

Regulation of funeral plans: Further proposals

Consultation Paper

CP21/20**

July 2021

How to respond

We are asking for comments on this Consultation Paper (CP) by **31 August 2021**.

You can send them to us using the form on our website at: www.fca.org.uk/cp21-20-response-form

Or in writing to:

Mark Andersen
Consumer and Retail Policy
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

Telephone:

020 7066 0037

Email:

cp21-20@fca.org.uk



Moving around this document

Use your browser's bookmarks and tools to navigate.

To **search** on a PC use Ctrl+F or Command+F on MACs.

Contents

1	Summary	3
2	The wider context	7
3	Resolution	9
4	Compensation	12
5	Structure	18
6	Additional proposals	20
Annex 1		
	Cost benefit analysis	21
Annex 2		
	Questions in this paper	29
Annex 3		
	Compatibility statement	30
Annex 4		
	Abbreviations used in this paper	34
Appendix 1		
	Draft Handbook text	

Sign up for our news and publications alerts

See all our latest press releases, consultations and speeches.



1 Summary

Why we are consulting

- 1.1** In CP21/4 – Funeral Plans: Proposed approach to regulation (March 2021), we consulted on proposed rules and guidance for the funeral plans sector. This was ahead of activities involving the provision and distribution of pre-paid funeral plans becoming subject to our regulation from 29 July 2022.
- 1.2** Following our consultation in March, on 5 July 2021, we published PS21/8 Feedback to CP21/4 and final rules, confirming the final rules in light of feedback received.
- 1.3** As part of CP21/4, we consulted on proposals relating to the resolution arrangements that firms are required to have in place to mitigate harm arising from firm failure and to introduce protection for funeral plan customers under the Financial Services Compensation Scheme (FSCS). These proposals sought to address the harms arising from the failure of regulated funeral plan firms. In particular, the risk that customers could lose their money following the failure of a regulated funeral plan provider.
- 1.4** As part of our resolution proposals in CP21/4, we sought further views from stakeholders on the amount that a regulated funeral plan provider should be expected to be able to reimburse to customers in the event of their failure. We indicated that the specific rules for this reimbursement amount would be consulted on at a later date.
- 1.5** In addition, we indicated that this reimbursement amount could have implications for the compensation payable by the FSCS. Moreover, we stated that the government was considering further possible legislative changes in relation to funeral plans and the FSCS. Accordingly, we signalled that it was possible that we may need to consult on further rules relating to the FSCS.
- 1.6** This paper provides further proposals for consultation regarding the resolution of regulated funeral plan firms and FSCS protection along with further additional proposals in relation to our regulation of funeral plans.

New consultation proposals

- 1.7** **Resolution of firms:** Following consultation feedback received from CP21/4, we are now in a position to consult on our final proposed resolution rules – which are set out in Chapter 3 of this document.
- 1.8** These resolution proposals are in addition to the resolution provisions consulted on in CP21/4. The previous proposals included a requirement for firms to have arrangements to ensure a transfer of funeral plan contracts would be possible following the failure of a provider, and for a resolution manual and a central record to be maintained. Those previous proposals are still under consideration, although we are not inviting specific comments as we have already done so as part of CP21/4. However, we will be considering

whether any of the issues we are consulting on in this paper have a bearing on those rules before finalising them, and would be grateful to hear from respondents in response to this consultation if that is the case. The final resolution rules will be made in a future policy statement, including both the CP21/4 proposals and the rules regarding the additional proposals in this consultation paper (subject to feedback received).

- 1.9 FSCS protection:** On 5 July 2021 the government launched a consultation on proposed legislation in relation to funeral plans and the FSCS. The proposed legislation would enable FCA rules to be made to allow the FSCS to arrange continuity of funeral plan contracts and to also supplement the FSCS's ability to seek recoveries from insurance policies or trust assets (which underpin the funeral plan arrangements) in the event of a regulated funeral plan provider failure. The government also confirmed that it is considering whether there are any further changes that may be required to ensure that the FSCS operates effectively for funeral plan consumers, such as how insolvency practitioners should engage with the FSCS if a regulated funeral plan provider fails.
- 1.10** Further to the government's announcement regarding its consultation, in this paper we are consulting on new FCA rules and guidance in the FCA Handbook in relation to how the FSCS would handle regulated funeral plan provider failures. This includes proposals for how the FSCS would arrange continuity of funeral plan contracts and how the FSCS would seek to recover the costs it incurs more effectively in the event of funeral plan providers being declared 'in default' (ie the status of being in default following a determination made under COMP 6.3.1 R), in order to mitigate the potential impact on industry levy players which fund the FSCS. The proposals are being consulted on on the assumption that the government's ultimate legislation is substantively as envisaged in the government's consultation.
- 1.11** In addition, we are also consulting on proposals to clarify who is entitled to claim compensation from the FSCS if a regulated funeral plan provider fails in cases where the consumer who purchases the funeral plan contract differs from the person to be provided with the funeral.
- 1.12** Further details about the FSCS proposals are set out at Chapter 4.
- 1.13** These FSCS proposals are in addition to the FSCS rules consulted on in CP21/4, which established an FSCS framework for protection of funeral plans, including how costs would be funded. Those rules have now been made, as confirmed in PS21/8.
- 1.14 Structure provisions:** As a consequence of the proposed further changes to our resolution and FSCS rules, we are also proposing changes to our structure provisions – which set out requirements for the arrangements which underpin funeral plan contracts – to ensure they align with our additional proposals. These proposals are set out at Chapter 5.
- 1.15** These structural provision proposals are in addition to the structural provisions consulted in CP21/4. As confirmed in PS21/8, those provisions have been made, save for provisions FPCOB 3.1.8R, 3.1.9R, 3.1.11R and 3.1.12G, which are subject to further consultation, as set out at Chapter 5.
- 1.16 Additional proposals:** Finally, we are consulting on proposals for obligations for firms to notify customers and nominated representatives following a transfer of a firm's funeral plan contracts and guidance to be added to our Funeral Plans: Conduct of business sourcebook (FPCOB) and Perimeter Guidance Manual (PERG). These proposals are set out at Chapter 6.

The risk of failure of a regulated funeral plan firm

- 1.17** The proposals covered in this paper primarily serve to mitigate the impact on customers arising from the failure of a regulated funeral plan firm, particularly a provider. We want to ensure that customers are protected, whilst ensuring that arrangements are proportionate and mitigate the impact on industry levy payers which fund the FSCS.
- 1.18** It is important to note that we are introducing strong safeguards to reduce the risk that a regulated funeral plan firm will fail, including at the authorisation gateway and through our ongoing supervision of firms. However, we want to ensure that our regime for funeral plan firms provides an appropriate level of protection for customers if an authorised funeral plan firm does fail.

Who this applies to

- 1.19** *Who needs to read this whole document:*
- firms that sell or carry out funeral plan contracts for funerals in the UK
 - 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
 - groups representing consumer interests
 - FSCS levy payers
- 1.20** *Who else will be interested in this consultation:*
- consumers that have a funeral plan, or are thinking of purchasing one
 - investment advisers who provide advice on funeral plan contracts

What we want to change

- 1.21** *We aim to:*
- minimise the harm to customers arising from the failure of a regulated funeral plan provider and protect customers' interests upon insolvency
 - ensure that if regulated funeral plan providers fail that it happens in an orderly way
 - ensure that contracts can be transferred to another regulated funeral plan provider where possible
 - ensure the FSCS can arrange continuity of funeral plan contracts or pay appropriate compensation if the regulated funeral plan provider is declared 'in default' by the FSCS
 - mitigate any undue impact on FSCS levy payers

Measuring success

- 1.22** We will put in place strong authorisation, supervisory and enforcement processes to ensure firms meet the standards set out in our final rules. Our reporting requirements confirmed in PS21/8 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.
- 1.23** We propose to evaluate our regime in 2026, when the industry has had time to adapt to the changes – including the proposals in this consultation paper. 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. In the interim we will be prepared to intervene if issues are identified in the market through our supervision.

Next steps

- 1.24** We want your feedback on our proposed rules and other issues discussed in this consultation paper. Please respond by 31 August 2021 using one of the methods in the 'How to respond' section on page 2.
- 1.25** We will consider feedback and aim to make our final rules in quarter 4, 2021 (although rules relating to the FSCS which are dependent on the government's associated legislation being introduced will be finalised once the legislation is introduced).
- 1.26** Firms wishing to become authorised to undertake funeral plan activities should refer to our dedicated webpage about [regulating the funeral plans sector](#) for details of the application process. We plan to open the application gateway in September 2021. If firms have any questions about the implications of the proposed rules set out in this consultation paper for their applications, then this can be discussed as part of the authorisation process.

2 The wider context

The harm we are trying to reduce

2.1 In CP21/4, we identified several harms arising from practices employed by some firms in the funeral plans market which our proposals aimed to address:

- Plans which do not meet consumers' needs or expectations, particularly plans paid by instalment which do not guarantee to provide a funeral service
- The use of high-pressure sales tactics by some firms, including cold calling of potentially vulnerable consumers, which can result in consumers taking out plans which are not suitable for their needs
- Consumers paying high prices for product benefits driven by high rates of commission and fees
- Poor governance and controls within firms, including oversight of intermediaries and potential conflicts of interest where an intermediary gets a high commission
- Plans going unclaimed because the consumers' families 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
- 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

The final rules confirmed in PS21/8 aim to mitigate the potential harms identified.

2.2 Our combined resolution and FSCS proposals – as consulted on in CP21/4 (with some FSCS rules confirmed in PS21/8) and the further proposals set out in this paper – seek to address and mitigate harms consumers could suffer if a regulated funeral plan firm fails. In particular, we are concerned that if a regulated funeral plan provider fails, customers of the provider may lose the benefit of the funeral plan that they have paid for, meaning that future funeral costs may not be met as expected. Further, we want to mitigate risks that would arise following the disorderly failure of a regulated funeral plan firm, which would impact customers and the wider integrity of the funeral plans sector.

How it links to our objectives

Our proposals link to our following objectives:

Consumer protection

2.3 Ensuring that customers of regulated funeral plan firms have an appropriate level of protection if a funeral plan firm fails.

Market integrity

- 2.4** Minimising the risk of a disorderly failure of a regulated funeral plan provider, which could have an adverse impact on the integrity of the wider funeral plans sector.

Wider effects of this consultation

- 2.5** Our proposals regarding the resolution of firms may have implications for:
- the arrangements that funeral plan providers have with 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

Equality and diversity considerations

- 2.6** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper.
- 2.7** Many consumers buying funeral plans or engaging with regulated funeral plan firms will be in vulnerable circumstances, eg due to lower financial resilience or recent bereavement, which may have led them to purchase a funeral plan. However, 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.
- 2.8** 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.

