

Funeral plans regulation

Lead regulator	Financial Conduct Authority (FCA)
Summary of proposal	From July 2022, activities involving the provision and distribution of pre-paid funeral plans became fully subject to regulation by the FCA. The rules aim to protect individuals so they can be confident the finances they have invested in a pre-paid funeral plan are protected.
Submission type	EANDCB validation
Legislation type	Regulator
Implementation date	29 July 2022
Policy stage	Final
RPC reference	RPC-FCA-5228(1)
Opinion type	Formal
Date of issue	18 October 2022

RPC opinion

Rating¹	RPC opinion
Fit for purpose	The EANDCB calculation is fit for purpose, with assumptions guided by an earlier cost-benefit analysis at the consultation stage.

Business impact target assessment

	Department assessment	RPC validated
Classification	Qualifying regulatory provision – IN	Qualifying regulatory provision – IN
Equivalent annual net direct cost to business (EANDCB)	£24.0 million	£24.0 million <i>(2019 prices, 2020 pv)</i>
Business impact target (BIT) score	£120.1 million	£120 million
Business net present value	-£206.7 million	
Overall net present value	-£206.7 million	

¹ The RPC opinion rating is based on the rating for the robustness of the EANDCB, as set out in the [business impact target statutory guidance](#) and the [better regulation framework](#). The RPC rating will be fit for purpose or not fit for purpose.

RPC summary

Category	Quality ²	RPC comments
EANDCB	Green	The EANDCB calculation is fit for purpose. It is supported by a detailed cost-benefit analysis, provided as part of the consultation conducted in March 2021. The outputs from this consultation are used to support the assumptions used to calculate the costs to business. The RPC welcomes this.
Other comments	Weak	The adverse outcomes that have arisen from the current operation of the funeral plans market, and which provide the rationale for regulation, are explained. However, the document should explain the regulatory measures in more detail and specifically how they will address identified market failures (rather than just the harms). While the benefits are not quantified, they are explained well. The assessment could benefit from including a monitoring and evaluation plan, including testing whether the anticipated costs and benefits have been realised.

² The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. Please find the definitions of the RPC quality ratings [here](#).

Summary of proposal

Until 29 July 2022, a funeral plan provider was exempted from FCA regulation if the plans into which it entered were either insurance or trust-backed and met certain conditions set out in the Regulated Activities Order (RAO)³. This arrangement has led to inadequate supervision of the sector and a number of adverse outcomes for consumers. Following this date, activities involving the provision and distribution of pre-paid funeral plans became fully subject to regulation by the FCA.

Authorisation involves complying with the FCA's 'high-level standards', Conduct Rules and the Senior Managers and Certification and Approved Persons regimes.

A small number of firms that meet specific conditions can use an extension to the existing exemption to carry out funeral plans until 31 October 2022.

EANDCB

The EANDCB calculation is fit for purpose. It is supported by a detailed cost-benefit analysis, provided as part of the consultation⁴ conducted in March 2021. The outputs from this consultation support the assumptions used to calculate the costs to business, which are laid out in the narrative. These could be presented more clearly as a table of figures so that they can be read and compared more easily.

The analysis estimates total one-off costs of £40m-£41.5m and total ongoing annual costs of £16.8m-£25.3m to firms. This includes:

- one-off familiarisation and legal review costs of £1.8 million;
- one-off costs of £1.2 million-£1.4 million and ongoing costs of £8.7 million-£12 million for firms to comply with the 'high-level standards';
- one-off costs of £4.9 million-£6 million and ongoing costs of £1.4 million-£5.1 million for firms to comply with the Conduct rules;
- one-off costs of £0.5 million and ongoing costs of £1.2 million for firms to comply with the Product Governance rules;
- one-off costs of £14.9 million-£15.1 million and ongoing costs of £4.6 million-£6.1 million for firms to comply with the Senior Managers and Certification and Approved Persons regimes;
- one-off costs of £15.2 million and ongoing costs of £0.7 million for firms to comply with the Prudential rules.

The assessment states that 26 funeral plan providers and one intermediary have been authorised by the FCA since 29 July 2022. It also states that 13 firms can use an extension to the existing exemption to carry out funeral plans until 31 October 2022.

While not all the costs have been estimated, some of these are impractical to quantify and may depend on unpredictable responses to the regulation by firms. The RPC therefore deems the approach taken proportionate. However, the assessment

³ <https://www.legislation.gov.uk/uksi/2001/544/article/60/made>

⁴ <https://www.fca.org.uk/publication/consultation/cp21-4.pdf>

would benefit from clarifying that the costs of recording and reporting compliance are also within scope.

Other comments

While the benefits are mostly unquantified, they include improvements in sales standards and product quality which better meets consumer needs and expectations. Further benefits include an end to nuisance calls (since the proposal directly prohibits firms from making unsolicited contact with consumers), reduced risks of provider failure (resulting in plan holders unable to recover funds) and increased psychological benefits provided by funeral plans.

Potential costs to consumers are also discussed in a limited and qualitative way.

The assessment refers to some market failure categories (information asymmetry, market power) that are believed to have contributed to adverse consumer outcomes in the provision of funeral plans. However, the document should explain the regulatory requirements of the measures in more detail, and specifically how they will address the market failures (rather than just the harms). For example, the assessment refers to “*market power of large providers*” but later states that the market has been “dominated” by three main providers with a fourth having grown in size. It is not clear why these apparently modest levels of market concentration would give rise to market power problems or insufficient choice. The assessment further notes that FCA regulation has led to a very large reduction in the number of intermediaries providing funeral plans. Taken at face value, that might indicate a problematic reduction of consumer choice, but the intermediaries that have been discouraged by the regulation seem most likely to be the agents that had previously been incentivised by the high commission payments. This has specifically been identified in the assessment as a problem that has led to consumer harm, and so this apparent reduction in the number of providers appears to be indicative of FCA regulation succeeding in improving standards in the industry.

The assessment provides a break-even analysis which suggests that “*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)*”. Although these numbers appear small, the probability of them occurring is unclear. These could be improved at the evaluation stage.

While there is supporting analysis in the related consultation, some of this should be brought into the assessment so that it can be read more easily as a standalone document.

The assessment would also benefit from including a monitoring and evaluation plan, including testing whether the anticipated costs and benefits have been realised.

Although not required for this assessment, it could also benefit from considering whether smaller businesses are impacted differently or whether larger businesses are able to absorb the costs more effectively.

Regulatory Policy Committee

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