy Limit (£million)
...		
<u>Class 7: Funeral Plan Claims</u>		<u>5</u>

6 Annex 3A Financial Services Compensation Scheme – classes and categories

This table belongs to FEES 6.5.6AR

...

Class 2	Investment Intermediation Claims
...	...
Category 2.2	Life insurance provision
Firms with permission for:	<i>effecting contracts of insurance;</i> and/or <i>carrying out contracts of insurance;</i> <i>that are long-term insurance contracts (including pure protection contracts); and/or</i> <i>entering as provider into a funeral plan contract.</i>
Also includes:	the <i>Society</i>
...	
Class 6	Deposit acceptors' contribution
...	
<u>Class 7</u>	<u>Funeral Plan Claims</u>
<u>Firms with permission for:</u>	<u>any of the following in relation to a funeral plan contract:</u>

	<u>entering as provider into a funeral plan contract;</u>
	<u>carrying out a funeral plan contract as provider;</u>
	<u>dealing in investments as agent;</u>
	<u>arranging (bringing about) deals in investments;</u>
	<u>making arrangements with a view to transactions in investments;</u>
	<u>managing investments;</u>
	<u>safeguarding and administering investments;</u>
	<u>sending dematerialised instructions;</u>
	<u>causing dematerialised instructions to be sent;</u>
	<u>advising on investments;</u>
	<u>agreeing to carry on a regulated activity which is within any of the above.</u>
<u>Tariff base</u>	<u>Annual eligible income where annual income is equal to the net amount retained by the firm of all income due to the firm in respect of or in relation to activities falling within class 7.</u>
<p><u>Notes on annual eligible income for class 7: For the purposes of calculating annual income, net amount retained means all the commission, fees, etc. in respect of activities falling within class 7, that the firm has not rebated to customers or passed on to other firms (for example, where there is a commission chain). Items such as general business expenses (for example, employees' salaries and overheads) must not be deducted.</u></p>	

Annex G

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

4 Communicating with clients, including financial promotions

4.1 Application

Who? What?

4.1.1 R This chapter applies to a *firm*:

...

(2) *communicating or approving a financial promotion other than:*

...

(d) *a financial promotion in relation to a credit agreement, a consumer hire agreement or a credit-related regulated activity;*
or

(e) a financial promotion in relation to a funeral plan contract or a regulated funeral plan activity.

...

...

Annex H

Amendments to the Product Intervention and Product Governance sourcebook (PROD)

After PROD 1.6 (Application of PROD 6) insert the following new section, PROD 1.7. The text is not underlined.

1 Product Intervention and Product Governance Sourcebook (PROD)

...

1.7 Application of PROD 7

Application of PROD 7

1.7.1 R (1) *PROD 7* applies to:

(a) a *funeral plan provider*; and

(b) a *funeral plan intermediary*,

with respect to:

(c) *manufacturing funeral plan products*; and

(d) *distributing funeral plan products*.

1.7.2 R A Gibraltar-based firm must also comply with the provisions in *PROD 7* (Product governance: funeral plans).

Manufacturing a funeral plan product

1.7.3 G The *Glossary* term ‘manufacture’ includes ‘designing, developing, creating and/or entering into or carrying out a *funeral plan contract* as provider’ which cover activities prior to the *funeral plan product* being approved for marketing and distributed, and on a continuing basis after such approval.

1.7.4 R (1) For the purposes of *PROD 7*, a *funeral plan intermediary* is a *manufacturer* of a *funeral plan product* where an overall analysis of their activity shows that they have a decision-making role in designing and developing a *funeral plan contract* for the market.

(2) A decision-making role will be assumed, in particular, where a *funeral plan intermediary* autonomously determines the essential features and main elements of a *funeral plan contract*, including any of its price, costs, target market or guarantee rights, which are not substantially modified by the *funeral plan provider*.

(3) Personalisation of and adaptation of existing *funeral plan products* in the context of *funeral plan distribution activities* for individual *customers*,

as well as the design of tailor-made contracts at the request of a single *customer*, are not manufacturing.

Territorial scope

- 1.7.5 R *PROD 7* applies to a *firm* with respect to activities carried on by it, or its *appointed representative*, in relation to:
- (1) a *funeral plan product*; and
 - (2) a *subsisting funeral plan*.

Interaction of PROD 7 and the RPPD Guide

- 1.7.6 G The *RPPD* Guide does not apply to a *firm* to which *PROD 7* applies for matters covered by, and where the *firm* has complied with, *PROD 7*.

After PROD 6 (Product governance: additional provisions for pathway investments) insert the following new chapter, PROD 7. The text is not underlined.

7 Product governance: funeral plans

7.1 General

Other requirements

- 7.1.1 G This chapter does not affect the application of other requirements in the *FCA Handbook* applying to *funeral plan providers* or *firms* in relation to *funeral plan distribution activities* including but not limited to:
- (1) Identification and management of conflicts of interest (*SYSC 10.1* (Conflicts of interest));
 - (2) Funeral plan remuneration incentives (*SYSC 19F.3* Funeral plan remuneration incentives));
 - (3) Structure arrangements (*FPCOB 3* (Structure provisions-arrangements underpinning a funeral plan contract));
 - (4) Disclosure (*FPCOB 6* (Information about the firm and its services) and *FPCOB 9* (Product information));
 - (5) Remuneration (*FPCOB 6.4* (Charging for funeral plan distribution) and *FPCOB 6.5* (Payments to funeral plan intermediaries)).

7.2 Manufacture of funeral plans

Product governance arrangements: product approval

- 7.2.1 R A *manufacturer* must maintain, operate and review a process for the approval of:

- (1) a *funeral plan product*; and
- (2) any significant adaptation of an existing *funeral plan product*,

in each case before it is marketed or distributed to *customers*.

- 7.2.2 G (1) *PROD 7.2.1R(1)* includes any *funeral plan product* whether a new product manufactured on or after [29 July 2022] or any *existing funeral plan product*. In relation to an *existing funeral plan product*, references in *PROD 7.2* and *7.3* to ‘marketing’ or ‘distributing’ includes reference to any future activity regardless of whether the product has previously been made available for marketing or distribution.
- (2) For the purposes of *PROD 7.2.2R(2)*:
- (whether a proposed change to the product would be a ‘significant a adaptation’ should include consideration of the potential impact the) adaptation may have on an existing or potential *customer* (when compared to the unadapted version of the product).
- (a ‘significant adaptation’ in relation to a *funeral plan product* may b include, but is not restricted to, a proposed change to the) undertaking to provide funeral arrangements, services added or removed, level of monetary benefits (other than adjustments for inflation or other cost variations) costs, and any other significant change to the terms and conditions.

Product governance arrangements: identifying the necessary approval process

- 7.2.3 R The product approval process in *PROD 7.2.1R* must be proportionate and appropriate to the nature of the *funeral plan product*.
- 7.2.4 G A *manufacturer* should take into account the following when considering whether the product approval process is proportionate and appropriate:
- (1) the complexity of the *funeral plan product*;
 - (2) the degree to which publicly available information can be obtained;
 - (3) the nature of the funeral plan and the risk of *consumer* detriment related to it;
 - (4) the characteristics of the target market;
 - (5) the scale and complexity of the relevant business of the *manufacturer* or *distributor*;
 - (6) the potential risk, and possible levels, of harm to *customers* if the product design is flawed, in particular, due to the potential scale of harm if the product is intended for a wide target market;

- (7) the nature of the cover that the product is intended to provide;
- (8) whether the distribution arrangements could mean *customers* are at a greater risk of not receiving fair value from the product;
- (9) any particularly notable features of, or relating to, existing products (including how it has been distributed); and
- (10) the nature and complexity of the *firm's* existing or intended *customer* base, for example whether it includes or is likely to include:
 - (a) different types of *customers* with varying characteristics including in relation to their understanding of financial matters; and
 - (b) a significant number of vulnerable *customers*.

Product approval process: outcomes, measures and procedures

- 7.2.5 R A *manufacturer* must have a product approval process that:
- (1) ensures the design of a *funeral plan product*:
 - (a) identifies how funeral arrangements will be provided;
 - (b) delivers fair value;
 - (c) takes into account the intended *customers* including their objectives, interests, needs and characteristics;
 - (d) does not adversely affect *customers*; and
 - (e) is driven by features that benefit the *customer* and not by a business model which relies on poor *customer* outcomes to be profitable;
 - (2) prevents or mitigates *customer* detriment; and
 - (3) supports a proper management of conflicts of interest.
- 7.2.6 R The product approval process must contain appropriate measures and procedures for:
- (1) the design, distribution, monitoring and review of a *funeral plan product*;
 - (2) identifying whether the product is, or remains, appropriate to be marketed or distributed to *customers*; and
 - (3) taking corrective and/or mitigating action for *funeral plan products* where actual or potential *customer* detriment is identified.

Product approval process: written policy and record keeping

- 7.2.7 R A *manufacturer* must set out the product approval process in a written document (“product oversight and governance policy”), which is made available to the relevant staff.
- 7.2.8 R A *manufacturer* must make and retain a record of any relevant actions taken in relation to the product approval process. The record must be made available to the *FCA* upon request.

Product approval process: governing body responsibility

- 7.2.9 R A *manufacturer’s governing body* must:
- (1) endorse and be responsible for establishing, implementing and reviewing the product approval process; and
 - (2) verify internal compliance with that process on an ongoing basis.

Product approval process: staff competence

- 7.2.10 R A *manufacturer* must ensure that any of its staff involved in the *manufacture* of a *funeral plan product* has the necessary skills, knowledge and expertise to properly carry out this role and in particular to understand the *funeral plan product* and the interests, objectives and characteristics of the *customers* belonging to the target market. (Also see SYSC 5.1.1R (competent employee rule)).
- 7.2.11 R Where a *manufacturer* uses a third party to undertake any part of the *manufacture* of the *funeral plan product* on its behalf, the *manufacturer* remains fully responsible for compliance with the product approval process.

Product approval process: review of process

- 7.2.12 R
- (1) A *manufacturer* must regularly review its product approval process to ensure that process is still appropriate and up to date.
 - (2) Where the process is identified to no longer be appropriate, the *manufacturer* must:
 - (a) amend the product approval process;
 - (b) review any product approved since the approval process was last deemed to be appropriate to:
 - (i) ensure these products were correctly approved for marketing and/or distribution; and
 - (ii) take all necessary steps for the mitigation and remediation of any actual or potential harm to *consumers*.

Product approval process: manufacture by more than one manufacturer

- 7.2.13 R (1) Where two or more *firms* collaborate to *manufacture a funeral plan product*, the *firms* must outline their mutual responsibilities in a signed written agreement.
- (2) The written agreement in (1) must specify:
- (a) their respective roles in the product approval process; and
 - (b) how they will collaborate to comply with the requirements in *PROD 7.2* (Manufacture of funeral plans) including the procedures through which they will agree on the identification of the target market.

Product approval process: need for product to have fair value

- 7.2.14 R A *manufacturer* must only approve a *funeral plan product* where it provides fair value to *customers* in the target market.

- 7.2.15 R (1) A *manufacturer* must:
- (a) be able to clearly demonstrate how any *funeral plan product* provides fair value; and
 - (b) make and retain a record of the value assessment required by *PROD 7.2.14R*.
- (2) Where a *firm* is unable to both:
- (a) identify; and
 - (b) clearly demonstrate,
- that the *funeral plan product* will provide fair value, the *manufacturer* must not:
- (c) market the *funeral plan product*; or
 - (d) permit the *funeral plan product* to be *distributed* (whether directly or through another person),
- unless the *manufacturer* has ensured appropriate changes have been made so that fair value will be provided.

Product approval process: meaning of value

- 7.2.16 R In *PROD 7* 'value' means the relationship between the total price to the *customer* and the quality of the product(s) and/or services provided. The assessment of value must include consideration of at least the following:

- (1) the nature of the product including the benefits that will be provided, their quality, and any limitations (for example in the scope of the funeral arrangements or other features);
- (2) the type and quality of services provided to *customers*;
- (3) the expected total price to be paid by the *customer* when buying the *funeral plan product*, and the elements that make up the total price. This will need to include consideration of at least the following:
 - (a) the overall cost to the *firm* of the *funeral plan product* of:
 - (i) operating the product including the costs of the trust or *premiums* paid towards an *insurance policy* to meet the requirements in *FPCOB 3* (Structure provisions - arrangements underpinning a funeral plan contract); and
 - (ii) the delivery of funeral benefits under it, and
 - (b) the individual elements of the expected total price to be paid by the *customer* including, but not limited to:
 - (i) the *funeral plan product*;
 - (ii) the costs of the distribution arrangements, including the remuneration of any relevant person in the distribution arrangements, and including where a *manufacturer* delegates the final decision on setting the price to another person; and
- (4) how the intended distribution arrangements support, and will not adversely affect, the intended value of the product.

7.2.17 R A *manufacturer* must not rely on individual *customers* to consider whether they are making fair value purchases in place of any part of the *manufacturer's* own assessment.

Product approval process: events indicating contravention of fair value

7.2.18 G The following *evidential provision* provides examples of arrangements the *FCA* considers will breach *PROD 7.2.14R*.

7.2.19 E (1) To ensure a *funeral plan product* will be providing fair value a *firm* must ensure:

- (a) the difference between the cost of delivering the *funeral plan contract* obligations to the *manufacturer* and the total price paid by the *customer* bears a reasonable relationship to:

- (i) the actual costs incurred by the *manufacturer* or any other person involved in the distribution arrangements;
 - (ii) the quality of any benefits (including of the *funeral plan product*); or
 - (b) any difference between the cost of the funeral arrangements under the *funeral plan product* and the cost of the equivalent funeral arrangements purchased without a *funeral plan contract* has an objective and reasonable basis.
- (2) Contravention of any of (1) may be relied on as tending to establish contravention of *PROD 7.2.14R*.

Product approval process: information to be used when assessing a product for approval

- 7.2.20 R When assessing whether a product should be approved for the purposes of *PROD 7.2.1R*, a *firm* must use the full range of data and information available to it including but not limited to:
- (1) information available to the *firm* internally including:
 - (a) *customer* research;
 - (b) the performance of the *funeral plan product* or other *funeral plan products* of the *firm* including for example:
 - (i) how the estimated costs of funerals compare to actual costs;
 - (ii) number of *customers* cancelling the *funeral plan contracts*, missed instalment plan payments by the *customer*; and
 - (iii) number of *funeral plan contracts* expected to be claimed but have not been redeemed;
 - (c) complaints data (including root cause analysis and handling times), both expected for the product itself and/or any actual information from a comparable product;
 - (2) public information or information obtainable by the *firm* from external sources including analysis of similar *funeral plan products* available from other *firms*;
 - (3) information available to the *firm* specifically from persons in the distribution arrangements or external funeral provider, including:
 - (a) any remuneration and its impact on the value of the product;

- (b) levels or quality of service provided by any person in the distribution arrangements;
- (c) any results of monitoring and oversight of the processes of any persons in the distribution arrangement (for example, call monitoring or file checks) including in relation to other products that person *distributes*; and
- (d) the wholesale and retail prices of a funeral not paid for using a *funeral plan contract* (whether paid for in advance or after the death of a person).

Product approval process: product backing arrangements

- 7.2.21 R A *manufacturer* must only approve a *funeral plan product* where it has established adequate processes and procedures to ensure:
- (1) any *funeral plan contracts* entered into using that product will have the necessary and robust trust or *insurance* arrangements required to comply with *FPCOB 3* (Structure provisions – arrangements underpinning a funeral plan contract); and
 - (2) at a product level, there is sufficient oversight and management of those trust or *insurance* arrangements to mitigate the risk of *customer* harm.

Product approval process: identifying the target market

- 7.2.22 R A *manufacturer* must ensure that for each *funeral plan product* the product approval process:
- (1) specifies an identified target market;
 - (2) assesses all relevant risks to the identified target market;
 - (3) identifies that a *funeral plan product* offers fair value to the specified target market, taking into account in particular their needs, objectives, interests, characteristics;
 - (4) permits only the approval of *funeral plan products* that are compatible with the needs, characteristics and objectives of the *customers* belonging to the target market;
 - (5) verifies that the intended distribution strategy is consistent with the identified target market; and
 - (6) requires reasonable steps are taken to ensure that the *funeral plan product* is distributed to the identified target market.

- 7.2.23 R A *manufacturer* must identify the target market at a sufficiently granular level, taking into account the characteristics, risk profile, complexity and nature of the *funeral plan product*.
- 7.2.24 R A *manufacturer* must identify groups of *customers* for whose needs, characteristics and objectives the *funeral plan product* is generally not compatible.
- 7.2.25 R When assessing whether a *funeral plan product* is compatible with a target market, a *manufacturer* must take into account:
- (1) the level of information available to the *customers* belonging to that target market and their financial literacy; and
 - (2) vulnerable *customers*.
- 7.2.26 G
- (1) The identification of the target market should describe a group of *customers* sharing common characteristics at an abstract and generalised level in order to enable the *manufacturer* to adapt the features of the product to the needs, characteristics and objectives of that group of *customers*.
 - (2) The identification of the target market should be distinguished from the individual assessment at the point of sale to determine whether a product meets the demands and needs of the individual *customer*.

Product approval process: product testing

- 7.2.27 R
- (1) A *manufacturer* must test a *funeral plan product* appropriately, including scenario analyses, in a qualitative manner and quantitative manner.
 - (2) The product testing in (1) must assess whether the *funeral plan product* over its lifetime meets the identified needs, objectives and characteristics of the target market.
 - (3) The requirement in (1) must be carried out:
 - (a) before approving the product for marketing or distribution;
 - (b) when the product is being significantly adapted; and
 - (c) where the target market has significantly changed.
- 7.2.28 R A *manufacturer* must not bring a *funeral plan product* to the market if the results of the product testing show that the product does not provide fair value including where it would not meet the identified needs, objectives and characteristics of the target market.

Distribution channels: selecting channels

- 7.2.29 R A *manufacturer* must carefully select distribution arrangements including specific distribution channels that are appropriate for the target market, taking into account the particular characteristics of the relevant *funeral plan product*.
- 7.2.30 R (1) When selecting any distribution arrangements including any particular distribution channel a *manufacturer* must be able to demonstrate clearly that these arrangements:
- (a) result in fair value to the *customer*;
 - (b) are consistent with the requirements in *FPCOB* 6.4 (charging for funeral plan distribution); and
 - (c) prevent or mitigate the risk of *customer* detriment arising from the distribution of the product, for example by verifying that any proposed distributor has the necessary knowledge, expertise and competence; and does not pose a significant risk of a distribution channel failing to meet the requirements in *FPCOB*.
- (2) A *manufacturer* that is unable to demonstrate the requirements in (1) are met must not use that channel.
- 7.2.31 G *Manufacturers* should only select *distributors* that have the necessary knowledge, expertise and competence to understand the features of a *funeral plan product* and the identified target market.
- 7.2.32 R Whenever making a change to the distribution arrangements, including adding a further distribution channel, a *manufacturer* must:
- (1) obtain all necessary information from the *distributor* or any other person who will be involved with the distribution arrangement, including that set out in *PROD* 7.2.20R; and
 - (2) identify whether the proposed change to the distribution arrangements is consistent with the fair value requirement in *PROD* 7.2.14R.

Distribution channels: information disclosure to distributors

- 7.2.33 R (1) A *manufacturer* must make available to a *distributor* all appropriate information on the:
- (a) *funeral plan product* including to enable the *distributor* to understand the intended value established by the *firm*;
 - (b) product approval process;
 - (c) identified target market of the *funeral plan product* including any type of *customer* for whom the *funeral plan product* is unlikely to provide fair value; and

- (d) suggested distribution strategy.
 - (2) The information in (1) must:
 - (a) include information on the main features and characteristics of the *funeral plan products*, their risks and costs, including implicit costs, and any circumstances which might cause a conflict of interest to the detriment of the *customer*;
 - (b) be clear, complete and up to date.
- 7.2.34 R (1) The information a *manufacturer* has to make available to any *distributor* under *PROD 7.2.33R(1)* must be of an adequate standard to enable *distributors* to:
- (a) understand the *funeral plan products*;
 - (b) comprehend the identified target market for the *funeral plan products*;
 - (c) identify any *customers* for whom the *funeral plan products* are not compatible with their needs, characteristics and objectives; and
 - (d) carry out distribution activities for the relevant funeral plans in accordance with the *best interests of their customers* as prescribed in *FPCOB 2.1.2R*.
- (2) A *manufacturer* is not required to disclose specific information objectively considered to be commercially sensitive if the information it does make available would still allow *distributors* to meet *PROD 7.2.35R(1)(a)* and (b).

Distribution channels: obtaining information from distributors

- 7.2.35 R A *manufacturer* must obtain from any person in the distribution arrangements all necessary and relevant information to enable it to assess the remuneration associated with the distribution arrangements to allow it to assess the ongoing value of the product, including at least:
- (1) the total costs of the distribution arrangement whether as part of the *funeral plan contract* price or not, including in relation to *additional products*;
 - (2) a sufficiently detailed breakdown of the costs in (1) identifying the type and level of remuneration of each person in the distribution arrangements together with an explanation of the services provided by that person; and

- (3) confirmation from any *firm* in the distribution arrangements that any remuneration is consistent with their regulatory obligations including SYSC 19F.3 (Funeral plan remuneration incentives).
- 7.2.36 G (1) Where the *manufacturer* is considering the effects of the distribution arrangements on value it should consider whether the additional costs of any individual party in the arrangements that add to the total price paid by the *customer* deliver any, or a proportional, additional benefit. If not, a *manufacturer* should consider how they can be satisfied that the arrangements are consistent with their obligations to be able to clearly demonstrate fair value to the *customer*.
- (2) A benefit that could be consistent with fair value might include where the party's inclusion in the distribution arrangements increases access to the product for *customers* in the target market in a way that is proportionate to the additional cost involved.

Monitoring and review of funeral plan products

- 7.2.37 R A *manufacturer* must regularly review the *funeral plan products* it offers or markets taking into account any event that could materially affect the potential risk to the identified target market, the main features or the guarantees of the *funeral plan product*. In doing so, the *manufacturer* must assess at least the following:
- (1) whether the *funeral plan product* remains consistent with:
 - (a) the identified target market including their interests, needs, characteristics and objectives;
 - (b) the fair value assessment required under *PROD 7.2.14R*; and
 - (2) whether the intended distribution strategy remains appropriate including whether those products are being distributed to the target market or are reaching *customers* outside the target market.
- 7.2.38 R A *manufacturer* must ensure the review process has:
- (1) the necessary measures to be able to identify if the *funeral plan product* is not providing fair value; and
 - (2) in that case, provide that appropriate actions be taken:
 - (a) for the mitigation and any potential remediation of the harm to existing *customers*; and
 - (b) to prevent harm to new *customers*.

Monitoring and review of funeral plan products: minimum review period

- 7.2.39 R A *manufacturer* must undertake the regular review:

- (1) every 12 *months*; or
- (2) more frequently where the potential risk associated with the *funeral plan product* makes it appropriate to do so.

7.2.40 R When determining the appropriate interval for review of a funeral plan, a *manufacturer* must take into account:

- (1) the nature of the *customer* base, including whether there are significant numbers of vulnerable *customers*;
- (2) any specific indicators seen in the *manufacturer's* assessment of the product's value to the *customer*;
- (3) the nature and type of distribution arrangements being used;
- (4) any indicators of *customer* harm potentially emerging from the performance of the product (for example through redemptions of *funeral plan contracts*, missed instalment plan payments by the *customer*, number of *funeral plan contracts* expected to be redeemed but have not been redeemed and complaints data); and
- (5) any relevant external factors such as changes to the applicable legal rules, technological developments, or changes to the market situation.

Product monitoring and review: monitoring through lifetime of the plan

- 7.2.41 R
- (1) A *manufacturer* must identify during the lifetime of a *funeral plan product* any circumstances related to the *funeral plan product* that may adversely affect a *customer* of that product.
 - (2) Where a *manufacturer* identifies an event that may adversely affect a *customer* of the product, the *manufacturer* must:
 - (a) take appropriate action to mitigate the situation and prevent further occurrences of the detrimental event; and
 - (b) promptly inform concerned *distributors* and *customers* about the remedial action taken.

Product monitoring and review: monitoring distribution arrangements

- 7.2.42 R
- (1) A *manufacturer* must take appropriate steps to monitor:
 - (a) that a *funeral plan product distributor* acts in accordance with the objectives of the *manufacturer's* product approval process; and
 - (b) any impact which the distribution arrangements are having on the value including whether the distribution channels remain appropriate.

- (2) *A manufacturer* must verify on a regular basis whether the *funeral plans products* are distributed on the identified target market.
- (3) The monitoring activities must be reasonable, taking into consideration the characteristics and the legal framework of the respective distribution channels.

7.2.43 G *PROD 7.2* does not require the *manufacturer* to monitor a *distributor's* compliance with general regulatory requirements when carrying out *funeral plan distribution activities* for individual *customers*.

7.2.44 R *A manufacturer* must:

- (1) ensure that it has sufficient, good quality management information; and
- (2) use the full range of data and information available to it (whether it holds this information already, the information is publicly available, or it is able to obtain it from another person),

to enable it to properly understand and monitor the *funeral plan product*.

7.2.45 G *A manufacturer* should identify whether there is a risk to its continuing to provide fair value where there is a material change in the relationship between the price to the *customer* and the actual costs to the *manufacturer* or another party involved in the ongoing service/distribution of the product.

Product monitoring and review: considering changes to funeral plan products

7.2.46 R For the purposes of showing the requirement in *PROD 7.2.1R* is met, where a *manufacturer* makes a change to a *funeral plan product* it must make and retain a record of:

- (1) the assessment of whether that change would amount to a significant adaptation of the *funeral plan product*; and
- (2) where the assessment in (1) is that the change would not be a significant adaptation, the reasons for that decision.

Product monitoring and review: remedial and mitigating action

7.2.47 R *Manufacturers* considering that the distribution of their *funeral plan products* is not in accordance with the objectives of their product approval process must take appropriate remedial action including but not limited to:

- (1) amending the distribution arrangements, including ceasing to use certain *distributors* or distribution channels;
- (2) amending remuneration structures;

- (3) withdrawing the *funeral plan product* from continued marketing or distribution.
- (4) paying redress as appropriate.

7.3 Distribution of funeral plans

Distribution arrangements: general requirements

7.3.1 R A *distributor* must have in place product distribution arrangements containing appropriate measures and procedures to:

- (1) aim to prevent and mitigate *customer* detriment;
- (2) be consistent with the aim of providing fair value to the *customer*;
- (3) support a proper management of conflicts of interest; and
- (4) ensure that the objectives, interests and characteristics of *customers* are duly taken into account.