3 Resolution

- 3.1** In CP21/4, we consulted on resolution arrangements that regulated funeral plan firms are required to have in place to protect customers upon firm failure (ie if the firm enters into insolvency proceedings). In particular, we consulted on a requirement for funeral plan providers to make arrangements for new plans (ie plans that commence on or after the point regulation commences on 29 July 2022) that they enter into to ensure that, if they fail, 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. We also proposed that firms must have arrangements to ensure that, if new funeral plan contracts will not continue to be carried out, consumers receive a reimbursement. In addition, we sought views on the appropriate level of a reimbursement and how it could be funded. Where a firm has entered into or carries out subsisting funeral plans (ie which commenced before the start of regulation), we proposed that firms should consider whether their arrangements in respect of those funeral plan contracts would meet our resolution requirements and, if not, what changes to its arrangements it could make to bring them more into line with these requirements.
- 3.2** In PS21/8, we explained that we had received positive feedback about aspects of our resolution proposals. This included that firms should have arrangements to ensure a transfer of funeral plan contracts is possible following the failure of a provider, and on the requirement to have a resolution manual and a central record to be maintained containing pertinent information and documents relating to funeral plan contracts that the firm is responsible for.
- 3.3** However, we also explained that we had received mixed feedback on what the reimbursement amount should be and how it could be funded. Consumer groups tended to suggest that consumers should be left no worse off as a result of the provider's failure, eg with a replacement plan or equivalent value. However, many firms questioned the ability of providers to reimburse all customers in full or cover the cost of a replacement plan (ie meeting that expense in one go, as opposed to over an extended period as funeral costs arise) in the event of firm failure. Those firms indicated that this would not be possible under typical arrangements. Some respondents suggested it may be a barrier to new entrants and could create unsustainable financial obligations, leading to a greater risk of firm failures.
- 3.4** We did not therefore finalise our resolution rules as part of PS21/8. Instead we have set out further proposals in this consultation paper. In particular, our proposals relate to arrangements plan providers must have in place to reimburse amounts to customers upon insolvency, in cases where a transfer of funeral plan contracts cannot be arranged (which remains the primary goal in the case of the resolution of regulated funeral plan providers).
- 3.5** Our further proposals relate to provisions FPCOB 16.1.4R, 16.1.5R, 16.1.6G, 16.1.8G and 16.2.3R. The remaining resolution rules and guidance provisions included in the instrument at Appendix 1 under FPCOB 16 have already been consulted on in CP21/4. They are still under consideration although we are not inviting specific comments as we have already done so as part of CP21/4. To the extent that any of the new proposals in this consultation paper raise new concerns or comments about these rules we would be grateful to hear about these in response to this consultation.

Reimbursement amount

- 3.6** In light of feedback received to CP21/4, we explained in PS21/8 that we have decided not to specify a specific reimbursement amount to be paid if a transfer of funeral plan contracts cannot be arranged (we previously referred to this amount as the ‘funeral plan customer balance’ – a term we have now removed).
- 3.7** Under FPCOB 16.1.4R, while we still propose to require firms to have arrangements in place to make payments to customers or covered individuals (ie the individual on whose death a funeral will be provided or secured under a funeral plan contract or prospective funeral plan contract) from the relevant trust or contract of insurance arrangement, we will not specify what that amount should be. It will be for the insolvency practitioner appointed to the failed regulated funeral plan provider to account for the liability in the course of its functions, and in any case that liability will relate to the contractual obligations of the firm towards customers or covered individuals (including those who have not passed away). However, we do require firms to ensure that those arrangements will provide a good outcome for customers and covered individuals if the provider fails; it is important that if a firm fails the arrangements do not adversely affect the interests of customers and covered individuals.
- 3.8** In addition, we propose that regulated funeral plan providers are required to ensure that there is nothing in their contractual arrangements which will limit their liability for a funeral plan contract to a level that is below that needed to purchase a replacement funeral plan contract on the same or substantially similar terms at the time of failure (even if the trust or insurance proceeds fall short of that amount). In practice, this means that there should be no term in the contract that limits liability, which would limit customers’ claims upon insolvency, including via the FSCS (Chapter 4 sets out our proposals for how the FSCS would deal with claims against regulated funeral plan firms that have been declared ‘in default’). We would not expect to see a term like this in any case as it may not meet the fairness test under the Consumer Rights Act 2015.
- 3.9** Under FPCOB 16.1.5R(3) we set out a proposed requirement for firms to ensure that relevant funeral plan contracts provide that, if the firm fails, the firm will be obliged to take all necessary steps to ensure that the customer, covered individual or (on the covered individual’s death) the covered individual’s next of kin will be repaid any amounts to which they are due from the relevant trust or contract of insurance.
- 3.10** In the case of insurance-backed plans, the requirement covers instances where the regulated funeral plan provider is the policyholder of the contract of insurance (rather than the funeral plan customer or covered individual). This proposed requirement aims to ensure that the consumer’s interests are protected if the provider has been wound up – ie the consumer will still be able to benefit from the contract of insurance.
- 3.11** The obligation that would be required to be inserted into contracts under FPCOB 16.1.5R(3) must come into effect if:
- the firm ceases to be able to provide funeral services under the funeral plan contract upon the death of the covered individual;
 - the firm no longer intends to provide funeral services under the funeral plan contract upon the death of the covered individual; or

- 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.

But that obligation is not owed if the firm achieves such a transfer.

3.12 We have also added proposed guidance at FPCOB 16.1.6G aimed at both regulated funeral plan firms and insolvency practitioners appointed to a failed regulated funeral plan provider. The guidance notes that, while the proposed requirements set out at FPCOB 16.1.3R to FPCOB 16.1.5R aim to help both the appointed insolvency practitioner and the FSCS if a regulated funeral plan provider fails, when considering whether its arrangements will ensure a good outcome in line with FPCOB 16.1.4R, the firm should not assume that the FSCS will declare the firm 'in default' and protect consumers. This means that firms should ensure arrangements appropriately protect the interests of consumers, notwithstanding any protection that may or may not be available through the FSCS.

3.13 In addition, we have clarified in the resolution rules where provisions may apply to a covered individual as well as to a customer.

3.14 We consider that these revised resolution proposals ensure that regulated funeral plan firms have appropriate, and proportionate, arrangements in place to protect customers in the event of the insolvency of the firm. The proposed rules also aim to ensure that there is no impediment to the FSCS being able to respond effectively if the provider is not able to meet its liabilities and the FSCS is required to step in to declare the firm 'in default'.

Q1: Do you agree with our resolution proposals? If not, please explain why.

4 Compensation

- 4.1** The FSCS is the UK's statutory compensation scheme of last resort. It protects certain customers of failed financial services firms, up to certain limits. The 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.
- 4.2** Under the Financial Services and Markets Act 2000 (Financial Services Compensation Scheme) Order 2013, the FCA and the 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 paid 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 the FCA's responsibilities includes setting the framework in relation to FSCS protection for funeral plans business.
- 4.3** In CP21/4, we set out proposals for introducing FSCS protection for customers of regulated funeral plan firms. As explained in PS21/8, most stakeholders were positive about the introduction of FSCS protection for customers of regulated funeral plan firms, which was seen as an important benefit of the new regulatory regime – ensuring that customers are protected and that they retain confidence in the funeral plan sector and the wider financial services industry.
- 4.4** Accordingly, our rules proposed in CP21/4 in relation to FSCS protection have been finalised, including:
- FSCS protection to commence upon regulation of funeral plan firms on 29 July 2022, where both an authorised firm is declared 'in default' by the FSCS and claims relate to acts or omissions occurring from the date of the commencement of FCA regulation.
 - Protected funeral plan business to become a new type of 'protected claim' under the FSCS compensation rules.
 - FSCS to be allowed discretion to calculate compensation to the extent that the payment of compensation is essential in order to provide the claimant with fair compensation.
 - A compensation limit of £85,000 to apply (to maintain consistency with other categories of protected claim dealt with by the FSCS).
 - FSCS costs attributed to funeral plan claims to be funded by a new 'funeral plan claims' FSCS funding class, to be funded by regulated funeral plan providers and intermediaries. The class will have a funding threshold of £5 million, after which the wider 'retail pool' of levy payers would be required to contribute.
- 4.5** On the basis of feedback and further proposed government legislation, we also set out further proposals in this section relating to the FSCS. These proposals are intended to enhance the rules which were finalised in PS21/8, in particular, by enabling the FSCS to secure continuity of cover, or pay appropriate compensation if that is not possible, and helping to enable the FSCS to seek to recover the sums paid.

Further government legislation in relation to the FSCS

- 4.6** On 5 July 2021, the government launched a consultation on proposed legislation relating to funeral plans and the FSCS, including:
- The introduction of a new Section 215A into the Financial Services and Markets Act 2001 (FSMA) to allow the FCA to make rules enabling the FSCS to take such steps as are appropriate to secure the continuity of funeral plan contracts on failure of a regulated funeral plan provider.
 - An amendment to Section 215 of FSMA to allow the FCA to make rules to give the FSCS recovery rights in relation to trust assets and insurance policies, in cases where the regulated funeral plan provider (but not an intermediary) has been declared 'in default' by the FSCS.
- 4.7** The government has confirmed that it is also considering whether there are any further changes that may be required to ensure that the FSCS operates effectively for funeral plan consumers, such as how insolvency practitioners should engage with the compensation scheme if a regulated funeral plan provider fails.
- 4.8** We welcome the further legislation which the government is proposing, which we consider would help ensure that the FSCS can respond most effectively to regulated funeral plan provider failures, by enhancing consumer protection through enabling the FSCS to secure continuity on failure of the funeral plan provider and by enhancing potential FSCS recovery rights, which would help mitigate the impact on FSCS levy payers.
- 4.9** Assuming that this legislation is introduced in substantively the same form as announced, we are consulting now on further proposals for rules which would implement the intention of the government's legislation. If the changes to FSMA are not ultimately made, then we would not introduce the associated rules into our COMP and FEES sourcebooks.

Continuity of cover

- 4.10** The proposed addition of s215A FSMA would mean that the FCA can make rules to provide the option for the FSCS to arrange continuity of funeral plan contracts, where the regulated funeral plan provider has been declared 'in default' by the FSCS, rather than pay compensation. This means that, if a transfer is not possible based on the funds available to the failed regulated firm's insolvency practitioner, the FSCS would be able to arrange continuity. Continuity would be achieved either by securing or facilitating a transfer of existing funeral plan contracts to a new regulated funeral plan provider, or by securing the issue of new funeral plan contracts by a new regulated funeral plan provider, as an alternative to a payment of compensation. Either outcome would ensure that the customers of the failed regulated funeral plan provider (who are eligible claimants under the FSCS) are provided with equivalent (or similar) funeral plan arrangements, notwithstanding the failure of the original provider.
- 4.11** The proposed legislative change is considered important as it would allow the FCA to make rules for continuity which may avoid the need for consumers – who may be elderly or vulnerable – to themselves arrange the purchase of replacement funeral plans, following the failure of their regulated funeral plan provider. The power is similar to powers which exist for long term insurance policies (under s216 FSMA and the Policyholder Protection rules in the PRA's Rulebook).

4.12 Under this new legislation, we propose to introduce rules – under COMP 3.3 – so that:

- the FSCS could make arrangements to secure continuity of a funeral plan contract for an eligible claimant (ie a person who is eligible to bring a claim for compensation under COMP 4.2.1R) who has a funeral plan contract upon a regulated funeral plan provider failure;
- in order to secure continuity of a funeral plan contract, the FSCS may take such measures as it considers it appropriate to:
 - secure or facilitate the transfer of the business of the relevant person or successor that is in default and which consists of carrying out funeral plan contracts or any part of that business, to another firm; and/or
 - secure the issue of funeral plan contracts by another firm in substitution for existing contracts held for eligible claimants;
- in securing continuity of a funeral plan contract, the FSCS must secure the provision of a funeral for the eligible claimant under the new or continuing funeral plan contract on terms corresponding in all material respects (so far as it appears to the FSCS to be reasonable in the circumstances), to those which have applied under the original funeral plan contract;
- where it makes arrangements to secure continuity of funeral plan contracts, the FSCS must use its reasonable endeavours to seek the most cost-effective arrangements available; and
- whilst the FSCS is seeking to secure continuity of funeral plan contracts, it may secure the provision of a funeral, which is due to be provided under a protected funeral plan contract, on terms corresponding in all material respects (so far as it appears to the FSCS to be reasonable in the circumstances) to that contract.

