

# Funeral Plan: Conduct of Business sourcebook

## Funeral Plan: Conduct of Business sourcebook

<b>FPCOB 1</b>	<b>Application and purpose</b>
1.1	Application
1.2	General application: who? what? where?
1 Annex 1	Application (see FPCOB 1.2.11G)
<b>FPCOB 2</b>	<b>General matters</b>
2.1	General principles
2.2	Inducements
2.3	Customers with a payment shortfall
<b>FPCOB 3</b>	<b>Structure Provisions - arrangements underpinning a funeral plan contract</b>
3.1	Trust and insurance arrangements: structure provisions
3.2	Trusts: solvency assessment, remediation and other requirements
3 Annex 1	Form of a beneficial trust
<b>FPCOB 4</b>	<b>Communications and financial promotions</b>
4.1	Application
4.2	Communications and financial promotions: the obligations
<b>FPCOB 5</b>	<b>Distance communications</b>
5.1	Distance marketing
5.2	E-Commerce
5 Annex 1	Guidance on the Distance Marketing Provisions
5 Annex 2	Distance marketing information
5 Annex 3	Abbreviated distance marketing information
<b>FPCOB 6</b>	<b>Information about the firm and its services</b>
6.1	General requirements for firms
6.2	Means of communication to customers
6.3	Fee disclosure
6.4	Charging for funeral plan distribution
6.5	Payments to funeral plan intermediaries

<b>FPCOB 7</b>	<b>Prohibition on entering into long-term instalment payment funeral plans</b>
7.1	Application and Purpose
7.2	Prohibition
<b>FPCOB 8</b>	<b>Identifying client needs and advising</b>
8.1	Application
8.2	Demands and needs
8.3	Ensuring customers can make an informed decision
8.4	Advised sales
<b>FPCOB 9</b>	<b>Product information</b>
9.1	Producing and providing product information
9.2	Providing product information to customers: general
9.3	Post-contract information: funeral plan contracts
9.4	Means of communication
9 Annex 1	Funeral plan summary
9 Annex 2	Nominated representative document
9 Annex 3	Plan Statement
<b>FPCOB 10</b>	<b>Arrangements for the funeral</b>
10.1	Application and purpose
10.2	Transfers of funeral plans
<b>FPCOB 11</b>	<b>Fees</b>
11.1	Application and purpose
<b>FPCOB 12</b>	<b>Handling of payments by intermediaries</b>
12.1	Application and purpose
12.2	Obligations on intermediaries
12.3	Obligations on providers
12.4	Appointed representatives
<b>FPCOB 13</b>	<b>Cancellation</b>
13.1	Application
13.2	The right to cancel
13.3	Effects of cancellation

<b>FPCOB 14</b>	<b>Funeral plan redemption</b>
14.1	Application and purpose
<b>FPCOB 15</b>	<b>Prudential requirements</b>
15.1	Application and purpose
15.2	General solvency requirement
15.3	Core capital resources requirement
15.4	Capital resources: relevant accounting principles
15.5	Core capital resources requirement for funeral plan provision activities
15.6	Core capital resources requirement for a firm that only undertakes funeral plan distribution activity
15.7	Core capital resources requirement for a firm carrying on other regulated activity
15.8	Calculation of annual income
15.9	Calculation of core capital resources
15.10	Systems, strategies, processes and reviews
15.11	Action for damages
<b>FPCOB 16</b>	<b>Resolution requirements</b>
16.1	Arrangements for funeral plan continuity or customer reimbursement on firm failure
16.2	Funeral Plan Resolution Manual
<b>FPCOB 17</b>	<b>Application of other parts of the Handbook</b>
17.1	Application and purpose
	<b>Transitional provisions and Schedules</b>
Sch 1	Recordkeeping requirements
Sch 2	Notification and reporting requirements
Sch 3	Right of action for damages

# Chapter 1

## Application and purpose

## 1.1 Application

### Application

1.1.1

G

- (1) The Funeral Plan: Conduct of Business sourcebook (*FPCOB*) is the specialist sourcebook for *regulated funeral plan activities*.
- (2) *FPCOB* is relevant both to *funeral plan providers* and *funeral plan intermediaries*.
- (3) *FPCOB* applies as described in this chapter unless the application of a chapter, a section or a *rule* is described differently in the chapters, sections or *rules* in *FPCOB*.

### Purpose

1.1.2

G

The purpose of *FPCOB* is to set out the detailed obligations that are specific to *regulated funeral plan activities* and the connected activities carried on by *firms*. ■ *FPCOB 17* refers to other high-level obligations in the *FCA Handbook* that apply to *firms*, for example, *PRIN*, *GEN* and *SYSC*.



## 1.2 General application: who? what? where?

### Providing funeral plan contracts

**1.2.1** **R** This sourcebook applies to a *firm* with respect to the activities of:

- (1) *entering as provider into a funeral plan contract*; and
- (2) *carrying out a funeral plan contract as provider*; and

activities connected with them.