Distribution arrangements: obtaining and understanding information

7.3.2 R (1) A *distributor* must ensure the product distribution arrangements contain effective measures and procedures to:

- (a) obtain from the *manufacturer* all appropriate information sufficient, adequate and reliable about the *funeral plan products* they intend to offer to their *customers* to ensure that they will be distributed in accordance with the characteristics, objectives and needs of the target market; and
 - (b) fully comprehend those *funeral plan products*, taking into account the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the *distributor*.
- (2) The information in (1) must be sufficient to understand:
- (a) the characteristics of each *funeral plan product*;
 - (b) the outcome of the value assessment required by *PROD* 7.2.14R, including:
 - (i) the value that the *funeral plan product* is intended to provide to the *customer*; and
 - (ii) the impact that the distribution arrangements (including any remuneration it, or another *person* in the distribution chain to which it belongs, receives) has on

the overall value of the *funeral plan product* to the *customer*; and

- (c) the identified target market of each *funeral plan product*, including any identified group of *customers* for whom the *funeral plan product* is not expected to provide fair value.

7.3.3 R For the purposes of *PROD 7.3.2R* a *distributor* must consider at least the following:

- (1) the benefits the product is intended to provide to the *customer*;
- (2) the characteristics, objectives, interests and needs of the target market;
- (3) the interaction between the price paid by the *customer* and the extent and quality of any services the *distributor* (or any person connected to it) provides;
- (4) whether any remuneration it receives in relation to the *funeral plan product* would result in the product ceasing to provide fair value to the *customer*.

Distribution arrangements: events indicating contravention of fair value

7.3.4 G The following *evidential provision* provides examples of what the *FCA* considers indicate that the *customer* is not being provided fair value which, if relied on by a *firm*, the *FCA* considers will breach *PROD*.

- 7.3.5 E
- (1) A *firm* should ensure that no person at any stage of the distribution chain receives a level of remuneration which does not bear a reasonable relationship to the person's actual costs, or their contribution, level of involvement or the benefit added by them, to the arrangements for the distribution of the product, including where the person provides little or no benefit beyond that which the *customer* would receive if they obtained the *funeral plan product* through another distribution channel.
 - (2) A *firm* must not have, and must ensure that no other person in the distribution arrangement has, remuneration arrangements which give an incentive to propose or recommend a *funeral plan product* which either does not meet the *customer's* needs (or not as well as another product would) or is not in accordance with the *customer's best interests rule*.
 - (3) A *firm* must ensure that the level of any remuneration (for which any person in the distribution arrangement is responsible for setting) is reasonably reflective of the costs actually incurred.
 - (4) Contravention of any of *PROD 7.3.5E* (1) to (3) may be relied upon as tending to establish contravention of *PROD 7.3.1R*.

Distribution arrangements: disclosing information to manufacturers

- 7.3.6 R A *distributor* must, upon request, provide *manufacturers* with:
- (1) information on the *distributor's* remuneration in connection with the distribution of the *funeral plan product*;
 - (2) information on any additional product or service that the *distributor* provides to the *customer*, which may affect the *manufacturer's* intended value of the product;
 - (3) relevant sales information, including, where appropriate, information on the regular reviews of the product distribution arrangements; and
 - (4) confirmation that the distribution arrangements are consistent with the obligations of the *firm* under the *FCA Handbook* including in particular in SYSC 10.1 (Conflicts of interest) and SYSC 19F.3 (Funeral plan remuneration incentives).

Distribution arrangements: record keeping

- 7.3.7 R A *distributor* must set out the product distribution arrangements in a written document and make it available to their relevant staff.
- 7.3.8 R A *distributor* must ensure that all relevant actions taken by it or any other party in relation to their product distribution arrangements are:
- (1) duly documented;
 - (2) kept for audit purposes; and
 - (3) made available to the *FCA* upon request.

Distribution arrangements: senior management responsibility

- 7.3.9 R A *distributor's governing body* must:
- (1) endorse and be ultimately responsible for establishing, implementing and reviewing the product distribution arrangements; and
 - (2) verify internal compliance with those arrangements on an ongoing basis.

Distribution arrangements: consistency with target market

- 7.3.10 R A *distributor* must ensure that any specific distribution strategy that it sets up or applies is consistent with:
- (1) the distribution arrangements set up by the *manufacturer*; and

- (2) the target market identified in *PROD 7.2* (Manufacture of funeral plans) including any *customers* to whom the product should not be distributed.

Distribution arrangements: review of distribution arrangements

- 7.3.11 R (1) A *distributor* must regularly review, at least every 12 *months*, their product distribution arrangements to ensure that those arrangements are still valid and up to date.
- (2) When determining the appropriate intervals for the regular review of their product distribution arrangements, a *distributor* must take into account the size, scale and complexity of the *funeral plan product* involved.
- 7.3.12 R When reviewing the product distribution arrangements, a *distributor* must verify that the *funeral plan products* are distributed to the identified target market.

Distribution arrangements: amending distribution arrangements after review

- 7.3.13 R A *distributor* must amend the product distribution arrangements, where appropriate, in view of the outcome of the review of the product distribution arrangements.
- 7.3.14 R When a *distributor* becomes aware:
- (1) that a *funeral plan product* is not in line with the interests, objectives and characteristics of its identified target market; or
 - (2) of other product-related circumstances that may adversely affect the *customer*,
- it must promptly:
- (3) inform the *manufacturer*; and
 - (4) where appropriate, amend the distribution arrangements for that *funeral plan product*.
- 7.3.15 R (1) A *distributor* must take appropriate remedial and mitigating action, including to amend its product distribution arrangements, where it identifies:
- (a) a product is not providing fair value for *customers*;
 - (b) any aspects of a product that may mean it does not offer fair value; or

- (c) the distribution arrangements including remuneration structures may mean the *customer* is not being provided with fair value.
 - (2) The actions which the *distributor* takes for (1) must:
 - (a) aim to mitigate the situation and prevent further occurrences of any possible harm to *customers*, including, where appropriate, amending the distribution strategy for that product; and
 - (b) include informing any relevant *manufacturers* promptly about any concerns they have and any action the *distributor* is taking.
- 7.3.16 G For the purposes of *PROD 7.3.15R* the steps a *distributor* may need to take include (but are not limited to):
- (1) amending its remuneration structures;
 - (2) amending the distribution arrangements;
 - (3) improving the quality of, or ceasing, any service or benefits it provides;
 - (4) where the failure to provide fair value is due to the costs or quality of additional products, renegotiating the terms of the current arrangements relating to the additional products, or selecting alternative providers or *distributors* of them, in order to provide for a fair outcome;
 - (5) ceasing to distribute certain products, or ceasing to use certain distribution channels;
 - (6) contacting existing *customers* to inform them of the issues and of the measures being taken to rectify them; and
 - (7) providing redress to *customers*.

7.4 Product governance requirements for subsisting funeral plans

Product governance arrangements

- 7.4.1 R This section applies to a *funeral plan provider* in relation to a *subsisting funeral plan*.
- 7.4.2 R A *funeral plan provider* must ensure that, in relation to its *subsisting funeral plans*, there are adequate product governance arrangements in place, containing appropriate measures and procedures, to ensure a *subsisting funeral plan* is carried out in way that complies with the *firm's* regulatory obligations under the *FCA Handbook*.

Monitoring and review of funeral plan products

- 7.4.3 R A *firm* must:
- (1) regularly review its *subsisting funeral plans* taking into account any event that could cause material harm to the *customers*; and
 - (2) ensure the review process in (1), provides that appropriate actions be taken for the mitigation and any potential remediation of the harm to existing *customers*.

Monitoring and review of funeral plan products: minimum review period

- 7.4.4 R (1) A *firm* must undertake the regular review at least every 12 *months*.
- (2) When determining the appropriate interval for review of a funeral plan, a *firm* must take into account:
- (a) the nature of the *customer* base, including whether there are significant numbers of vulnerable *customers*;
 - (b) any indicators of *customer* harm potentially emerging from the performance of the product; and
 - (c) any relevant external factors such as changes to the applicable legal rules, technological developments, or changes to the market situation.

Product monitoring and review: remedial and mitigating action

- 7.4.5 R (1) A *firm* must identify during the lifetime of a *subsisting funeral plan* any circumstances related to it that may adversely affect a customer.
- (2) Where a *firm* identifies an event that may adversely affect a *customer* holding the funeral plan contract, the *firm* must:
- (a) take appropriate action to mitigate the situation and prevent further occurrences of the detrimental event; and
 - (b) promptly inform concerned *customers* about the remedial action taken.

Insert the following new Transitional Provision, PROD TP 2 (Transitional provisions for Funeral Plan Products) after PROD TP 1 (Transitional provisions). The text is not underlined.

TP 2 Transitional Provisions for Funeral Plan Products

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision:
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					coming into force
2.1	<i>Rules in PROD 7.2 in relation to an existing funeral plan product</i>	R	<p>Where an <i>existing funeral plan product</i>:</p> <p>(1) has, before [29 July 2022], been available for marketing and distribution; and</p> <p>(2) remains available for distribution,</p> <p>a <i>manufacturer</i> must ensure the requirements in <i>PROD 7.2</i> have been met to continue to be marketed and distributed after [29 July 2022].</p>	From [29 July 2022]	[29 July 2022]
2.2	<i>PROD 7.2 and PROD TP 2.1</i>	G	<p>The effect of <i>PROD TP 2.1</i> and the requirements in <i>PROD 7.2</i> is that where the <i>firm</i> is unable to demonstrate it has satisfied these requirements then the <i>firm</i> will need to:</p> <p>(1) cease any distribution of the product, whether directly or through another person, immediately; and/or</p> <p>(2) take any necessary steps to ensure the product meets the requirements in <i>PROD 7.2</i>, including that it offers fair value before marketing or distributing the product after [29 July 2022].</p>		
2.3	<i>PROD 7.2</i>	G	When identifying the necessary product approval process and arrangements and whether the	From [29 July 2022]	[29 July 2022]

			requirements in <i>PROD</i> 7.2 are met, a <i>manufacturer</i> may take into account any previous product governance arrangements including reviews which the <i>manufacturer</i> (or where there is more than one <i>manufacturer</i> , any other <i>manufacturer</i>) has undertaken and the extent to which these would or would not have complied with <i>PROD</i> requirements.		
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Annex I

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

10A FCA Approved Persons in Appointed Representatives

...

10A.10 Customer-dealing functions

...

Customer function (CF 30)

10A.10.7 R The *customer function* is the function of:

(1) *advising on investments* other than a *non-investment insurance contract* (but not where this is *advising on investments* in the course of carrying on the activity of giving *basic advice* on a *stakeholder product*) and performing other functions related to this such as *dealing*, ~~and *arranging*~~ and (where the product is a contract) *entering into and carrying it out*;

...

(7) in relation to *bidding in emissions auctions*, acting as a ‘bidder’s representative’ within the meaning of subparagraph 3 of article 6(3) of the *auction regulation*; ~~and~~

(8) *performing a funeral plan distribution activity (but not *advising on investments*) or a funeral plan provision activity.*

...

10C FCA senior managers regime for approved persons in SMCR firms

...

10C What functions apply to what type of firm

Annex 1

...

Part Seven: Functions applying to limited scope firms

7.1 R *Limited scope SMCR firms* are divided into the following categories for the purposes of SUP 10C Annex 1:

- (1) ...
- (2) ...
- (2A) a firm falling within row (6) of the table in SYSC 23 Annex 1 6.4R (funeral plans);
- ...
- ...
- 7.3 R (1) The table in SUP 10C Annex 1 7.4R sets out which FCA controlled functions apply to a limited scope SMCR firm covered by SUP 10C Annex 1 7.1R(1), (2), (2A), (3), (4), (4A), (8) or (9).
- ...
- 7.4 R Table: Controlled functions applying to limited scope SMCR firms except sole traders and authorised professional firms
- ...

Part 2 (Claims management <u>and funeral plan</u> firms)				
(1) Brief description of function	(2) Function number	(3) Class 1 claims management firms	(4) Other claims management firms	(5) <u>Funeral plan firms</u>
Required functions				
<i>Compliance oversight function</i>	SMF 16	×
<i>Limited scope function</i>	SMF 29	☐

Notes to the table
<p>Note (1): The categories of <i>firm</i> in the column headings of this table are to be interpreted in accordance with the classification of <i>firms</i> at SUP 10C Annex 1 7.1R. Therefore:</p> <p>...</p> <p>(4) column three of Part 2 of the table (Class 1 claims management firms) refers to SUP 10C Annex 1 7.1R(8); and</p> <p>(5) column four of Part 2 of the table (Other Claims management firms) refers to SUP 10C Annex 1 7.1R(9); and</p> <p>(6) column five of Part 2 of the table (Funeral plan firms) refers to SUP 10C Annex 1 7.1R(2A).</p>

...

12 Appointed representatives

...

12.2 Introduction

...

Business for which an appointed representative is exempt

12.2.7 G (1) The *Appointed Representatives Regulations* are made by the Treasury under sections 39(1), (1C) and (1E) of the *Act*. These regulations describe, among other things, the business for which an *appointed representative* may be exempt or to which sections 20(1) and (1A) and 23(1A) of the *Act* may not apply, which is business which comprises any of:

(a) *dealing in investments as agent* (article 21 of the *Regulated Activities Order*) where the transaction relates to:

(i) a *pure protection contract* (but only where the contract is not a *long-term care insurance contract*) or *general insurance contract*; or

(ii) a *funeral plan contract*;

...

...

12.7 Notification requirements

...

Notification of appointed representatives undertaking regulated funeral plan activity

12.7.6A R (1) A firm must notify the FCA in good time before:

(a) it appoints an appointed representative to carry on regulated funeral plan activity for the first time; or

(b) the number of its appointed representatives appointed to carry on regulated funeral plan activity increases through a material threshold.

(2) A firm that has appointed one or more appointed representatives to carry on regulated funeral plan activity must notify the FCA in good

time before it appoints an *appointed representative* to carry on any other *regulated activity* for the first time.

12.7.6B G The purpose of SUP 12.7.6AR is to ensure that the FCA is notified when a firm diversifies its activities around regulated funeral plan activities. This may be because the firm:

- (1) intends to appoint an *appointed representative* for the first time where the scope of business for which the firm will accept responsibility will include regulated funeral plan activity;
- (2) is the principal to one or more appointed representatives:
 - (a) and intends to expand the scope of business of one or more of those appointed representatives for which it accepts responsibility to include regulated funeral plan activity; or
 - (b) in relation to which it has accepted responsibility for regulated funeral plan activity only and it intends to expand the scope of business of those, or new, appointed representatives for which it accepts responsibility beyond such activity.

12.7.6C R A firm must submit to the FCA at least once a year a list of those of its appointed representatives which:

- (1) undertake regulated funeral plan activity; and
- (2) are the subject of a multiple principal agreement (for the purposes of SUP 12.4.5BR).

12.7.6D G (1) For the purposes of SUP 12.7.6AR(1)(b), an increase through a material threshold should be understood as referring to an increase in the number of appointed representatives undertaking regulated funeral plan activity:

- (a) from fewer than 25 to 25 or more;
- (b) from fewer than 50 to 50 or more;
- (c) from fewer than 75 to 75 or more;
- (d) from fewer than 100 to 100 or more;
- (e) from fewer than 200 to 200 or more;
- (f) from fewer than 500 to 500 or more.

(2) Any notification required by SUP 12.7.6AR or SUP 12.7.6CR is in addition to any notification required by any other rule in SUP 12 (including the requirement to notify the FCA of the intention to appoint individual appointed representatives in SUP 12.7.1R).

- (3) A firm making a notification in accordance with SUP 12.7.6AR or SUP 12.7.6CR should consider the guidance in SUP 15.7 on the form and method of notification.

...

16 Reporting requirements

16.1 Application

...

- 16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.15, SUP 16.16, SUP 16.17, SUP 16.22 and SUP 16.26)

(1) Section(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
...		
SUP 16.4 and SUP 16.5	All categories of <i>firm</i> except:	Entire sections
	...	
	(jc)) <u>a firm with permission to carry on only funeral plan distribution activities;</u>	
	(k) a <i>firm</i> falling within a combination of (i), (ia), (j), (ja), and (jb) and (jc).	
...		
Note 1 [deleted]		
...		

...

16.12 Integrated Regulatory Reporting

...

Purpose

- 16.12.2 G (1) *Principle 4* requires firms to maintain adequate financial resources. The Interim Prudential sourcebooks, *BIPRU*, *GENPRU*, ~~and~~ *IFPRU* and, for *firms engaged in regulated funeral plan activity*, *FPCOB* set

out the *FCA's* detailed capital adequacy requirements. By submitting regular data, *firms* enable the *FCA* to monitor their compliance with *Principle 4* and their prudential requirements.

...

Reporting requirement

16.12.3 R ...

(3) Paragraph (2) does not apply to:

...

(b) *firms* in RAG 2 in relation to the reporting requirements for RAG 2 activities (except the funeral plan provision activities); and

...

...

...

16.12.4 R Table of applicable rules containing *data items*, frequency and submission periods

(1)		(2)	(3)	(4)
<i>RAG</i> number	<i>Regulated activities</i>	Provisions containing:		
		applicable <i>data items</i>	reporting frequency/period	due date
...				
RAG 2.1	<ul style="list-style-type: none"> • effecting contracts of insurance • carrying out contracts of insurance • entering as provider into a funeral plan contract • <u>carrying out a funeral plan</u> 	<u>RAG 2.1 firms should complete their prudential reporting requirements as set out in the PRA Rulebook except firms carrying out funeral plan provision activities in relation to which SUP 16.12.8AR applies.</u>		

	<u>contract as provider</u>			
...				
RAG 9	<ul style="list-style-type: none"> • <i>home finance mediation activity</i> • <i>insurance distribution activity (non-investment insurance contracts)</i> • <u><i>funeral plan distribution activity</i></u> 	SUP 16.12.28AR	SUP 16.12.28AR	SUP 16.12.28AR
...				

...

Regulated Activity Group 2.1

16.12.8 R The applicable *data items*, reporting frequencies and submission deadlines referred to in SUP 16.12.4R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

A

<u>Description of data item</u>	<u>Data item (note 1)</u>	<u>Frequency</u>	<u>Submission deadline</u>
<u>Funeral plan conduct return</u>	FP001	<u>Quarterly (note 2)</u>	<u>15 business days after the quarter end</u>
<u>Funeral plan financials return: providers</u>	FP003a	<u>Half yearly (note 3)</u>	<u>80 business days after the half year end</u>
<u>Note 1</u>	<u>When submitting the completed data item required, a firm must use the format of the data item set out in SUP 16 Annex []R. Guidance notes for the completion of the data items are set out in SUP 16 Annex [].</u>		

<u>Note 2</u>	<u>Reporting frequencies and reporting periods for this data item are calculated on a calendar year basis and not from a firm's accounting reference date. Quarters end on 31 March, 30 June, 30 September and 31 December.</u>
<u>Note 3</u>	<u>Reporting frequencies and reporting periods for this data item are calculated on a calendar year basis and not from a firm's accounting reference date. The relevant half year periods end on 30 June and 31 December.</u>

...

Regulated Activity Group 9

...

16.12.2 R The applicable *data items*, reporting frequencies and submission deadlines referred to in SUP 16.12.4R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

Description of data item	Data item (note 1)	Frequency		Submission deadline
		Annual regulated business revenue up to an including £5 million	Annual regulated business revenue over £5 million	
<u>Home finance mediation activity and insurance distribution activity</u>				
Balance Sheet	Section A RMAR	Half yearly	Quarterly	30 <i>business days</i>
...				
Fees and levies	Section J RMAR	Annually	Annually	30 <i>business days</i>
<u>Funeral plan distribution activity</u>				
<u>Funeral plan financials return:</u>	<u>FP003b</u>	<u>Half yearly (note 5)</u>		<u>80 <i>business days</i></u>

<u>distributors (note 4)]</u>			
...			
<u>Note 4</u>	<u>When submitting the completed <i>data item</i> required, a <i>firm</i> must use the format of the <i>data item</i> set out in SUP 16 Annex []. Guidance notes for the completion of the <i>data item</i> are set out in SUP 16 Annex [].</u>		
<u>Note 5</u>	<u>Reporting frequencies and reporting periods for this <i>data item</i> are calculated on a calendar year basis and not from a <i>firm's</i> <i>accounting reference date</i>. The relevant half year periods end on 30 June and 31 December.</u>		

...

Authorised professional firms

16.12.3 R (1) An *authorised professional firm*, other than one that must comply with IPRU(INV) 3, 5 or 13 in accordance with IPRU(INV) 2.1.4R, or one that is a *CASS debt management firm* or one that carries on only *credit-related regulated activity* as a *non-mainstream regulated activity*, must submit an annual questionnaire, contained in SUP 16 Annex 9R, unless:

(a) its only *regulated activities* are one or more of:

...

(v) *mortgage administration*; ~~or~~

(vi) *funeral plan distribution activities*; or

...

...

TP 11A Bank of England and Financial Services Act 2016: Approved persons in solo-regulated firms

11A.1 Application, purpose and definitions

...

11A.1.2 G ...

(3) SUP TP 11A does not apply to a *firm* that becomes a **solo-regulated SMCR firm** after the **commencement date**. There is a limited exception to this in SUP TP 11A.24 (Claims management firms) for

a firm that still has a *claims management temporary permission* at the **commencement date**.

...

Annex J

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Treating complainants fairly

1.1 Purpose and application

Purpose

...

1.1.10 R In relation to a *firm*'s obligations under this chapter, references to a *complaint* also include an expression of dissatisfaction which is capable of becoming a: ~~relevant new complaint, a relevant transitional complaint, a relevant new credit-related complaint, or a relevant new claims management complaint.~~

(1) relevant new complaint;

(2) relevant transitional complaint;

(3) relevant new credit-related complaint;

(4) relevant new claims management complaint; or

(5) relevant transitional funeral plan complaint.

...

1.10 Complaints reporting rules

1.10.1 R (1) Unless (2) applies, twice a year a *firm* must provide the *FCA* with a complete report concerning *complaints* received from *eligible complainants*.

(2) If a *firm*:

(a) ...

(b) has permission to carry on only:

(i) regulated claims management activities; or

(ii) regulated funeral plan activities.

the *firm* must provide the *FCA* with a complete report concerning *complaints* received from *eligible complainants* once a year.

- (3) The report required by (1) and (2) must be set out in the format in:
- (a) *DISP* 1 Annex 1R, in respect of *complaints* which do not relate to *regulated claims management activity* or any activity ancillary to *regulated claims management activity*; ~~and~~
 - (b) *DISP* 1 Annex 1ABR, in respect of *complaints* relating to *regulated claims management activity* or any activity ancillary to *regulated claims management activity*; and
 - (c) *DISP* 1 Annex 1ACR, in respect of *complaints* relating to *regulated funeral plan activities*.

...

...

1.10.2B R ...

1.10.2C R *DISP* 1 Annex 1ACR requires (for the relevant reporting period) information about:

- (1) in Table 1, the total number of *complaints* received by the *firm* and the main focus of the *complaint*;
- (2) in Table 2:
 - (a) the number of *complaints* that were closed or upheld within different time periods; and
 - (b) the total amount of redress paid by the *firm* in relation to *complaints* upheld and not upheld in the relevant reporting period.

1.10.3 G For the purposes of *DISP* 1.10.2R, *DISP* 1.10.2-AR, *DISP* 1.10.2AR, ~~and~~ *DISP* 1.10.2BR and *DISP* 1.10.2CR, when completing the return, the *firm* should take into account the following matters.

- (1) ...
- (2) Under *DISP* 1.10.2R(1)(b), *DISP* 1.10.2R(2)(b), *DISP* 1.10.2-AR, ~~or~~ *DISP* 1.10.2BR(2) or *DISP* 1.10.2CR(2), a *firm* should report information relating to all *complaints* which are closed and upheld within the relevant reporting period, including those resolved under *DISP* 1.5 (Complaints resolved by close of the third business day). Where a *complaint* is upheld in part, or where the *firm* does not have enough information to make a decision yet chooses to make a goodwill payment to the complainant, a *firm* should treat the *complaint* as upheld for reporting purposes. However, where

a *firm* rejects a *complaint* yet chooses to make a goodwill payment to the complainant, the *complaint* should be recorded as ‘rejected’.

- (3) If a *firm* reports on the amount of redress paid under *DISP* 1.10.2R(1)(b)(ii), *DISP* 1.10.2R(2)(b)(ii), *DISP* 1.10.2-AR(4), *DISP* 1.10.2AR, ~~or~~ *DISP* 1.10.2BR(2)(b) or *DISP* 1.10.2CR(2)(b), redress should be interpreted to include an amount paid, or cost borne, by the *firm*, where a cash value can be readily identified, and should include:

(a) ...

...

- (4) If a *firm* reports on the amount of redress paid under *DISP* 1.10.2R(1)(b)(ii), *DISP* 1.10.2R(2)(b)(ii), *DISP* 1.10.2-AR(4), ~~or~~ *DISP* 1.10.2AR or *DISP* 1.10.2CR(2)(b), the redress should not, however, include repayments or refunds of premiums which had been taken in error (for example where a *firm* had been taking, by direct debit, twice the actual premium amount due under a policy). The refund of the overcharge would not count as redress.

...

...

1.10A Complaints data publication rules

Obligation to publish summary of complaints data or total number of complaints

- 1.10A.1 R (1) Unless (1A) applies to the *firm*, where, in accordance with *DISP* 1.10.1R, a *firm* submits a report to the *FCA* reporting 500 or more *complaints*, it must publish a summary of the *complaints* data contained in that report (the *complaints* data summary).

(1A) (a) This paragraph applies to a *firm* which:

(i) has *permission* to carry on only *credit-related regulated activities* or to *operate an electronic system in relation to lending*; and

(ii) has revenue arising from those activities that is less than or equal to £5,000,000 a year.

(aa) This paragraph also applies to a *firm* which has *permission* to carry on only:

(i) regulated claims management activities; or

(ii) regulated funeral plan activities.

...

...

1 Annex 1B Complaints publication report

Number of complaints opened by volume of business

Product / service grouping	Provision (at reporting period end date)	Intermediation (within the reporting period)
----------------------------	--	--	-----	-----	-----	-----	-----	-----

...

Claims management per 1000 claims in progress and/or leads generated

Funeral plans per 1000 plans in force per 1000 plans sold

...

Note 1: ...

...

Note: 5 When a *firm* publishes the ‘main cause of complaints opened’, this should be the cause category prompting the largest number of complaints for the relevant product/service grouping in, as applicable, Table 4 of Part A-2, *DISP 1 Annex 1*, Table 1 of *DISP 1 Annex 1ABR* or Table 1 of *DISP 1 Annex 1CR*

After DISP 1 Annex 1AB (Claims management complaints and redress return form) insert the following new Annex, DISP 1 Annex 1ACR. The text is not underlined.

[To insert new form that will be DISP 1 Annex 1ACR]

...

Amend the following as shown.

2 Jurisdiction of the Financial Ombudsman Service

2.1 Purpose, interpretation and application

Purpose

2.1.1 G The purpose of this chapter is to set out *rules* and guidance on the scope of the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction*, which are the *Financial Ombudsman Service's* two jurisdictions:

(1) the *Compulsory Jurisdiction* is not restricted to *regulated activities, payment services*, issuance of *electronic money*, and *CBTL business* and covers:

(a) ...

(b) *relevant complaints* against former members of *former schemes* under the *Ombudsman Transitional Order*, the *Mortgage and General Insurance Complaints Transitional Order*, ~~and~~ the *Claims Management Order* and the *Funeral Plans Order*;

...