4.13 We have also proposed further changes to the COMP rules to clarify that the FSCS may secure continuity of funeral plans as an alternative to paying compensation.

4.14 The combined effect of these further rules, and the framework for the FSCS we introduced for funeral plan claims in PS21/8, would mean that the FSCS would have a number of options open to it when responding to the failure of a regulated funeral plan provider (that has been declared in default by the FSCS) to ensure appropriate consumer protection is available:

- If there is a provider willing to take over the funeral plan contracts from the failed provider, but there are insufficient assets available to the failed provider's insolvency practitioner to do that, the FSCS could, under proposed rule COMP 3.3.5R(1), secure or facilitate the transfer of the business from the failed provider to a new provider.
- Alternatively, under proposed rule COMP 3.3.5R(2), the FSCS could secure the issue of new funeral plan contracts by another provider to eligible claimants in substitution for their existing contracts with the failed provider.
- If a covered individual dies while the FSCS is seeking to secure continuity of funeral plan contracts, under proposed rule COMP 3.3.8R(1), the FSCS may secure provision of a funeral, in accordance with all material benefits due under the covered individual's funeral plan.
- Under COMP 12.4.21B (which was made under PS21/8), the FSCS may – where it considers it essential to provide fair compensation to the claimant – pay compensation to a funeral plan customer to compensate them for the loss of their funeral plan contract. The amount of compensation payable would depend on the nature of the claim, which may, for example, include a claim for anticipatory breach of contract (which may result in the FSCS paying fair compensation calculated

at the cost of a replacement funeral plan) or a claim in restitution, where the compensation payable may reflect the amount needed to place the claimant in the position they would have been in had they never entered the contract (which could be the amount paid into the funeral plan with an element of interest).

Q2: Do you agree with our proposals to allow the FSCS to secure continuity of funeral plan contracts and pay compensation? If not, please explain why.

Recoveries

- 4.15** Upon making payments to secure the continuity of cover, or the payment of compensation, by the FSCS, the claimant's rights against the firm in default and third parties are usually transferred to the FSCS by assignment or subrogation. Using these rights, the FSCS has an obligation to seek recoveries that it considers are both reasonably possible and cost effective to pursue. This helps to mitigate the impact of payments made by the FSCS on its levy payers, who fund the FSCS's costs. For information, the current rules in relation to assignment or subrogation of rights can be found in [section 7](#) of the COMP chapter of our Handbook.
- 4.16** However, in the case of claims against failed regulated funeral plan providers, and depending on the arrangements in place, there is a risk that only the regulated funeral plan provider – and not its customers – have rights over the trust or insurance arrangements. This could mean that the FSCS is not able to seek to make recoveries in respect of its costs in the usual way – despite having arranged continuity or compensated the customer in relation to a claim against a failed funeral plan provider.
- 4.17** The government's intended change to s215 FSMA would therefore allow the FCA to make rules to give the FSCS the right, following declaring a regulated funeral plan provider 'in default', to vary existing rights or obligations, or create new rights or obligations, in relation to any trust arrangement or contract of insurance relating to the funeral plan contracts entered into or carried out by the failed provider. In addition, the change would provide the FSCS with a right of recovery if it arranges continuity of cover, in addition to recovery rights following payment of compensation (as the legislation currently allows). Accordingly, the government's proposed change to s215 FSMA would help ensure that the FSCS has the ability to seek to recover the cost of securing continuity or paying compensation, even in cases where the funeral plan customer does not have direct rights over the trust or insurance arrangements. This would help ensure that the FSCS is able to recover some of the amounts that it has paid to secure continuity or pay compensation and therefore helping to mitigate the impact on FSCS levy payers.
- 4.18** Acting under the powers provided by this proposed legislation, we propose to introduce rules in COMP 7.7 that would allow the FSCS, following securing continuity of funeral plan contracts or payment of compensation, to make a determination that:
- varies existing rights or obligations under or in respect of the trust or contract of insurance;
 - creates new rights under the trust or contract of insurance in favour of, or obligations by the trustees or insurer to, the FSCS;

- enables the FSCS to claim and take legal or any other proceedings or steps in the United Kingdom or elsewhere to enforce any such rights held by or obligations owed to the FSCS in its own name against the trustees, the insurer and/or any third party.

4.19 We are also proposing changes to COMP 7.2, 7.3 and 7.6 to confirm how the assignment of rights would work and how recoveries would be treated in light of the proposed ability to arrange continuity.

4.20 These proposed rules would allow the FSCS, following declaring a regulated funeral plan provider 'in default' and securing of continuity or payment of compensation, to make a determination to vary existing rights or obligations or to create new rights to enable it to recover at least some of the costs of funding continuity or paying compensation, in order to mitigate the impact on levy payers. It is considered appropriate for the FSCS to be able to amend those rights or obligations in order to ensure that its interests – and the interests of the levy payers who fund it – are protected.

4.21 In cases where the funeral plan customer has direct rights over the trust or insurance arrangements it is expected that, upon payment by the FSCS, the claimant's rights against the firm in default and third parties would be transferred to the FSCS by assignment or subrogation, under the current provisions in [section 7](#) of the COMP chapter of our Handbook.

Q3: Do you agree with our proposals regarding FSCS recoveries? If not, please explain why.

Further proposals in relation to the FSCS

4.22 We propose the following further changes relating to the FSCS:

- To confirm under COMP 4.2.2R that a 'customer' is not entitled to claim against a failed regulated funeral plan provider, in cases where a 'covered individual' is an eligible claimant. This is to ensure that, in cases where a funeral plan has been purchased by a customer for a covered individual (ie to cover the covered individual's funeral costs), only the covered individual (or the covered individual's estate if appropriate) is able to claim compensation from the FSCS, in the case of a claim against a regulated funeral plan provider. This is to avoid a situation whereby two individuals can claim for the same loss arising from the inability of the failed provider to provide the funeral on the death of the covered person. This exclusion is limited to a regulated funeral plan provider failure as we do not consider the same risk applies to claims against funeral plan intermediaries, where identification of the appropriate claimant will depend on the facts of the claim and it is unlikely that there could both be a claim by the customer and a claim by the covered individual arising from the same act or omission.
- To confirm under COMP 9.2.2R that the FSCS may postpone the payment of compensation if either it, or an insolvency practitioner appointed to the failed provider, is seeking to secure continuity of the funeral plan contract. This allows time for the insolvency practitioner to attempt to secure continuity before the FSCS steps in (although, as per paragraph 4.12, the FSCS could still meet the cost of a funeral if a covered individual dies during this time).

- To reflect in the guidance included at FEES 6.1.9G (regarding FSCS management expenses) that the government proposes to amend s223 FSMA to confirm that expenses incurred as a result of making arrangements to secure continuity of funeral plan contracts do not represent 'management expenses'.
- To reflect in the guidance included at FEES 6.1.15G (regarding FSCS compensation costs) that costs incurred in connection with making arrangement to secure continuity of funeral plan contracts would represent compensation costs.
- To amend our Glossary definition of 'Compensation costs' to encompass costs incurred in connection with making arrangements to secure continuity of funeral plan contracts.

Q4: Do you agree with our further proposals regarding the FSCS? If not, please explain why.

4.23 Overall, the FSCS proposals set out in this chapter help to ensure that the FSCS has appropriate options open to it once it has declared a regulated funeral plan provider 'in default' – including both arranging continuity of cover or paying compensation, as appropriate. These options include meeting the funeral costs following the death of a covered individual (in accordance with the terms of the funeral plan taken out), if those costs cannot be met by the firm itself. The proposals ensure that there is an appropriate level of protection for customers of funeral plan contracts to protect them if their provider fails, mitigating the harms referred to in Section 2. The further proposals in relation to recoveries help to mitigate the impact on industry levy payers which fund the FSCS.

5 Structure

- 5.1** In CP21/04, we consulted on a range of requirements concerning the trust and insurance arrangements to be put in place by plan providers. These proposed rules were seeking to ensure that firms are able to deliver funeral services on an ongoing basis, in light of a number of risks around the inability to deliver funerals, poor management of trusts and insufficient funding to wind-down or transfer books, pay redress or return monies where plans are cancelled. These rules were set out in Chapter 3 of our proposed new Funeral Plan: Conduct of Business sourcebook (FPCOB).
- 5.2** In PS21/8, we explained that, in light of feedback received, the majority of our rules in FPCOB Chapter 3 would be made as consulted on. However, some of the rules would require further changes to reflect our proposed policy in relation to the resolution of firms and the FSCS, and considering feedback received following CP21/4. The provisions subject to further consultation are FPCOB 3.1.8R, 3.1.9R (subject to the note in the next paragraph), 3.1.11R and 3.1.12G.
- 5.3** The rule in FPCOB 3.1.9R(3)(d) – which sets out a list of types of payments that can be made from a trust – is not part of this consultation; it is included in the instrument at Appendix 1 for context and completeness. FPCOB 3.1.9R(3)(d) has been amended compared to its CP21/4 equivalent to take into account stakeholder feedback. Similarly, FPCOB 3.1.10R is not being consulted on but is included in the instrument for context and completeness.
- 5.4** Accordingly, we propose the following changes to the structure provisions that were consulted on in CP21/4:
- At FPCOB 3.1.8R we set out requirements in relation to contracts of insurance that are used to back a funeral plan. We propose that the contract of insurance must restrict the circumstances in which the insurer can make payments under the contract to:
 - payments made to the regulated funeral plan provider or to a funeral services provider (ie a funeral director or other funeral services provider) for the purposes of delivering a covered individual's funeral, following receipt and verification of appropriate documentation to confirm the covered individual's death;
 - providing a customer refund, pursuant to a request by the customer to cancel the funeral plan contract; or
 - on the failure of the regulated funeral plan provider, or a declaration of default by the FSCS, payments to the customer or covered individual (or their next of kin), or in accordance with a determination by the FSCS (as described at paragraph 4.20).
 - FPCOB 3.1.8R has also been amended to require the regulated funeral plan provider to ensure that the contract of insurance will not terminate upon the failure of the regulated funeral plan provider.
 - At FPCOB 3.1.9R we set out requirements in relation to trusts. As proposed in CP21/4, we require firms to ensure that the trust assets are held for the benefit of customers, save for instances where surpluses can be withdrawn (in accordance with FPCOB 3.2.12R). We propose that the trust instrument must restrict the circumstances in which the trust can make payments under the instrument to:

- payments made to the regulated funeral plan provider or to a funeral services provider for the purposes of delivering a covered individual's funeral, following receipt and verification of appropriate documentation to confirm the covered individual's death;
 - providing a customer refund, pursuant to a request by the customer to cancel the funeral plan contract;
 - on the failure of the regulated funeral plan provider, or a declaration of default by the FSCS, payments of the amount held on trust to the customer or covered individual (or their next of kin), or in accordance with a determination by the FSCS (as described at paragraph 4.20);
 - essential payments for the operation of the trust (which, under the new rule noted at paragraph 5.3, are now limited to taxes, trustee fees, actuary fees, custodian fees, legal fees, trust administration fees, audit fees, investment management fees (including transaction fees), trustee liability insurance, and costs of insurance arrangements to provide a funeral on death within the instalment term); or
 - surpluses, where FPCOB 3.2.12R applies.
- We have also clarified in FPCOB 3.1.9R (4) the circumstances under which an insolvency practitioner appointed to a failed regulated funeral plan provider may claim against the assets held on trust. This is to ensure that the insolvency practitioner's costs can be met to secure resolution objectives including providing or arranging funerals under existing funeral plan contracts, effecting a transfer of those contracts to a new provider or making payments under FPCOB 3.1.9R (3) (c).
 - At FPCOB 3.1.11R we set out requirements in relation to safeguarding. We have amended the proposed rule to clarify that a regulated funeral plan provider must have arrangements to safeguard monies it has received from a customer, appointed representative or funeral plan intermediary under a funeral plan contract. The proposed rule also aligns the circumstances whereby monies may be received to those permitted under FPCOB 3.1.8R (2) and 3.1.9R (3).
 - At FPCOB 3.1.12G we propose to include guidance about how safeguarding may be achieved.