**1.2.2** **G** The regulated activities of *entering as provider into a funeral plan contract* and *carrying out a funeral plan contract as provider* apply in relation to *funeral plan contracts* under which the provider undertakes to provide, or secure that another *person* provides, a funeral in the *United Kingdom* (article 59(2) of the *Regulated Activities Order* and see ■ PERG 2.4.2AG).

### Distributing funeral plan contracts: firms and appointed representatives

**1.2.3** **R** This sourcebook applies to a *firm* with respect to *funeral plan distribution* and activities connected with *funeral plan distribution*.

**1.2.4** **R** A *firm* (including a *funeral plan provider*) that has appointed an *appointed representative* to carry on *funeral plan distribution* must ensure that its *appointed representative* complies with this sourcebook as it applies to a *firm* carrying on *funeral plan distribution*.

**1.2.5** **G** A *funeral plan provider* that wishes to appoint an *appointed representative* to distribute its *funeral plan contracts* should ensure that the *regulated activities* covered by the *appointed representative's* appointment fall within the scope of the *firm's Part 4A permissions* or are otherwise excluded from being *regulated activities* when carried on by the *firm* (see ■ SUP 12.4.1AG).

### Financial promotions

**1.2.6** **R** This sourcebook applies to a *firm*:

- (1) *communicating a financial promotion* in relation to a *funeral plan contract* or a *regulated funeral plan activity* to a *person* inside the *United Kingdom*; and

- (2) approving a financial promotion in relation to a funeral plan contract or a regulated funeral plan activity for communication to a person inside the United Kingdom.

### Modifications to the general application rules

1.2.7 **R** The general application rules in this section are modified:

- (1) in the chapters of this sourcebook for particular purposes, including those relating to the type of firm and its activities; and
- (2) in ■ FPCOB 1 Annex 1 according to the type of firm.

### New, subsisting and transferred funeral plans

1.2.8 **R** All of the rules in this sourcebook apply in relation to new funeral plans, unless otherwise stated.

1.2.9 **R** The rules in certain sections of this sourcebook also apply in relation to subsisting funeral plans.

1.2.9A **R** Any references in this sourcebook, other than that at ■ FPCOB 16.1.5R(3)(e), to a transfer of a funeral plan contract or a transfer of the business of a funeral plan provider should be read to include circumstances where funeral plan contracts are transferred using the mechanism referred to in ■ FPCOB 10.2.2R.

### Application to Gibraltar-based firms

1.2.10 **R** A Gibraltar-based firm with permission for funeral plan provision activity or funeral plan distribution must comply with the relevant provisions of FPCOB and any other provisions in the Handbook relating to regulated funeral plan activity.

### Guidance on application

1.2.11 **G** Guidance on the application provisions is in ■ FPCOB 1 Annex 1.

### Customers and covered individuals

- 1.2.12 **G**
- (1) In this sourcebook, rules may apply by reference to the customer or covered individual under a funeral plan contract, or to both.
  - (2) The definition of customer includes a prospective customer under a funeral plan contract.
  - (3) Reference to the covered individual is to the individual on whose death a funeral will be provided or secured under a funeral plan contract or prospective funeral plan contract. The covered individual under a funeral plan contract will not necessarily be the same person as the customer (article 59(2)(b) of the Regulated Activities Order).



- 1.2.13 **G** Where the *rules* in this sourcebook require a *firm* to disclose information to a *customer*, the *firm* should also consider:
- (1) whether it should disclose the same information to the *covered individual* (where different from the *customer*) in accordance with its obligations under *Principle 7*; and
  - (2) if it considers that disclosure should be made to the *covered individual*, whether it requires the consent of the *customer* in order to make that disclosure.

**Interpretation – “concluding” funeral plan contracts**.....

- 1.2.14 **G** Certain *rules* in this sourcebook apply by reference to the conclusion of a *funeral plan contract*, which means the entering into of the *funeral plan contract*.



Application (see FPCOB 1.2.11G)

Application to different types of firm			
<b>1</b>	<b>Application to funeral plan providers and intermediaries</b>		
1.1	G	(1)	Certain sections of this sourcebook apply differently to <i>funeral plan providers</i> and <i>funeral plan intermediaries</i> . This table summarises which sections of this sourcebook are relevant to <i>funeral plan providers</i> , which are relevant to <i>funeral plan intermediaries</i> and which are relevant to both.
		(2)	A <i>funeral plan provider</i> that has appointed an <i>appointed representative</i> to distribute <i>funeral plan contracts</i> will need to consider the sections of this sourcebook which are relevant to <i>funeral plan intermediaries</i> in relation to the activities of its <i>appointed representatives</i> .
<b>2</b>	<b>Third party processors</b>		
2.1	R	(1)	This <i>rule</i> applies where a <i>firm</i> (or its <i>appointed representative</i> ) ("A") has outsourced <i>funeral plan distribution</i> to a <i>third party processor</i> .
		(2)	Any <i>rule</i> in this sourcebook which requires the <i>third party processor</i> , when acting as such, to disclose its identity to a <i>customer</i> must be read as applying to the <i>third party processor</i> only to the extent that it applies to A and as requiring disclosure of A's identity.