...

2.1.2 G *Relevant complaints* covered by the *Compulsory Jurisdiction* comprise:

(1) ...

...

(6) *relevant existing claims management complaints* referred to the *Legal Ombudsman* before 1 April 2019 and inherited by the *Financial Ombudsman Service* under the *Claims Management Order*; ~~and~~

(7) *relevant new claims management complaints* about events which took place before 1 April 2019 but referred to the *Financial Ombudsman Service* on or after 1 April 2019 under the *Claims Management Order*; and

- (8) relevant transitional funeral plan complaints about events which took place before 29 July 2022 but referred to the *Financial Ombudsman Service* on or after 29 July 2022 in accordance with article 7 of the *Funeral Plans Order*.

...

2.3 To which activities does the Compulsory Jurisdiction apply?

...

Activities by firms and unauthorised persons subject to a former scheme

2.3.2 G The *Ombudsman* can also consider under the *Compulsory Jurisdiction*:

(1) ...

...

(2B) as a result of the *Funeral Plans Order*, a relevant transitional funeral plan complaint that relates to an act or omission by a firm or unauthorised person which was subject to a former scheme at the time of the act or omission;

...

(3) ...

...

2.5 To which activities does the Voluntary Jurisdiction apply?

2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:

(1) it is not covered by the *Compulsory Jurisdiction*; and

(2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:

(a) ...

...

(c) activities, other than *regulated claims management activities* and activities ancillary to *regulated claims management activities*, which (on ~~IP completion day~~ 29 July 2022) would be covered by the *Compulsory Jurisdiction*, if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP 2 Annex 1G*);

...

- (cb) an activity which would be a regulated funeral plan activity and would be covered by the Compulsory Jurisdiction if it were carried on in relation to a funeral in the United Kingdom.

...

...

...

2.5.3 G *DISP 2.5.1R(2)(a)* is for those that are subject to the *Compulsory Jurisdiction* for *regulated activities* but are not covered by any of the following:

- (a) the *Ombudsman Transitional Order*,
- (b) the *Mortgage and General Insurance Complaints Transitional Order*,
- (c) the *Claims Management Order*, or
- (d) the Funeral Plans Order.

It enables the *Financial Ombudsman Scheme* to cover *complaints* about earlier events relating to those activities before they became *regulated activities*.

...

2.6 What is the territorial scope of the relevant jurisdiction?

...

Voluntary jurisdiction

2.6.4A G ...

2.6.4B G Complaints about activities which would be regulated funeral plan activities but which are not regulated funeral plan activities (for example, services carried on in relation to a funeral outside of the United Kingdom) may be covered by the Voluntary Jurisdiction under DISP 2.5.1R(2)(cb).

2.7 Is the complainant eligible?

...

Eligible complainants

...

- 2.7.8 G In the *Compulsory Jurisdiction*, under the *Ombudsman Transitional Order*, the *Mortgages and General Insurance Complaints Transitional Order*, ~~and~~ *Claims Management Order* and the *Funeral Plans Order*, where a complainant:
- (1) wishes to have a *relevant new complaint*, a *relevant transitional complaint*, ~~or~~ a *relevant new claims management complaint*, or a *relevant transitional funeral plan complaint* dealt with by the *Ombudsman*; and

...

...

2 Annex 1 Regulated Activities for the Voluntary Jurisdiction on IP completion day

This table belongs to *DISP 2.5.1R*

- G The activities which were covered by the *Compulsory Jurisdiction* (on ~~IP completion day~~ 29 July 2022) were:

- (1) ...

...

The activities which (on ~~IP completion day~~ 29 July 2022) were *regulated activities* were, in accordance with section 22 of the *Act* (Regulated Activities), any of the following activities specified in Part II and Parts 3A and 3B of the *Regulated Activities Order* (with the addition of administering a benchmark):

- (1) ...

...

- (39) *entering as provider into a funeral plan contract* (article 59);

- (39A) *carrying out a funeral plan contract as provider* (article 59(1A));

...

...

3 Complaint handling procedures of the Financial Ombudsman Service

...

3.6 Determination by the Ombudsman

Fair and reasonable

...

3.6.5 G Where the *Ombudsman* is determining what is fair and reasonable in all the circumstances of a *relevant new complaint*, ~~or a relevant transitional complaint~~, ~~or a relevant new claims management complaint~~ or a relevant transitional funeral plan complaint, the *Ombudsman Transitional Order*, the *Mortgage and General Insurance Complaints Transitional Order*, ~~and~~ the *Claims Management Order* and the Funeral Plan Order respectively make provision for ~~him~~ them to take into account what determination the *former Ombudsman* might have been expected to reach in relation to an equivalent *complaint* dealt with under the *former scheme* in question immediately before the *relevant order* came into effect.

...

3.7 Awards by the Ombudsman

...

Money awards

...

3.7.3 G Where the *Ombudsman* is determining what amount (if any) constitutes fair compensation as a money award in relation to a *relevant new complaint*, a *relevant transitional complaint*, ~~or a relevant new claims management complaint~~ or a relevant transitional funeral plan complaint, the *Ombudsman Transitional Order*, the *Mortgages and General Insurance Complaints Transitional Order*, ~~and~~ the *Claims Management Order* and the Funeral Plans Order respectively make provision for ~~him~~ them to take into account what amount (if any) might have been expected to be awarded by way of compensation in relation to an equivalent complaint dealt with under the *former scheme* in question immediately before the *relevant order* came into effect.

...

TP1 Transitional provisions

TP1.1 Transitional provisions table

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force

...
54	<u>DISP 1.10.1R</u> , <u>DISP 1.10.4AR</u> , <u>DISP 1.10.5R</u> and <u>DISP 1 Annex 1ACR</u>	R	<p>(1) This transitional provision applies where a <i>firm</i> with permission to carry on only <i>regulated funeral plan activities</i> is required to provide the FCA with its first report under <u>DISP 1.10.1R</u> in the form of <u>DISP 1 Annex 1ACR</u>.</p> <p>(2) No report is required under <u>DISP 1.10.1R</u> in the form of <u>DISP 1 Annex 1ACR</u> in respect of a period ending on an accounting reference date of the <i>firm</i> earlier than 29 October 2022.</p> <p>(3) If the <i>firm</i> does not provide a report in the form of <u>DISP 1 Annex 1ACR</u> under <u>DISP 1.10.1R</u> in respect of a period ending on an <i>accounting reference date</i> of the <i>firm</i> earlier than 29 October 2022, the first report in the form of <u>DISP 1 Annex 1ACR</u> provided under <u>DISP 1.10.1R</u> must cover the period from 29 July 2022 to the <i>firm's</i> first <i>accounting reference date</i> which occurs on or after 29 July 2023.</p>	From 29 July 2022	29 July 2022
55	<u>DISP 2</u> and <u>DISP 3</u>	R	In <u>DISP 2</u> and <u>DISP 3</u> references to a " <i>firm</i> " or " <i>firms</i> " include unauthorised persons subject to the <i>Compulsory Jurisdiction</i> in relation to a <i>relevant transitional funeral plan complaint</i> in accordance with the <i>Funeral Plans Order</i> .	From 29 July 2022	From 29 July 2022
56	<u>DISP 2</u> and <u>DISP 3</u>	G	Under the <i>Funeral Plans Order</i> , a <i>relevant transitional funeral plan complaint</i> is subject to the <i>Compulsory Jurisdiction</i> whether or not it is about a <i>firm</i>	From 29 July 2022	From 29 July 2022

			<p><u>or an unauthorised person.</u> <u>Unauthorised persons are not subject to DISP 1, but references to “firm” in DISP 2 and DISP 3 include unauthorised persons subject to the Compulsory Jurisdiction in relation to a relevant transitional funeral plan complaint, where applicable.</u></p>		
<u>57</u>	<u>DISP 1, DISP 2, DISP 3 and DISP 4</u>	<u>R</u>	<p><u>In relation to a relevant transitional funeral plan complaint, references in DISP 1, DISP 2, DISP 3 and DISP 4 to an “eligible complainant” include a person who is to be treated as an eligible complainant in accordance with the Funeral Plans Order and references to a complaint shall be construed accordingly.</u></p>	<u>From 29 July 2022</u>	<u>From 29 July 2022</u>

Annex K

Amendments to the Compensation sourcebook (COMP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Introduction and Overview

...

1.3 Claimants

...

1.3.3 G Areas of particular interest to claimants (see COMP 1.1.3G)

This table belongs to COMP 1.1.3G.

...		
Q2	How much compensation will I be offered?	
A2	This depends on whether your <i>protected claim</i> is:	
	(1)	[deleted]
	...	
	(6)	a <i>claim</i> in connection with <i>protected debt management business</i> ; <u>or</u>
		<i>COMP 5.8</i>
	(7)	a <i>claim</i> in connection with <u><i>protected funeral plan business</i></u> .
		<u><i>COMP 5.9</i></u>
	...	
Q3	How will the FSCS calculate the compensation that is offered to me?	
A3	Again, this will depend on whether your <i>protected claim</i> is:	
	(1)	[deleted]
	...	

	(6)	a <i>claim</i> in connection with <i>protected debt management business</i> ; or	COMP 12.4.21AR
	(7)	a <i>claim</i> in connection with <i>protected funeral plan business</i> .	COMP 12.4.21BR

[*Editor's note:* The text at A2(6) and A3(6) in the table at COMP 1.3.3G is being consulted on separately in the March 2021 FCA Quarterly Consultation Paper. Any changes to A2 and A3 proposed in this instrument will come into effect after any such changes are made.]

...

5 Protected claims

...

5.2 What is a protected claim?

5.2.1 R A *protected claim* is:

...

(6) a *claim* in connection with *protected debt management business* (see COMP 5.8); or

(7) a *claim* in connection with *protected funeral plan business* (see COMP 5.9).

...

Claims in respect of successors

5.2.4 G Where a claim for compensation is in respect of a *claim* against a *successor*, the following rules apply to the *relevant person* for whose liabilities the *successor* has assumed responsibility (or to such *relevant person's* activities, as the case may be):

...

(6) COMP 5.7.2R; ~~and~~

(7) COMP 5.8.1R; and

(8) COMP 5.9.1R and COMP 5.9.2R.

[*Editor's note:* The proposed changes to COMP 5.2.4G are drafted on the basis that changes to this provision which are due to be consulted on as part of the FCA's March 2021 Quarterly Consultation Paper are made. Any changes to COMP 5.2.4G proposed in this instrument will come into effect after any such changes are made.]

...

5.9 **Protected funeral plan business**

5.9.1 R *Protected funeral plan business is a regulated funeral plan activity carried on by a relevant person from an establishment maintained by the relevant person (or its appointed representative) in the United Kingdom.*

5.9.2 R *COMP 5.9.1R does not apply in relation to a claim against an intermediary (or where applicable, their successor) where the eligible claimant did not deal initially with an intermediary that was established in the United Kingdom.*

Advising without a personal recommendation

5.9.3 R *The FSCS must treat a claim relating to advice in relation to a funeral plan contract that falls outside article 53(1) of the Regulated Activities Order by virtue of article 53(1A) of that Order as being ‘in connection with protected funeral plan business’ for the purposes of COMP 5.2.1R(7) where the relevant person giving the advice, at the time the act or omission giving rise to the claim took place:*

(1) *had, or required, permission to carry on; or*

(2) *(in the case of an appointed representative) was exempt from the general prohibition in respect of,*

an activity that was protected funeral plan business.

...

8 **Rejection of application and withdrawal of offer**

...

8.2 **Rejection of application for compensation**

...

8.2.4 R For claims made in connection with *protected investment business, protected home finance mediation, protected non-investment insurance distribution, ~~or~~ protected debt management business or protected funeral plan business*, the FSCS may disregard a defence of limitation where the FSCS considers that it would be reasonable to do so.

...

8.2.5 R For claims made in connection with *protected investment business, protected non-investment insurance distribution, protected home finance mediation, ~~or~~ protected debt management business or protected*

funeral plan business, if a *relevant person* (or where applicable, a *successor*), incorporated as a *company*, has been dissolved with the result that its liability to the claimant has been extinguished by operation of law, the *FSCS* must treat the claim, for the purposes of paying compensation, as if the *relevant person* or a *successor*, as appropriate, had not been dissolved.

[*Editor's note*: The addition of the references to protected home finance mediation and protected debt management business in COMP 8.2.4R and COMP 8.2.5R are being consulted on as part of the FCA's March 2021 Quarterly Consultation Paper. Any changes to COMP 8.2.4R or COMP 8.2.5R proposed in this instrument will come into effect after any such changes are made.]

...

9 Time limits on payment and postponing payment

...

9.2 When must compensation be paid?

...

9.2.2 R The *FSCS* may postpone paying compensation if:

(1) ...

(2) in the case of a *claim* relating to *protected investment business* which is not an *ICD claim*, a *claim* relating to *protected home finance mediation*, a *claim* relating to *protected non-investment insurance distribution*, ~~or~~ a *claim* relating to *protected debt management business* or a claim relating to *protected funeral plan business*, the *FSCS* considers that the claimant should first exhaust his rights against the *relevant person* (or, where applicable, a *successor*) or any third party, or make and pursue an application for compensation to any other *person*; or

...

[*Editor's note*: The addition of the reference to protected non-investment insurance distribution and protected debt management business in COMP 9.2.2R(2) is being consulted on as part of the FCA's March 2021 Quarterly Consultation Paper. Any changes to COMP 9.2.2R(2) proposed in this instrument will come into effect after any such change is made.]

...

10 Limits on the amount of compensation payable

...

10.2 Limits on compensation payable

...

10.2.3 R Table Limits

This table belongs to COMP 10.2.1R

Type of claim	Level of Cover	Maximum Payment
...
<i>Protected debt management business</i>	100% of claim	£85,000
<u><i>Protected funeral plan business</i></u>	<u>100% of claim</u>	<u>£85,000</u>

...

11 Payment of compensation

...

11.2 Payment

To whom must payment be made?

11.2.1A R If the *FSCS* determine that compensation is payable (or any recovery or other amount is payable by the *FSCS* to the claimant), it must pay it to the claimant, or if the *FSCS* so decides, as directed by the claimant, unless *COMP* 1.2.2R, ~~or~~ *COMP* 11.2.2AR or *COMP* 11.2.2CR apply.

Certain protected investment business claims

11.2.2 R ...

Collective investment scheme claims

11.2.2A R ...

...

Protected funeral plan business claims

11.2.2C R Where a claimant has a *protected funeral plan business claim* the *FSCS* may pay compensation (and any recovery or other amount payable by the *FSCS* to the claimant) to any other person on such terms and on such conditions as it thinks fit.

11.2.2D G *COMP* 3.2.2R permits the *FSCS* to pay compensation to a person who makes a claim on behalf of another person where certain conditions are satisfied. This includes payment to the personal representatives who make a claim on behalf of the deceased (see *COMP* 3.2.3G)(1)). *COMP*

11.2.2CR permits the FSCS to pay compensation to any other person who it considers should receive the compensation. For example, this may be to a funeral director directly where the funeral director has incurred expenses in providing funeral services under the funeral plan contract and is yet to be reimbursed.

...

12 Calculating compensation

...

12.3 Quantification date

...

Protected debt management business

12.3.9 R ...

Protected funeral plan business

12.3.10 R For a claim made in connection with protected funeral plan business, the FSCS must determine a specific date as the quantification date, and this date may be either on, before or after the date of determination of default.

12.4 The compensation calculation

...

Protected debt management business

12.4.21A R The FSCS may pay compensation for any claim made in connection with protected debt management business only to the extent that the FSCS considers that the payment of compensation is essential to provide the claimant with fair compensation.

Protected funeral plan business

12.4.21B R The FSCS may pay compensation for any claim made in connection with protected funeral plan business only to the extent that the FSCS considers that the payment of compensation is essential to provide the claimant with fair compensation.

...

TP 1 Transitional Provisions

TP 1.1 Transitional Provisions Table

(1)	(2)	(3)	(4)	(5)	(6)
-----	-----	-----	-----	-----	-----

	Material to which the transitional provision applies	Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming into force
...				
<u>48</u>	<u>Amendments introduced by the XX Instrument 2021</u>	<u>R</u>	<u>The changes referred to in (2) do not apply in relation to a <i>claim</i> against a <i>relevant person</i>, or against a <i>successor</i>, that was in default before [date] nor, in relation to <i>claims</i> in connection with <i>protected funeral plan business</i>, where the relevant act or omission occurs before [date].</u>	<u>From [date] indefinitely</u> [date]

Annex L

Funeral Plan: Conduct of Business sourcebook (FPCOB)

In this Annex, all the text is new and is not underlined.

Funeral Plan: Conduct of Business sourcebook (FPCOB)

1 Application and purpose

1.1 Application and purpose

Application

- 1.1.1 G (1) The Funeral Plan: Conduct of Business sourcebook (*FPCOB*) is the specialist sourcebook for *regulated funeral plan activities*.
- (2) *FPCOB* is relevant both to *funeral plan providers* and *funeral plan intermediaries*.
- (3) *FPCOB* applies as described in this chapter unless the application of a chapter, section or a *rule* is described differently in the chapters, sections or *rules* in *FPCOB*.

Purpose

- 1.1.2 G The purpose of *FPCOB* is to set out the detailed obligations that are specific to *regulated funeral plan activities* and the connected activities carried on by *firms*. *FPCOB* 17 refers to other high-level obligations in the *FCA Handbook* that apply to *firms*, for example, *PRIN*, *GEN* and *SYSC*.

1.2 General application: who? what? where?

Providing funeral plan contracts

- 1.2.1 R This sourcebook applies to a *firm* with respect to the activities of:
- (1) *entering as provider into a funeral plan contract*; and
- (2) *carrying out a funeral plan contract as provider*; and
- activities connected with them.
- 1.2.2 G The regulated activities of *entering as provider into a funeral plan contract* and *carrying out a funeral plan contract as provider* apply in relation to *funeral plan contracts* under which the provider undertakes to provide, or secure that another *person* provides, a funeral in the *United Kingdom* (article 59(2) of the *Regulated Activities Order* and see *PERG 2.4.2AG*).

Distributing funeral plan contracts: firms and appointed representatives

- 1.2.3 R This sourcebook applies to a *firm* with respect to *funeral plan distribution activity* and activities connected with that activity.
- 1.2.4 R A *firm* (including a *funeral plan provider*) that has appointed an *appointed representative* to carry on *funeral plan distribution activity* must ensure that its *appointed representative* complies with this sourcebook as it applies to a *firm* carrying on *funeral plan distribution activity*.
- 1.2.5 G A *funeral plan provider* that wishes to appoint an *appointed representative* to distribute its *funeral plan contracts* should ensure that the *regulated activities* covered by the *appointed representative's* appointment fall within the scope of the *firm's Part 4A permissions* or are otherwise excluded from being *regulated activities* when carried on by the *firm* (see SUP 12.4.1AG).

Financial promotions

- 1.2.6 R This sourcebook applies to a *firm*:
- (1) *communicating a financial promotion* in relation to a *funeral plan contract* or a *regulated funeral plan activity* to a *person* inside the *United Kingdom*; and
 - (2) *approving a financial promotion* in relation to a *funeral plan contract* or a *regulated funeral plan activity* for *communication* to a *person* inside the *United Kingdom*.

Modifications to the general application rules

- 1.2.7 R The general application rules in this section are modified:
- (1) in the chapters of this sourcebook for particular purposes, including those relating to the type of *firm* and its activities; and
 - (2) in *FPCOB* 1 Annex 1 according to the type of *firm*.

New and subsisting funeral plans

- 1.2.8 R All of the *rules* in this sourcebook apply in relation to *new funeral plans*, unless otherwise stated.
- 1.2.9 G The *rules* in certain sections of this sourcebook also apply in relation to *subsisting funeral plans*.

Application to Gibraltar-based firms

- 1.2.10 R A Gibraltar-based firm with *permission* for *funeral plan provision activity* or *funeral plan distribution activity* must comply with the relevant provisions of *FPCOB*.

Guidance on application

1.2.11 G *Guidance* on the application provisions is in *FPCOB 1 Annex 1*.

Customers and covered individuals

- 1.2.12 G (1) In this sourcebook, *rules* may apply by reference to the *customer* or *covered individual* under a *funeral plan contract*, or to both.
- (2) The definition of *customer* includes a prospective *customer* under a *funeral plan contract*.
- (3) Reference to the *covered individual* is to the *individual* on whose death a funeral will be provided or secured under a *funeral plan contract* or prospective *funeral plan contract*. The *covered individual* under a *funeral plan contract* will not necessarily be the same *person* as the *customer* (article 59(2)(b) of the *Regulated Activities Order*).

1.2.13 G Where the *rules* in this sourcebook require a *firm* to disclose information to a *customer*, the *firm* should also consider:

- (1) whether it should disclose the same information to the *covered individual* (where different from the *customer*) in accordance with its obligations under *Principle 7*; and
- (2) if it considers that disclosure should be made to the *covered individual*, whether it requires the consent of the *customer* in order to make that disclosure.

Interpretation – “concluding” funeral plan contracts

1.2.14 G Certain *rules* in this sourcebook apply by reference to the conclusion of a *funeral plan contract*, which means the entering into of the *funeral plan contract*.

1 Annex 1 Application (see FPCOB 1.2.11G)

Application to different types of firm			
1	Application to funeral plan providers and intermediaries		
1.1	G	(1)	Certain sections of this sourcebook apply differently to <i>funeral plan providers</i> and <i>funeral plan intermediaries</i> . This table summarises which sections of this sourcebook are relevant to <i>funeral plan providers</i> , which are relevant to <i>funeral plan intermediaries</i> and which are relevant to both.
		(2)	A <i>funeral plan provider</i> that has appointed an <i>appointed representative</i> to distribute <i>funeral plan contracts</i> will need to consider the sections of this sourcebook which are relevant to <i>funeral plan intermediaries</i> in relation to the activities of its <i>appointed representatives</i> .

1.2	G	Section	Description	Relevant to a funeral plan intermediary?	Relevant to a funeral plan intermediary?
		[Editor's note: To be populated to provide a summary of the application of FPCOB.]			
2	Third party processors				
2.1	R	(1)	This <i>rule</i> applies where a <i>firm</i> (or its <i>appointed representative</i>) (“A”) has outsourced <i>funeral plan distribution activities</i> to a <i>third party processor</i> .		
		(2)	Any <i>rule</i> in this sourcebook which requires the <i>third party processor</i> , when acting as such, to disclose its identity to a <i>customer</i> must be read as applying to the <i>third party processor</i> only to the extent that it applies to A and as requiring disclosure of A’s identity.		

2 General matters

2.1 General principles

Application

- 2.1.1 R (1) This section applies to a *firm* in relation to its *regulated funeral plan activity*.
- (2) This section applies in relation to a *firm’s customers* under *subsisting funeral plans*, unless otherwise stated.

The customer’s best interests rule

- 2.1.2 R A *firm* must act honestly, fairly and professionally in accordance with the best interests of:
- (1) its *customer*; and
- (2) if different, the *covered individual*.

Exclusion of liability

- 2.1.3 R A *firm* must not seek to exclude or restrict, or rely on any exclusion or restriction of, any duty or liability it may have to a *customer* or *covered individual* unless it is reasonable for it to do so and the duty or liability arises other than under the *regulatory system*.
- 2.1.4 G The general law, including the *Unfair Terms Regulations* (for contracts entered into before 1 October 2015) and the *CRA*, also limits the scope for a *firm* to exclude or restrict any duty or liability to a *consumer*.

Reliance on others

- 2.1.5 G (1) Where it is compatible with the nature of the obligation imposed by a particular *rule*, including the *customer's best interests rule*, and with the *Principles*, in particular *Principles* 1 (Integrity), 2 (Skill, care and diligence) and 3 (Management and control), *firms* may rely on third parties in order to comply with the *rules* in this sourcebook.
- (2) For example, where a *rule* requires a *firm* to take reasonable steps to achieve an outcome, it will generally be reasonable for a *firm* to rely on information provided to it in writing by an unconnected *authorised person* or a *professional firm*, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information. However, a *firm* cannot delegate its responsibility under the *regulatory system*. For example, where a *rule* imposes an absolute obligation (such as the requirement on a *funeral plan provider* in *FPCOB* 14.1.4R regarding the services required for a *funeral plan contract*) although a *firm* could use outsourcing arrangements to fulfil its obligation, it retains regulatory responsibility for achieving the outcome required.

Record keeping

- 2.1.6 G (1) This sourcebook, other than *FPCOB* 4 and *FPCOB* 15, does not generally have detailed record-keeping requirements: *firms* will need to decide what records they need to keep in line with the high-level record-keeping requirements and their own business needs.
- (2) The Training and Competence sourcebook (*TC*) (see *TC* 3.1.1R) and the Senior Management Arrangements, Systems and Controls sourcebook (*SYSC*) contain record-keeping requirements (see *SYSC* 9.1.1R, *SYSC* 10.1.6R and *SYSC* 28A.3.1R).
- (3) *Firms* should bear in mind the need to deal with requests for information from the *FCA* as well as queries and complaints from *customers* and *covered individuals* which may require evidence of matters such as:
- (a) the reasons for *personal recommendations*;
 - (b) what documentation has been provided to a *customer* or *covered individual*; and
 - (c) how redemptions have been settled and why.

2.2 Inducements

- 2.2.1 G (1) *Principle* 8 requires a *firm* to manage conflicts of interest fairly, both between itself and its *customers* and between a *customer* and another *client*. This principle extends to soliciting or accepting inducements where this would conflict with a *firm's* duties to its *customers*. A *firm*

that offers such inducements should consider whether doing so conflicts with its obligations under:

- (a) *Principles 1 and 6 to act with integrity and treat customers fairly; and*
 - (b) *the customer's best interests rule.*
- (2) An inducement is a benefit offered to a *firm*, or any *person* acting on its behalf, with a view to that *firm*, or that *person*, adopting a particular course of action. This can include, but is not limited to, cash, cash equivalents, *commission*, goods, hospitality or training programmes.
 - (3) *Firms* should also refer to the *rules* on charging for funeral plan distribution and payments to *funeral plan intermediaries* (*FPCOB 6.4* and *FPCOB 6.5*).

2.3 Customers with a payment shortfall

Application

- 2.3.1 R This section applies to a *funeral plan provider* dealing with a *customer* that has:
 - (1) an *instalment payment funeral plan* entered into on or after 29 July 2022; and
 - (2) a *payment shortfall* in relation to that *instalment payment funeral plan*.
- 2.3.2 G In relation to *funeral plan contracts* entered into before 29 July 2022, a *funeral plan provider* should deal with *customers* fairly and, as far as possible, in a manner that is compatible with the *customer's best interests rule*.

Purpose

- 2.3.3 G This section amplifies *Principle 6* (Customers' interests) in respect of the information and service that *firms* should provide to *customers* who have payment difficulties or shortfalls.