5.5 The changes ensure that the interests of customers are appropriately protected through the structural provisions and align with the proposed resolution and FSCS rules consulted on (as set out at Chapters 3 and 4).

**Q5: Do you agree with our structure provision proposals?
If not, please explain why.**

6 Additional proposals

6.1 We also propose the following changes in relation to:

- an obligation for firms to notify customers and their nominated representative following a transfer of a firm's funeral plan contracts;
- guidance schedules to be added to our Funeral Plans: Conduct of business sourcebook (FPCOB); and
- guidance to be added to our Perimeter Guidance Manual (PERG).

6.2 We propose to introduce a requirement under FPCOB 10.1.11R for firms to notify customers and their nominated representative if they take responsibility for another provider's funeral plan contracts, within 30 days of a transfer of those contracts. The requirement will ensure that customers and nominated representatives are notified of the transfer.

6.3 We propose to add guidance schedules to FPCOB as follows:

- Schedule 1: Record keeping requirements, providing readers with an overview of the relevant record keeping requirements in FPCOB.
- Schedule 2: Notification and reporting requirements, providing readers with an overview of the relevant notification and reporting requirements in FPCOB.
- Schedule 3: Rights of action for damages, setting out the rules in FPCOB contravention of which by an authorised person may be actionable under section 138D of the Act (Actions for damages) by a person who suffers loss as a result of the contravention.

6.4 We also propose to introduce guidance at PERG 2.3.4B G to clarify the application of the commercial element of the 'by way of business test' referred to in our existing guidance at PERG 2.3. The proposed guidance may be of interest to burial societies or religious organisations with a defined religious community of members.

Q6: Do you agree with our additional proposals?

6.5 In CP21/4 we consulted on rule FPCOB 9.3.3R, which required firms to notify customers and their nominated representatives about material changes to information concerning the failure of a regulated funeral plan provider. Although we still propose to introduce this rule, as it relates to our resolution rules which will be finalised following feedback from this consultation paper, we will make the rule (now as FPCOB 9.3.4R) at the same time as the final rules are made regarding the proposals set out in this paper.

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'. 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. This analysis presents estimates of the significant impacts of our proposals. We provide monetary values for the impacts where we believe it is reasonably practicable to do so. For others, we provide estimates 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, taking into account all the other impacts we foresee.

Background

3. Our March 2021 Consultation Paper CP21/4 – Funeral Plans: Proposed approach to regulation – included a comprehensive CBA relating to our proposals for the regulation of the funeral plans sector. The baseline and key assumptions from the original CBA are still relevant to our further proposals consulted on in this consultation paper. Accordingly, we have only updated the CBA in this section where our latest proposals change the original assumptions.
4. In PS21/8, we summarised feedback received regarding our original CBA following CP21/4, including where the feedback changed our CBA assumptions. The changes made do not affect the assumptions used in this new CBA.

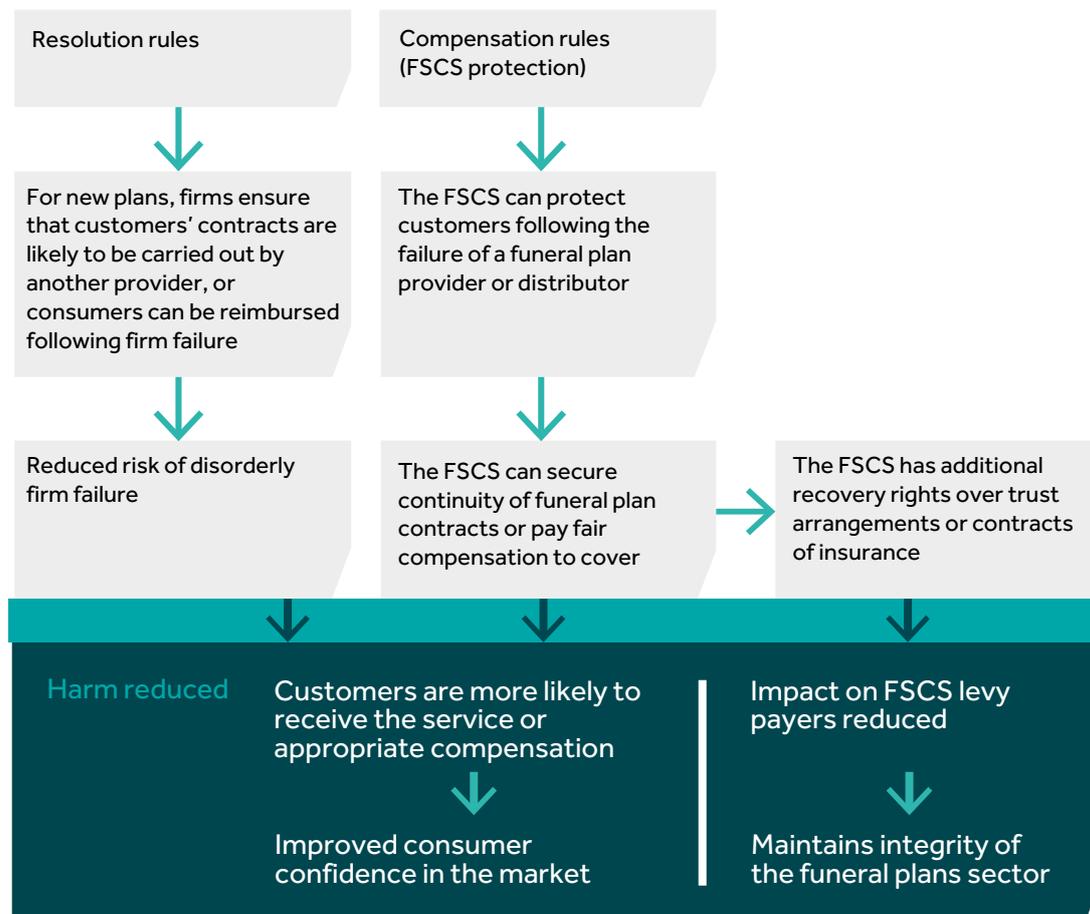
Problem and rationale for intervention

5. Our combined resolution and FSCS proposals – as consulted on in CP21/4 and the further proposals set out in this paper – seek to address harms consumers could suffer if a regulated funeral plan firm fails. In particular, we are concerned that if a regulated funeral plan provider fails, customers of the provider may lose the benefit of the funeral plan that they have paid for, meaning that future funeral costs may not be met as expected. Further, we want to mitigate risks that would arise following the disorderly failure of a regulated funeral plan firm, which would impact customers and the wider integrity of the funeral plans sector.

Overview of our proposed intervention

6. The proposals set out in this consultation paper include:
- In Chapter 3 we set out our further proposals regarding the resolution of failed regulated funeral plan firms. These proposals include a requirement for firms to ensure that relevant funeral plan contracts provide that, if the firm fails and if a transfer to a new provider is not possible, it will be obliged to take all necessary steps to ensure that the customer or covered individual will be repaid any amounts to which they are entitled from the relevant trust or contract of insurance. Furthermore, there should be nothing in the contractual arrangements which will limit the provider's liability in relation to the funeral plan contract to a level that is below that needed at the time to purchase a replacement funeral plan contract on the same or substantially similar terms.
 - In Chapter 4 we set out our further proposals regarding protection under the FSCS. In particular, we have set out proposed rules in relation to securing continuity of cover as an alternative to paying compensation to eligible customers of a failed regulated funeral plan provider that is declared 'in default' by the FSCS, and rules in relation to FSCS recoveries. These rules are linked to further legislation in connection with funeral plans which the government is currently consulting on.
 - In Chapter 5 we set out our further proposals regarding the structure provisions, to ensure that they align with our policy proposals for the resolution of firms and FSCS protection.
 - In Chapter 6 we set out additional proposals regarding our regulation of funeral plans, including an obligation for firms to notify customers and covered individuals following a transfer of a firm's funeral plan contracts and guidance to be added to our Funeral Plans: Conduct of business sourcebook (FPCOB) and Perimeter Guidance Manual (PERG).

Figure 1: Expected impact of resolution and compensation rules



Summary of costs and benefits

7. The costs arising from the proposals set out in this consultation paper have largely already been accounted for in the costs set out in our previous CBA included in CP21/4. This is because the previous cost estimates – eg regarding changes to contractual arrangements – are not expected to increase as a consequence of the further proposals consulted on. However, we have estimated that the funeral plans sector will incur the following additional one-off costs:
- total familiarisation costs of **£340,000** associated with all funeral plan firms reading the requirements of the proposed rules and guidance proposed in this consultation paper
 - total legal review costs of **£62,000** relating to all funeral plan providers completing a legal review of the proposals and a gap analysis to check current practices against expectations
8. We have also estimated that the ongoing cost to funeral plan providers of issuing a letter to notify customers and nominated representatives following a transfer of a firm's funeral plan contracts to be between **£0 to £400,000 a year** (£0 if no such letters are sent, and otherwise probably at the lower end of that range, as few firms would be expected to issue such a letter in a given year).

9. The benefit of the proposals set out in this consultation paper is primarily that customers of regulated funeral plan firms will be protected if a regulated funeral plan firm fails. There are also benefits to FSCS levy paying firms associated with the proposed rules enabling the FSCS to recover from the insurance or trust assets which underpin the funeral plan arrangements (assuming the government introduces the accompanying legislation). However, it is not reasonably practicable to quantify the value of these benefits.

Costs

Familiarisation costs

10. 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.
11. We have estimated the costs of this to firms based on assumptions on the time required to read the approximately 40 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 1.5 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 1.
12. Table 1 outlines the total familiarisation costs by firm size as well as the main assumptions used to estimate these costs. We have assumed all funeral plan firms (including appointed representatives) will read the consultation paper – although the proposals are of more relevance to funeral plan providers. In total, we estimate that the one-off industry cost of familiarisation would be approximately **£340,000**.

Table 1: Total familiarisation costs

Firm category	Total hours to read the consultation paper	Hourly staff salary (£)	Assumed number of firms	Total familiarisation costs
<i>Large and medium-sized funeral plan providers</i>	30	£59	8	£14,275
<i>Small-sized funeral plan providers, intermediaries and ARs</i>	3	£45	2,388	£325,911
				£340,000

Sources: [How we analyse the costs and benefits of our policies](#)

13. Following familiarisation with the proposals put forward in this consultation paper, we expect firms to conduct a legal review of the proposals and a gap analysis to check their current practices against expectations.
14. As the proposals set out in this consultation paper primarily impact funeral plan providers, we have only accounted for funeral plan providers in our legal review costs analysis.

15. We have estimated this cost to funeral plan providers based on the assumptions that the time required to read the approximate 30 page long legal text will be 28 hours for large and medium-sized funeral plan providers and 7 hours for small providers.
16. Table 2 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 approximately **£62,000**.