# Chapter 2

## General matters

## 2.1 General principles

### Application

- 2.1.1 **R** (1) This section applies to a *firm* in relation to its *regulated funeral plan activity*.
- (2) This section applies in relation to a *firm's customers* under *subsisting funeral plans*, unless otherwise stated.

### The customer's best interests rule

- 2.1.2 **R** A *firm* must act honestly, fairly and professionally in accordance with the best interests of:
- (1) its *customer*; and
- (2) if different, the *covered individual*.

### Exclusion of liability

- 2.1.3 **R** A *firm* must not seek to exclude or restrict, or rely on any exclusion or restriction of, any duty or liability it may have to a *customer* or *covered individual* unless it is reasonable for it to do so and the duty or liability arises other than under the *regulatory system*.

- 2.1.4 **G** The general law, including the *Unfair Terms Regulations* (for contracts entered into before 1 October 2015) and the *CRA*, also limits the scope for a *firm* to exclude or restrict any duty or liability to a *consumer*.

### Reliance on others

- 2.1.5 **G** (1) Where it is compatible with the nature of the obligation imposed by a particular *rule*, including the *customer's best interests rule*, and with the *Principles*, in particular *Principles 1* (Integrity), *2* (Skill, care and diligence) and *3* (Management and control), *firms* may rely on third parties in order to comply with the *rules* in this sourcebook.
- (2) For example, where a *rule* requires a *firm* to take reasonable steps to achieve an outcome, it will generally be reasonable for a *firm* to rely on information provided to it in writing by an unconnected *authorised person* or a *professional firm*, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information. However, a *firm* cannot delegate its responsibility under the *regulatory system*.

For example, where a *rule* imposes an absolute obligation (such as the requirement on a *funeral plan provider* in ■ FPCOB 14.1.4R regarding the services required for a *funeral plan contract*) although a *firm* could use outsourcing arrangements to fulfil its obligation, it retains regulatory responsibility for achieving the outcome required.

### Record keeping

#### 2.1.6

G

- (1) This sourcebook, other than ■ FPCOB 4, ■ FPCOB 6.4.18R, ■ 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.
- (2) In order to deal with requests for information from the *FCA*, as well as queries and complaints from *customers* and *covered individuals*, *firms* may require evidence of matters such as:
  - (a) the reasons for *personal recommendations*;
  - (b) what documentation has been provided to a *customer* or *covered individual*; and
  - (c) how redemptions have been settled and why.
- (3) A *firm* may be subject to record-keeping requirements elsewhere in the *FCA Handbook*, including in:
  - (a) the Training and Competence sourcebook (*TC*) (see ■ TC 3.1.1R);
  - (b) the Senior Management Arrangements, Systems and Controls sourcebook (*SYSC*) (see ■ SYSC 9.1.1R, ■ SYSC 10.1.6R and ■ SYSC 28A.3.1R); and
  - (c) chapter 7 of the Product Intervention and Product Governance sourcebook (*PROD*) when *manufacturing* or *distributing* a *funeral plan product*.

## 2.2 Inducements

### 2.2.1

**G**

- (1) *Principle 8* requires a *firm* to manage conflicts of interest fairly, both between itself and its *customers* and between a *customer* and another *client*. This principle extends to soliciting or accepting inducements where this would conflict with a *firm's* duties to its *customers*. A *firm* that offers such inducements should consider whether doing so conflicts with its obligations under:
  - (a) *Principles 1* and *6* to act with integrity and treat *customers* fairly; and
  - (b) the *customer's best interests rule*.
- (2) An inducement is a benefit offered to a *firm*, or any *person* acting on its behalf, with a view to that *firm*, or that *person*, adopting a particular course of action. This can include, but is not limited to, cash, cash equivalents, *commission*, goods, hospitality or training programmes.
- (3) *Firms* should also refer to the *rules* on charging for funeral plan distribution and payments to *funeral plan intermediaries* (■ FPCOB 6.4 and ■ FPCOB 6.5).



## 2.3 Customers with a payment shortfall

### Application

- 2.3.1 **R** This section applies to a *funeral plan provider* dealing with a *customer* that has:
- (1) an *instalment payment funeral plan* entered into on or after 29 July 2022; and
  - (2) a *payment shortfall* in relation to that *instalment payment funeral plan*.

- 2.3.2 **G** In relation to a *subsisting funeral plan*, a *funeral plan provider* should deal with *customers* fairly and, as far as possible, in a manner that is compatible with the *customer's best interests rule*.

### Purpose

- 2.3.3 **G** This section amplifies *Principle 6* (Customers' interests) in respect of the information and service that *firms* should provide to *customers* who have payment difficulties or shortfalls.

### Dealing fairly with customers with a payment shortfall

- 2.3.4 **R** The *firm* must deal fairly with the *customer* in relation to the *payment shortfall*.
- 2.3.5 **R** Where the *customer* has a *payment shortfall* of 2 consecutive payments, the *firm* must, as soon as possible, and in any event within 5 *business days* of the second missed payment, provide the *customer* with a statement in a *durable medium* of:
- (1) the individual payments due;
  - (2) the total amount of the *payment shortfall*; and
  - (3) information on the consequences and potential consequences under the *funeral plan contract*, if the *payment shortfall* is not settled within 10 *business days* of the date of the *customer* communication.
- 2.3.6 **R** The *firm* must allow the *payment shortfall* to be settled within 10 *business days* of the date of the communication, without penalty.