Dealing fairly with customers with a payment shortfall

- 2.3.4 R The *firm* must deal fairly with the *customer* in relation to the *payment shortfall*.
- 2.3.5 R Where the *customer* has a *payment shortfall* of two consecutive payments, the *firm* must, as soon as possible, and in any event within five *business days* of the second missed payment, provide the *customer* with a statement in a *durable medium* of:

- (1) the individual payments due;
 - (2) the total amount of the *payment shortfall*; and
 - (3) information on the consequences and potential consequences under the *funeral plan contract*, if the *payment shortfall* is not settled within 10 *business days* of the date of the *customer* communication.
- 2.3.6 R The *firm* must allow the *payment shortfall* to be settled within 10 *business days* of the date of the communication, without penalty.
- 2.3.7 R The *firm* must not impose a *fee* on the *customer* for incurring or correcting the *payment shortfall*.
- 2.3.8 R The *firm* must not cancel the *funeral plan contract* on the basis of a *payment shortfall* unless the *customer*:
- (1) has a *payment shortfall* of at least two consecutive payments; and
 - (2) has failed to settle the *payment shortfall* in accordance with the terms of the statement provided by the *firm* for the purposes of *FPCOB* 2.3.5R.
- 2.3.9 R If the *firm* does not cancel the *funeral plan contract* on the basis of a *payment shortfall*, it must provide the *customer* with a further statement in accordance with the requirements of *FPCOB* 2.3.5R following each further consecutive missed payment.
- 2.3.10 R A *firm*'s obligation to maintain insurance arrangements in accordance with *FPCOB* 3.1.8R continues despite any *payment shortfall*.

3 Structure Provisions - arrangements underpinning a funeral plan contract

3.1 Application: general

- 3.1.1 R This section applies to a *firm*:
- (1) *entering as provider into a funeral plan contract*; and
 - (2) *carrying out a funeral plan contract as provider* in relation to a *new funeral plan contract*.

Application: subsisting funeral plans

- 3.1.2 G The *FCA* encourages *firms* which carry out *subsisting funeral plans* underpinned by existing trust arrangements or insurance contracts, and the relevant trustees and insurers to work together to seek to amend those arrangements to bring them into line with the arrangements in this chapter.
- 3.1.3 R In relation to a *subsisting funeral plan*:

- (1) under which the *funeral plan provider* undertakes to secure that sums paid by the *customer* under the contract will be held on trust for the purpose of providing the funeral; and
- (2) where the trust instrument or such contract have been substantively amended on or after [date of publication of this Consultation Paper] so that their terms (post-amendment) meet any of the applicable requirements in this section or the *resolution rules*,

a *firm* carrying out that contract as provider must, to the extent within its powers, comply with this section from 29 July 2022 or the point in time that the amendment is made if later.

Primary purpose

- 3.1.4 R The *rules and guidance* in this section must be construed in accordance with the *primary purpose*.
- 3.1.5 R The *primary purpose* is to ensure that *funeral plan contracts* are underpinned by robust trust or insurance arrangements that will enable the provision, at the relevant time, of funerals in accordance with the terms of the *funeral plan contracts*.

Arrangements underpinning funeral plan contracts

- 3.1.6 R In relation to each *funeral plan contract* a *funeral plan provider* must either:
- (1) purchase, or arrange the purchase of, a *contract of insurance* from an authorised *insurer* on the life of the *covered individual* that is sufficient for the purpose of providing the agreed funeral; or
 - (2) arrange for such proportion of sums paid by the *customer* under the *funeral plan contract* that is sufficient for the purpose of providing the agreed funeral to be held on trust,
- as soon as reasonably practicable after receipt of monies from the *customer*.
- 3.1.7 G When purchasing a *contract of insurance* or determining what proportion of sums paid by the *customer* under the *funeral plan contract* should be held on trust, a *funeral plan provider* should take into account its obligations under *FPCOB 7* to provide a funeral under an *instalment payment funeral plan* before all instalments have been paid.

Requirements in relation to contracts of insurance

- 3.1.8 R For the purpose of *FPCOB 3.1.6R(1)*, the *contract of insurance* must contain terms that will deliver the following objectives:
- (1) is [placeholder for type of insurance];
 - (2) clearly identifies the policyholder under the *contract of insurance*;

- (3) restricts the circumstances in which the policyholder can make a claim to where a claim is being made for the purpose of:
 - (a) delivering a *covered individual's* funeral;
 - (b) providing a *customer* refund (pursuant to a request by the *customer* to cancel the *funeral plan contract*); or
 - (c) discharging the *funeral plan provider's* contractual obligation to pay the *customer* an amount corresponding to their *funeral plan customer balance*;
- (4) will deliver all applicable outcomes in the *resolution rules*; and
- (5) requires the *insurer* to co-operate with the *FCA*, the *FSCS* and any insolvency practitioner appointed, or proposed to be appointed, to the *funeral plan provider* in seeking to achieve the *primary purpose* on a failure or potential failure of the *funeral plan provider*.

Requirements in relation to trusts

- 3.1.9 R For the purposes of *FPCOB* 3.1.6R(2), the trust must be established by a written instrument which contains terms that will deliver the following objectives:
- (1) that the assets held on trust are for the benefit of *customers* (or, where relevant, *covered individuals*) for the purpose of giving effect to their rights under the *funeral plan contracts*;
 - (2) that the assets held on trust are kept segregated from any assets belonging to the *funeral plan provider*;
 - (3) that the circumstances in which a *funeral plan provider* can make a claim against the assets held on trust are restricted to where a claim is being made for:
 - (a) the purpose of delivering a *covered individual's* funeral;
 - (b) providing a *customer* refund (pursuant to a request by the *customer* to cancel the *funeral plan contract*) or discharging the *funeral plan provider's* contractual obligation to pay the *customer* an amount corresponding to their *funeral plan customer balance*; or
 - (c) surpluses, where *FPCOB* 3.2.12R applies;
 - (4) that in an insolvency of the *funeral plan provider* an insolvency practitioner may claim against the assets held on trust, in priority to all other claims against those assets, to meet their costs properly attributable to causing the *firm* to continue providing or arranging

funerals under existing *funeral plan contracts* or effecting a transfer of those contracts to a new provider;

- (5) will deliver all applicable outcomes in the *resolution rules*;
- (6) more than half of the trustees must be unconnected with the *funeral plan provider*;
- (7) the trustees must appoint, or have appointed, an independent fund manager who is an *authorised person* who has *permission* to carry on an activity of the kind specified by article 37 of the *Regulated Activities Order*, and who is a *person* that is unconnected with the *funeral plan provider*, to manage the assets of the trust;
- (8) annual accounts in respect of the assets and liabilities of the trust must be prepared, and audited by a person who is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006;
- (9) the trustees must send a copy of the annual accounts to the *funeral plan provider* to facilitate its financial reporting, and must otherwise co-operate with and provide information to the *funeral plan provider* to facilitate compliance with its obligations under the *rules* (as amended from time to time);
- (10) the trustees must co-operate with the *FCA*, the *FSCS* and any insolvency practitioner appointed, or proposed to be appointed, to the *funeral plan provider* in seeking to achieve the *primary purpose* on a failure or potential failure of the *funeral plan provider*; and
- (11) that the written instrument can and must be amended if and to the extent that the *funeral plan provider* is required to seek an amendment by the *FCA* (by a *rule* or *requirement*).

3.1.10 R For the purposes of *FPCOB* 3.1.9R(6) and (7), a person is unconnected with the *funeral plan provider* if that *person* is a *person* other than:

- (1) the *funeral plan provider*;
- (2) a member of the same *group* as the *funeral plan provider*;
- (3) a director, other officer or employee of the *funeral plan provider*, or of any member of the same *group* as the *funeral plan provider*;
- (4) a partner of the *funeral plan provider*;
- (5) a close relative of a person falling within sub-paragraphs (1), (3) or (4);
- (6) an agent of any person falling within sub-paragraphs (1) to (5); or
- (7) any other *person* whose business or domestic relationship with the *funeral plan provider* (or other *person* in sub-paragraphs (1) to (6))

might reasonably be expected to give rise to a community of interest between them and the *funeral plan provider* which may involve a conflict of interest in dealings with third parties.

Safeguarding - obligations in relation to money received from a customer, trust or insurance provider

3.1.11 R A *funeral plan provider* must:

- (1) make arrangements to safeguard monies it has received:
 - (a) from a *customer* under a *funeral plan contract*, and which are sufficient for the purpose of providing the agreed funeral, between receipt and applying the monies in accordance with *FPCOB 3.1.6R*;
 - (b) pursuant to a *contract of insurance* prior to delivering a *covered individual's* funeral, providing a *customer* refund or discharging its contractual obligation to pay the *customer* an amount corresponding to their *funeral plan customer balance*; or
 - (c) from a trust prior to delivering a *covered individual's* funeral, providing a *customer* refund, or discharging its contractual obligation to pay the *customer* an amount corresponding to their *funeral plan customer balance*,

to ensure that such monies are not at any stage, including on insolvency, assets of the *funeral plan provider*.

- (2) provide to an *insurer* or trustee, as applicable, a copy of the *covered individual's* death certificate prior to, or at the time of, requesting money under the terms of an applicable *contract of insurance* or in accordance with the terms of a trust for the purpose of delivering or arranging a funeral; and
- (3) pay any monies received from an *insurer* or a trust for the funeral of a *covered individual* to the funeral director that has agreed to provide a funeral for the *covered individual* as soon as reasonably practicable from receipt.

3.1.12 G Examples of how the safeguarding required by *FPCOB 3.1.11R* may be achieved include:

- (1) requiring payments made by a *customer* under a *funeral plan contract* to be made directly to the *insurer* or the trustee, as applicable;
- (2) requiring payments used to deliver a *covered individual's* funeral and payments to a *customer* to be provided by the *insurer* or trustee, as applicable, directly to the funeral director, or the *customer*, as appropriate; and

- (3) the *funeral plan provider* holding the received monies on trust for the benefit of the *customer*. This arrangement would need to include keeping the monies segregated from any other monies held by the *funeral plan provider* and keeping an appropriate record of these monies.

Systems and controls

- 3.1.13 G *Firms* are reminded of *Principle 3* which provides that a *firm* must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- 3.1.14 R (1) A *firm* must ensure that the systems and controls, including procedures and arrangements, used to comply with the requirements in this chapter are adequate, effective and appropriate for the scale and nature of its business.
- (2) Sub-paragraph (1) applies in particular to systems and controls concerning:
- (a) the adequacy of the trust and insurance arrangements that a *firm* must put in place in accordance with *FPCOB* 3.1.6R;
 - (b) whether a proposed price for a *funeral plan contract* is likely to lead to, as applicable, an under-funded trust arrangement or an insufficient insured sum to provide the funeral contracted for;
 - (c) the price of the *funeral plan contract*, bearing in mind the cost of the funeral to the *firm*.
- 3.1.15 R A *firm*'s systems and controls must be developed to:
- (1) factor in the risk of inflation when considering pricing decisions; and
 - (2) if applicable, factor in the volatility of trust assets.

3.2 Trusts: solvency assessment, remediation and other requirements

Application

- 3.2.1 R This section applies to a *funeral plan provider* in relation to *funeral plan contracts* (including *subsisting funeral plans*) under which sums paid by the *customer* are held on trust for the purpose of providing the funeral.

Solvency assessment report

Annual preparation of solvency assessment report

- 3.2.2 R A *funeral plan provider* must arrange for a *solvency assessment report* to be produced at least once every 12 *months* by an actuary who is a fellow of the Institute and Faculty of Actuaries.

Contents of solvency assessment report

- 3.2.3 R The *solvency assessment report* must:
- (1)
 - (a) within 12 *months* of the last report obtained by the *funeral plan provider*, or
 - (b) within 12 *months* of the trust being established;
 - (2) determine, calculate and verify the assets and liabilities of the trust by applying a *best estimate* basis;
 - (3) include, as a minimum, the following information:
 - (a) the actuarial valuation date;
 - (b) an actuarial valuation of the assets and liabilities of the trust;
 - (c) the solvency level of the trust (ratio of trust assets over trust liabilities as a percentage) on a *best estimate* basis;
 - (d) the assumptions adopted with respect to the valuation of the trust assets and trust liabilities;
 - (e) the number of undrawn or live plans categorised by payment method;
 - (f) the total plan values in relation to undrawn or live plans categorised by payment method;
 - (g) the average plan value categorised by payment method;
 - (h) the investment of trust assets at fair value by asset class at the actuarial valuation date;
 - (i) the investment of trust assets at fair value by investment manager at the actuarial valuation date;
 - (j) the level of all monies deducted from the trust over the period and identification of how the deductions have been spent; and
 - (k) the details of any liability sub-contracted to funeral directors.
 - (4) be produced taking account of any relevant actuarial professional and technical standards, guidance and codes.
 - (5) be published by the *funeral plan provider* on its website within 30 *days* of the date on which the actuary conducts the valuation and, in any case, no later than 6 weeks from the date an actuary is appointed to produce a *solvency assessment report*; and

- (6) be made available free of charge on request.
- 3.2.4 R (1) For the purposes of *FPCOB* 3.2.3R(3)(b), the liabilities of the trust should be assessed against *FPCOB* 3.1.6R(2).
- (2) For the purposes of *FPCOB* 3.2.3R(3)(e), (f) and (g), the payment method should be categorised into:
- (i) single payments;
 - (ii) instalment payments fully paid; and
 - (iii) instalment payments not fully paid.
- (3) For the purposes of *FPCOB* 3.2.3R(3)(k), details of any liability sub-contracted to funeral directors may include inflation.

Sending the solvency assessment report to the FCA

- 3.2.5 R (1) *A funeral plan provider must send a copy of the solvency assessment report to the FCA within 7 days of it being received by the funeral plan provider.*
- (2) *If the solvency assessment report concludes that the assets of the trust are not sufficient to cover the liabilities of the trust, the funeral plan provider must provide a notification of that fact with the solvency assessment report, in accordance with SUP 15.7.1R.*

When a remediation plan is required

- 3.2.6 R *If a solvency assessment report concludes that the assets of the trust are not sufficient to cover the liabilities of the trust, a funeral plan provider must prepare a remediation plan that is approved by an actuary who is a fellow of the Institute and Faculty of Actuaries.*

Contents of the remediation plan

- 3.2.7 R *The funeral plan provider must ensure the remediation plan sets out the following:*
- (1) *how the deficit in the trust that has been identified by the solvency assessment report will be remedied before the next annual solvency assessment report is due; and*
 - (2) *any assumptions that have made in relation to any of the remedial steps or actions that the funeral plan provider intends to implement to remedy the deficit in the trust.*

Sending the remediation plan to the FCA

- 3.2.8 R *The funeral plan provider must submit the remediation plan to the FCA for review, in accordance with SUP 15.7.1R, as soon as possible and no later*

than 30 *days* from the submission date of the relevant *solvency assessment report* to the *FCA*.

Implementing the remediation plan

3.2.9 The *funeral plan provider* must begin to implement the *remediation plan*:

- (1) as soon as possible and in any event within 30 *days* of submitting it to the *FCA*;
- (2) in accordance with the terms of the *remediation plan* (or any amendments agreed with the *FCA* or imposed by the *FCA* by *requirement*).

Failure of remediation plan: notification to the FCA

3.2.10 R A *funeral plan provider* that is in the process of implementing a *remediation plan* must:

- (1) notify the *FCA*, in accordance with *SUP 15.7.1R*, as soon as it suspects that it will not be able to fully implement the *remediation plan* in accordance with its terms; and
- (2) notify the *FCA*, in accordance with *SUP 15.7.1R*, immediately if the solvency level of the trust remains below 100% following the expiration of the *remediation plan*.

Obligation to remedy a trust deficit

3.2.11 R (1) If, following the expiration of the *remediation plan*, the assets of the trust remain insufficient to cover the liabilities of the trust, the *funeral plan provider* must remedy any shortfall using its own resources so that the solvency level of the trust is returned to 100% or more (when assessed on a *best estimate* basis).

(2) The obligation in (1) must be fulfilled as soon as practicable and in any case within 3 *months* of the date the expiration of the *remediation plan*.

(3) The *funeral plan provider* must notify the *FCA*, in accordance with *SUP 15.7.1R*, when the shortfall has been remedied.

Prohibition on the withdrawal of monies from a trust

3.2.12 R A *funeral plan provider* must not withdraw any surpluses from the trust except and only to the extent that:

- (1) the solvency level of the trust is above 110% when calculated on a *best estimate* basis; and
- (2) the withdrawal has been approved by an actuary who is a fellow of the Institute and Faculty of Actuaries.

Sending trust accounts to the FCA

- 3.2.13 R A *funeral plan provider* must send a copy of the annual accounts of the trust to the *FCA* as part of its next financial report.

4 Communications and financial promotions

4.1 Application

- 4.1.1 R This section applies to a *firm*:

- (1) communicating with a *customer* or *covered individual* under a new *funeral plan* or *subsisting funeral plan* in relation to its *regulated funeral plan activity*; and
- (2) *communicating* or *approving a financial promotion* in relation to a *funeral plan contract* or a *regulated funeral plan activity* unless that *financial promotion* could lawfully be *communicated* by an *unauthorised person* without *approval*.

- 4.1.2 G A *firm* is required to comply with the *financial promotion rules* in relation to a *financial promotion communicated* by its *appointed representative* even where the *financial promotion* does not require *approval* because of the exemption in article 16 of the *Financial Promotion Order* (Exempt persons).

[**Note:** section 39 of the *Act*]

4.2 Communications and financial promotions: the obligations

Fair, clear and not misleading rule

- 4.2.1 R A *firm* must ensure that a communication or a *financial promotion* is fair, clear and not misleading.
- 4.2.2 G *FPCOB* 4.1.1R(2) does not limit the application of the *fair, clear and not misleading rule* under *FPCOB* 4.1.1R(1). So, for example, a *financial promotion* that could lawfully be *communicated* by an *unauthorised person* without *approval* will still be subject to the *fair, clear and not misleading rule* to the extent that it is a communication with a *customer* or *covered individual* in relation to *regulated funeral plan activity*.
- 4.2.3 G If a communication or a *financial promotion* names the *FCA*, *PRA* or both as the regulator of a *firm* or other provider, and refers to matters not regulated by the *FCA*, *PRA* or both, the *firm* should ensure that the communication or *financial promotion* makes clear that those matters are not regulated by the *FCA*, *PRA* or both.
- 4.2.4 G Part 7 (Offences relating to Financial Services) of the Financial Services Act 2012 creates criminal offences relating to certain misleading statements and practices.

Financial promotions to be balanced and with appropriate warnings

- 4.2.5 R A *firm* must ensure that a communication or *financial promotion*:
- (1) includes the name of the *firm*;
 - (2) is accurate;
 - (3) is balanced and, in particular, does not emphasise any potential benefits without also giving a fair and prominent indication of any relevant risks;
 - (4) is appropriate for, and presented at a level and in a form that is comprehensible to the average *funeral plan customer*;
 - (5) does not disguise, omit, diminish or obscure important items, statements or warnings; and
 - (6) where it contains a comparison or contrast, presents the comparison or contrast in a fair and balanced way and ensures that it is meaningful.
- 4.2.6 G A *firm* should consider whether the omission of any relevant fact will result in a communication or *financial promotion* being insufficient, unclear, unfair or misleading.

Marketing communications

- 4.2.7 R A *firm* must ensure that a *financial promotion* in relation to a *funeral plan* or *regulated funeral plan activity* is clearly identifiable as such.

Approving financial promotions

- 4.2.8 R (1) Before a *firm* approves a *financial promotion*, it must take reasonable steps to ensure that the *financial promotion* complies with the *financial promotion rules*.
- (2) If, subsequently, a *firm* becomes aware that a *financial promotion* no longer complies with the *financial promotion rules*, it must withdraw its *approval* and notify any *person* that it knows to be relying on its *approval* as soon as reasonably practicable.
- 4.2.9 R A *firm* must not *approve* a *financial promotion* to be made in the course of a personal visit, telephone conversation or other interactive dialogue.

The reasonable steps defence to an action for damages

- 4.2.10 R If, in relation to a particular communication or *financial promotion*, a *firm* takes reasonable steps to ensure it complies with the *fair, clear and not misleading rule*, a contravention of that *rule* does not give rise to a right of action under section 138D of the *Act*.

Cold calling

- 4.2.11 R A *firm* must not make a *cold call* unless the recipient has an established existing client relationship with the *firm* and the relationship is such that the recipient envisages receiving *cold calls*.

Promotions that are not in writing

- 4.2.12 R A *firm* must not *communicate* a solicited or unsolicited *financial promotion* that is not in writing, to a *client* outside the *firm's* premises, unless the *person communicating* it:
- (1) only does so at an appropriate time of the *day*;
 - (2) identifies themselves and the *firm* they represent at the outset and makes clear the purpose of the communication;
 - (3) clarifies if the *client* would like to continue with or terminate the communication, and terminates the communication at any time that the *client* requests it; and
 - (4) gives a contact point to any *client* with whom they arrange an appointment.

Record keeping: financial promotions

- 4.2.13 R (1) A *firm* must make an adequate record of any *financial promotion* it *communicates* or *approves*, other than a *financial promotion* made in the course of a personal visit, telephone conversation or other interactive dialogue.
- (2) For a telemarketing campaign, a *firm* must make an adequate record of copies of any scripts used.
- (3) A *firm* must retain the record in relation to the *financial promotion* for six years.
- 4.2.14 G A *firm* should consider maintaining a record of why it is satisfied that the *financial promotion* complies with the *financial promotion rules*.

5 Distance communications

5.1 Distance marketing

Application

- 5.1.1 R This chapter applies to a *firm*:
- (1) in relation to its *regulated funeral plan activity*; and
 - (2) that carries on any distance marketing activity from an establishment in the *United Kingdom*, with or for a *consumer* in the *United Kingdom*.

Guidance on the distance marketing rules

- 5.1.2 G *Guidance* on the application of the provisions in this section can be found in *FPCOB 5 Annex 1G*.

The distance marketing disclosure rules

- 5.1.3 R A *firm* must provide a *consumer* with the distance marketing information (*FPCOB 5 Annex 2R*) in good time before the *consumer* is bound by a *distance contract* or offer.
- 5.1.4 G The *rules* setting out the responsibilities of *funeral plan providers* and *funeral plan intermediaries* for producing and providing information apply to requirements in this section to provide information (see *FPCOB 9.1.3R*).
- 5.1.5 R A *firm* must ensure that the distance marketing information, the commercial purpose of which must be made clear, is provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith in commercial transactions, and the legal principles governing the protection of those who are unable to give their consent.
- 5.1.6 R When a *firm* makes a telephone call to a *consumer*, it must make its identity and the purpose of its call explicitly clear at the beginning of the conversation.
- 5.1.7 R A *firm* must ensure that the information on contractual obligations to be communicated to a *consumer* during the pre-contractual phase is in conformity with the contractual obligations which would result from the law presumed to be applicable to the *distance contract* if that contract is concluded.

Terms and conditions, and form

- 5.1.8 R A *firm* must communicate to the *consumer* all the contractual terms and conditions and the information referred to in the distance marketing disclosure *rules* in writing or another *durable medium* available and accessible to the *consumer* in good time before conclusion of any *distance contract*.
- 5.1.9 G A *firm* will provide information, or communicate contractual terms and conditions, to a *consumer* if another *person* provides the information, or communicates the terms and conditions, to the *consumer* on its behalf.

Commencing performance of the distance contract

- 5.1.10 R The performance of the *distance contract* may only begin after the *consumer* has given their approval.

Exception: distance contract as a stage in the provision of another service

- 5.1.11 R This section does not apply to a *distance contract* to act as a *funeral plan intermediary*, if the *distance contract* is concluded merely as a stage in the provision of another service by the *firm* or another *person*.

Exception: successive operations

- 5.1.12 R In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the *rules* in this section only apply to the initial agreement.
- 5.1.13 R If there is no initial service agreement but the successive operations or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure *rules* will only apply:
- (1) when the first operation is performed; and
 - (2) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed to be the first in a new series of operations).

Exception: telephone calls

- 5.1.14 R (1) In the case of a telephone call, and subject to the explicit consent of the *consumer*, only the abbreviated distance marketing information (*FPCOB 5 Annex 3R*) needs to be provided during that communication.
- (2) However, unless another exemption applies (such as the exemption for means of distance communication not enabling disclosure) a *firm* must still provide the distance marketing information (*FPCOB 5 Annex 2R*) in writing or another *durable medium* available and accessible to the *consumer* in good time before conclusion of any *distance contract*.

Exception: means of distance communication not enabling disclosure

- 5.1.15 R A *firm* may provide the distance marketing information (*FPCOB 5 Annex 2R*) and the contractual terms and conditions in writing or another *durable medium* immediately after the conclusion of a *distance contract*, if the contract has been concluded at a *consumer's* request using a means of distance communication that does not enable the provision of that information in that form in good time before conclusion of any *distance contract*.

Consumer's right to request paper copies and change

- 5.1.16 R At any time during the contractual relationship the *consumer* is entitled, at their request, to receive the contractual terms and conditions on paper. The *consumer* is also entitled to change the means of distance communication

used unless this is incompatible with the contract concluded or the nature of the service provided.

Unsolicited services

- 5.1.17 R (1) A *firm* must not enforce, or seek to enforce, any obligations under a *distance contract* against a *consumer*, in the event of an unsolicited supply of services, the absence of reply not constituting consent.
- (2) This *rule* does not apply to the tacit *renewal* of a *distance contract*.

Mandatory nature of consumer's rights

- 5.1.18 R If a *consumer* purports to waive any of the *consumer's* rights created or implied by the *rules* in this section, a *firm* must not accept that waiver, nor seek to rely on or enforce it against the *consumer*.
- 5.1.19 R If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the *United Kingdom*, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this section.

5.2 E-Commerce

Application

- 5.2.1 R This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom*, with or for a *person* in the *United Kingdom*.

Information about the firm and its products or services

- 5.2.2 R A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:
- (1) its name;
 - (2) the geographic address at which it is established;
 - (3) the details of the *firm*, including its e-mail address, which allow it to be contacted and communicated with in a direct and effective manner;
 - (4) an appropriate statutory status disclosure statement (*GEN 4 Annex 1R*), together with a statement which explains that it is on the *Financial Services Register* and includes its Firm Reference Number;
 - (5) if it is a *professional firm*:

- (a) the name of the professional body (including any *designated professional body*) or similar institution with which it is registered;
 - (b) the professional title;
 - (c) a reference to the applicable professional rules and the means to access them; and
- (6) where the *firm* undertakes an activity that is subject to VAT, its VAT number.
- 5.2.3 R If a *firm* refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.
- 5.2.4 R A *firm* must ensure that commercial communications which are part of, or constitute, an *information society service*, comply with the following conditions:
- (1) the commercial communication must be clearly identifiable as such;
 - (2) the *person* on whose behalf the commercial communication is made must be clearly identifiable;
 - (3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and
 - (4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.
- 5.2.5 R An unsolicited commercial communication sent by e-mail by a *firm* must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

Requirements relating to the placing and receipt of orders

- 5.2.6 R A *firm* must (except when otherwise agreed by parties who are not *consumers*):
- (1) give an *ECA recipient* the following information, clearly, comprehensibly and unambiguously, and prior to the order being placed by the recipient of the service:
 - (a) the different technical steps to follow to conclude the contract;
 - (b) whether or not the concluded contract will be filed by the *firm* and whether it will be accessible;

- (c) the technical means for identifying and correcting input errors prior to the placing of the order; and
 - (d) the languages offered for the conclusion of the contract;
 - (2) indicate any relevant codes of conduct to which it subscribes and provide information on how those codes can be consulted electronically;
 - (3) (when an *ECA recipient* places an order through technological means), acknowledge the receipt of the recipient's order without undue delay and by electronic means (an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them); and
 - (4) make available to an *ECA recipient* appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors prior to the placing of an order.
- 5.2.7 R For the purposes of *FPCOB* 5.2.6R(3), an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them.
- 5.2.8 R Contractual terms and conditions provided by a *firm* to an *ECA recipient* must be made available in a way that allows the recipient to store and reproduce them.
- Exception: contract concluded by e-mail
- 5.2.9 R The requirements relating to the placing and receipt of orders do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

5 Annex 1G

Guidance on the Distance Marketing Provisions

This Annex belongs to *FPCOB* 5.1.2G.