Table 2: Total legal review costs

Firm category	Total hours to conduct the review	Hourly staff salary (£)	Assumed number of firms	Total legal review costs
Large and medium-sized funeral plan providers	90	£69	8	£49,644
Small-sized funeral plan providers	6	£55	40	£12,228
				£62,000

Sources: [How we analyse the costs and benefits of our policies](#)

Costs associated to resolution proposals

17. In our CBA included in CP21/4, we explained that we expected firms to incur one off costs in amending arrangements in relation to new funeral plans with respect to continuity and reimbursement, including contractual arrangements with trustees and insurers. Trustees and insurers were also expected to bear costs as the counterparty to these arrangements. We also expected 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. We also expected costs to arise in relation to the other resolution requirements, such as for a resolution manual.
18. We also explained in CP21/4 that we expected 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 assumed all providers would incur costs to meet the new requirements. Using the assumptions for minor change projects in our [standardised cost model](#), we assumed small firms would take 10 project days to complete the change and medium and large firms would take 40 and 60 days respectively. Given the nature of the changes we also accounted for board and executive review of the necessary changes. This gave a one-off cost of £1.1m across the 48 estimated funeral plan providers.
19. In addition, we expected ongoing costs for an annual review of the continuity and reimbursement arrangements, including the resolution manual, following their initial implementation. Based on the assumptions set out in our previous CBA, we estimated annual ongoing industry costs of £42k – £126k.

- 20.** We consider that these estimated resolution costs as set out in CP21/4 and updated in PS21/8 still apply notwithstanding the updated resolution proposals set out in this consultation paper. This is because the updated proposals require the same kind of changes to be made to contractual arrangements as envisaged in the CP21/4 proposals. Therefore, we do not intend to update the previous estimates nor highlight additional costs in this respect.

Costs associated to compensation proposals

- 21.** In our CBA included in CP21/4, we explained that the FSCS had estimated that it would cost £150,000 to make system changes to prepare for the introduction of FSCS protection for funeral plans. These management expenses will ultimately be passed on to firms through the levy it collects from industry levy payers.
- 22.** Notwithstanding the further proposals set out in this consultation paper regarding the FSCS, we consider that this cost estimate still applies. This is because the FSCS's set-up costs are not materially impacted by the introduction of the ability to arrange continuity of funeral plan contracts or additional recovery powers.
- 23.** In addition to operational costs, the FSCS may incur further costs following the failure of regulated funeral firms – particularly funeral plan providers – which are declared 'in default' by the FSCS in the future. However, as explained in CP21/4, we are not able to robustly estimate FSCS's ongoing compensation costs (whether arising from securing continuity or the payment of compensation) arising from the failure of regulated 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 the FSCS. To estimate the liabilities which the FSCS could be exposed to, we would need to quantify several uncertain factors, including:
- the number of firms which will become authorised
 - the likelihood that firms fail
 - the value of undrawn funeral plan contracts
 - the cost of securing continuity or amount of compensation which the FSCS may pay for a given failure
 - the value of insurance or trust assets which can be recovered
- 24.** We consider quantifying the variables to be too speculative to derive a meaningful estimated figure for future liabilities at this time.
- 25.** Nonetheless, in our previous consultation paper (at paragraph 200 of the CBA), we did estimate, based on various assumptions, the cost to individual regulated funeral plan firms if total FSCS compensation costs for a given year totalled either £1 million or £5 million (£5 million being the funding threshold for the new Funeral Plans Claims funding class, after which the wider 'retail pool' of levy payers is required to contribute). That previous analysis may still be of interest to funeral plan firms in estimating what their liability may be if a regulated funeral plan provider is declared 'in default' by the FSCS.
- 26.** Accordingly, our previous cost estimate published in CP21/4 regarding the FSCS still applies, in relation to both the FSCS's set-up costs to prepare for the introduction of FSCS protection for funeral plans, and to the ongoing costs associated to delivering FSCS protection.

27. In the case of the ongoing costs, as above, there is still considerable uncertainty as to what compensation costs could arise in the future following the failure of regulated funeral plan firms. As explained in PS21/8, we aim to carry out a review of the class limit for the funeral plans funding class at least one year after our regulation of the sector commences to ensure the limit is set at an appropriate level. At that time, we will also consider the funding arrangements for funeral plan firms more generally, including whether a single funding class for funeral plan firms remains appropriate, or whether it would be appropriate to combine funeral plan firms with firms from other funding classes. In the meantime, we will monitor information about funeral plan firms that become authorised and consider any issues that may arise in the interim to consider if, in our opinion, action is needed.

Costs associated to structure proposals

28. The relevant costs associated with the structural provisions – including arrangements in place to protect consumers in the event of the insolvency of a provider – were included in the estimates in relation to firm resolution set out in our previous CBA in CP21/4, as summarised at paragraphs 17-19 above. As explained, we consider that those estimated costs still apply notwithstanding the further proposals set out in this consultation paper. This is because the updated proposals require the same kind of changes to be made to contractual arrangements as envisaged in the CP21/4 proposals. Therefore, we do not intend to update the previous estimates nor highlight additional costs in this respect.

Costs associated to additional proposals

29. We are proposing to introduce a new requirement for firms to notify customers upon the transfer of plans to a new provider, even if there are no other changes to the funeral plan arrangements (PS21/8 has already introduced a notification requirement in cases where there are changes to arrangements following a transfer). If a firm is required to notify customers and nominated representatives following a transfer of a firm's funeral plan contracts under this new requirement, and where there are no other changes to the arrangements, there will be a cost associated with this notification. In our CBA included in CP21/4, we estimated the cost of setting up notification letters to customers, for all firms, to be £868k (and likely to be lower). We consider that the additional requirement to notify customers following a transfer of contracts would be encompassed in the previous estimated cost of setting up notification letters. In addition, we have estimated the cost of sending an additional letter to affected customers to fall within the range of **£0 to £400,000 a year**, based on each letter costing £1 to send. The £400,000 upper end of the range is based on data from our funeral plan firm survey conducted in 2019, which indicated that the larger funeral plan providers had up to 400,000 undrawn funeral plans. Accordingly, the cost to smaller providers will be considerably less than this amount. We are unable to predict how many transfers of contracts we will see in the future (where there are no other changes to the arrangements), and it may be the case that no such transfers occur in a given year therefore there would be no need for notification letters to be sent (and therefore the bottom end of the range is zero). We are assuming that there will not be more than one such transfer of a large provider's contracts in a year.

30. We do not consider there are any additional costs associated with the guidance to be added to FPCOB or PERG.

FCA costs associated to proposals

31. We do not consider there are any additional costs to the FCA associated to the proposals set out in this CBA that were not already accounted for in our previous CBA included in CP21/4.

Benefits

32. The primary benefit of the proposals set out in this consultation paper is that customers of regulated funeral plan firms will be protected if a regulated funeral plan firm fails.
33. The proposals set out in this consultation paper primarily aim to mitigate the risk that a customer of a regulated 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 (eg 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.
34. The combined effect of the resolution, FSCS and structure proposals will serve to mitigate harm from financial loss and/or psychological distress arising from the failure of a regulated funeral plan firm. The FSCS proposals will ensure that the FSCS is able to protect customers if a regulated funeral plan firm fails, by arranging continuity (assuming the government introduces the accompanying legislation) or paying compensation. 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. In addition to financial benefits, there are expected to be wider social and economic benefits in protecting consumers who might be vulnerable or at a vulnerable stage of their lives.
35. In addition, the proposed rules to allow the FSCS to recover from the insurance or trust assets which underpin the funeral plan arrangements (assuming the government introduces the accompanying legislation) will help to mitigate the impact on industry levy payers who fund the FSCS.
36. 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, and do not know how often a transfer of funeral plan contracts will arise in the future. It is therefore not practicable to robustly quantify the harm avoided by the proposals set out in this paper.

Q7: Do you have any comments on our cost benefit analysis?

Annex 2

Questions in this paper

- Q1:** Do you agree with our resolution proposals? If not, please explain why.
- Q2:** Do you agree with our proposals to allow the FSCS to secure continuity of funeral plan contracts and pay compensation? If not, please explain why.
- Q3:** Do you agree with our proposals regarding FSCS recoveries? If not, please explain why.
- Q4:** Do you agree with our further proposals regarding the FSCS? If not, please explain why.
- Q5:** Do you agree with our structure proposals? If not, please explain why.
- Q6:** Do you agree with our additional proposals? If not, please explain why.
- Q7:** Do you have any comments on our cost benefit analysis?

Annex 3

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 ensure market integrity. 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 the FCA's market integrity objective.

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 consider these proposals are compatible with the FCA's strategic objective of ensuring that there is an appropriate degree of protection for consumers as they aim to ensure that customers of regulated funeral plan firms are appropriately protected in the event of the failure of a regulated funeral plan firm, particularly failed providers.
11. Our proposals regarding the resolution of firms and for FSCS protection ensure that consumers are appropriately protected upon the failure of regulated funeral plan firms.

Market integrity objective

12. The mandate of the FCA includes the requirement to protect and enhance the integrity of the UK financial system. The FCA has in this consultation had regard to the matters listed in s.1D(2) FSMA on integrity.
13. We consider these proposals are compatible with the FCA's strategic objective of protecting and enhancing the integrity of the UK financial system. In particular the proposals aim to minimise the risk of a disorderly failure of a regulated funeral plan provider, which could have an adverse impact on the integrity of the wider funeral plans sector.

The FCA's regulatory principles

14. 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

15. The proposals set out in this consultation paper primarily aim to ensure that harms that may occur following the failure of a regulated funeral plan firm are mitigated and

that consumers are protected to an appropriate level. By focusing new proposals on this specific harm, we allow our resources to be used in the most efficient way.

The principle that a burden or restriction should be proportionate to the benefits

16. We have considered the impact of our proposals on both firms and consumers and have undertaken a cost-benefit analysis (CBA) which is included in Annex 2 of this consultation paper, which builds on the CBA published as part of CP21/4. 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

17. Our overall proposals (covered in this consultation paper and CP21/4) 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

18. Our proposals do have regard for the principle that consumers should take responsibility for their decisions, whilst recognising that a consumer may have limited opportunity to mitigate the risk of a regulated funeral plan firm failing and therefore it is considered reasonable that an appropriate level of protection is available.

The responsibilities of senior management

19. In PS21/8 we confirmed that the Senior Managers & Certification Regime will apply to regulated funeral plan providers and will ensure that firms and the FCA are able to hold individuals to account.

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

20. Our proposals are not relevant to this principle. 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

21. Our proposals are not relevant to this principle.

The principle that we should exercise our functions as transparently as possible

22. 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

- 23.** 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 rules 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

- 24.** The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies.

Treasury recommendations about economic policy

- 25.** In the remit letter published by the Chancellor of the Exchequer on 8 March 2017, 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

- 26.** 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.
- 27.** As part of this, we ensure the equality and diversity implications of any new policy proposals are considered. The outcome of our consideration regarding these matters in this case is stated in Chapter 2 of this Consultation Paper.