- 2.3.7** **R** The *firm* must not impose a *fee* on the *customer* for incurring or correcting the *payment shortfall*.
- 2.3.8** **R** The *firm* must not cancel the *funeral plan contract* on the basis of a *payment shortfall* unless:
- (1) The *customer*:
    - (a) has a *payment shortfall* of at least 2 consecutive payments; and
    - (b) has failed to settle the *payment shortfall* in accordance with the terms of the statement provided by the *firm* for the purposes of ■ FPCOB 2.3.5R; or
  - (2) ■ FPCOB 13.2.3R applies.
- 2.3.9** **R** If the *firm* does not cancel the *funeral plan contract* on the basis of a *payment shortfall*, it must provide the *customer* with a further statement in accordance with the requirements of ■ FPCOB 2.3.5R following each further consecutive missed payment.
- 2.3.10** **R** A *firm's* obligation to maintain insurance arrangements in accordance with ■ FPCOB 3.1.8R continues despite any *payment shortfall*.

## Chapter 3

# Structure Provisions - arrangements underpinning a funeral plan contract

## 3.1 Trust and insurance arrangements: structure provisions

### Application: general

3.1.1

R

This section applies to a *firm*:

- (1) *entering as provider into a funeral plan contract*; and
- (2) *carrying out a funeral plan contract as provider in relation to a new funeral plan contract*.

### Application: subsisting funeral plans

3.1.2

G

The *FCA* encourages *firms* which carry out *subsisting funeral plans* underpinned by existing trust arrangements or insurance contracts, and the relevant trustees and insurers, to work together to seek to amend those arrangements to bring them into line with the arrangements in this chapter.

3.1.3

R

In relation to a *subsisting funeral plan*:

- (1) under which the *funeral plan provider* undertakes to secure that sums paid by the *customer* under the contract will be held on trust for the purpose of providing the funeral; and
- (2) where the trust instrument or such contract have been substantively amended on or after 2 March 2021 so that their terms (post-amendment) meet any of the applicable requirements in this section or the funeral plan resolution rules in ■ FPCOB 16,

a *firm* carrying out that contract as provider must, to the extent within its powers, comply with this section from 29 July 2022 or the point in time that the amendment is made if later.

### Primary purpose

3.1.4

R

The *rules* and *guidance* in this section must be construed in accordance with the *primary purpose*.

3.1.5

R

The *primary purpose* is to ensure that *funeral plan contracts* are underpinned by robust trust or insurance arrangements that will enable the provision, at the relevant time, of funerals in accordance with the terms of the *funeral plan contracts*.

**Arrangements underpinning funeral plan contracts**

**3.1.6** **R** In relation to each *funeral plan contract*, a *funeral plan provider* must either:

- (1) purchase, or arrange the purchase of, a *contract of insurance* from an authorised *insurer* on the life of the *covered individual* that is sufficient for the purpose of providing the agreed funeral; or
- (2) arrange for such proportion of sums paid by the *customer* under the *funeral plan contract* that is sufficient for the purpose of providing the agreed funeral to be held on trust,

as soon as reasonably practicable after receipt of monies from the *customer*, *appointed representative* or *funeral plan intermediary*.

**3.1.7** **G** When purchasing a *contract of insurance* or determining what proportion of sums paid by the *customer* under the *funeral plan contract* should be held on trust, a *funeral plan provider* should take into account its obligations under **FPCOB 7** to provide a funeral under an *instalment payment funeral plan* before all instalments have been paid.

**Requirements in relation to contracts of insurance**

**3.1.8** **R** For the purpose of **FPCOB 3.1.6R(1)**, the *contract of insurance* must contain terms that will deliver the following objectives:

- (1) 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; or
  - (c) on the *failure* of the *funeral plan provider* or if it is *in default*, payments to a *customer* or *covered individual* or (on the *covered individual's* death) to their next of kin or in accordance with a determination of the *FSCS*;

will deliver all applicable outcomes in the *funeral plan resolution rules*;

the *contract of insurance* will not terminate upon *failure* of the *funeral plan provider*;

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*; and

where the whole, or relevant part, of the business of the *funeral plan provider* has been transferred to a new *funeral plan provider*,

3.1.9

R

the *insurer* may substitute the new provider in place of the original provider.