Q1. What is a distance contract?

To be a *distance contract*, a contract must be concluded under an 'organised distance sales or service-provision scheme' run by the contractual provider of the service who, for the purpose of the contract, makes exclusive use (directly or otherwise) of one or more means of distance communication up to and including the time at which the contract is concluded.

So:

- the *firm* must have put in place facilities designed to enable a *consumer* to deal with it exclusively at a distance; and
- there must have been no simultaneous physical presence of the *firm* and the *consumer* throughout the offer, negotiation and conclusion of the contract. So, for example, contracts offered, negotiated and concluded over the internet, through a telemarketing operation or by *post*, will normally be *distance contracts*.

Q2. What about a firm that normally operates face-to-face but occasionally uses distance means?

If a *firm* normally operates face-to-face and has no facilities in place enabling a *consumer* to deal with it customarily by distance means, there will be no *distance contract*. A one-off transaction effected exclusively by distance means to meet a particular contingency or emergency will not be a *distance contract*.

Q3. What is meant by “simultaneous physical presence”?

A *consumer* may visit the *firm*’s local office in the course of the offer, negotiation or conclusion of a contract. Wherever, in the literal sense, there has been “simultaneous physical presence” of the *firm* and the *consumer* at the time of such a visit, any ensuing contract will not be a *distance contract*.

Q4. Does the mere fact that an intermediary is involved make the sale of a product or service a distance contract?

No.

Q5. When is a contract concluded?

A contract is concluded when an offer to be bound by it has been accepted. An offer in the course of negotiations (for example, an offer by a *funeral plan provider* to consider an application) is not an offer to be bound, but is part of a pre-contractual negotiation.

A *consumer* will provide all the information a *funeral plan provider* needs to decide whether to offer a plan and to calculate the price of the plan. The *consumer* may do this orally or in writing. The response by a *funeral plan provider*, giving a quotation to the consumer specifying the price of the plan and the terms is likely to amount to an offer of the terms on which the *funeral plan provider* will provide the plan. Agreement by the *consumer* to those terms is likely to be an acceptance which concludes the contract.

Q6. How do these provisions apply to funeral plan intermediaries’ services?

The *FCA* anticipates that the provisions relating to distance marketing are likely to apply to *funeral plan intermediaries*’ services only in those cases where:

- the *firm* concludes a *distance contract* with a *consumer* covering its *funeral plan distribution activities* which is additional to any *funeral plan contract* which it is marketing; and
- that *distance contract* is concluded other than merely as a stage in the entering into of a *funeral plan contract* by the *firm* or another *person*: in other words it has some continuity independent of a *funeral plan contract*, as opposed, for example, to being concluded as part of marketing a *funeral plan contract*.

Q7. Can you give examples of when the distance marketing provisions would and would not apply to funeral plan intermediaries' services?

The *rules* in this section are unlikely to apply in the typical case where a *funeral plan intermediary* sells a *funeral plan contract* to a *consumer* on a one-off basis.

Nor will the *rules* apply if a *funeral plan intermediary*, in its terms of business, makes clear that it does not, in conducting *funeral plan distribution activities*, act contractually on behalf of, or for, the *consumer*.

An example of when the provisions in this section would apply would be a *distance contract* under which a *funeral plan intermediary* agrees to provide advice to a *consumer* on *funeral plan contracts*.

5 Distance marketing information

Annex 2R

This Annex belongs to *FPCOB* 5.1.3R.

Distance marketing information	
The firm	
(1)	The name and the main business of the <i>firm</i> , the geographical address at which it is established and any other geographical address relevant for the <i>consumer's</i> relations with the <i>firm</i> .
(2)	Where the <i>firm</i> has a representative established in the <i>United Kingdom</i> , the name of that representative and the geographical address relevant for the <i>consumer's</i> relations with the representative.
(3)	When the <i>consumer's</i> dealings are with any professional other than the <i>firm</i> , the identity of that professional, the capacity in which he is acting with respect to the <i>consumer</i> , and the geographical address relevant for the <i>consumer's</i> relations with that professional.

<p>(4) An appropriate statutory status disclosure statement (<i>GEN 4</i>), a statement that the firm is on the <i>Financial Services Register</i> and its <i>FCA</i> registration number.</p>
<p>The financial service</p>
<p>(5) A description of the main characteristics of the service the <i>firm</i> will provide.</p>
<p>(6) The total price to be paid by the <i>consumer</i> to the <i>firm</i> for the financial service, including all related <i>fees</i>, charges and expenses, and all taxes paid through the <i>firm</i> or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the <i>consumer</i> to verify it.</p>
<p>(7) Where relevant, notice indicating that the financial service is related to instruments involving special risks related to their specific features or the operations to be executed or whose price depends on fluctuations in the financial markets outside the <i>firm's</i> control and that past performance is no indicator of future performance.</p>
<p>(8) Notice of the possibility that other taxes or costs may exist that are not paid through the <i>firm</i> or imposed by it.</p>
<p>(9) Any limitations on the period for which the information provided is valid, including a clear explanation as to how long a <i>firm's</i> offer applies as it stands.</p>
<p>(10) The arrangements for payment and for performance.</p>
<p>(11) Details of any specific additional cost for the <i>consumer</i> for using a means of distance communication.</p>
<p>The distance contract</p>
<p>(12) The existence or absence of a right to cancel under the cancellation <i>rules</i> (<i>FPCOB 13</i>) and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the <i>consumer</i> may be required to pay (or which may not be returned to the <i>consumer</i>) in accordance with those <i>rules</i>, as well as the consequences of not exercising the right to cancel.</p>
<p>(13) The minimum duration of the contract, in the case of services to be performed permanently or recurrently.</p>
<p>(14) Information on any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases.</p>

(15)	Practical instructions for exercising any right to cancel, including the address to which any cancellation notice should be sent.
(16)	Any contractual clause on law applicable to the contract or on the competent court, or both.
(17)	In which language, or languages, the contractual terms and conditions and the other information in this Annex will be supplied, and in which language, or languages, the <i>firm</i> , with the agreement of the <i>consumer</i> , undertakes to communicate during the duration of the contract.
Redress	
(18)	How to complain to the <i>firm</i> , whether complaints may subsequently be referred to the <i>Financial Ombudsman Service</i> and, if so, the methods for having access to it, together with equivalent information about any other applicable named complaints scheme.
(19)	Whether compensation may be available from the <i>compensation scheme</i> , or any other named compensation scheme, if the <i>firm</i> is unable to meet its liabilities, and information about any other applicable named compensation scheme.

5
Annex
3R

Abbreviated distance marketing information

This Annex belongs to *FPCOB* 5.1.14R.

Abbreviated distance marketing information	
(1)	The identity of the <i>person</i> in contact with the <i>consumer</i> and their link with the <i>firm</i> .
(2)	A description of the main characteristics of the financial service.
(3)	The total price to be paid by the <i>consumer</i> to the <i>firm</i> for the financial service including all taxes paid through the <i>firm</i> or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the <i>consumer</i> to verify it.
(4)	Notice of the possibility that other taxes or costs may exist that are not paid through the <i>firm</i> or imposed by it.
(5)	The existence or absence of a right to cancel in accordance with the cancellation <i>rules</i> (<i>FPCOB</i> 13) and, where the right to cancel exists, its duration and the conditions for exercising it, including information

	on the amount the <i>consumer</i> may be required to pay (or which may not be returned to the <i>consumer</i>) on the basis of those <i>rules</i> .
(6)	That other information is available on request and what the nature of that information is.

6 Information about the firm and its services

6.1 General requirements for firms

Application: who?

- 6.1.1 R This chapter applies to a *funeral plan intermediary* and to a *funeral plan provider* in relation to the distribution of its own *funeral plan contracts*.

Interaction with the customer's best interests rule and Principle 7

- 6.1.2 G To comply with the *customer's best interests rule* and *Principle 7* (Communications with clients), a *firm* should consider the information needs of the *customer* and, if different, the *covered individual*, including:

- (1) what a *customer* and/or *covered individual* needs in order to understand the relevance of any information provided by the *firm*; and
- (2) the point in the sales process at which information will be most useful to the *customer* to enable them to make an informed decision.

Status disclosure: general information provided by firms

- 6.1.3 R In good time before a *customer* enters into a *funeral plan contract*:
- (1) a *firm* must provide the *customer* with at least the following information:
 - (a) its identity, address and whether it is a *funeral plan intermediary* or a *funeral plan provider*;
 - (b) the statutory status disclosure statement (see *GEN 4*);
 - (c) the fact that it is included in the *Financial Services Register* and the means for verifying this;
 - (d) whether it provides a *personal recommendation* about the *funeral plans* offered or information;
 - (e) whose *funeral plans* it offers;
 - (f) the procedures allowing *customers* and other interested parties to register *complaints* about the *firm* with the *firm* and the

Financial Ombudsman Service or, if the *Financial Ombudsman Service* does not apply, information about any out-of-court complaint and redress procedures available for the settlement of disputes between the *firm* and its *customers*; and

- (2) a *funeral plan intermediary* must also provide the *customer* with the following information:
- (a) whether it has a direct or indirect holding representing 10% or more of the voting rights or capital in a given *funeral plan provider*;
 - (b) whether a given *funeral plan provider* or its *parent undertaking* has a direct or indirect holding representing 10% or more of the voting rights or capital in the *firm*; and
 - (c) whether it is representing the *customer* or is acting for and on behalf of the *funeral plan provider*.

Scope of service: funeral plan intermediaries

- 6.1.4 R (1) Where a *funeral plan intermediary* proposes or advises on a *funeral plan contract* then in good time before the conclusion of a *funeral plan contract* and, if necessary, on its amendment a *funeral plan intermediary* must provide the *customer* with at least information on whether the *firm*:
- (a) gives a *personal recommendation*, on the basis of a fair and personal analysis of *funeral plans* available in the market; or
 - (b) is under a contractual obligation to conduct *funeral plan distribution activity* exclusively with one or more *funeral plan providers*, in which case it must provide the names of those *funeral plan providers*; or
 - (c)
 - (i) is not under a contractual obligation to conduct *funeral plan distribution activity* exclusively with one or more *funeral plan providers*; and
 - (ii) does not give a *personal recommendation* on the basis of a fair and personal analysis of *funeral plans* available in the market;

in which case it must provide its *customer* with the name of those *funeral plan providers* with which the *funeral plan intermediary* may and does conduct business.

6.2 Means of communication to customers

Application

- 6.2.1 R This section applies to all information required to be provided to a *customer* in this chapter and in other chapters or sections where stated.

Means of communication to customers: non-telephone sales

- 6.2.2 R (1) A *firm* must communicate information to a *customer* using any of the following:
- (a) paper; or
 - (b) a *durable medium* other than paper; or
 - (c) a website (where it does not constitute a *durable medium*) where the *website conditions* are satisfied.
- (2) The *firm* must communicate the information in (1):
- (a) in a clear and accurate manner, comprehensible to the *customer*;
 - (b) in English or in any other language agreed by the parties; and
 - (c) free of charge.

- 6.2.3 R Where the information is communicated using a *durable medium* other than paper or by means of a website, the *firm* must, upon request and free of charge, also send the *customer* a paper copy.

- 6.2.4 R A *firm* must ensure that a *customer's* choice or consent to receive the information by means of a website (whether a *durable medium* or where the *website conditions* are satisfied) is an active and informed choice or consent.

- 6.2.5 G (1) For the purposes of *FPCOB* 6.2.4R, for example an option to allow a change to the e-mail address to be used or an option to allow information to be provided by means of a website should be presented in a way that is clear, fair and not misleading.
- (2) The following are examples of circumstances not evidencing active or informed choice or consent:
- (a) a pre-ticked box (suggesting that option has been selected) which appears in a more prominent place than an un-ticked box allowing another option to be selected; and
 - (b) the *customer* electing to be informed by a website without being first given other options.

Means of communication to customers: telephone sales

- 6.2.6 R In the case of telephone selling:

- (1) the information must be given in accordance with the distance marketing disclosure *rules* (see *FPCOB 5*); and
 - (2) if prior to the conclusion of the contract the information is provided:
 - (a) orally; or
 - (b) on a *durable medium* other than paper;
- the *firm* must also provide the information to the *customer* in accordance with *FPCOB 6.2.2R* immediately after the conclusion of the *funeral plan contract*.

6.3 Fee disclosure

- 6.3.1 R (1) Where a *fee* is payable, the *firm* must inform its *customer* of the amount of the *fee*.
- (2) The information in (1) must be given before the *customer* incurs liability to pay the *fee*, or before entering into the *funeral plan contract*, whichever is earlier.
- 6.3.2 R The *fee* disclosure requirement extends to all such *fees* that may be charged in connection with a *funeral plan*.

6.4 Charging for funeral plan distribution

Application

- 6.4.1 R This section applies to a *firm* which carries on *funeral plan distribution activity*.
- 6.4.2 G This section does not apply to a *funeral plan provider* in connection with *entering as provider into funeral plan contracts*.

Purpose

- 6.4.3 G (1) The purpose of the *rules* in this section is to ensure that *funeral plan intermediaries* act in accordance with the *customer's best interests rule* and are not improperly influenced in their *funeral plan distribution activities* by payments made, or benefits provided, by *funeral plan providers*. In particular, the *rules* in this section prevent a *firm* from accepting commission from a *funeral plan provider*.
- (2) The *rules* in this section apply whether or not the relevant *funeral plan distribution activity* involves the provision of *investment advice*.
- (3) *Firms* should be mindful of the *customer's best interests rule* when considering their approach to compliance with the *rules* in this section.

Requirement to be paid by the customer

- 6.4.4 R A *firm* must:
- (1) only be remunerated for its *funeral plan distribution activity* (and any other related services provided by the *firm*) by *FP distribution charges*; and
 - (2) not solicit or accept (and ensure that none of its *associates* solicits or accepts) any other commissions, remuneration or benefit of any kind in connection with the *firm's* business of engaging in *funeral plan distribution activity* or any other related services, regardless of whether it intends to refund the payments or pass the benefits on to the *customer* or *covered individual*,
- except as provided in this section.
- 6.4.5 R 'Related service(s)' for the purposes of *FPCOB* 6.4.4R includes:
- (1) *communicating* or *approving financial promotions* in relation to a *funeral plan contract* or *regulated funeral plan activity*;
 - (2) recommending a *funeral plan provider*.
- 6.4.6 G *FPCOB* 6.4.4R prevents a *firm* from receiving any monetary or non-monetary benefit either in relation to the distribution of particular *funeral plan contracts* or in connection with its business of marketing, selling or distributing *funeral plan contracts* more generally.

Group distribution arrangements

- 6.4.7 R If the *firm's* *funeral plan distribution activity* relates to *funeral plan contracts* entered into by the *firm* itself or by an *associate*, the *firm* must ensure that the level of its *FP distribution charge* is at least reasonably representative of the services associated with its *funeral plan distribution activity* (and related services).
- 6.4.8 G A *firm* should consider whether the level of its *FP distribution charge* meets the requirement of *FPCOB* 6.4.7R by reference to whether the charge would be appropriate in the context of the service being provided by a *firm* unconnected with a *funeral plan provider*.

Guidance on the requirement to be paid by the customer

- 6.4.9 G *FPCOB* 12.2.1R prevents a *funeral plan intermediary* from handling payments which are due under a *funeral plan contract*. That rule does not prevent a *funeral plan intermediary* from receiving any payments from a *customer* that are contemplated by this section.

- 6.4.10 G *FPCOB 6.3.1R* requires a *funeral plan intermediary* to inform the *customer* of the amount of any *fee* payable. That disclosure should include any *FP distribution charge* payable by the *customer*.

Payment for funerals

- 6.4.11 G (1) *FPCOB 6.4.4R* applies to providers of funerals (such as funeral directors) which engage in *funeral plan distribution activity*. However, that *rule* only restricts the receipt of payments or benefits in connection with the business of engaging in *funeral plan distribution activity*.
- (2) *FPCOB 6.4.4R* does not prevent a provider of funerals from receiving payment for the provision of a funeral from a *funeral plan provider* under the terms of a *funeral plan contract*. For these purposes it does not matter whether payment for the funeral is received at the time that the *customer* enters into the relevant *funeral plan contract* or at any other time thereafter.
- 6.4.12 R A *firm* which carries on *funeral plan distribution activity* and is also a provider of funerals must ensure that:
- (1) the level of its *FP distribution charge* is at least reasonably representative of the cost of the services associated with its *funeral plan distribution activity*; and
- (2) any payments which it receives from a *funeral plan provider* under a *funeral plan contract* are reasonably representative of the cost of delivering the relevant funeral.
- 6.4.13 G A payment is unlikely to be reasonably representative of the cost of delivering the relevant funeral if it is materially greater than the same payment would have been had the relevant *firm* had no involvement in the sale or distribution of the *funeral plan contract*.

Training and support

- 6.4.14 R A *firm* may receive:
- (1) training on the *funeral plan contracts* in relation to which it carries on *funeral plan distribution activity*; and
- (2) appropriate support with complying with its obligations under the *regulatory system* from a *funeral plan provider*.
- 6.4.15 R Any training or support received for the purposes of *FPCOB 6.4.14R* must be:
- (1) of a scale and nature that it could not be judged to impair the *firm's* compliance with its duty to act honestly, fairly and professionally in the best interests of the *customer* or *covered individual*; and

- (2) reasonable, proportionate and of a scale that is unlikely to influence the *firm's* behaviour in any way that is detrimental to the interests of any relevant *customer* or *covered individual*.

- 6.4.16 G The *rules* in this section do not preclude a *funeral plan intermediary* from receiving from a *funeral plan provider* any materials necessary for the *funeral plan intermediary* to engage in its business of *funeral plan distribution activity*. This may include the product information for the purposes of *FPCOB 9*.

Payments to employees

- 6.4.17 G The *rules* in this section do not prevent an *employee* of a *firm* receiving payment from that *firm*.

Record keeping

- 6.4.18 R A *firm* must keep a record of the *FP distribution charges* paid by each *customer*.

6.5 Payments to funeral plan intermediaries

Application

- 6.5.1 R This section applies to a *funeral plan provider*.

Requirement not to offer commissions

- 6.5.2 R A *firm* must not offer or pay (and must ensure that none of its *associates* offers or pays) any commissions, remuneration or benefit of any kind to:
- (1) another *firm* in connection with that *firm's* business of engaging in *funeral plan distribution activity*;
 - (2) another *person* in connection with:
 - (a) that *person's* business of engaging in *funeral plan distribution activity*:
 - (i) for which it does not require *authorisation*; or
 - (ii) which it carries on in breach of the *general prohibition*;
 - (b) business of that *person* which would involve engaging in *funeral plan distribution activity* but for an exclusion in the *Regulated Activities Order*;
 - (c) that *person's* business of introducing *customers* to another *person* in relation to *funeral plan contracts*;
 - (3) a *person* in (1) or (2) in relation to any related services; or

- (4) any third party for the benefit of a *person*, and in the circumstances described, in (1) to (3),

except as provided in this section.

- 6.5.3 R *FPCOB* 6.5.2R does not apply to training or support which meet the requirements of *FPCOB* 6.4.14R and 6.4.15R.
- 6.5.4 G *FPCOB* 6.5.2R prevents a *funeral plan provider* from making payments, or offering benefits, to *persons* involved in distributing the *firm's funeral plan contracts*. This includes payments made, or benefits offered, to a *firm's appointed representatives*.
- 6.5.5 R *FPCOB* 6.5.2R does not prevent a *funeral plan provider* from making payments to a *person* to *communicate a financial promotion*.

Payments to employees

- 6.5.6 G (1) The *rules* in this section do not apply to payments made by *firms* to their *employees* in relation to sales activity.
- (2) *Firms* should refer to SYSC 19F and the *FCA's final guidance*, 'Risks to customers from financial incentives' (January 2013) when considering the structure of any incentive schemes for their *employees*.

[Note: see <https://www.fca.org.uk/publication/finalised-guidance/fsa-fg13-01.pdf>]

7 Prohibition on entering into long term instalment payment funeral plans

7.1 Purpose

- 7.1.1 G This section ensures that, subject to an initial 12-month moratorium period, a *customer* who chooses to pay for a *funeral plan contract* in instalments receives the funeral under that contract even if the *covered individual* dies before the end of the instalment period.

7.2 Prohibition

Prohibition

- 7.2.1 R (1) A *funeral plan provider* must not enter into an *instalment payment funeral plan* under which the *customer* agrees to make payments over a period of more than 12 months.
- (2) Paragraph (1) does not apply in respect of an *instalment payment funeral plan* under the terms of which:
- (a) a funeral will be unconditionally provided upon the *covered individual's* death where:

- (i) this occurs more than 12 *months* after the date on which the relevant parties entered into the *funeral plan contract*; or
 - (ii) (if earlier) the death is accidental; and
- (b) no further payment is required following the *covered individual's* death in order for the funeral specified by the *funeral plan contract* to be provided.

Guidance

- 7.2.2 G This section is relevant to any *instalment payment funeral plan* which requires payments to be made over a period of more than 12 *months*. This may include a *funeral plan contract* under which the *customer* is required to make payments until the *covered individual* reaches a certain age or on a regular basis until the time of the *covered individual's* death.
- 7.2.3 G This section does not affect the position where a *funeral plan contract* has been cancelled either by the *customer* or by the *funeral plan provider* in compliance with the *rules* in *FPCOB* 13.
- 7.2.4 G The effect of *FPCOB* 13.1.2R is that the death of the *covered individual* (other than by reason of an accident) within the *moratorium period* is treated as a cancellation of the *funeral plan contract*. In this case, any instalments paid by the *customer* must be returned without deduction to the *customer* or (where the customer is also the *covered individual*) to his or her estate.

8 Identifying client needs and advising

8.1 Demands and needs

Application: who? what?

- 8.1.1 R This section applies to a *firm* when carrying on *funeral plan distribution activities*.

Demands and needs

- 8.1.2 R The sale of a *funeral plan contract* must always be accompanied by a demands and needs test.

Demands and needs test

- 8.1.3 R (1) Prior to the conclusion of a *funeral plan contract* a *firm* must identify on the basis of information obtained from the *customer* and other sources where relevant, the demands and the needs of that *customer*.
- (2) When proposing a *funeral plan contract* a *firm* must ensure it is consistent with the *customer's* demands and needs.

- (3) A statement of the demands and needs must be communicated to the *customer* prior to the *customer* entering into a *funeral plan contract*.
- 8.1.4 G A *firm* may obtain information from the *customer* in a number of ways including, for example, by asking the *customer* questions in person or by way of a questionnaire prior to any *funeral plan contract* being proposed.
- 8.1.5 G *FPCOB* 8.1.3R(2) applies whether or not advice is given and in the same way regardless of whether that contract is sold on its own, or in connection with other goods or services.
- 8.1.6 R In determining whether a *funeral plan contract* is consistent with the *customer's* demands and needs, a *firm* must consider, amongst other things:
- (1) whether any *person* has already made provision for the *covered individual's* funeral; and
 - (2) the length of the *moratorium period* during which the contracted funeral will not be provided.

8.2 Ensuring customers can make an informed decision

Disclosing the limits of the service provided

- 8.2.1 R (1) In a sale that does not involve a *personal recommendation*, a *firm* must take reasonable steps to ensure a *customer* ('C') understands that C is responsible for deciding whether a *funeral plan* meets C's demands and needs.
- (2) If a *firm* anticipates providing, or provides, information on any main characteristic of a *funeral plan* orally during a non-advised sale, taking reasonable steps includes explaining the *customer's* responsibility orally.
- (3) A *funeral plan's* main characteristics include its significant benefits, its significant exclusions and limitations, its duration and price information.

Means of communication to customers

- 8.2.2 R The information to be provided to *customers* in *FPCOB* 8.1 (Demands and needs) must be given in accordance with *FPCOB* 6.2 (Means of communication to customers).

8.3 Advised sales

Application

- 8.3.1 R This section applies to a *firm* that provides *advice on investments* where that advice relates to a *funeral plan contract*.

Suitability of advice

- 8.3.2 R A *firm* must take reasonable care to ensure the suitability of its advice for any *customer* who is entitled to rely upon its judgement.

Suitability guidance

- 8.3.3 G (1) In taking reasonable care to ensure the suitability of advice on a *funeral plan contract* a *firm* should:
- (a) establish the *customer's* demands and needs by using information readily available to the *firm* and by obtaining further relevant information from the *customer*, including details of existing alternative arrangements by which the *customer* may reasonably fund the cost of the funeral in question. For example, this could include insurance products, investments, or cash savings;
 - (b) take reasonable care to ensure that a *funeral plan* is suitable for the *customer's* demands and needs, taking into account its level of cover and cost, the duration of instalment payments, and relevant exclusions, limitations and conditions; and
 - (c) inform the *customer* of any demands and needs that are not met.

Personal recommendations

- 8.3.4 R If a *firm* provides a *customer* with a *personal recommendation* in relation to a *funeral plan contract*, that *personal recommendation* must be provided:
- (1) on the basis of a fair and personal analysis;
 - (2) on the basis of an analysis of a sufficiently large number of *funeral plan contracts* available on the market; and
 - (3) in accordance with professional criteria, regarding which *funeral plan contract* would be adequate to meet the *customer's* needs.

Personalised explanation

- 8.3.5 R Where a *firm* provides a *personal recommendation*, the *firm* must, in addition to the statement of demands and needs, provide the *customer* with a personalised explanation of why a particular *funeral plan contract* would best meet the *customer's* demands and needs.

Means of communication

- 8.3.6 R A *firm* must provide the information in this section in accordance with *FPCOB* 6.2 (Means of communication to customers).

9 Product information

9.1 Producing and providing product information

Application

- 9.1.1 R This chapter applies to *funeral plan providers* and *funeral plan intermediaries*.

Purpose

- 9.1.2 G The purpose of the *rules* in this chapter is to ensure that *customers* are provided with appropriate information before concluding a *funeral plan contract* and at relevant times thereafter, in particular when post-contractual changes to a *funeral plan contract* are proposed.