Annex 4

Abbreviations used in this paper

Abbreviation	Description
CBA	Cost-Benefit Analysis
COMP	Compensation sourcebook
CP	Consultation Paper
CP21/4	Funeral Plans: Proposed approach to regulation consultation paper, published in March 2021
FCA	Financial Conduct Authority
FEES	Fees manual
FPCOB	Funeral Plans: Conduct of business sourcebook
FSCS	Financial Services Compensation Scheme
FSMA	The Financial Services and Markets Act 2001
PERG	The Perimeter Guidance Manual
PRA	Prudential Regulation Authority
PS21/8	Regulation of funeral plans: Feedback to CP21/4 and final rules policy statement, published in July 2021
RAO	The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544)

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 7948 or email: publications_graphics@fca.org.uk or write to: Editorial and Digital team, Financial Conduct Authority, 12 Endeavour Square, London E20 1JN



Sign up for our **news and publications alerts**

Appendix 1

Draft Handbook text

FUNERAL PLANS (No. 2) INSTRUMENT 2021

Powers exercised

- A. 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 137A (The FCA’s general rules);
 - (2) section 137D (FCA general rules: product intervention);
 - (3) section 137T (General supplementary powers);
 - (4) section 138D (Action for damages);
 - (5) section 139A (Power of the FCA to give guidance);
 - (6) section 213 (The compensation scheme);
 - (7) section 214 (General);
 - (8) section 215 (Rights of the scheme in insolvency); and
 - (9) [section 215A (Continuity of funeral plan contracts)].
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 29 July 2022, immediately after the Funeral Plans Instrument 2021 (FCA 2021/26).

Amendments to the Handbook

- D. 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).

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Funeral Plan: Conduct of Business sourcebook (FPCOB)	Annex C
Compensation sourcebook (COMP)	Annex D

- E. 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.

Amendments to material outside the Handbook

- F. The Perimeter Guidance manual (PERG) is amended in accordance with Annex E to this instrument.

Notes

- G. In the Annexes to this instrument, “notes” are included for the convenience of readers, but do not form part of the legislative text.

Citation

- H. This instrument may be cited as the Funeral Plans (No. 2) Instrument 2021.

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.

funeral plan resolution manual the manual required by *FPCOB* 16.2.3R.

funeral plan resolution rules the *rules* in *FPCOB* 16.

Amend the following definitions as shown.

<i>compensation costs</i>	the costs incurred:	
	(a)	in paying compensation; or
	(b)	[deleted]
	(c)	[deleted]
	(d)	under section 214B or section 214D of the <i>Act</i> ; or
	(e)	by virtue of section 61 (Sources of compensation) of the Banking Act 2009; <u>or</u>
	(f)	<u>in connection with making arrangements to secure continuity of <i>funeral plan contracts</i>;</u>
	(including the costs of paying interest, principal and other costs of borrowing to pay such costs).	

Annex B

Amendments to the Fees manual (FEES)

In this Annex, unless otherwise stated, underlining indicates new text and striking through indicates deleted text.

6	Financial Services Compensation Scheme Funding		
6.1	Application		
...			
	The management expenses levy		
6.1.9	G	Section 223 of the <i>Act</i> (Management expenses) prevents the <i>FSCS</i> from recovering, through a levy, any <i>management expenses</i> attributable to a particular period in excess of the limit set in <i>COMP</i> as applicable to that period. ‘Management expenses’ are defined in section 223(3) to mean expenses incurred or expected to be incurred by the <i>FSCS</i> in connection with its functions under the <i>Act</i> , except:	
		(1)	expenses incurred in paying compensation;
		(2)	expenses incurred as a result of the <i>FSCS</i> making the arrangements to secure continuity of insurance to make payments to or in respect of policyholders or to safeguard policyholders, under <i>PRA rules</i> made under sections 216(3) or (4), 217(1) or 217(6) of the <i>Act</i> ;
		<u>(2A)</u>	<u>expenses incurred as a result of the <i>FSCS</i> making the arrangements to secure continuity of funeral plan contracts or to make payments under <i>FCA rules</i> made under [sections 215A(3) or (4) of the <i>Act</i>];</u>
		(3)	expenses incurred under section 214B or section 214D of the <i>Act</i> as a result of the <i>FSCS</i> being required by HM Treasury to make payments in connection with the exercise of the stabilisation power under Part 1 of the Banking Act 2009; and
		(4)	expenses incurred under Part 15A of the <i>Act</i> as a result of the <i>FSCS</i> being required by HM Treasury to act in relation to a <i>relevant scheme</i> .
...			
	The compensation costs levy		
...			

6.1.15	G	<i>Compensation costs</i> are principally the costs incurred in paying compensation. Costs incurred:	
		(1)	[deleted]
		...	
		(4)	as a result of the <i>FSCS</i> being required by HM Treasury to make payments in connection with the exercise of the stabilisation power under Part 1 of the Banking Act 2009; or
		(5)	in paying interest, principal and other costs from borrowing to allow the <i>FSCS</i> to pay claims attributable to a particular <i>class</i> ; <u>or</u>
		(6)	<u>in connection with making arrangements to secure continuity of funeral plan contracts;</u>
			are also treated as <i>compensation costs</i> . <i>Compensation costs</i> are attributed to the <i>class</i> which gives rise to the costs up to relevant <i>levy limits</i> . <i>Classes</i> (other than the <i>deposit acceptors' contribution class</i>) may be funded, for <i>compensation costs levies</i> beyond the <i>class levy limit</i> , by the <i>retail pool</i> .

Annex C

Amendments to the Funeral Plan: Conduct of Business sourcebook (FPCOB)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

2 General matters

2.1 General principles

...

Record keeping

- 2.1.6 G (1) This sourcebook, other than *FPCOB* 4, *FPCOB* 6.4.18R, ~~and *FPCOB* 15 and *FPCOB* 16~~, 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.

...

...

3 Structure Provisions - arrangements underpinning a funeral plan contract

3.1 Application: general

...

...

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) clearly identifies the policyholder under the *contract of insurance*;
 - (2) restricts the circumstances in which the insurer can make a payment under the contract to:
 - (a) payments made to the *funeral plan provider* or funeral services provider for the purpose of delivering a *covered individual's* funeral, which must only be paid after receipt and verification of the *covered individual's* death certificate, or Certificate for Burial or Cremation (GR021 in Northern Ireland) where a death certificate is not available, in accordance with *FPCOB* 3.1.11R(2);

- (b) providing a *customer* refund (pursuant to a request by the *customer* to cancel the *funeral plan contract*); or
- (c) on the *failure* of the *funeral plan provider* or if it is in *default*, payments to the *customer* or *covered individual*, (on the *covered individual's* death) to their next of kin, or in accordance with a determination of the *FSCS*;
- (3) delivers all applicable outcomes in the *funeral plan resolution rules*;
- (4) the *contract of insurance* will not terminate upon *failure* of the *funeral plan provider*; 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) except where *FPCOB* 3.1.9R(3)(e) applies, 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 it restricts the circumstances in which the trustees can make a payment out of the trust to:
 - (a) payments made to the *funeral plan provider* or funeral services provider for the purpose of delivering a *covered individual's* funeral, which must only be paid after receipt and verification of the *covered individual's* death certificate, or Certificate for Burial or Cremation (GR021 in Northern Ireland) where a death certificate is not available, in accordance with *FPCOB* 3.1.11R(2);
 - (b) providing a *customer* refund (pursuant to a request by the *customer* to cancel the *funeral plan contract*);
 - (c) on the *failure* of the *funeral plan provider* or if it is in *default*, payments of the amount held on trust to the *customer* or *covered individual*, (on the *covered individual's* death) to their next of kin, or in accordance with a determination of the *FSCS*;

- (d) essential payments for the operation of the trust, limited to taxes, trustee fees, actuary fees, custodian fees, legal fees, trust administration fees, audit fees, investment management fees (including transaction fees), trustee liability insurance, costs of insurance arrangements to provide a funeral on death within the instalment term;
- (e) 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, effecting a transfer of those contracts to a new provider, or making payments under FPCOB 3.1.9R(3)(c);
- (5) will deliver all applicable outcomes in the funeral plan 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 must be 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 FPCOB 3.1.9R(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, appointed representative, or funeral plan intermediary 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 pursuant to FPCOB 3.1.8R(2)(c); or
 - (c) from a trust prior to delivering a covered individual's funeral, providing a customer refund, or pursuant to FPCOB 3.1.9R(3)(c),

to ensure that such monies are not at any stage, including on failure, assets of the funeral plan provider.

- (2) provide to an insurer or trustee, as applicable, a copy of the covered individual's death certificate, or Certificate for Burial or Cremation (GR021 in Northern Ireland) where a death certificate is not available, 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 monies received from an insurer or a trust for the funeral of a covered individual to the funeral services provider that has agreed to provide a funeral for the covered individual as soon as reasonably practicable following receipt.

3.1.12 G Examples of how the safeguarding required by FPCOB 3.1.11R may be achieved include:

- (1) where monies are contractually owed to the funeral plan provider under the funeral plan contract, 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 services provider, 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.

...

9 Product information

...

9.3 Post-contract information: funeral plan contracts

...

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 Funeral plan summary

Annex

1

...

...	...		
		Headings, corresponding information and order of content	
2.5	R	The subheadings must be in this sequence and have the following corresponding information:	
		...	
		(9)	<p><u>‘Information concerning potential funeral plan provider failure’</u></p> <p><u>A firm should briefly explain the arrangements in place to ensure that in the event of its failure:</u></p> <p>(a) <u>there will be a reasonable likelihood that the relevant funeral plan contracts will continue to be carried out by another firm, identifying particular terms in its contracts with customers, including relating to prior consents from customers or covered individuals, and explaining how they operate; and</u></p> <p>(b) <u>in the event that the relevant funeral plan contract will not continue to be carried out by the firm or another firm, the relevant customer will promptly receive a payment corresponding to the funeral plan customer balance.</u></p> <p><u>A firm should also explain the particular risks to the carrying out of funeral plan contracts in the event of its failure, including the possibility that funeral plan contracts may cease to be carried out before the covered individual’s death, and that customers may need to make arrangements with an alternative provider and potentially incur associated costs.</u></p>

9 Nominated representative document

Annex

2

This annex belongs to *FPCOB 9.3.6R*.

...	...		
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) (10), in this sequence:	
		...	

	(10)	<p><u>‘Information concerning potential provider failure’</u></p> <p><u>A firm should briefly explain the arrangements in place to ensure that in the event of its failure:</u></p> <p>(a) <u>there will be a reasonable likelihood that the relevant funeral plan contracts will continue to be carried out by another firm, identifying particular terms in its contracts with customers, including relating to prior consents from customers, and explaining how they operate; and</u></p> <p>(b) <u>in the event that the relevant funeral plan contract will not continue to be carried out by the firm or another firm, the relevant customer will promptly receive a payment corresponding to the funeral plan customer balance.</u></p> <p><u>A firm should also explain the particular risks to the carrying out of funeral plan contracts in the event of its failure, including the possibility that funeral plan contracts may cease to be carried out before the covered individual’s death, and that customers may need to make arrangements with an alternative provider and potentially incur associated costs.</u></p>
--	------	---

...

10 Arrangements for the funeral

10.1 Application and purpose

...

- 10.1.11 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 within 30 days of the completion of the transfer notify the customer and nominated representative that a transfer of the funeral plan contract has taken place.
- (3) ...
- (4) ...

...

Insert the following new chapter FPCOB 16, after FPCOB 15 (Prudential requirements). The text is not underlined.

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* that 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*, there will be a good outcome for *customers* and *covered individuals* and, in particular:

- (1) there will be no cause for unreasonable delay to any payment that the *firm* or any other *person* arranges to be made to any *customer* or *covered individual* from the relevant trust or *contract of insurance* arranged under *FPCOB* 3.1.6R; and

- (2) the *firm's* liability towards any *customer* or *covered individual* who may be entitled to a payment in respect of a *funeral plan contract* (whether from the relevant trust or *contract of insurance* arranged under *FPCOB* 3.1.6R or from the *firm's* own assets, or both) will not be limited by any contract term to a level below that which would be needed, at the time of the *firm's failure*, to purchase a replacement *funeral plan contract* on terms corresponding, in all material respects, to the *funeral plan contract* that the *firm* had entered into.