**Requirements in relation to trusts**

For the purposes of ■ FPCOB 3.1.6R(2), the trust must be established by a written instrument which contains terms that will deliver the following objectives:

- (1) that the assets are held on trust to make the payments set out in (3), and, when there are no more payments due or potentially due under that paragraph, upon trust for the *funeral plan provider*;
- (2) that the assets held on trust are kept segregated from any assets belonging to the *funeral plan provider*;
- (3) that the trustees are required to make the following payments (and are not permitted to make any other payments) out of the trust:
  - (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) essential payments for the operation of the trust (arising out of obligations owed by either the trustees or the *funeral plan provider*), 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;
  - (c) in the event of the insolvency of the *funeral plan provider*, payments to meet a claim by an insolvency practitioner against the assets held on trust, in priority to all other claims against those assets, to meet their costs properly attributable to:
    - (i) causing the provider to continue providing or arranging funerals under existing *funeral plan contracts*;
    - (ii) effecting a transfer of those contracts to another *funeral plan provider*; or
    - (iii) making payments under (3)(e);
  - (d) providing a *customer* refund;
  - (e) on the *failure* of the *funeral plan provider* or if it is *in default*:
    - (i) except where arrangements to secure continuity (whether or not involving the *FSCS*) of *funeral plan contracts* have been implemented:
      - (A) payments to each *customer* or *covered individual* or (on the *covered individual's* death) to their next of kin of the amount that the trustees consider is a reasonable estimate of the cost, at the time of the *failure* or declaration of default, of purchasing a replacement *funeral plan contract* on terms corresponding, in all material respects, to the original *funeral plan contract*; or

(B) if the trust assets are insufficient to pay each *customer* or *covered individual* the full amount required by (A), a proportional amount of the trust assets based on that full amount required by (A); or

(ii) payments in accordance with a determination of the *FSCS*;

(f) on a transfer by the *funeral plan provider* of all or part of its *funeral plan business* to another *funeral plan provider*, payment to the trustees of another trust set up by the other provider or to purchase *insurance contracts*, as directed by the *funeral plan provider*, provided that an actuary, who is a fellow of the Institute and Faculty of Actuaries, has certified the sufficiency of the arrangements for the purpose of providing the agreed funerals under the *funeral plan contracts* transferred and any contracts which are not transferred;

(g) surpluses to a *funeral plan provider*, where ■ FPCOB 3.2.12R applies;

will deliver all applicable outcomes in the *funeral plan resolution rules*;

more than half of the trustees must be unconnected with the *funeral plan provider*;

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 trust assets;

annual accounts in respect of the assets and liabilities of the trust must be prepared, and audited by a *person* who is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006;

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);

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*;

(10) 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*);

(12) where the whole of the business of the *funeral plan provider* has been transferred to another *funeral plan provider*, the trust may make provision for the substitution of the new provider in place of the original provider;

3.1.10

**R**

(13) an acknowledgement by the trustee that the *funeral plan provider* has been appointed by *customers* as an agent with a duty to enforce their rights under the trust (see ■ FPCOB 16.1.5(3)(d)).

**Note:** *Guidance* on the preparation of a trust deed to meet these objectives is in ■ FPCOB 3 Annex 1.

For the purposes of ■ FPCOB 3.1.9R(5) and ■ FPCOB 3.1.9R(6), a *person* is unconnected with the *funeral plan provider* if that person is a *person* other than:

the *funeral plan provider*;

a member of the same *group* as the *funeral plan provider*;

a director, other officer or employee of the *funeral plan provider*, or of any member of the same *group* as the *funeral plan provider*;

a partner of the *funeral plan provider*;

a close relative of a *person* falling within sub-paragraphs (1), (3) or (4);

an agent of any *person* falling within sub-paragraphs (1) to (5); or

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)(e),

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

(d) 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

- (i) 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.

**Systems and controls**.....

**3.1.13** **G** *Firms* are reminded of *Principle 3* which provides that a *firm* must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

**3.1.14** **R**

- (1) A *firm* must ensure that the systems and controls, including procedures and arrangements, used to comply with the requirements in this chapter are adequate, effective and appropriate for the scale and nature of its business.
- (2) Sub-paragraph (1) applies in particular to systems and controls concerning:
  - (a) the adequacy of the trust and insurance arrangements that a *firm* must put in place in accordance with **■ FPCOB 3.1.6R**;
  - (b) whether a proposed price for a *funeral plan contract* is likely to lead to, as applicable, an under-funded trust arrangement or an insufficient insured sum to provide the funeral contracted for; and
  - (c) the price of the *funeral plan contract*, bearing in mind the cost of the funeral to the *firm*.

**3.1.15** **R** A *firm's* systems and controls must be developed to:

- (1) factor in the risk of inflation when considering pricing decisions; and

(2) if applicable, factor in the volatility of trust assets.

## 3.2 Trusts: solvency assessment, remediation and other requirements

### Application

- 3.2.1 **R** This section applies to a *funeral plan provider* in relation to *funeral plan contracts* (including *subsisting funeral plans*) under which sums paid by the *customer* are held on trust for the purpose of providing the funeral.

### Annual preparation of solvency assessment report

- 3.2.2 **R** A *funeral plan provider* must arrange for a *solvency assessment report* to be produced at least once every 12 *months* by an actuary who is a fellow of the Institute and Faculty of Actuaries.