Responsibilities for producing and providing information as between funeral plan providers and funeral plan intermediaries: general

- 9.1.3 R (1) This *rule* applies in relation to the information that must be provided to the *customer* before the conclusion of a *funeral plan contract* in compliance with the *rules* in this chapter and the distance communication *rules* (*FPCOB 5.1*).
- (2) The *funeral plan provider* is responsible for producing the information to which this *rule* applies.
- (3) The *funeral plan intermediary* is responsible for providing the information to which this *rule* applies to the *customer*.
- (4) If there is no *funeral plan intermediary*, the *funeral plan provider* is responsible for providing the information to the *customer*.
- (5) A *funeral plan provider* must produce information in good time to enable a *funeral plan intermediary* to comply with the *rules* in this chapter, or promptly on a *funeral plan intermediary's* request.
- 9.1.4 R A *funeral plan provider* is responsible for providing all post-contractual information to a *customer* including information required on post-contractual changes made to the *funeral plan*.
- 9.1.5 R A *funeral plan intermediary* is responsible for producing price information if it agrees this with a *funeral plan provider*.

9.2 Providing product information to customers: general

Ensuring customers can make an informed decision: the appropriate information rule

- 9.2.1 R (1) A *firm* must ensure that a *customer* is given appropriate information about a *funeral plan contract* in good time before the conclusion of the contract and at relevant times thereafter, in a comprehensible

form so that the *customer* can make an informed decision about the arrangements proposed.

- (2) The information must be provided to the *customer*:
 - (a) whether or not a *personal recommendation* is given; and
 - (b) irrespective of whether a *funeral plan* is offered as part of a package with another product or service.

9.2.2 G The appropriate information *rule* applies:

- (1) at all of the different stages of a contract and includes pre-conclusion and post-conclusion information, and also when post-contractual changes are proposed;
- (2) in the same way to any *funeral plan*, regardless of whether that *funeral plan* is sold on its own, or in connection with other goods or services; and
- (3) to the price of the *funeral plan*.

What level of information needs to be provided?

9.2.3 G The level of information required will vary according to matters such as:

- (1) the knowledge, experience and ability of a typical *customer* for the *funeral plan*;
- (2) the terms of the *funeral plan contract*, including its main benefits, exclusions, limitations, conditions and its duration;
- (3) whether the *funeral plan* is bought in connection with another product or service; and
- (4) distance communication information requirements (for example, under the distance communication *rules* less information can be given during certain telephone sales than in a sale made purely by written correspondence (see *FPCOB* 5.1.14R (exception: telephone calls)).

9.2.4 G Cancellation rights do not affect what information it is appropriate to give to a *customer* to enable them to make an informed purchasing decision.

Oral sales: ensuring customers can make an informed decision

- 9.2.5 R
- (1) If a *firm* provides information orally during a sales dialogue with a *customer* on a main characteristic of a *funeral plan*, it must do so for all the *funeral plan's* main characteristics.
 - (2) A *firm* must take reasonable steps to ensure that the information provided orally is sufficient to enable the *customer* to take an

informed decision on the basis of that information, without overloading the *customer* or obscuring other parts of the information.

- 9.2.6 G (1) A *funeral plan's* main characteristics include its significant benefits, its significant exclusions and limitations, its duration (if applicable) and price information.
- (2) A significant exclusion or limitation is one that would tend to affect the decision of *customers* generally to buy a *funeral plan*. In determining what exclusions or limitations are significant, a *firm* should particularly consider the exclusions or limitations that relate to the significant features and benefits of a *funeral plan* and factors which may have an adverse effect on the services provided under it. Another type of significant limitation might be that the contract only operates through certain means of communication, e.g. telephone or internet.

Funeral plan summary

- 9.2.7 R A *firm* must provide a *customer* with a *funeral plan summary* in good time before the conclusion of a *funeral plan contract*.
- 9.2.8 G (1) The *funeral plan summary* should be provided on paper or in another *durable medium*.
- (2) In the case of telephone selling, a *firm* may provide the *funeral plan summary* in accordance with the distance communication timing requirements and provide the *funeral plan summary* to the *customer* immediately after the conclusion of the *funeral plan contract*.
- (3) The *funeral plan summary* should be provided in accordance with *FPCOB 6.2* (Means of communication to customers).

Responsibility for producing and providing the funeral plan summary as between funeral plan providers and funeral plan intermediaries

- 9.2.9 R (1) A *funeral plan provider* is responsible for designing and producing a *funeral plan summary*.
- (2) A *funeral plan intermediary* is responsible for providing a *funeral plan summary* to a *customer*.
- (3) If there is no *funeral plan intermediary*, the *funeral plan provider* is responsible for providing the summary to a *customer*.

Funeral plan contracts: importance of reading documentation

- 9.2.10 R (1) A *firm* must draw a *customer's* attention to the importance of reading the *funeral plan contract* documentation before the end of the cancellation period to check that the *funeral plan* is suitable for the *customer*.

- (2) This must be done orally if a *firm* provides information orally on any main characteristic of a *funeral plan* but otherwise in writing.

Price information: general

- 9.2.11 R A *firm* must provide price information in a way calculated to enable the *customer* to relate it to a regular budget.
- 9.2.12 G Price information should include at least the total price (or where it cannot be indicated, the basis for calculating it) of the *funeral plan* and, where relevant:
- (1) for *instalment payment funeral plans* with a payment schedule greater than 12 *months*, whether the payments may increase and if so, the amount of the increase (or where this cannot be indicated, the basis for calculating it) and the timing of the increase;
 - (2) other *fees* and taxes payable and potentially payable by the *customer* through the *firm*; and
 - (3) a statement identifying separately the possibility of any taxes not payable through the *firm*.
- 9.2.13 R Where a *firm* offers *customers* the option to pay for a *funeral plan* by instalments, it must clearly communicate the total cost of the instalment payment option.
- 9.2.14 R If a *firm* has more than one payment option available for its *funeral plans* and does not present all the payment options to *customers*, it must also make it clear to *customers* that other payment options are available.
- 9.2.15 G For the purposes of the *fair, clear and not misleading rule*:
- (1) the total price of the instalment payment option should be given equal prominence and emphasis as the price of the single payment option;
 - (2) the total price of the instalment payment option should not be presented in a way that gives the impression that it is equivalent to the price of the single payment option (unless this is actually the case).
- 9.2.16 G Price information should be given in writing or another *durable medium* in good time before conclusion of the contract. This is in addition to any requirement or decision to provide the information orally. In the case of a *distance contract* concluded over the telephone, it may be provided in writing or another *durable medium* no later than immediately after conclusion.

9.3 Post-contract information: funeral plan contracts

Application

- 9.3.1 R This section applies to a *funeral plan provider* in relation to:
- (1) the activities of *entering into a funeral plan contract* and *carrying out a funeral plan contract*;
 - (2) *new funeral plans* and *subsisting funeral plans*.

Post-contractual changes

- 9.3.2 R (1) Throughout the term of a *funeral plan*, a *firm* must provide a *customer* with information about any change to:
- (a) the price of the *funeral plan*, unless the change conforms to a previously disclosed formula; and
 - (b) any term of the *funeral plan*, together with an explanation of any implications of the change where necessary.
- (2) This information must be provided in writing or another *durable medium* in good time before the change takes effect or, if the change is at the *customer's* request, as soon as is practicable provided the *firm* explains the implications of the change before it takes effect.
- 9.3.3 R A *firm* must notify each *customer* and their nominated representative in good time about any material change to the information concerning potential *funeral plan provider failure* provided in the *funeral plan summary* or the *nominated representative document*, together with an explanation of any implications of the change where necessary. This information must be provided in writing or another *durable medium*.
- 9.3.4 G (1) When explaining the implications of a change, a *firm* should explain any changes to the benefits and significant or unusual exclusions arising from the change.
- (2) *Firms* will need to consider whether post-contractual changes are compatible with the original *funeral plan*, in particular whether it reserves the right to vary the price of the *funeral plan*, charges or other terms. *Firms* also need to ensure that any terms which reserve the right to make variations are not themselves unfair under the *Unfair Terms Regulations* (for contracts entered into before 1 October 2015) or the *CRA*.

Nominated representative document

Purpose

- 9.3.5 G The purpose of this section is to ensure that a *customer's* nominated representative is aware of the *funeral plan contract*, its features and the procedure to be followed upon the *covered individual's* death.

- 9.3.6 R A *firm* must provide the *nominated representative document* to the *customer's* nominated representative within five *business days* of the date of conclusion of the *funeral plan contract*.
- 9.3.7 R *FPCOB* 9.3.6R does not apply if:
- (1) the *customer* has expressly stated that they do not wish their nominated representative to be contacted; or
 - (2) the *customer* is not the *covered individual* and the *customer* has confirmed that no nominated representative is to be appointed.
- 9.3.8 G For the purposes of *FPCOB* 9.3.7R(1), 'expressly states' means that the *customer* has actively opted out of the nominated representative being contacted.
- 9.3.9 R In relation to *funeral plan contracts* entered into before 29 July 2022, a *firm* must consider whether the information provided to date to the *customer's* nominated representative is sufficient to achieve the purpose of this section, and if not, provide the *nominated representative document* to the *customer's* nominated representative.
- 9.3.10 R The requirement to provide the *nominated representative document* in *FPCOB* 9.3.9R only applies to *funeral plan contracts* where the *firm* already has the nominated representative's contact details and consent to contact the nominated representative.

Annual statement - requirement for funeral plan providers

- 9.3.11 R (1) A *firm* must provide the *customer* with an annual statement (*FPCOB* 9 Annex 3) regarding the *funeral plan contract* at least once a year.
- (2) In relation to contracts entered into before 29 July 2022, a *firm* must provide a *customer* with the first annual statement no later than 31 August 2023.

9.4 Means of communication

Means of communication

- 9.4.1 R The information in *FPCOB* 9 must, unless stated otherwise in this chapter, be provided in accordance with *FPCOB* 6.2 (Means of communication to customers).

9 Annex 1

Funeral plan summary

This annex belongs to *FPCOB* 9.2.7R.

1		What information needs to be contained in the funeral plan summary?
1.1	R	The <i>funeral plan summary</i> must contain the following information:
		(1) a summary of the significant features of the <i>funeral plan</i> ;
		(2) a summary of the main exclusions or limitations of the <i>funeral plan</i> ;
		(3) an explanation of whether changes can be made to the <i>funeral plan</i> , and if so, the process and any related costs;
		(4) price and payment information;
		(5) the consequences of non-payment;
		(6) the existence and duration of the right of cancellation;
		(7) how to complain to the <i>firm</i> and that complaints may subsequently be referred to the <i>Financial Ombudsman Service</i> ;
		(8) details on whether compensation is available from the <i>compensation scheme</i> , if the <i>firm</i> cannot meet its liabilities;
		(9) details of the <i>firm's</i> arrangements to transfer the <i>funeral plan contracts</i> or to promptly pay the <i>funeral plan customer balance</i> in the event of <i>funeral plan provider failure</i> .
1.2	G	A <i>firm</i> , when providing the information in the <i>funeral plan summary</i> , should consider:
		(1) the <i>rules and guidance</i> on: providing appropriate information to <i>customers</i> in <i>FPCOB 9.2</i> , post contractual changes in <i>FPCOB 9.3</i> and price information in <i>FPCOB 9.2</i> ;
		(2) the order of the information and priority of the information to be provided;
		(3) the information needs of the <i>firm's</i> typical <i>customer</i> for the <i>funeral plan</i> ;
		(4) using colours, images and other ways to make the document more accessible, easy-to-read, and eye-catching; and
		(5) whether to provide additional information to the <i>customer</i> , for example, to assist the <i>customer's</i> understanding of the proposed arrangements. If a <i>firm</i> does provide additional information, the additional information should not disguise, diminish or obscure important information contained in the <i>funeral plan summary</i> document.

	Name and company logo of the funeral plan provider		
1.3	R	(1)	The name of the provider, its statutory status (<i>GEN</i> 4 Annex 1R) and its firm reference number should follow the title ‘Funeral Plan summary document’ at the top of the first page.
		(2)	The provider may insert its company logo to the right of the title.
	Purpose of the document and reference to complete pre-contractual and contractual information		
1.4	R		<p>The <i>funeral plan summary</i> should state the purpose of the document and that complete pre-contractual and contractual information about the <i>funeral plan</i> is provided to the <i>customer</i> in other documents. The following wording should be used and placed immediately below the name of the provider in a way that it is likely to maximise <i>customers’</i> awareness that it is a summary only:</p> <p><i>This document explains what is and is not included in your funeral plan, how you will pay for your plan and information on cancelling your plan, making a complaint and your entitlement to compensation. Please ensure you read this carefully. Please note this is a summary of your plan, please refer to our pre-contractual documentation and terms & conditions or contact us using the contact details below for further details.</i></p>
2	How must the summary be presented and formatted?		
2.1	R		The <i>funeral plan summary</i> must:
		(1)	be a short and stand-alone document;
		(2)	be presented and laid out in a way that is clear and easy to read, using characters of a readable size; and
		(3)	be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white.
	Length		
2.2	R		The summary document must be set out on no more than two sides of A4-sized paper when printed.
	Plain language		
2.3	R		The <i>funeral plan summary</i> must be drafted in plain language, facilitating the <i>customer’s</i> understanding of the content of that

			document, and must focus on key information which the <i>customer</i> needs to make an informed decision. Jargon must be avoided.
	Presentation		
2.4	G	A <i>firm</i> , when providing the information in the <i>funeral plan summary</i> should consider:	
		(1)	the use of tables to display costs and other ways to make the document and information more accessible and easy-to-read; and
		(2)	the use of bold and italic text to highlight key information.
	Headings, corresponding information and order of content		
2.5	R	The subheadings must be in this sequence and have the following corresponding information:	
		(1)	‘What products and services are included in my funeral plan?’ This section should clearly set out using green tick boxes and text the key products and services the <i>funeral plan</i> provides.
		(2)	‘What products and services are not included in my funeral plan?’ This section should clearly set out through red cross boxes and red text the key products and services the <i>funeral plan</i> would not provide, that the <i>customer</i> would typically expect to be included in their funeral (e.g. catering, flowers). A <i>firm</i> should also highlight where the cost of a feature (e.g. burial plot), may exceed the allocated allowance. This section should also clearly set out any additional costs the <i>customer</i> may face (e.g. the need to appoint a new funeral director due to the <i>covered individual’s</i> change of address.) If applicable, a <i>firm</i> should prominently state that other exclusions will apply and explain where to find relevant information.
		(3)	‘How do I make changes to my plan?’ This section should set out if a <i>customer</i> can make changes to their plan, how they can do so and any related costs. It should also refer to the cancellation process should their needs change.
		(4)	‘When and how do I pay?’ A <i>firm</i> should set out the payment options on offer and the timings of these payments. For example, whether payment is in monthly instalments or a lump sum/single payment.

			<p>A <i>firm</i> should set out clearly and prominently if the cost of the plan will increase as a result of paying with a different payment option and if so, the cost of each payment option. If applicable, a <i>firm</i> should clearly state the <i>moratorium period</i> in which the funeral will not be provided if the <i>covered individual</i> dies.</p> <p>A <i>firm</i> should set out clearly and prominently any <i>fees</i> which are, or may be, payable (including the circumstances in which they are payable).</p> <p>A <i>firm</i> should clearly set out where a <i>customer</i> can find additional information.</p>
		(5)	<p>‘What happens if I miss a payment?’</p> <p>This section should clearly set out any impact of missing payments, including any <i>fees</i> or potential cancellation.</p> <p>A <i>firm</i> should clearly pinpoint where a <i>customer</i> can find additional information.</p>
		(6)	<p>‘How do I cancel my plan?’</p> <p>A <i>firm</i> should set out the <i>customer’s</i> right to cancel – including how long they have to cancel without incurring a cancellation <i>fee</i>.</p> <p>A <i>firm</i> should set out clearly and prominently any cancellation <i>fee</i>.</p> <p>A <i>firm</i> should clearly pinpoint where a <i>customer</i> can find additional information.</p>
		(7)	<p>‘How do I make a complaint?’</p> <p>A <i>customer</i> should complain to the <i>firm</i> in the first instance. The <i>firm</i> should provide information regarding its internal procedures for the reasonable and prompt handling of complaints.</p> <p>If the <i>customer</i> is unhappy with the <i>firm’s</i> response, they may be able to refer the matter to the <i>Financial Ombudsman Service</i>.</p>
		(8)	<p>‘Financial Services Compensation Scheme’</p> <p>A <i>firm</i> should explain that if it is unable to meet its liabilities, the <i>customer</i> (or their estate, if the <i>customer</i> has died) may be entitled to compensation from the <i>compensation scheme</i>.</p> <p>A <i>firm</i> should clearly state where <i>customers</i> can find further information in relation to the <i>compensation scheme</i>.</p>
		(9)	<p>‘Information concerning potential funeral plan provider failure’</p> <p>A <i>firm</i> should briefly explain the arrangements in place to ensure that in the event of its <i>failure</i>:</p>

			<p>there will be a reasonable likelihood that the relevant <i>funeral plan contracts</i> will continue to be <i>carried out</i> by another <i>firm</i>, identifying particular terms in its contracts with <i>customers</i>, including relating to prior consents from <i>customers</i>, and explaining how they operate; and</p> <p>in the event that the relevant <i>funeral plan contract</i> will not continue to be <i>carried out</i> by the <i>firm</i> or another <i>firm</i>, the relevant <i>customer</i> will promptly receive a payment corresponding to the <i>funeral plan customer balance</i>.</p> <p>A <i>firm</i> should also explain the particular risks to the <i>carrying out of funeral plan contracts</i> in the event of its <i>failure</i>, including the possibility that <i>funeral plan contracts</i> may cease to be <i>carried out</i> before the <i>covered individual's</i> death, and that <i>customers</i> may need to make arrangements with an alternative provider and potentially incur associated costs.</p>
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9
Annex
2

Nominated representative document

This annex belongs to *FPCOB* 9.3.6R.

1	Format		
	The document must:		
1.1	R	(1)	be short and stand alone;
		(2)	be presented and laid out in a way that is clear and easy to read, using characters of a readable size; and
		(3)	be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white;
2	Length		
2.1	R	The document shall be set out on no more than two sides of A4-sized paper when printed.	
3	Presentation		
3.1	G	A <i>firm</i> , when providing the information in the document should consider:	
		(1)	the use of tables to display costs and other ways to make the document and information more accessible and easy-to-read;

		(2)	the use of bold and italics text to highlight key information.
4	Headings, corresponding information and order of content		
4.1	R	The document must contain the following information and use the headings in (4) to (9) in this sequence:	
		(1)	a clear statement outlining the purpose of the document, including the name of the <i>customer</i> and, if different, the <i>covered individual</i> and why it is important that the nominated representative reads the document;
		(2)	a clear statement explaining the nominated representative's obligations regarding the plan;
		(3)	a clear and prominent statement explaining that the document is a summary of the plan, that complete contractual information is available in other documents and the <i>customer's</i> duties and obligations;
		(4)	'What is the procedure to follow when the <i>covered individual</i> dies?' A <i>firm</i> should explain the procedure that the nominated representative should follow when the <i>covered individual</i> dies, include contact information for the funeral director and specify what documents will be needed.
		(5)	'What is included in the funeral plan?' This section should clearly set out using green tick boxes and text the key products and services provided by the <i>funeral plan</i> .
		(6)	'What additional costs could there be for me?' Clearly state that the items in this section are not included in the cost of the plan and will need to be paid for separately. Red cross box and text: which outlines the key products and services NOT included in the plan. These must include any products the <i>customer</i> may reasonably expect to be included in their funeral. A <i>firm</i> should also specify if there is a cost to changing funeral directors and explain that there may be additional costs if the nominated representative chooses alternative items which are not included in the plan.
		(7)	'What happens if the <i>covered individual</i> dies before payments are completed?'

			<p>A <i>firm</i> should provide a clear explanation of the coverage of the funeral plan contract if the <i>covered individual</i> dies before payments are completed, including any associated <i>fees</i>.</p>
		(8)	<p>‘How do I make a complaint?’</p> <p>A <i>firm</i> should explain that a <i>customer’s</i> nominated representative should complain to the <i>firm</i> in the first instance. The <i>firm</i> should provide information regarding its internal procedures for the reasonable and prompt handling of complaints.</p> <p>If the nominated representative is unhappy with the <i>firm’s</i> response, they may be able to refer the matter to the <i>Financial Ombudsman Service</i>. The representative may need to show that they are authorised to complain on behalf of the <i>customer</i>.</p>
		(9)	<p>‘Financial Services Compensation Scheme’</p> <p>A <i>firm</i> should explain that if it is unable to meet its liabilities, the <i>customer</i> (or their estate, if the <i>customer</i> has died) may be entitled to compensation from the <i>compensation scheme</i>.</p> <p>A <i>firm</i> should clearly state where <i>customers</i> and nominated representatives can find further information in relation to the <i>compensation scheme</i>.</p>
		(10)	<p>‘Information concerning potential provider failure’</p> <p>A <i>firm</i> should briefly explain the arrangements in place to ensure that in the event of its <i>failure</i>:</p> <p>there will be a reasonable likelihood that the relevant <i>funeral plan contracts</i> will continue to be <i>carried out</i> by another <i>firm</i>, identifying particular terms in its contracts with <i>customers</i>, including relating to prior consents from <i>customers</i>, and explaining how they operate; and</p> <p>in the event that the relevant <i>funeral plan contract</i> will not continue to be carried out by the <i>firm</i> or another <i>firm</i>, the relevant <i>customer</i> will promptly receive a payment corresponding to the <i>funeral plan customer balance</i>.</p> <p>A <i>firm</i> should also explain the particular risks to the <i>carrying out</i> of <i>funeral plan contracts</i> in the event of its <i>failure</i>, including the possibility that <i>funeral plan contracts</i> may cease to be <i>carried out</i> before the <i>covered individual’s</i> death, and that <i>customers</i> may need to make arrangements with an alternative provider and potentially incur associated costs.</p>

This annex belongs to *FPCOB 9.3.11R*.

1	Format		
	The annual statement must:		
1.1	R	(1)	be a short and stand-alone document;
		(2)	be presented and laid out in a way that is clear and easy to read, using characters of a readable size; and
		(3)	be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white.
2	Length		
2.1	R	The annual statement shall be set out on one side of A4-sized paper when printed.	
3	Presentation		
3.1	G	A <i>firm</i> , when providing the information in the annual statement should consider:	
		(1)	the use of tables to display costs and other ways to make the document and information more accessible and easy-to-read;
		(2)	the use of bold and italic text to highlight key information.
3.2	G	The <i>funeral plan provider</i> may insert its company logo to the right of the title.	
4	Headings, corresponding information and order of content		
4.1	R	The annual statement must contain the following information and use the headings in (3) to (7) in this sequence:	
		(1)	a clear and prominent statement outlining the purpose of the annual statement.
		(2)	a clear and prominent statement that the <i>customer</i> should review the information in the document to consider whether the plan still meets their needs.
		(3)	‘How much have I got left to pay?’ This section should clearly set out: the <i>customer’s</i> monthly payment (as appropriate), the total cost of their plan, and the amount paid to date.

			This section should also prominently set out details of the outstanding balance and the duration of the remaining payments.
		(4)	‘What does my plan provide?’ This section should set out a brief summary of what is included and excluded in the plan and where further information can be found. This should also include the name of the relevant funeral director.
		(5)	‘How do I make changes to my plan?’ A firm should explain whether a <i>customer</i> can make changes to the plan, how to do so, what changes they can make (e.g. paying it off more quickly, adding items to plan) and any related costs. A firm should also explain where to find further information.
		(6)	‘How do I cancel my plan?’ The firm should set out clearly and prominently the <i>customer’s</i> right to cancel and identify any cancellation <i>fees</i> .
		(7)	‘Financial Services Compensation Scheme’ A <i>firm</i> should explain that if it is unable to meet its liabilities, the <i>customer</i> (or their estate, if the <i>customer</i> has died) may be entitled to compensation from the <i>compensation scheme</i> . A <i>firm</i> should clearly state where <i>customers</i> can find further information in relation to the <i>compensation scheme</i> .
		(8)	‘Contact us’ A firm should provide its contact details for the <i>customer</i> .

10 Arrangements for the funeral

10.1 Application and purpose

Application

- 10.1.1 R This chapter applies to a *funeral plan provider* that enters into a *funeral plan contract*, under which it undertakes to secure that another *person* provides a funeral for the *covered individual* on their death.

Purpose

- 10.1.2 G The purpose of the requirements in this chapter is to provide certainty at the point of sale of a *funeral plan contract* that a local funeral director will

provide the services required under the contract at no additional cost to the *customer* or the *covered individual's* estate.

Arrangements with the funeral director

- 10.1.3 R A *firm* must, within 30 *days* of the *customer's* purchase of a *funeral plan contract*, make appropriate arrangements for the funeral to be carried out. The arrangements must:
- (1) be legally enforceable;
 - (2) be made with a funeral director that is located within a reasonable distance of the *covered individual's* address, unless the *customer* agrees otherwise;
 - (3) identify the business name and address of the funeral director (including as appropriate, the relevant branch) that will carry out the funeral; and
 - (4) be such as to ensure that neither the *customer* nor the *covered individual's* estate are required to make further payments to the funeral director to provide the funeral in accordance with the *funeral plan contract*.
- 10.1.4 R Following compliance with *FPCOB* 10.1.3R, the *firm* must within two *business days* provide the *customer* and the nominated representative with a notification of:
- (1) the name, address and contact details of the relevant funeral director; and
 - (2) a summary of the arrangements made with the funeral director,
- in accordance with *FPCOB* 6.2 (Means of communication to customers).
- 10.1.5 R The *firm* must regularly review the arrangements under *FPCOB* 10.1.3R to ensure that the funeral director will provide the services required under the *funeral plan contract*.
- 10.1.6 G For the purposes of *FPCOB* 10.1.5R, a review should take place every 12 *months*.
- 10.1.7 R If at any time after a *firm* has complied with *FPCOB* 10.1.3R, a *firm* becomes aware that the funeral director is unable or likely to be unable to provide the services required under the *funeral plan contract*, the *firm* must make alternative arrangements with another funeral director, at no additional cost to the *customer* or *covered individual*.
- 10.1.8 R In accordance with *FPCOB* 6.2, the *firm* must notify:
- (1) the *customer*; and

(2) the nominated representative,

of these new arrangements as soon as practicable and in any event, within two *business days* of making the arrangements.

10.1.9 G A *funeral plan provider* should consider its arrangements in respect of *funeral plan contracts* entered into before 29 July 2022 and whether those arrangements would meet the purpose of the requirements in this section, what steps it might take to change those arrangements as a result and what notifications to make to the *customer* and the nominated representative.

10.1.10 R (1) This *rule* applies to a *funeral plan provider* which has assumed the undertaking under a *funeral plan contract* to provide, or secure the provision of, a funeral as a result of a transfer of the contract.

(2) The *firm* must ensure that arrangements meeting the requirements of *FPCOB* 10.1.3R are in place within 30 *days* of the completion of the transfer.

(3) If, as a result of the *firm's* compliance with this *rule*, there are any changes to the arrangements under the contract, the *firm* must notify the *customer* in compliance with *FPCOB* 10.1.4R.