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* (that 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) any payment which *customers* or *covered individuals* may be in a position to claim from the trust or *contract of insurance*, or from the *firm* in respect of the trust or *contract of insurance*.
- (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* that would *carry out funeral plan contracts as provider*.
- (3) As well as including in each relevant *funeral plan contract* any terms necessary to ensure compliance with *FPCOB* 16.1.4R(2), each relevant *funeral plan contract* entered into by the *firm* with a *customer* must provide that:
- (a) if the *firm fails* it will be obliged to take all necessary steps to ensure that:
 - (i) in the case of a *funeral plan contract* for which there is a *contract of insurance* arranged under *FPCOB* 3.1.6R(1) under which the policyholder is the *firm*, the *customer*, *covered individual* or (on the *covered individual's* death) their next of kin will be able to make a claim themselves under the *contract of insurance* directly to the *insurer*;

- (ii) in the case of a *funeral plan contract* for which there is a trust under *FPCOB 3.1.6R(2)*, the *customer* or *covered individual* will be paid their entitlement from the relevant trust; and
 - (b) the obligation under (a) will arise 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 obligation under (a) 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*.
- (5) The *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:
- (a) every *funeral plan contract* that could be transferred to another *firm*;
 - (b) for each *funeral plan contract*:
 - (i) the name and contact details of the *customer*, the *covered individual* (if different to the *customer*) and any nominated representative; and

- (ii) 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.

- 16.1.6 G (1) In the event of a *firm's failure*, any insolvency practitioner appointed to the *firm* will have duties under insolvency law in respect of the *firm's* creditors, who may include any *customer* or *covered individual* towards whom the *firm* has undischarged contractual obligations at the point of *failure*.
- (2) Such *customers* or *covered individuals* may be entitled to recover amounts from the relevant trust or *contract of insurance* arranged by the *firm* under *FPCOB* 3.1.6R and may also have separate claims against the *firm* itself.
- (3) Depending on how the insolvency practitioner proposes to address the rights of such *customers* or *covered individuals* and the nature of any potential claims against the *firm* that they may have, the *FSCS* may declare the *firm* in *default* and take further steps under the relevant provisions of *COMP*.
- (4) A *firm's* compliance with the requirements in *FPCOB* 16.1.3R to 16.1.5R will assist both the appointed insolvency practitioner and the *FSCS* in the event of the *firm's failure*.
- (5) However, when considering whether its arrangements will ensure a good outcome in accordance with *FPCOB* 16.1.4R, a *firm* should not make any assumptions as to whether the *FSCS* will determine the *firm* to be in *default* and take any other steps under the relevant provisions of *COMP*.

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* or *covered individual's* rights under or in respect of the relevant trust or *contract of insurance* arranged under *FPCOB* 3.1.6R;
 - (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* or *covered individual*.
- (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* or *covered individual* receiving a payment where the relevant *funeral plan contracts* will not continue to be *carried out* by the *firm* or another *firm*.
- (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, and 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 plan 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* 15.3.21R (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, and 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 could be paid to *customers* or *covered individuals* where the relevant *funeral plan contracts* will not continue to be *carried out* by the *firm* or another *firm*;
 - (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 will be paid to *customers* or *covered individuals* where the relevant *funeral plan contracts* will not continue to be *carried out* by the *firm* or another *firm*;
 - (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 (Plan 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.

Insert the following new schedules to FPCOB, after FPCOB 17 (Application of other parts of the Handbook). The text is not underlined.

Schedule 1 **Record keeping requirements**

- 1.1 G The aim of the guidance in the following table is to give the reader a quick overall view of the relevant record keeping requirements in *FPCOB*.
- 1.2 G It is not a complete statement of those requirements and should not be relied on as if it were.
- 1.3 G Where a *rule* does not specify a retention period for a record, a *firm* should have regard to *SYSC 9.1.5G* which refers to the general principle that records should be retained for as long as is relevant for the purposes for which they are made

Handbook reference	Subject of record	Content of record	When record must be made	Retention period
<i>FPCOB</i> 4.2.13R(1)	<i>Financial promotion</i>	<i>A financial promotion communicated or approved (subject to exemptions)</i>	When <i>communicated or approved</i>	6 years
<i>FPCOB</i> 4.2.13R(2)	Telemarketing scripts	Copy of any script used	Date script used	6 years
<i>FPCOB</i> 6.4.18R	<i>FP distribution charges</i>	<i>FP distribution charges paid by each customer</i>	Date paid by <i>customer</i>	Not specified
<i>FPCOB</i> 15.9.4G	Calculation of <i>core capital resources</i>	<i>A firm is encouraged to record reasons for any difference between the deficit reduction amount and any public commitment to provide funding in respect of a defined benefit occupational pension scheme</i>	When calculating its capital resources for the <i>core capital resources requirement</i>	Not specified

<i>FPCOB</i> 15.10.5R	Risk assessments	Assessments required under <i>FPCOB</i> 15.10.4R including major sources of risk and how <i>firm</i> intends to deal with them	When assessments are made under <i>FPCOB</i> 15.10.4R	At least 3 years
<i>FPCOB</i> 16.1.5R(5)	Single central record	Single central record containing all up-to-date and pertinent information and documents relating to each <i>funeral plan contract</i>	Date <i>firm</i> entered into <i>funeral plan contract</i>	Not specified
<i>FPCOB</i> 16.2.3R	The <i>firm's</i> most recent <i>funeral plan resolution manual</i>	As stated in the <i>rule</i>	When the <i>funeral plan resolution manual</i> is made or updated	None specified (but see <i>FPCOB</i> 16.2.4R)

Schedule 2 Notification and reporting requirements

- 2.1 G The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant notification and reporting requirements in *FPCOB*.
- 2.2 G It is not a complete statement of those requirements and should not be relied on as if it were.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>FPCOB</i> 3.2.5R(1)	<i>Solvency assessment report</i>	A copy of the <i>solvency assessment report</i> to the <i>FCA</i>	<i>Funeral plan provider's</i> receipt of <i>solvency assessment report</i>	Within 7 days of receipt of <i>solvency assessment report</i>

<i>FPCOB</i> 3.2.5R(2)	Assets of the trust are insufficient to cover the liabilities	If <i>solvency assessment report</i> concludes that assets of the trust are insufficient to cover the trust's liabilities, notification of that fact with the report	Conclusion in report that assets of the trust are insufficient to cover the trust's liabilities	In accordance with <i>SUP</i> 15.7.1R, at the same time as providing a copy of the <i>solvency assessment report</i> , see also <i>FPCOB</i> 3.2.5R(1).
<i>FPCOB</i> 3.2.8R	<i>Remediation plan</i>	<i>Remediation plan</i> to the <i>FCA</i> for review	Submission date of the relevant <i>solvency assessment report</i> to the <i>FCA</i>	In accordance with <i>SUP</i> 15.7.1R, as soon as possible and no later than 30 days from the submission date of the relevant <i>solvency assessment report</i>
<i>FPCOB</i> 3.2.10R(1)	Concerns with implementation of <i>remediation plan</i>	<i>Funeral plan provider</i> to notify the <i>FCA</i> that it will not be able to fully implement the <i>remediation plan</i> in accordance with its terms	<i>Funeral plan provider's</i> suspicion that it will not be able to fully implement the <i>remediation plan</i> in accordance with its terms	In accordance with <i>SUP</i> 15.7.1R, as soon as <i>funeral plan provider</i> suspects that it will not be able to fully implement the <i>remediation plan</i> in accordance with its terms
<i>FPCOB</i> 3.2.10R(2)	Inability to fully implement <i>remediation plan</i>	Notify the <i>FCA</i> if the solvency level of the trust remains below 100%	Expiration of the <i>remediation plan</i>	In accordance with <i>SUP</i> 15.7.1R, immediately

		if the <i>funeral plan provider</i> is unable to fully implement the <i>remediation plan</i>		
<i>FPCOB</i> 3.2.11R(3)	Remediation of trust deficit	Fact of the remediation of trust deficit	Remediation of trust deficit	Not specified

Schedule 3 Right of action for damages

- 3.1 G The table below sets out the *rules* in *FPCOB* contravention of which by an *authorised person* may be actionable under section 138D of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.
- 3.2 G If a “Yes” appears in the column headed “For private person?”, the *rule* may be actionable by a “*private person*” under section 138D (or, in certain circumstances, their fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A “Yes” in the column headed “Removed” indicates that the *FCA* has removed the right of action under section 138D(2) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.
- 3.3 G The column headed “For other person?” indicates whether the *rule* may be actionable by a *person* other than a *private person* (or their fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* may be actionable is given.

3.4 G

			Rights of action under section 138D			
Chapter	Section/ Annex	Paragr aph	For private person?	Removed ?	For other person ?	
The <i>fair, clear and not misleading rule</i> in <i>FPCOB</i> 4.2.1R			Yes	In part (Note 1)	No	
Any <i>rule</i> in <i>FPCOB</i> which prohibits an <i>authorised person</i> from seeking to make			Yes	No	Yes	Any other person

provision excluding or restricting any duty or liability				
The prudential <i>rules</i> for <i>firms</i> carrying on <i>regulated funeral plan activity</i> in <i>FPCOB 15</i>	No	Yes (see <i>FPCOB</i> 15.11.1 R)	No	
All other <i>rules</i> in <i>FPCOB</i>	Yes	No	No	
Notes				
<p>1. <i>FPCOB 4.2.10R</i> provides that if, in relation to a particular communication or <i>financial promotion</i>, a <i>firm</i> takes reasonable steps to ensure it complies with the <i>fair, clear and not misleading rule</i>, a contravention of that <i>rule</i> does not give rise to a right of action under section 138D of the <i>Act</i>.</p>				

Annex D

Amendments to the Compensation sourcebook (COMP)

In this Annex, unless otherwise stated, underlining indicates new text and striking through indicates deleted text.

3 **The qualifying conditions ~~for compensation~~**

3.1 **Application and Purpose**

...

Purpose

- 3.1.3 G The purpose of this chapter is to set out in general terms the conditions that must be satisfied before the *FSCS* can make an offer of compensation or secure continuity of funeral plan contracts.

...

3.2 **The qualifying conditions ~~for paying compensation~~**

Paying compensation

- 3.2.1 R ...

...

Securing continuity of funeral plan contracts

- 3.2.3 G Examples of the circumstances covered by *COMP* 3.2.2R are:

(1) ...

...

(6) in relation to a funeral plan claim which was bought by one individual to provide a funeral on the death of another individual, when the first individual makes a claim.

...

Insert the following new section COMP 3.3, after COMP 3.2 (The qualifying conditions for paying compensation). The text is not underlined.

3.3 **Continuity of funeral plan contracts**

Ability to secure continuity of funeral plan contracts

- 3.3.1 R The *FSCS* may make arrangements to secure continuity of a *funeral plan contract* for an *eligible claimant* who has a *funeral plan contract* if:
- (1) the contract is with a *relevant person* (or, where applicable, a *successor*) that is *in default*;
 - (2) it is reasonably practicable to do so;
 - (3) in the opinion of the *FSCS* at the time it proposes to make the arrangements, it would be beneficial to the generality of *eligible claimants* covered by the proposed arrangements; and
 - (4) in situations where the cost of securing continuity of *funeral plan contracts* might exceed the cost of paying compensation, any additional cost is likely to be justified by the benefits.
- 3.3.2 R When assessing the cost of paying compensation, the *FSCS* may have regard to the likely total cost of paying compensation arising out of the *default*, net of recoveries, not just the compensation amounts likely to be payable to particular *eligible claimants* covered by the proposed arrangements for continuity.