### Contents of solvency assessment report

- 3.2.3 **R** The *solvency assessment report* must:
- (1) within 12 *months* of the:
    - (a) last report obtained by the *funeral plan provider*; or
    - (b) trust being established,determine, calculate and verify the assets and liabilities of the trust by applying a *best estimate* basis;
  - (2) include, as a minimum, the following information:
    - (a) the actuarial valuation date;
    - (b) an actuarial valuation of the assets and liabilities of the trust;
    - (c) the solvency level of the trust (ratio of trust assets over trust liabilities as a percentage) on a *best estimate* basis;
    - (d) the assumptions adopted with respect to the valuation of the trust assets and trust liabilities;
    - (e) the number of undrawn or live plans categorised by payment method;
    - (f) the total plan values in relation to undrawn or live plans categorised by payment method;
    - (g) the average plan value categorised by payment method;
    - (h) the investment of trust assets at fair value by asset class at the actuarial valuation date;

3.2.4

**R**

- (i) the investment of trust assets at fair value by investment manager at the actuarial valuation date;
  - (j) the level of all monies deducted from the trust over the period and identification of how the deductions have been spent; and
  - (k) the details of any liability sub-contracted to funeral services providers;
- (3) be produced taking account of any relevant actuarial professional and technical standards, guidance and codes;
- (4) be published by the *funeral plan provider* on its website within 30 days of the date on which the actuary completes the valuation and, in any case, no later than 6 weeks from the date an actuary is appointed to produce a *solvency assessment report*; and
- (5) be made available free of charge on request.
- (1) For the purposes of ■ FPCOB 3.2.3R(2)(b), the liabilities of the trust should be assessed against ■ FPCOB 3.1.6R(2).
- (2) For the purposes of ■ FPCOB 3.2.3R(2)(e), (f) and (g), the payment method should be categorised into:
- (i) single payments;
  - (ii) instalment payments fully paid; and
  - (iii) instalment payments not fully paid.
- (3) For the purposes of ■ FPCOB 3.2.3R(2)(k), details of any liability sub-contracted to funeral services providers may include inflation.

3.2.5

**R**

#### **Sending the solvency assessment report to the FCA**

- (1) A *funeral plan provider* must send a copy of the *solvency assessment report* to the FCA within 7 days of it being received by the *funeral plan provider*.
- (2) If the *solvency assessment report* concludes that the assets of the trust are not sufficient to cover the liabilities of the trust, the *funeral plan provider* must provide a notification of that fact with the *solvency assessment report* at the same time as providing a copy of the *solvency assessment report*, in accordance with ■ SUP 15.7.1R.

3.2.6

**R**

#### **When a remediation plan is required**

If a *solvency assessment report* concludes that the assets of the trust are not sufficient to cover the liabilities of the trust, a *funeral plan provider* must prepare a *remediation plan* that is approved by an actuary who is a fellow of the Institute and Faculty of Actuaries.

3.2.7

**R**

#### **Contents of the remediation plan**

The *funeral plan provider* must ensure the *remediation plan* sets out the following:

- (1) how the deficit in the trust that has been identified by the *solvency assessment report* will be remedied before the next annual *solvency assessment report* is due; and
- (2) any assumptions that have been made in relation to any of the remedial steps or actions that the *funeral plan provider* intends to implement to remedy the deficit in the trust.

### **Sending the remediation plan to the FCA**

- 3.2.8 **R** The *funeral plan provider* must submit the *remediation plan* to the *FCA* for review, in accordance with ■ SUP 15.7.1R, as soon as possible and no later than 30 *days* from the submission date of the relevant *solvency assessment report* to the *FCA*.

### **Implementing the remediation plan**

- 3.2.9 **R** The *funeral plan provider* must begin to implement the *remediation plan*:
- (1) as soon as possible and in any event within 30 *days* of submitting it to the *FCA*;
  - (2) in accordance with the terms of the *remediation plan* (or any amendments agreed with the *FCA* or imposed by the *FCA* by requirement).

### **Failure of remediation plan: notification to the FCA**

- 3.2.10 **R** A *funeral plan provider* that is in the process of implementing a *remediation plan* must:
- (1) notify the *FCA*, in accordance with ■ SUP 15.7.1R, as soon as it suspects that it will not be able to fully implement the *remediation plan* in accordance with its terms; and
  - (2) notify the *FCA*, in accordance with ■ SUP 15.7.1R, immediately if the solvency level of the trust remains below 100% following the expiration of the *remediation plan*, which is the time at which the next *solvency assessment report* is due.

### **Obligation to remedy a trust deficit**

- 3.2.11 **R**
- (1) If, following the expiration of the *remediation plan*, the assets of the trust remain insufficient to cover the liabilities of the trust, the *funeral plan provider* must remedy any shortfall using its own resources so that the solvency level of the trust is returned to 100% or more (when assessed on a *best estimate* basis).
  - (2) The obligation in (1) must be fulfilled as soon as practicable and in any case within 3 *months* of the date the expiration of the *remediation plan*.
  - (3) The *funeral plan provider* must notify the *FCA*, in accordance with ■ SUP 15.7.1R, when the shortfall has been remedied.

**Prohibition on the withdrawal of monies from a trust**

3.2.12

**R**

A *funeral plan provider* must not withdraw any surpluses from the trust except and only to the extent that:

- (1) the solvency level of the trust is above 110% when calculated on a *best estimate* basis; and
- (2) the withdrawal has been approved by an actuary who is a fellow of the Institute and Faculty of Actuaries.