11 Fees

11.1 Application and purpose

Application

11.1.1 R This chapter applies to a *funeral plan provider* and to a *funeral plan intermediary*.

Purpose

11.1.2 G *Principle 6* requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. A *firm* is also under an obligation to comply with the *customer's best interests rule* and, as a consequence of this sourcebook's *customer* communication requirements, to communicate information to *customers* in a clear, fair and not misleading way. This chapter reinforces these requirements by preventing a *firm* from imposing *fees* which amount to profit.

Instalment payment fee

11.1.3 R *FPCOB* 11.1.4R applies to a *firm* that charges an *instalment payment fee*.

11.1.4 R A *firm* must not impose an *instalment payment fee* on a *customer* unless it is equal to or lower than the aggregate of:

- (1) a reasonable pre-estimate of any costs incurred by the *firm* as a result of the *customer* paying in instalments rather than in a single payment; and
 - (2) a reasonable pre-estimate of any lost investment gain which is a result of that *customer* paying in instalments rather than in a single payment.
- 11.1.5 R A *firm* must be able to objectively justify that the calculation of the *instalment payment fee* does not include profit above that which the *firm* would make, or which would have been generated by *trust arrangements* if the *customer* paid for the *funeral plan contract* in a single payment.
- 11.1.6 G For the purposes of *FPCOB* 11.1.4R(2), “lost investment gain” refers to a reasonable estimate of the difference between:
- (1) the investment return that instalment payments under an *instalment payment funeral plan* will make when invested under the *trust arrangements* over the period of time that instalments in that plan are agreed; and
 - (2) the investment return that would have been expected from the *customer’s* payment if the *customer* had paid for the *funeral plan contract* in a single payment at the date the *funeral plan contract* was entered into and that payment (less any charges or deductions the *firm* would ordinarily have made) had been invested under the *trust arrangements* for the period of time used when estimating the amount in paragraph (1).

Other fees

- 11.1.7 R A *firm* must ensure that any *fee* other than an *instalment payment fee* imposed on a *customer* is based upon a reasonable reflection of the costs incurred by the *firm*, in providing the service to which the *fee* relates, and not with a view to profit.

12 Intermediaries: handling of payments

12.1 Application and purpose

Application

- 12.1.1 R This chapter applies to a *firm* when carrying on *funeral plan distribution activities*.

Purpose

- 12.1.2 G The purpose of the *rule* in this chapter is to ensure that a *funeral plan intermediary* does not receive or handle payment for a *funeral plan contract*. This is to ensure that payments for *funeral plan contracts* are not exposed to

the solvency risk of a *funeral plan intermediary* but are processed only by the *funeral plan provider* in accordance with the rules in *FPCOB 3*.

12.2 Handling of payments

- 12.2.1 R A *firm* must not receive any payments made by a *customer* which are due under a *funeral plan contract*.

13 Cancellation

13.1 The right to cancel

- 13.1.1 R A *customer* has a right within:

- (1) in the case of a *funeral plan contract* other than an *instalment payment funeral plan contract*, 30 days; or
- (2) in the case of an *instalment payment funeral plan contract*, 30 days or the *moratorium period*, whichever is later,

to cancel the *funeral plan contract*, without giving any reason and without being required to pay any amount to do so.

- 13.1.2 R The following events in relation to an *instalment payment funeral plan contract* must, for the purposes of this chapter, be taken to be a cancellation:

- (1) the death of the *covered individual* (other than as a result of an accident) within the *moratorium period*;
- (2) the cancellation by the *firm*, having complied with the payment shortfall rules (*FPCOB 2.3*), of the *funeral plan* due to the *customer's* failure to settle a *payment shortfall*.

- 13.1.3 R *FPCOB 13.1.2R* does not apply where the *customer* and *firm* have agreed that any party may pay sums outstanding under the *instalment payment funeral plan* and the *funeral plan* be redeemed.

- 13.1.4 G A *firm* may provide longer or additional cancellation rights voluntarily, but if it does these should be on terms at least as favourable to the *customer* as those in this chapter, and any differences should be clearly explained.

Exception to the right to cancel

- 13.1.5 R The right to cancel does not apply to a *funeral plan contract* under which a redemption request has been made or the funeral has been provided.

Start of the cancellation period

- 13.1.6 R The cancellation period begins either:

- (1) from the *day* the *customer* is informed that the contract has been concluded; or

- (2) from the *day* on which the *customer* receives the contractual terms and conditions and any other pre-contractual information required under this sourcebook, if that is later than the date referred to above.

Exercising a right to cancel

- 13.1.7 R If a *customer* exercises the right to cancel:
- (1) they must notify this to the *firm* before the expiry of the relevant deadline;
 - (2) a *firm* must enable a *customer* to make the notification via the same medium by which the *customer* purchased the *funeral plan contract*;
 - (3) the deadline shall be deemed to have been observed if the notification, if on paper or another *durable medium*, is dispatched before the deadline expires.
- 13.1.8 G A *firm* may provide additional methods by which the *customer* can make a notification of cancellation to the firm.

13.2 Effects of cancellation

Termination of contract

- 13.2.1 R By exercising the right to cancel, the *customer* withdraws from the contract and the contract is terminated.

Firm's obligation on cancellation

- 13.2.2 R
- (1) This *rule* applies where a *funeral plan contract* is cancelled or deemed cancelled:
 - (a) within 30 *days*; or
 - (b) in the case of an *instalment payment funeral plan*, during the *moratorium period*.
 - (2) A *firm* must, without any undue delay and no later than within 30 *days*, return to a *customer* any sums it has received from them in accordance with the contract, except as specified in this section.
 - (3) This period shall begin from the *day* on which the *firm* receives the notification of cancellation.

14 Funeral plan redemption

14.1 Application and purpose

Application

- 14.1.1 R (1) This chapter applies to a *funeral plan provider* in relation to the activity of *carrying out a funeral plan contract*.
- (2) This chapter applies in relation to *subsisting funeral plans* unless compliance would be contrary to a term of the *subsisting funeral plan* agreed with the *customer* prior to 29 July 2022.

Purpose

- 14.1.2 G This chapter concerns the conduct of a *funeral plan provider* in relation to the redemption of a *funeral plan contract* upon the death of the *covered individual*.

Redemption

- 14.1.3 R A *funeral plan provider* must:
- (1) handle the redemption of a *funeral plan* promptly and fairly;
- (2) provide reasonable guidance and appropriate information to help a *customer* or a nominated representative to make arrangements, in accordance with the *funeral plan contract*; and
- (3) not unreasonably reject a request to redeem a *funeral plan* (including by cancelling a *funeral plan contract*).

Services required for the funeral plan contract

- 14.1.4 R Upon notification of the *covered individual's* death, the *funeral plan provider* must ensure that the services required for the *funeral plan contract* are delivered:
- (1) to a satisfactory quality and standard by the appointed funeral director, or if that funeral director is unable to provide the required services, appoint another funeral director at no additional cost to the *customer*; and
- (2) in a timely manner,
- in accordance with the terms of the *funeral plan contract*.

- 14.1.5 G In relation to *FPCOB* 14.1.4R, where a firm uses outsourcing arrangements to fulfil this obligation, it retains the regulatory responsibility for achieving the required outcome (*FPCOB* 2.1.5G).

- 14.1.6 R Other than as set out in *FPCOB* 14.1.7R, a *firm* must not seek or obtain further payments from the *customer* or from the *covered individual's* estate to secure the funeral services as set out in the *funeral plan contract*.

Outstanding payments

- 14.1.7 R If upon the *covered individual's* death, further payments are due to the *firm* under the *funeral plan contract*, the *firm* must inform the *customer* and *covered individual's* estate within 24 hours of receiving notification of the *covered individual's* death of the following matters:
- (1) that further payments are due to the *firm* under the *funeral plan contract*;
 - (2) the sums received under the *funeral plan contract*; and
 - (3) the amount of the shortfall.
- 14.1.8 R *FPCOB* 14.1.7R does not apply where the effect of *FPCOB* 7.1.3R is that a funeral will be provided on the death of the *covered individual* even where payments are outstanding under an *instalment payment funeral plan contract*.

15 Prudential requirements

15.1 Application and purpose

Purpose

- 15.1.1 G
- (1) The purpose of *FPCOB* 15 is to set out the detailed prudential obligations that apply to *regulated funeral plan activity*.
 - (2) Adequate financial resources are necessary for the effective management of prudential risks. The *rules* in this chapter therefore impose requirements relating to the financial resources of a *firm* to which this chapter applies.
 - (3) The *rules* concern the adequacy of the financial resources that a *firm* needs to hold in order to be able to meet its liabilities as they fall due (the *general solvency requirement*). These resources include both capital and liquidity resources.
 - (4) The *rules* also place a *core capital resources requirement* on a *firm* to which this chapter applies. This *core capital resources requirement* varies depending on the nature of the activities undertaken by the *firm*.

General application

- 15.1.2 R Subject to *FPCOB* 15.1.3R, this chapter applies to *firms* with a *Part 4A permission* for *regulated funeral plan activities*.
- 15.1.3 R This chapter does not apply to a *PRA-authorised person*.

15.2 General solvency requirement

- 15.2.1 R A *firm* must at all times maintain overall financial resources which are adequate, both as to amount and quality, to ensure that there is no

significant risk that its liabilities cannot be met as they fall due. This includes capital resources and liquidity resources.

- 15.2.2 G The liabilities referred to in the *general solvency requirement* include:
- (1) a *firm's* contingent and prospective liabilities;
 - (2) liabilities that arise both in scenarios where the *firm* is a going concern and where the *firm* ceases to be a going concern; and
 - (3) claims that could be made against a *firm* which ought to be paid in accordance with fair treatment of *customers*, even if such claims could not be legally enforced.
- 15.2.3 G The liabilities referred to in the *general solvency requirement* exclude liabilities that might arise from transactions that a *firm* has not entered into and which it could avoid. This could include, for example, by taking realistic management actions such as ceasing to transact new business after a suitable period of time has elapsed.
- 15.2.4 G A *firm* should therefore make its assessment of adequate financial resources on realistic valuation bases of assets and liabilities, taking into account the actual amounts and timings of cash flows under realistic adverse projections.
- 15.2.5 G Risks may be addressed through holding capital to absorb losses that unexpectedly materialise. The ability to pay liabilities as they fall due also requires liquidity. Therefore, *firms* should consider both capital and liquidity needs in assessing the adequacy of its financial resources. A *firm* should also consider the quality of its financial resources, such as the loss-absorbency of different types of capital and the time required to liquidate different types of asset.
- 15.2.6 G As part of its day-to-day supervision of a *firm*, the *FCA* may review whether the amount and quality of capital and liquidity resources that a firm holds to comply with its *general solvency requirement* is sufficient.
- 15.2.7 G Where necessary, the *FCA* may consider the use of its powers under section 166 of the *Act* (Reports by skilled persons) to assist in such circumstances.
- 15.2.8 G After completing such a review, the *FCA* may, in accordance with *SUP* 9.3, give a *firm* *individual capital guidance* or *individual liquidity guidance*, advising it of the amount and quality of capital or liquidity resources which it should hold to meet the *general solvency requirement*.
- 15.2.9 G If a *firm* considers that the *individual capital guidance* or *individual liquidity guidance* given to it is inappropriate, it should (consistent with *Principle* 11 (Relations with regulators)) inform the *FCA* that it disagrees with it. The *FCA* may reissue *individual capital guidance* or *individual liquidity guidance* if, after discussion with the *firm*, the *FCA* concludes that the amount or quality of capital or liquidity resources that the *firm* should

hold to meet the *general solvency requirement* is different from the amount or quality initially suggested by the *FCA*.

- 15.2.10 G The *FCA* will not give *individual capital guidance* or *individual liquidity guidance* to the effect that the amount of capital advised in that *guidance* is lower than the amount of capital which a *firm* should hold to meet its *core capital resources requirement*.
- 15.2.11 G If, after a reasonable period of discussion, the *FCA* and a *firm* cannot agree on an adequate level of capital or liquidity, the *FCA* may consider using its own initiative power under section 55L of the *Act* to vary a *firm's Part 4A permission* to require it to hold capital or liquidity resources in accordance with the *FCA's* view of the capital and liquidity necessary to comply with the *general solvency requirement*.

15.3 Core capital resources requirement

- 15.3.1 R A *firm* must at all times maintain *capital resources* equal to or in excess of its *core capital resources requirement*.

15.4 Capital resources: relevant accounting principles

- 15.4.1 R A *firm* must recognise an asset or liability, and measure its amount, in accordance with the relevant accounting principles applicable to it for the purpose of preparing its *annual financial statements*.

15.5 Core capital resources requirement for funeral plan provision activities

- 15.5.1 R Subject to *FPCOB* 15.7.1R, for a *firm* with a *Part 4A permission* to carry on *regulated funeral plan provision activities* to which *FPCOB* 15.6.1R does not apply, the *core capital resources requirement* is the higher of:
- (1) £20,000;
 - (2) 2.5% of the *firm's annual income*; or
 - (3) the sum of:
 - (a) the number of undrawn *funeral plan contracts* backed by *trust arrangements*, multiplied by the median of the amounts that would be payable to the *firm* under each *trust arrangement* if a funeral were required on the day following the end of the *firm's* previous period for submitting its Funeral plan financials return in accordance with *SUP* 16.12, multiplied by 0.5%;
 - (b) the number of undrawn *funeral plan contracts* backed by a *whole of life insurance policy*, multiplied by the median of the amounts payable to the *firm* under each *whole of life insurance policy* if a funeral were required on the day following the end of the *firm's* previous period for

submitting its Funeral plan financials return in accordance with *SUP* 16.12, multiplied by 0.5%.

- 15.5.2 R The calculation in *FPCOB* 15.5.1R(3) does not include any undrawn *legacy funeral plan contracts* held by the *firm*.

15.6 Core capital resources requirement for a firm that only undertakes funeral plan distribution activity

- 15.6.1 R Subject to *FPCOB* 15.7.1R, for a *firm* with a *Part 4A permission* to carry on *funeral plan distribution activity* that does not also carry on any other *regulated funeral plan activity*, the *core capital resources requirement*, is the higher of:

- (1) £10,000; or
- (2) 2.5% of the *firm's annual income*.

15.7 Core capital resources requirement for a firm carrying on other regulated activity

- 15.7.1 R Where a *firm* to which this chapter applies also has a *Part 4A permission* to carry on other *regulated activities*, the capital resources requirement is the higher of:

- (1) the *core capital resources requirement* in *FPCOB* 15.5.1R or *FPCOB* 15.6.1R; and
- (2) a capital resources requirement (however described) applied to the *firm* by any other *rule* or *requirement*.

15.8 Calculation of annual income

Annual income

- 15.8.1 R A *firm's annual income* refers to all income received or receivable, whether arising from the *firm's permitted activities* or not, as reported in its most recent audited *annual financial statements*.

Annual income: periods of less than 12 months

- 15.8.2 R If the *firm's* most recent *annual financial statement* does not cover a 12-*month* period, the *annual income* is taken to be the amount in the statement converted, proportionally, to a 12-*month* period.

Annual income: no financial statements

- 15.8.3 R If the *firm* does not have *annual financial statements*, the *annual income* is to be taken from the forecast or other appropriate accounts which the *firm* has submitted to the *FCA* in accordance with its reporting obligations in *SUP* 16.12.

15.8.4 R If a *firm* is a *principal*, its *annual income* includes amounts due to its *appointed representative* in respect of activities for which the *firm* has accepted responsibility.

15.8.5 R If a *firm* is a *network*, it should include the relevant income due to all of its *appointed representatives* in its *annual income*.

15.9 Calculation of core capital resources

The calculation of a firm's core capital resources

15.9.1 R A *firm* must calculate its *capital resources for the core capital resources requirement* from the items that are eligible to contribute to a *firm's capital resources*, as set out in items 1 to 6 in the table in *FPCOB 15.9.3R*.

15.9.2 R In arriving at its calculation of its capital resources for the *core capital resources requirement* a *firm* must deduct the items set out in items 1 to 5 in the table in *FPCOB 15.9.5R*.

15.9.3 R The items that are eligible to contribute to the *capital resources* of a *firm* are set out in the following table:

	Item	Additional explanation	
1	Share capital	This must be fully paid and may include:	
		(1)	ordinary <i>share</i> capital; or
		(2)	preference <i>share</i> capital (excluding preference <i>shares</i> redeemable by shareholders within two years).
2	Capital other than <i>share</i> capital (for example, the capital of a <i>sole trader</i> , <i>partnership</i> or <i>limited liability partnership</i>)	(1)	The capital of a <i>sole trader</i> is the net balance on the <i>firm's</i> capital account and current account.
		(2)	The capital of a <i>partnership</i> is the capital made up of the <i>partners'</i> :
		(a)	Capital account, which is the account:
		(i)	into which capital contributed by the <i>partners</i> is paid; and
		(ii)	from which, under the terms of the <i>partnership</i> agreement, into which capital contributed by the <i>partners</i> is paid; and from which an amount representing capital may be withdrawn by a <i>partner</i> only if:

			(A)	the person ceases to be a <i>partner</i> and an equal amount is transferred to another such account by their former <i>partners</i> or any person replacing them as their <i>partner</i> , or
			(B)	the <i>partnership</i> is otherwise dissolved or wound up; and
	(b)	Current accounts according to the most recent financial statement.		
	For the purpose of the calculation of capital resources in respect of a <i>defined benefit occupational pension scheme</i> :			
	(1)	a <i>firm</i> must derecognise any <i>defined benefit asset</i> ;		
	(2)	a <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's deficit reduction amount</i> , provided that the election is applied consistently in respect of any one <i>financial year</i> .		
3	Reserves (Note)	These are, (subject to the Note) the audited accumulated profits retained by the <i>firm</i> (after deduction of tax, dividends and proprietors' or <i>partners</i> ' drawings) and other reserves created by appropriations of share premiums and similar realised appropriations. Reserves also include gifts of capital, for example, from a <i>parent undertaking</i> .		
	For the purposes of calculating capital resources, a <i>firm</i> must make the following adjustments to its reserves, where appropriate:			
	(1)	a <i>firm</i> must deduct any unrealised gains or, where applicable, add back in any unrealised losses on debt instruments held, or formerly held, in the available-for-sale financial assets category;		
	(2)	a <i>firm</i> must deduct any unrealised gains or, where applicable, add back in any unrealised losses on cash flow hedges of financial instruments measured at cost or amortised cost;		
	(3)	in respect of a <i>defined benefit occupational pension scheme</i> :		
	(a)	a <i>firm</i> must derecognise any <i>defined benefit asset</i> ;		

		(b)	a <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's reduction amount</i> , provided that the election is applied consistently in respect of any one <i>financial year</i> .
4	Interim net profits (Note)	If a <i>firm</i> seeks to include interim net profits in the calculation of its capital resources, the profits must (subject to the Note), be verified by the <i>firm's</i> external auditor, net of tax, anticipated dividends or proprietors' drawings and other appropriations.	
5	Revaluation reserves	Deliberately left blank.	
6	Subordinated loans/debt	Subordinated loans/debt must be included in capital on the basis of the provisions in this chapter that apply to subordinated loans/debts.	
Note: Reserves			
Reserves must be audited, and interim net profits, general and collective provisions must be verified by the <i>firm's</i> external auditor unless the <i>firm</i> is exempt from the provisions of Part 16 of the Companies Act 2006 (section 477 (Small companies: conditions for exemption from audit)) relating to the audit of accounts.			

15.9.4 G A *firm* should keep a record of and be ready to explain to its supervisory contacts in the *FCA* the reasons for any difference between the *deficit reduction amount* and any commitment the *firm* has made in any public document to provide funding in respect of a *defined benefit occupational pension scheme*.

15.9.5 R In arriving at its calculation of its capital resources for the *core capital resources requirement* a *firm* must deduct the items set out in the following table:

Item	Additional explanation
1	<i>Investments in own shares</i>
2	<i>Investments in subsidiaries</i> (Note 1)
3	Intangible assets (Note 2)
4	Interim net losses (Note 3)
5	Excess of drawings over profits for a <i>sole trader</i> or a <i>partnership</i> (Note 3)

Notes:	<p>1. <i>Investments</i> in subsidiaries are the full balance sheet value.</p> <p>2. Intangible assets are the full balance sheet value.</p> <p>3. The interim net losses in row 4, and the excess of drawings in row 5, are in relation to the accounting period following the date as at which the <i>capital resources</i> are being computed.</p>
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Personal assets

15.9.6 R In relation to a *sole trader's firm* or a *firm* which is a *partnership*, the *sole trader* or a *partner* in the *firm* may use personal assets to meet the *core capital resources requirement*, to the extent necessary to make up any shortfall in meeting that requirement, unless:

- (1) those assets are needed to meet other liabilities arising from:
 - (a) personal activities; or
 - (b) another business activity not regulated by the *FCA*; or
- (2) the *firm* holds *client money* or other *client* assets in relation to *regulated activities* other than *regulated funeral plan activity*.

15.9.7 G A *sole trader* or a *partner* may use any personal assets, including property, to meet the capital requirements of this chapter, but only to the extent necessary to make up a shortfall.

Subordinated loans

15.9.8 R A subordinated loan/debt must not form part of the *capital resources for the core capital resources requirement* of the *firm* unless it meets the following conditions:

- (1) it has an original maturity of:
 - (a) at least five years; or
 - (b) it is subject to five years' notice of repayment;
- (2) the claims of the subordinated creditors must rank behind those of all unsubordinated creditors;
- (3) the only events of default must be non-payment of any interest or principal under the debt agreement or the winding up of the *firm*;
- (4) the remedies available to the subordinated creditor in the event of non-payment or other default in respect of the subordinated loan/debt must be limited to petitioning for the winding up of the *firm* or proving the debt and claiming in the liquidation of the *firm*;

- (5) the subordinated loan/debt must not become due and payable before its stated final maturity date, except on an event of default complying with (3);
- (6) the agreement and the debt are governed by the law of England and Wales, or of Scotland or of Northern Ireland;
- (7) to the fullest extent permitted under the rules of the relevant jurisdiction, creditors must waive their right to set off amounts they owe the *firm* against subordinated amounts owed to them by the *firm*;
- (8) the terms of the subordinated loan/debt must be set out in a written agreement that contains terms that provide for the conditions set out in this *rule*; and
- (9) the loan/debt must be unsecured and fully paid up.

15.9.9 R When calculating its *capital resources*, the *firm* must exclude any amount by which the aggregate amount of its subordinated loans/debts exceeds the amount calculated as follows:

A - B

where:

A is equal to the sum of items 1 to 6 (inclusive) in the table of items in *FPCOB* 15.9.3R, which are eligible to contribute to a *firm's* *capital resources*.

B is equal to the sum of items 1 to 5 (inclusive) in the table of items in *FPCOB* 15.9.5R, which must be deducted in arriving at *firm's* *capital resources*.

15.10 Systems, strategies, processes and reviews

Purpose

15.10.1 G In addition to adequate financial resources, adequate systems and controls are necessary for the effective management of prudential risks. The rules in this section therefore impose *requirements* relating to such systems and controls.

15.10.2 G This section also has *rules* requiring a *firm* to identify, assess and document:

- (1) risks to it being able to meet its liabilities as they fall due;
- (2) how it intends to mitigate these risks; and

- (3) the amount and nature of financial resources that the *firms* consider necessary to address any remaining risks.

15.10.3 G The *FCA* may review this assessment as part of its own assessment of the adequacy of a *firm*'s financial resources.

Systems, strategies, processes

15.10.4 R A *firm* must use sound, effective and comprehensive systems, strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of financial resources that it considers adequate to cover:

- (1) the nature and level of the risks to which it is or might be exposed; and
- (2) the risk that the *firm* might not be able to meet its *core capital resources requirement* and *general solvency requirement* in the future.

Documentation of risk assessments

15.10.5 R A *firm* must make a written record of the assessments required under *FPCOB* 15.10.4R. In particular, it must make a written record of:

- (1) the major sources of risk identified in accordance with *FPCOB* 15.10.4R; and
- (2) how it intends to deal with those risks.

15.10.6 R A *firm* must retain the records of its assessments referred to in *FPCOB* 15.10.5R for at least three years.

15.10.7 G The *FCA* may review the written record of the assessment as set out under *FPCOB* 15.10.5R as part of its own assessment of the adequacy of a *firm*'s financial resources as part of its day-to-day supervision of *firms*.

15.11 Action for damages

15.11.1 R A contravention of the *rules* in *FPCOB* 15 does not give rise to a right of action by a *private person* under section 138D of the *Act* and each of those *rules* is specified under section 138D(3) of the *Act* as a provision giving rise to no such right of action.

16 Resolution requirements

16.1 Arrangements for funeral plan continuity or customer reimbursement on firm failure

Application

- 16.1.1 R In accordance with *FPCOB* 1.2 (General application), this chapter applies to a *firm*:
- (1) *entering as provider into a funeral plan contract;*
 - (2) *carrying out a funeral plan contract as provider,*
- in respect of *new funeral plans*.

- 16.1.2 G (1) As a result of *FPCOB* 16.1.1R (2), this chapter applies to a *firm* in relation to *new funeral plans* it *carries out as provider* as a result of a transfer of those *funeral plan contracts* from another *firm*.
- (2) Where a *firm* has entered into or *carries out subsisting funeral plans*, it should consider whether its arrangements in respect of those *funeral plan contracts* would meet the requirements in this section and, if not, what changes to its arrangements it could make to bring them more into line with these requirements.

Obligation to have arrangements for continuity

- 16.1.3 R (1) A *firm* must have arrangements in place to ensure that, in the event of its *failure*, there will be a reasonable likelihood that the relevant *funeral plan contracts* will continue to be *carried out* by another *firm* who has *permission* to continue to *carry out the funeral plan contract as provider*.
- (2) However, the arrangements must not be restricted to only a particular *firm* or particular *firms* taking over those services. There must be a reasonable likelihood of the *funeral plan contracts* being *carried out* by any *firm* of that description.

Obligation to have arrangements for reimbursement

- 16.1.4 R A *firm* must also have arrangements in place to ensure that, in the event of its *failure* and where the relevant *funeral plan contracts* will not continue to be *carried out* by the *firm* or another *firm*, each relevant *customer* will promptly receive a payment corresponding to their [*funeral plan customer balance*].