Quality of funeral under new arrangements

- 3.3.3 R In securing continuity of a *funeral plan contract*, the *FSCS* must secure the provision of a funeral for the *eligible claimant* under the new or continuing *funeral plan contract* on terms corresponding in all material respects (so far as it appears to the *FSCS* to be reasonable in the circumstances), to those which have applied under the *funeral plan contract*.
- 3.3.4 R If the *FSCS* secures the provision of a funeral that is of materially lower quality, then the *FSCS* must:
- (1) give the *eligible claimant* the option of receiving compensation instead; and
 - (2) (if the claimant does not elect to receive compensation) ensure that any future premiums that the claimant is committed to paying under the contract will be reduced by an amount that reflects the reduced quality.

Measures to be taken

- 3.3.5 R In order to secure continuity of *funeral plan contracts*, the *FSCS* may take such measures as it considers appropriate to:
- (1) secure or facilitate the transfer of the business of the *relevant person* or *successor* that is *in default* and which consists of carrying out

funeral plan contracts or any part of that business, to another *firm*;
and/or

- (2) secure the issue of *funeral plan contracts* by another *firm* to *eligible claimants* in substitution for their existing contracts.

3.3.6 R In making arrangements to secure continuity of *funeral plan contracts*, the *FSCS* must use its reasonable endeavours to seek the most cost-effective arrangements available.

3.3.7 G For trust arrangements and insurance policies relating to *funeral plan contracts*, *COMP 7.7* gives the *FSCS* powers to vary existing rights or obligations, and create new rights in favour of, or obligations to, the *FSCS*. These powers may be exercised to assist in securing continuity of *funeral plan contracts*.

Provision of funerals while seeking continuity

- 3.3.8 R (1) While the *FSCS* is seeking to secure continuity of *funeral plan contracts*, it may secure the provision of a funeral, which is due to be provided under any *protected funeral plan contract* of the *relevant person* (or, where applicable, a *successor*), on terms corresponding in all material respects (so far as it appears to the *FSCS* to be reasonable in the circumstances) to that contract.
- (2) The provision of a funeral is required regardless of whether the cost of securing its provision is more or less than the cost of paying compensation.
- (3) To secure the provision of a funeral, the *FSCS* may:
- (a) make a payment to or on behalf of the estate of an *eligible claimant*, or to a funeral services provider, on such terms (including any terms requiring repayment in whole or in part) and on such conditions as it thinks fit; or
- (b) secure that a payment is made to or on behalf of the estate of the *eligible claimant*, or to a funeral services provider, by the liquidator, administrator or provisional liquidator of the *relevant person* (or, where applicable, a *successor*), or by the trustees of any trust arrangement or *insurer* of any *contract of insurance* relating to the *funeral plan contract*, by giving them an indemnity covering any such payment or any class or description of such payments.

Amend the following as shown.

4 Eligible claimants

...

4.2 Who is eligible to benefit from the protection provided by the FSCS?

...

Persons not eligible to claim unless COMP 4.3 applies (see COMP 4.2.1R)

4.2.2 R This table belongs to COMP 4.2.1R

(1)	...
...	
(21)	<u>in relation to a claim in connection with funeral plan provision activity, a customer where the FSCS consider that the claim could be made by a different covered individual who is an eligible claimant</u>

...

6	Relevant persons and successors in default		
...			
6.3	When is a relevant person in default?		
...			

Scheme manager’s power to require information

6.3.9	R	For the purposes of section 219(1A)(b) and (d) and [(f)] of the <i>Act</i> (Scheme manager’s power to require information) whether a <i>relevant person</i> is unable or likely to be unable to satisfy claims <u>claims</u> shall be determined by reference to whether it is <i>in default</i> .
...		
6.3A	When is a successor in default?	
...		
6.3A.5	R	For the purposes of section 219(1A)(b) and (d) and [(f)] of the <i>Act</i> (Scheme manager’s power to require information) whether a <i>successor</i> is unable or likely to be unable to satisfy claims <u>claims</u> shall be determined by reference to whether it is <i>in default</i> .

7 Assignment ~~or~~, subrogation, variation or creation of rights

7.1 Application

...

Purpose

7.1.3 G The *FSCS* may (and in some cases must) make an offer of compensation conditional on the assignment of rights to it by a claimant. The *FSCS* may also be subrogated automatically to the claimant's rights. The purpose of this chapter is to make provision for and set out the consequences of an assignment or subrogation of the claimant's rights.

7.1.4 G In relation to *claims* in connection with *funeral plan provision activity*, the *FSCS* may:

(1) vary existing rights and obligations in connection with trust arrangements and insurance policies relating to the relevant *funeral plan contract* entered into or carried out by the *relevant person* or *successor*; and

(2) create new rights in favour of, or obligations to, the *FSCS* that override such existing rights or obligations.

This chapter also makes provision for and sets out the consequences of such a variation or creation of new rights and/or obligations: see *COMP 7.7*.

7.2 How does the assignment of rights work?

7.2.1 R The *FSCS* may make any payment of compensation to a claimant in respect of any *protected claim* or, where applicable, may make a payment to secure continuity of *funeral plan contracts* in accordance with *COMP 3.3*, conditional on the claimant assigning the whole or any part of ~~his~~ their rights against any one or more of the *relevant person*, any third party, or, where applicable, a *successor*, to the *FSCS* on such terms as the *FSCS* thinks fit.

...

7.3 Automatic subrogation

General

7.3.1 ...

...

Rights and obligations against the relevant persons, successors and third parties

7.3.8 R The *FSCS* may determine that:

(1) the payment of compensation by the *FSCS*; or

...

- (3) a payment by the FSCS in connection with securing continuity of funeral plan contracts;

shall have all or any of the following effects:

...

- 7.3.9 R The FSCS may alternatively or additionally make the actions in COMP 7.3.8R(1) conditional on the claimant assigning or transferring the whole or any part of all such rights as ~~he~~ they may have against the *relevant person* (or, where applicable, a *successor*) and/or any third party on such terms as the FSCS determines are appropriate.

...

7.6 Treatment of recoveries

...

- 7.6.2 R Unless compensation was paid under COMP 9.2.3R, if a claimant assigns or transfers ~~his~~ their rights to the FSCS or a claimant's rights and claims are otherwise subrogated to the FSCS and the FSCS subsequently makes recoveries through those rights or claims, those recoveries must be paid to the claimant:

- (1) ...

- (2) in circumstances where the amount recovered does not exceed the amount of compensation paid, to the extent that failure to pay any sums recovered to the claimant would leave a claimant who had promptly accepted an offer of compensation or whose rights and claims had been subrogated to the FSCS at a disadvantage relative to a claimant who had delayed accepting an offer of compensation or whose claims had not been subrogated (see COMP 7.6.4R); or

- (3) where the FSCS has secured continuity of a funeral plan contract, to the extent that the amount recovered exceeds the cost of securing that continuity as estimated on a reasonable basis by the FSCS.

Insert the following new section COMP 7.7, after COMP 7.6 (Treatment of recoveries). The text is not underlined.

7.7 Funeral plan contracts and related trusts and insurance policies

Application

- 7.7.1 R This section applies:
- (1) in connection with any trust arrangement or *contract of insurance* that relates to *funeral plan contracts* entered into or carried out by a *relevant person* or *successor*; and
 - (2) irrespective of whether the trust, *contract of insurance* or related rights or obligations came into existence before or after the date on which this section comes into force.

- 7.7.2 G The *FSCS* is required to administer the *compensation scheme* in accordance with the European Convention on Human Rights (*COMP 2.2.1R*). This includes in accordance with Article 1 Protocol 1 of the Convention concerning the protection of property.

General

- 7.7.3 R The following provisions apply in relation to this section making any necessary changes:
- (1) *COMP 7.3.2R* and *COMP 7.3.3R* (General);
 - (2) *COMP 7.3.4R* (Determinations by the *FSCS*);
 - (3) *COMP 7.3.5R* (Verification of determinations); and
 - (4) *COMP 7.3.6R* (Effect of this section on other provisions in this sourcebook etc).

Rights and obligations in respect of trust arrangements and insurance policies

- 7.7.4 R If the *FSCS*:
- (1) has paid, or has decided to make a payment of, compensation; or
 - (2) has made a payment, or has decided to make a payment, in connection with securing continuity of *funeral plan contracts*,
- the *FSCS* may make a determination with all or any of the following effects as set out in the determination:
- (3) to vary existing rights or obligations under or in respect of the trust or *contract of insurance*; such variation may, in particular, provide for the right to be transferred, or obligation to be owed, to a different *person* and, in either case, to subsist between that different *person* and the trustees or *insurer* respectively provided that the different *person* (if not the *eligible claimant*) has consented;
 - (4) to create new rights under the trust or *contract of insurance* in favour of, or obligations by the trustees or *insurer* to, the *FSCS*; those new

rights or obligations may, in particular, override existing rights or obligations;

- (5) to enable the *FSCS* to claim and take legal or any other proceedings or steps in the *United Kingdom* or elsewhere to enforce any such rights held by or obligations owed to the *FSCS* in its own name against the trustees, the *insurer* and/or any third party.

7.7.5 R Any right of recovery conferred on the *FSCS* by a determination under this section may not exceed the amount paid or (in the opinion of the *FSCS*) to be paid out by the *FSCS* in connection with the *funeral plan contracts* concerned.

7.7.6 R Any right of recovery conferred on the *FSCS* by a determination under this section is subject to the prior payment of those sums that the *FSCS* reasonably considers should be prioritised. Such sums may include: the legitimate fees and expenses of the trustee, *insurer*, actuary and *relevant person*, tax payable in respect of the trust or insurance arrangements and existing funeral costs.

7.7.7 R A payment by the trustees pursuant to a determination will operate to discharge the trustees from all other obligations in relation to that part of the trust assets reflecting the payment made.

Duty to pursue recoveries

7.7.8 R If the *FSCS* has a right of recovery under this section, it must pursue all and only such recoveries as it considers are likely to be both reasonably possible and cost effective to pursue.

Amend the following as shown.

9 Time limits for payment and postponing payment

...

9.2 When must compensation be paid?

...

9.2.2 R The *FSCS* may postpone paying compensation if:

(1) ...

...

(5) the claimant has been charged with an offence arising out of or in relation to *money laundering*, and those proceedings have not yet been concluded;

(6) [deleted]

- (7) it or an insolvency practitioner appointed to the *relevant person* (or, where applicable, a *successor*) is seeking to secure continuity of the relevant *funeral plan contract*.

...

Annex E

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text.

2 Authorisation and regulated activities

...

2.3 The business element

...

- 2.3.4B G (1) The *funeral plan* sector gives an example of how the commercial element of the ‘by way of business’ test referred to in *PERG 2.3.3G* should be interpreted.
- (2) A burial society or religious organisation with a defined religious community of members may provide a *funeral plan* to its members to facilitate their burial in a manner which complies with the teachings of that religion. In doing that it may be carrying on *funeral plan provision activity*. However, if the provider does so on a not-for-profit basis it is unlikely to do so by way of business.
- (3) One should look at whether the provider carries on its activities on a not-for-profit basis in a realistic way. So one should take into account:
- (a) whether the services benefit, or are provided as part of, wider commercial activities carried on by the provider or by an affiliate; and
- (b) any benefits an affiliate may get as well as those the provider gets.
- (4) If the provider’s *funeral plan* activities generate a profit, that does not mean that it acts by way of business as long as the surplus is used for the purposes of its funeral activities, for example to buy new land for burials or to maintain its graveyards.