**Sending trust accounts to the FCA**

3.2.13

**R**

A *funeral plan provider* must send a copy of the annual accounts of the trust to the *FCA* as part of its next financial report.

## Form of a beneficial trust

This annex belongs to ■ FPCOB 3.1.9R.

1. This annex outlines provisions that a *funeral plan provider* might include in the trust deed of a beneficial trust set up in compliance with FPCOB 3.1.9R.
2. This annex does not represent legal drafting for inclusion in the trust deed. *Funeral plan providers* will need to engage legal advisers to prepare the trust deed.
3. Where a provision is required by FPCOB, the annex references the FPCOB rule but does not set it out in full. Other provisions, not explicitly required by FPCOB, are also listed below which are consistent with FPCOB generally and which will make the trust operable.

### Definitions

4. “Related funeral plan” means a funeral plan in respect of which a proportion of the sums paid by the *customer* has been paid into the trust pursuant to FPCOB 3.1.6R(2).
5. “Undischarged related funeral plan” means a related funeral plan in respect of which the Trustees remain under a liability, or a potential liability, to make a payment under paragraph 7(4) below.
6. Terms in italics have the meaning in the *Glossary*.

### Beneficial provisions

7. The trustees shall hold the trust fund upon trust as follows:
  - (1) to make the payments in (3) to (7) and, when there are no more payments due or potentially due under those paragraphs, upon trust for the *funeral plan provider* (FPCOB 3.1.9R(1));
  - (2) the assets held on trust must be kept segregated from any assets belonging to the *funeral plan provider* (FPCOB 3.1.9R(2));
  - (3) to pay the essential payments for the operation of the trust (FPCOB 3.1.9R(3)(b));
  - (4) in respect of each related funeral plan, to raise and pay one of the following payments:
    - (a) a payment to the *funeral plan provider* or funeral services provider for the purpose of delivering a *covered individual's* funeral (FPCOB 3.1.9R(3)(a));
    - (b) the provision of a *customer* refund (FPCOB 3.1.9R(3)(d));
    - (c) on the *failure* of the *funeral plan provider*, or if it is *in default*, payments to the *customer* or *covered individual* or in accordance with a determination of the FSCS (FPCOB 3.1.9R(3)(e));
  - (5) the *funeral plan provider* shall have the power to require the trustee to pay to it a sum equal to any surplus in the trust which satisfies the requirements of FPCOB 3.2.12R (FPCOB 3.1.9R(3)(g));
  - (6) in the event of the insolvency of the *funeral plan provider*, any insolvency practitioner shall have power to require the trustee to discharge certain costs in priority to any other claim on the assets of

the trust – for example, costs of the insolvency practitioner properly attributable to causing the provider to continue providing or arranging funerals, effecting a transfer of the *funeral plan contracts* to a new provider or making payments under FPCOB 3.1.9R(3)(e) (FPCOB 3.1.9R(3)(c));

- (7) on a transfer of business of the *funeral plan provider*, the provider shall have power to require the trustee to pay trust assets to the trustees of another trust set up by the other provider or to purchase *insurance contracts*; a certificate from an actuary will generally be required (FPCOB 3.1.9R(3)(f));
- (8) the trustee is required to make all the payments in (3) to (7) and must not make any other payments out of the trust fund;
- (9) the trustee is required to make all the payments in (3) to (7) and must not make any other payments out of the trust fund;
- (10) (a) subject to (b) below, the *funeral plan provider* may notify the trustee by notice in writing that the termination date may be any earlier date than that referred to in (9) (but not a date earlier than the date of the notice);  
(b) the termination date may only be declared to be a date on which the trust has no undischarged related funeral plans; and
- (11) upon the termination date, any assets remaining after discharging the costs of winding up the trust shall be held for the *funeral plan provider* absolutely.

**Other provisions**

- 8. In addition to the above beneficial provisions, the trust will also need to include:
  - (1) provisions to reflect the requirements of FPCOB 3.1.9R(5) to FPCOB 3.1.9R(12); this includes facilitating compliance by the *funeral plan provider* with its obligations concerning trust solvency, remediation plans and remedying deficits (FPCOB 3.1.9R(8) and FPCOB 3.2);
  - (2) the necessary standard administrative provisions – for example, for appointment or removal of the trustee and to enable the trustee to manage and invest the trust fund;
  - (3) a power of amendment vested in the *funeral plan provider* and the trustee, but limited so as to prevent the trust being amended in any way which causes it to cease to comply with the requirements of FPCOB.
- 9. The trust will also need to be compatible with the *funeral plan provider's* obligations to have arrangements for continuity and reimbursement on its *failure* under the *funeral plan resolution rules* (see FPCOB 16.1.3R and FPCOB 16.1.4R), in particular:
  - (1) that there will be no cause for unreasonable delay for payments that the provider or any other *person* arranges to be made to any *customer* or *covered individual* from the trust (FPCOB 16.1.4R(1));
  - (2) obligations concerning:
    - (a) another provider carrying out related funeral plans with the trustee remaining in place on the same terms (FPCOB 16.1.5R(1)(a) – see also FPCOB 3.1.9R(11));
    - (b) payments to *customers* and *covered individuals* (FPCOB 16.1.5R(1)(b) – see also paragraph 7(4)(c) above);