Minimum detailed arrangements for continuity and reimbursement

- 16.1.5 R A *firm's* arrangements under *FPCOB* 16.1.3R and *FPCOB* 16.1.4R must, as a minimum, include the following elements.
- (1) The rights and obligations under any contract or deed entered into by the *firm* with a trustee or insurer under *FPCOB* 3.1.6R in respect of the relevant *funeral plan contracts* must make appropriate provision for, and should not frustrate, in the event of the *firm's failure*:

- (a) any other *firm* (who has the appropriate permission) *carrying out as provider* those *funeral plan contracts* with the trustee or insurer remaining in place on the same terms; and
 - (b) the prompt payment of [*funeral plan customer balances*] to *customers*.
- (2) The contract or deed referred to in (1) must also require that the trustee or insurer cannot unreasonably withhold its consent to a transfer to another *firm* who would *carry out funeral plan contracts as provider*.
- (3) Each relevant *funeral plan contract* entered into by the *firm* with a *customer* must provide that:
- (a) if the *firm fails* it will owe an amount corresponding to the [*funeral plan customer balance*];
 - (b) that amount will fall due on any of the following situations occurring (whichever comes first):
 - (i) the *firm* ceases to be able to provide funeral services under the *funeral plan contract* upon the death of the *covered individual*;
 - (ii) the *firm* no longer intends to provide funeral services under the *funeral plan contract* upon the death of the *covered individual*;
 - (iii) the *firm* is neither attempting, nor will it attempt, a transfer of the *funeral plan contract* to another *firm* who has *permission* to *carry out funeral plan contracts as provider*;
 - (c) but that amount is not owed if the *firm* achieves such a transfer.
- (4) The *firm* must obtain prior and informed consent from each *customer* for the transfer of the *firm's* obligations under the *funeral plan contract* to another *firm* in the event of its *failure*, such prior consent must:
- (a) not be limited to a transfer only to particular *firm* or particular *firms*; and,
 - (b) only be to transfers that will result in the *funeral plan contract* being *carried out* by the transferee on the same terms as the *funeral plan contract* the *customer* entered into with the *firm*.

Obligation to have a single central record

- 16.1.6 R A *firm* must maintain a single central record containing all up-to-date and pertinent information and documents relating to each *funeral plan contract* that it has entered into (including through agents) and under which it has any undischarged obligations. The central record must be capable of identifying:
- (1) every *funeral plan contract* that could be transferred to another *firm*;
 - (2) every payment obligation of the *firm* under the term described at paragraph (3); and
 - (3) for each *funeral plan contract*:
 - (a) the name and contact details of the *customer*, the *covered individual* (if different to the *customer*) and any nominated representative; and
 - (b) the amount paid to the *firm* by the *customer* that has, in accordance with *FPCOB* 3.1.6R, been applied towards a *contract of insurance* or paid into a trust.

Guidance on arrangements with other firms for continuity

- 16.1.7 G A *firm* may enter into an arrangement with another *firm*, which has the *permission* to carry out a *funeral plan contract* as provider, under which the other *firm* agrees to take over the obligations under the *funeral plan contract* in the event of its *failure*. But it should only do this in a way that does not impair its compliance with *FPCOB* 16.1.3R (2). This means that the arrangement with the other *firm* must not prevent any similar agreements being made, at the time or in future, with other *firms*.

Further guidance on arrangements for continuity and reimbursement

- 16.1.8 G (1) When designing its arrangements under *FPCOB* 16.1.3R and *FPCOB* 16.1.4R, a *firm* should take into account the general law to ensure that the insolvency of the *firm* does not prejudice the operation of arrangements that the *firm* has put in place. In particular, the arrangements should be such that an insolvency practitioner appointed to the *firm* in its *failure* would be in a position to:
- (a) recognise a *customer's* rights described in *FPCOB* 16.1.5R(3);
 - (b) rely on a *customer's* consent as described in *FPCOB* 16.1.5R(4); and
 - (c) exercise any rights of the *firm* under the provisions described in *FPCOB* 16.1.5R(1) to give effect to a transfer or payment to the *customer*.

- (2) A *firm* should consider the need to obtain professional advice on the adequacy of its arrangements, including in the event of insolvency. For example, a *firm* may benefit from obtaining legal advice or advice from a qualified insolvency practitioner on the likelihood of its arrangements securing the outcome of those *funeral plan contracts* continuing to be *carried out* by another *firm* or the relevant *customer* promptly receiving a payment corresponding to the [*funeral plan customer balance*].
- (3) In assessing the adequacy of its arrangements, a *firm* should consider, in particular:
 - (a) whether any terms included in relevant contracts as part of its arrangements are enforceable and by whom, for example terms in trust deeds, insurance policies, customer, service and supplier contracts; and
 - (b) the extent to which other practical obstacles could foreseeably prevent the implementation of the arrangements or frustrate the required outcome.
- (4) *Firms* may find it useful to refer to the *FCA's* Wind-down Planning Guide (*WDPG*) when designing their arrangements.

Guidance on disclosures

- 16.1.9 G (1) *Firms* are reminded of the disclosure requirements in *FPCOB* 9.2.7R (funeral plan summary) and *FPCOB* 9.3.6R (nominated representative document).
- (2) In relation to *subsisting funeral plans*, a *firm* should consider:
- (a) notifying each *customer* and their nominated representative of any arrangements put in place as a result of the guidance in *FPCOB* 16.1.2G(2);
 - (b) notifying each *customer* and their nominated representative of any subsequent changes to those arrangements; and
 - (c) where the *firm* makes such a notification, making it alongside the annual statement required under the *rule* at *FPCOB* 9.3.11R.
- 16.1.10 G *Firms* are reminded of the disclosure requirements under *Principle 11* and in *SUP* 16.3.21R (Insolvency, bankruptcy and winding up).

16.2 Funeral Plan Resolution Manual

Application

- 16.2.1 R This section applies to a *firm* that *carries out as provider*:

- (1) *new funeral plans*;
 - (2) *subsisting funeral plans*.
- 16.2.2 G (1) As a result of *FPCOB* 16.2.1R, this chapter applies to a *firm* in relation to any *funeral plan contract* that it is *carrying out as a provider*, regardless of when it entered into that contract or when the *firm* from which it took on the responsibilities under that contract entered into that contract.
- (2) *Firms* should consider whether their *funeral plan resolution manual* should make different provision for *new funeral plans* and *subsisting funeral plans*.

Contents of the funeral plan resolution manual

- 16.2.3 R A *firm* must produce and keep up-to-date a *funeral plan resolution manual* which contains information about the *firm* that, in the event of the *firm's failure*, would assist in resolving the *firm's* business of *carrying out a funeral plan contract as provider*. It must, as a minimum, include a written explanation of each of the following:
- (1) how the *firm* conducts the business of *carrying out a funeral plan contract as provider*, what the day-to-day operation of that business entails, and what resources would be needed to continue that business if the *firm failed*, including a specification of:
 - (a) critical staff and their respective roles;
 - (b) critical premises;
 - (c) the *firm's* IT systems;
 - (d) the *firm's* record-keeping systems, including how records are organised;
 - (e) all relevant bank accounts and payment facilities;
 - (f) all relevant *persons* outside of the *firm*, and their respective roles, including any outsourced service providers;
 - (g) all relevant legal documentation, including trust deeds, insurance policies, customer, service and supplier contracts, including any contracts with funeral directors; and
 - (h) the *firm's group*, using a structure chart showing:
 - (i) the legal entities in the *group*;
 - (ii) the ownership structure of those entities; and

- (iii) the jurisdiction of those entities;
- (2) any steps that would need to be implemented under any arrangements in place, in order for *funeral plan contracts* entered into by the *firm* to continue to be *carried out* by another *firm*, and, in order that any payments owed to *customers* corresponding to their [*funeral plan customer balances*] be paid promptly;
- (3) any terms in contracts that may need to be relied on to ensure *funeral plan contracts* entered into by it will continue to be *carried out* by another *firm* and, in order that payments corresponding to [*funeral plan customer balances*] will be paid promptly to *customers*;
- (4) how to access any record of each *funeral plan contract* facilitated by the *firm*, *including* where this is required under *FPCOB* 16.1.6R; and
- (5) how the *firm's* systems can produce the detail specified in *FPCOB* 9 Annex 3 (Annual Statement) for each *funeral plan contract* entered into by it.

Requirement to make the funeral plan resolution manual available

- 16.2.4 R A *firm* must put in place arrangements to ensure that its *funeral plan resolution manual* would be immediately available to:
- (1) an administrator, receiver, trustee, liquidator or analogous officer appointed in respect of it or any material part of its property;
 - (2) the *FCA*, on request; and
 - (3) the *FSCS* and any other *person* to whom the *firm* might want to provide it.

17 Application of other parts of the Handbook

17.1 Application and purpose

- 17.1.1 G This chapter applies to a *firm* carrying out *regulated funeral plan activities*. It is intended to draw a *firm's* attention to the application of other key parts of the *FCA Handbook* to *firms*, as set out in the table at *FPCOB* 17.1.2G.

17.1.2 G Application of other parts of the Handbook and of Regulatory Guides

Module	Relevance to Funeral Plan Firms
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<p>The Principles for Businesses (<i>PRIN</i>)</p>	<p>The Principles for Businesses (<i>PRIN</i>) set out high-level requirements imposed by the <i>FCA</i>. They provide a general statement of regulatory requirements. The <i>Principles</i> apply to all <i>firms</i>.</p>
<p>Senior Management Arrangements, Systems and Controls (<i>SYSC</i>)</p>	<p><i>SYSC</i> 1, <i>SYSC</i> 4 to 10, <i>SYSC</i> 18, <i>SYSC</i> 19F.3, <i>SYSC</i> 21, <i>SYSC</i> 22, <i>SYSC</i> 23, <i>SYSC</i> 24, <i>SYSC</i> 27 and <i>SYSC</i> 28A apply to <i>firms</i> carrying out <i>regulated funeral plan activities</i>.</p>
<p>Code of Conduct (<i>COCON</i>)</p>	<p>This contains <i>rules</i> and <i>guidance</i> that are directly applicable to a <i>firm's SMF managers, certification employees</i> and other <i>conduct rules staff</i>. It also contains <i>guidance</i> for <i>firms</i> on giving their staff training about <i>COCON</i> and general factors to which the <i>FCA</i> will have regard when assessing compliance with the <i>COCON rules</i>.</p>
<p>Threshold Conditions (<i>COND</i>)</p>	<p>In order to become <i>authorised</i> under the <i>Act</i> all <i>firms</i> must meet the <i>threshold conditions</i>. The <i>threshold conditions</i> must be met on a continuing basis by <i>firms</i>. Failure to meet one of the conditions is sufficient grounds for the exercise by the <i>FCA</i> of its powers.</p>
<p>Statements of Principle and Code of Practice for Approved Persons (<i>APER</i>)</p>	<p><i>APER</i> applies to <i>FCA approved persons</i> working within an <i>appointed representative</i> and so is not relevant to a <i>firm</i> without <i>appointed representatives</i>.</p> <p>The <i>Statements of Principle</i> are <i>rules</i> made under section 64A(1)(a) of the <i>Act</i> (Rules of conduct).</p> <p>The <i>Code of Practice for Approved Persons</i> sets out descriptions of conduct which, in the opinion of the <i>FCA</i>, do or do not comply with a <i>Statement of Principle</i>. The <i>Code of Practice for Approved Persons</i> also sets out, in certain cases, factors which, in the opinion of the <i>FCA</i>, are to be taken into account in determining whether or not an <i>approved person's</i> conduct complies with a <i>Statement of Principle</i>.</p>
<p>The Fit and Proper test for Employees and Senior Personnel (<i>FIT</i>)</p>	<p>The purpose of <i>FIT</i> is to set out and describe the criteria that a <i>firm</i> should consider when assessing the fitness and propriety of a <i>person</i> (1) in respect of whom an application is being made for approval to undertake a <i>controlled function</i> under the senior managers regime, (2) who has already been approved, (3) who is a <i>certification employee</i> or (4) whom a <i>firm</i> is considering appointing to be a <i>certification employee</i>.</p>

	It also sets out and describes criteria that the <i>FCA</i> will consider when assessing the fitness and propriety of a <i>candidate</i> for a <i>controlled function</i> position and that it may consider when assessing the continuing fitness and propriety of <i>approved persons</i> .
Training and Competence (<i>TC</i>)	<i>TC</i> sets out rules and guidance regarding the competence of a <i>firm</i> 's employees, continuing professional development and associated record keeping requirements.
General Provisions (<i>GEN</i>)	<i>GEN</i> contains <i>rules</i> and <i>guidance</i> on general matters, including interpreting the <i>FCA Handbook</i> , statutory status disclosure, the <i>FCA</i> 's logo and insurance against financial penalties.
Fees manual (<i>FEES</i>)	This manual sets out the fees applying to <i>firms</i> .
Product Intervention and Product Governance Sourcebook (<i>PROD</i>)	The purpose of <i>PROD</i> is to improve <i>firms</i> ' product oversight and governance processes. For <i>funeral plan products</i> , this sets out the systems and controls which need to be established by product <i>manufacturers</i> and <i>distributors</i> to deliver fair value products. <i>PROD</i> also sets out the <i>FCA</i> 's statement of policy on making temporary and permanent product intervention rules.
Supervision manual (<i>SUP</i>)	<i>SUP</i> sets out the relationship between the <i>FCA</i> and <i>firms</i> . As a general rule, <i>SUP</i> contains material that is of continuing relevance after authorisation.
Decision, Procedure and Penalties manual (<i>DEPP</i>)	<i>DEPP</i> sets out: (1) the <i>FCA</i> 's decision-making procedure for giving <i>statutory notices</i> . These are <i>warning notices</i> , <i>decision notices</i> and <i>supervisory notices</i> (<i>DEPP</i> 1.2 to <i>DEPP</i> 5); and (2) the <i>FCA</i> 's policy with respect to the imposition and amount of penalties under the <i>Act</i> (see <i>DEPP</i> 6).
Dispute Resolution: Complaints (<i>DISP</i>)	<i>DISP</i> sets out <i>rules</i> and <i>guidance</i> in relation to treating complainants fairly and the <i>Financial Ombudsman Service</i> .
Compensation (<i>COMP</i>)	<i>COMP</i> sets out <i>rules</i> relating to the scheme for compensating <i>consumers</i> when authorised <i>firms</i> are unable, or likely to be unable, to satisfy claims against them.

Professional Firms (<i>PROF</i>)	<i>PROF</i> is relevant to <i>exempt professional firms</i> and <i>authorised professional firms</i> which engage in <i>funeral plan distribution activities</i> .
The Enforcement Guide (<i>EG</i>)	The Enforcement Guide (<i>EG</i>) describes the <i>FCA's</i> approach to exercising the main enforcement powers given to it by the <i>Act</i> and by other legislation.
Financial Crime Guide: A firm's guide to countering financial crime risks (<i>FCG</i>) and Financial Crime Thematic Reviews (<i>FCTR</i>)	<i>FCG</i> and <i>FCTR</i> provide <i>guidance</i> on steps that a <i>firm</i> can take to reduce the risk that it might be used to further <i>financial crime</i> .
The Perimeter Guidance Manual (<i>PERG</i>)	The purpose of <i>PERG</i> is to give <i>guidance</i> about the circumstances in which <i>authorisation</i> is required, or <i>exempt person</i> status is available, including <i>guidance</i> on the activities which are regulated under the <i>Act</i> and the exclusions which are available.
The Unfair Contract Terms and Consumer Notices Regulatory Guide (<i>UNFCOG</i>)	<i>UNFCOG</i> explains the <i>FCA's</i> policy on how it will use its powers under the Consumer Rights Act 2015 in relation to unfair terms and consumer notices.

Annex M

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 Authorisation and regulated activities

...

2.3 The business element

...

2.3.2 G ...

...

- (4) The business element for all other *regulated activities* is that the activities are carried on by way of business. This applies to the activities of *effecting or carrying out contracts of insurance*, certain activities relating to the Lloyd's market, *entering as provider into a funeral plan contract, carrying out a funeral plan contract as provider, entering into a home finance transaction or administering a home finance transaction, operating a dormant account fund, credit-related regulated activities* (subject to the modification for *not-for-profit bodies* in (3B)) and *operating an electronic system in relation to lending*.

...

2.4 Link between activities and the United Kingdom

...

2.4.2A G The regulated funeral plan activities only apply if the contract is for a funeral in the United Kingdom.

...

2.6 Specified investments: a broad outline

...

Rights under a contract of insurance

...

2.6.8 G Certain arrangements in relation to funeral plans are specifically excluded from being *contracts of insurance* if they would otherwise be so. The

exclusion applies to arrangements that fall within the definition of a *funeral plan contract* (see *PERG 2.6.26G*) ~~as well as arrangements that are excluded from the regulated activity of entering as provider into funeral plan contracts (see *PERG 2.8.14G*).~~

...

Rights under a funeral plan

2.6.26 G (1) Rights under a *funeral plan contract* are the rights to a funeral obtained by a *person* who pays for the funeral before the death of the *person* whose funeral it will be.

(2) The definition of *funeral plan contract* excludes those contracts under which the *customer* and the *funeral plan provider* intend or expect that the funeral will be provided within one *month* of the contract being entered into.

...

2.6.27C G ...

Rights to or interests in investments

2.6.28 G ...

2.6.29 G (1) There are several things that are not covered by this category (other than rights to, or interests in, rights under a mortgage contract). Anything that is covered by any other *specified investment* category is excluded, as are interests under the trusts of an *occupational pension scheme*. ~~Finally, where a contract is excluded from the scope of the regulated activity of entering as provider into a funeral plan contract (see *PERG 2.8.14G*), then rights to, or interests in, the *contracts of insurance* or interests under the trusts, to which the contracts relate are also excluded from this *specified investment* category.~~

(2) There are also excluded from this category rights or interests acquired as a result of entering into a *funeral plan contract*. Where the *funeral plan contract* is trust or insurance backed (see *FPCOB 3*), the effect of this exclusion is that rights to, or interests in, the *contract of insurance* or interests under trust, to which the contract relates are excluded from this *specified investment* category. Rights under the *funeral plan contract* itself which a *person* obtains when they enter into a *funeral plan contract* are covered by the *specified investment* category described in *PERG 2.6.26G*.

...

2.7 Activities: a broad outline

...

Dealing in investments (as principal or agent)

...

- 2.7.6 G Both the activities of *dealing in investments as principal* and *dealing in investments as agent* are defined in terms of ‘*buying, selling, subscribing for or underwriting*’ certain *investments*. These *investments* are:

...

- (2) for *dealing in investments as agent, securities, structured deposits and relevant investments (except rights under a funeral plan contract)*.

...

Entering into funeral plan contracts

- 2.7.18 G *Entering as provider into a funeral plan contract* is a regulated activity. The ‘provider’, for the purposes of this activity, is the *person* to whom the pre-payments are made and who undertakes to provide, or secure the provision of, the funeral at some future point. ~~He~~ They may be the funeral director or a third party who arranges for another *person* to provide the funeral. ~~Certain types of funeral plan contract are excluded (see PERG 2.8.14G).~~

- 2.7.18A G It is the FCA’s view that, in the case of a funeral plan contract involving more than one payment (such as an instalment payment funeral plan), the funeral plan provider does not enter as provider into a funeral plan contract on the occasion of each individual payment.

- 2.7.19 G In addition, other activities carried on in relation to rights under certain *funeral plan contracts* are regulated (see ~~PERG 2.7.5G to PERG 2.7.11G and PERG 2.7.15G and PERG 2.7.16G~~ PERG 2.7.6G, PERG 2.7.7AG(1) and (2), PERG 2.7.8G, PERG 2.7.9G, PERG 2.7.10G, PERG 2.7.11G and PERG 2.7.14CG to PERG 2.7.16-AG). This is because such rights are classified as *contractually based investments*.

Carrying out funeral plan contracts as provider

- 2.7.19-A G *Carrying out a funeral plan contract as provider* is a regulated activity. This regulated activity applies in relation to both new funeral plan contracts and those which were entered into by funeral plan providers before 29 July 2022 in reliance on the exclusions for trust and insurance-backed plans which were formerly contained in article 60 of the Regulated Activities Order.

- 2.7.19-B G In its consultation on the regulation of pre-paid funeral plans (June 2019), the Treasury indicated that this regulated activity was intended to cover the administration of funeral plan contracts after the point of sale. However, the

Treasury's consultation also explained that the regulated activity of carrying out a funeral plan contract as provider was not intended to extend to the activities of the funeral director in providing the end service for which pre-payment is made under the funeral plan contract (whether or not the funeral director is also the provider of the funeral plan contract).

- 2.7.19-C G For the purposes of this regulated activity, the definition of funeral plan provider includes a person who has assumed the undertaking referred to in PERG 2.7.18G to provide, or secure that another person provides, the funeral.

...

2.8 Exclusions applicable to particular regulated activities

...

Dealing in investments as agent

- 2.8.5 G The regulated activity of dealing in investments as agent applies to specified transactions relating to any security or to any relevant investment, ~~(apart from rights under funeral plan contracts or rights to or interests in such rights).~~ ~~In addition, the~~ The activity is cut back by exclusions as follows.

...

...

Entering into funeral plan contracts and carrying out funeral plan contracts as provider

- 2.8.14 G ~~Entering as provider into a funeral plan contract is not treated as a regulated activity where:~~
- (1) ~~the contract is one under which the sums received from the customer will be applied towards a contract of insurance on the life of the person whose funeral is to be provided or be held on trust for the purpose of providing a funeral; in each case certain specified conditions must be met for the exclusion to apply; or~~ The definition of funeral plan contract excludes those contracts under which the customer and the funeral plan provider intend or expect that the funeral will be provided within one month of the contract being entered into.
 - (2) ~~the customer and the provider intend or expect that the funeral will be provided within one month of the contract being entered into; or~~ The exclusion relating to activities carried on by a local authority (see PERG 2.9.23G) applies to the funeral plan provision activities.
 - (3) [deleted]

- (4) ~~it is provided by a firm with a Part 4A permission to manage a UK UCITS or manage an AIF in connection with, or for the purposes of, managing a UK UCITS or managing an AIF (see PERG 2.9.22G (Managers of UCITS and AIFs)). The funeral plan provision activities are subject to the exclusion for firms with a Part 4A permission to manage an AIF or manage a UK UCITS for activities carried on in connection with, or for the purposes of, managing a UK UCITS or managing an AIF.~~

...

2.9 Regulated activities: exclusions applicable in certain circumstances

- 2.9.1 G The various exclusions outlined below deal with a range of different circumstances.

- (1) ~~Each set of circumstances described in PERG 2.9.3G to PERG 2.9.17G has some application to several regulated activities relating to securities, structured deposits, relevant investments or home finance transactions. They have no effect in relation to the separate regulated activities of accepting deposits, issuing electronic money, effecting or carrying out contracts of insurance, advising on syndicate participation at Lloyd's, managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's or entering as provider into a funeral plan contract.~~ Within each set of circumstances, the *Regulated Activities Order*, in Chapter XVII of Part II of the Order, makes separate provision for each regulated activity affected. This is necessary because each exclusion has to be tailored to reflect the different nature of the regulated activity involved and the different language required (for example, some activities involve entering directly into transactions while others relate to the provision of services).

...

Local authorities

- 2.9.23 G This group of exclusions applies, in specified circumstances, to the regulated activities of:

...

(23A) entering as provider into a funeral plan contract;

(23B) carrying out a funeral plan contract as provider;

...

...

2.10 Persons carrying on regulated activities who do not need authorisation

...

Members of the professions

...

- 2.10.14 G The *regulated activities* that may be carried on in this way are restricted by an Order made by the Treasury under section 327(6) of the *Act* (Exemption from the general prohibition) (the *Non-Exempt Activities Order*). Accordingly, under that section, a *person* may not by way of business carry on any of the following activities without *authorisation*:

...

(7A) carrying out a funeral plan contract as provider:

...

...

2 Annex 2 Regulated activities and the permission regime

...

Table 1: Regulated Activities (excluding PRA-only activities) [See note 1 to Table 1]	
Regulated activity	Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on
...	
Funeral plan providers	
(u) <i>entering as provider into a funeral plan contract</i> (article 59(1)) [see note 1A to Table 1] (ua) <i>carrying out a funeral plan contract as provider</i> (article 59(1A))	<i>funeral plan contract</i> (article 87) [see Note 1A to Table 1]
...	
Notes to Table 1	
...	
Note 1A:	

Funeral plan contracts are contractually based investments. Accordingly, the following are regulated activities when carried on in relation to a funeral plan contract: (a) dealing in investments as agent, (b) arranging (bringing about) deals in investments, (c) making arrangements with a view to transactions in investments, (d) managing investments, (e) safeguarding and administering investments, (f) advising on investments (except P2P agreements), (g) sending dematerialised instructions and (h) causing dematerialised instructions to be sent (as well as agreeing to carry on each of the activities listed in (a) to (h)). However, they are not designated investment business.

...

Note 2:

For the purposes of the ~~regulated activities~~ regulated activity of dealing in investments as principal (article 14) and ~~dealing in investments as agent~~ (article 21), the definition of contractually based investments [expanded in Table 3] excludes a funeral plan contract (article 87) and rights to or interests in funeral plan contracts.

...

Table 3: Securities, contractually based investments and relevant investments [see notes 1 and 2 to Table 3]

...

Notes to Table 3

...

Note 2:

For the purposes of the ~~regulated activities~~ regulated activity of dealing in investments as principal (article 14) and ~~dealing in investments as agent~~ (article 21), the definition of contractually based investments excludes a funeral plan contract (article 87) and rights to or interests in funeral plan contracts.

...

8 Financial promotion and related activities

8.1 Application and purpose

...

Purpose of guidance

...

8.1.3 G In particular, this *guidance* covers:

...

(11) ~~*financial promotions* concerning funeral plans (see *PERG* 8.16);~~
~~[deleted]~~

...

...

8.7 Engage in investment activity

...

8.7.2 G *Controlled activity* and *controlled investment* are defined in Schedule 1 to the *Financial Promotion Order* and are listed in *PERG* 8.36.3G and *PERG* 8.36.4G. Broadly speaking, *controlled activities* and *controlled investments* are similar to *regulated activities* and *specified investments* under the *Regulated Activities Order*. However, with *controlled activities*, the exclusions set out in the *Regulated Activities Order* do not, in most cases, apply. It is important to note, however, that there are certain differences between *controlled activities* and *regulated activities* and between *controlled investments* and *specified investments*. This is most notable where the *financial promotion* is about:

- (1) certain credit agreements (see *PERG* 8.17 (Financial promotions concerning agreements for qualifying credit)); and
- (2) ~~*funeral plan contracts* (see *PERG* 8.16 (Financial promotions concerning funeral plans)); and~~ ~~[deleted]~~

...

...

8.16 Financial promotions concerning funeral plans

8.16.1 G ~~Section 21 of the Act came into force for *financial promotions* about funeral plans on 1 January 2002. A *financial promotion* about funeral plans is subject to the restriction in section 21 of the Act if it relates to a pre-paid funeral plan of any kind where the provider of the plan carries on the *regulated activity* of *entering as provider into a funeral plan contract* under article 59 of the *Regulated Activities Order* (see *PERG* 2.8.14G). This is the case even if the actual plan being promoted is excluded under article 60 of the *Regulated Activities Order*. However, providers may choose only to enter into *funeral plan contracts* which are excluded under article 60 of the *Regulated Activities Order*. If this is the case, any *financial promotion*~~

relating to those plans will not be subject to the restriction in section 21 of the Act. [deleted]

...

8.36 Illustrative tables

...

8.36.3 G Table Controlled activities

...	
9.	Providing <u>Entering into</u> funeral plan contracts
<u>9A.</u>	<u>Carrying out</u> funeral plan contracts
...	

...

16 Scope of the Alternative Investment Fund Managers Regime

...

16.2 What types of funds and businesses are caught?

G ...

Question 2.39: Are funeral plans caught?

No. A funeral plan contract is not caught. Neither is a contract which would be a funeral plan contract but for the proviso to article 59(2) of the RAO or ~~the exclusion in article 60 of the RAO.~~

...

...