	(c)	the trustee not unreasonably withholding consent to the transfer of related funeral plans to another provider (FPCOB 16.1.5R(2));
	(3)	that an insolvency practitioner would be in a position to recognise a <i>customer's</i> or <i>covered individual's</i> rights under the trust (FPCOB 16.1.8G(1)(a));
	(4)	that an insolvency practitioner would be in a position to exercise the rights of the provider concerning transfer of related funeral plans or payment as in (2)(a) and (b) above (FPCOB 16.1.8G(1)(c)).
10.		The trust should not contain any provision that is in conflict with the <i>funeral plan provider's</i> obligations under the <i>FCA's rules</i> or under any <i>requirement</i> specific to the provider.



## Chapter 4

# Communications and financial promotions

## 4.1 Application

### 4.1.1

**R**

This section applies to a *firm*:

- (1) *communicating with a customer or covered individual under a new funeral plan or subsisting funeral plan in relation to its regulated funeral plan activity; and*
- (2) *communicating or approving a financial promotion in relation to a funeral plan contract or a regulated funeral plan activity unless that financial promotion could lawfully be communicated by an unauthorised person without approval.*

### 4.1.2

**G**

A *firm* is required to comply with the *financial promotion rules* in relation to a *financial promotion communicated* by its *appointed representative* even where the *financial promotion* does not require *approval* because of the exemption in article 16 of the *Financial Promotion Order* (Exempt persons).

[Note: section 39 of the Act]



## 4.2 Communications and financial promotions: the obligations

### Fair, clear and not misleading rule

- 4.2.1 **R** A *firm* must ensure that a communication or a *financial promotion* is fair, clear and not misleading.
- 4.2.2 **G** ■ FPCOB 4.1.1R(2) does not limit the application of the *fair, clear and not misleading rule* under ■ FPCOB 4.1.1R(1). So, for example, a *financial promotion* that could lawfully be *communicated* by an *unauthorised person* without *approval* will still be subject to the *fair, clear and not misleading rule* to the extent that it is a communication with a *customer* or *covered individual* in relation to *regulated funeral plan activity*.
- 4.2.3 **G** If a communication or a *financial promotion* names the *FCA*, the *PRA* or both as the regulator of a *firm* or other provider, and refers to matters not regulated by the *FCA*, the *PRA* or both, the *firm* should ensure that the communication or *financial promotion* makes clear that those matters are not regulated by the *FCA*, the *PRA* or both.
- 4.2.4 **G** Part 7 (Offences relating to Financial Services) of the Financial Services Act 2012 creates criminal offences relating to certain misleading statements and practices.
- 4.2.4A **G** A *firm* is reminded of its obligations under ■ ESG 4.3.1R when it *communicates* or *approves a financial promotion* that references the *sustainability characteristics* of a product or service.

### Financial promotions to be balanced and with appropriate warnings

- 4.2.5 **R** A *firm* must ensure that a communication or *financial promotion*:
  - (1) includes the name of the *firm*;
  - (2) is accurate;
  - (3) is balanced and, in particular, does not emphasise any potential benefits without also giving a fair and prominent indication of any relevant risks;

- (4) is appropriate for, and presented at a level and in a form that is comprehensible to the average *funeral plan customer*;
  - (5) does not disguise, omit, diminish or obscure important items, statements or warnings; and
  - (6) where it contains a comparison or contrast, presents the comparison or contrast in a fair and balanced way and ensures that it is meaningful.
- 4.2.6 **G** A *firm* should consider whether the omission of any relevant fact will result in a communication or *financial promotion* being insufficient, unclear, unfair or misleading.

**Marketing communications**

- 4.2.7 **R** A *firm* must ensure that a *financial promotion* in relation to a funeral plan or *regulated funeral plan activity* is clearly identifiable as such.

**Approving financial promotions**

- 4.2.8 **R**
- (1) Before a *firm* approves a *financial promotion*, it must take reasonable steps to ensure that the *financial promotion* complies with the *financial promotion rules*.
  - (2) If, subsequently, a *firm* becomes aware that a *financial promotion* no longer complies with the *financial promotion rules*, it must withdraw its *approval* and notify any *person* that it knows to be relying on its *approval* as soon as reasonably practicable.

- 4.2.9 **R** A *firm* must not *approve* a *financial promotion* to be made in the course of a personal visit, telephone conversation or other interactive dialogue.

- 4.2.9A **G**
- (1) The effect of section 55NA of the *Act* is that a *firm* is unable to *approve* a *financial promotion* unless:
    - (a) the *firm* is a *permitted approver* in relation to the *financial promotion*; or
    - (b) an *approver permission exemption* applies.
  - (2) ■ SUP 6A contains *guidance* on applying for *approver permission*.

**The reasonable steps defence to an action for damages**

- 4.2.10 **R** If, in relation to a particular communication or *financial promotion*, a *firm* takes reasonable steps to ensure it complies with the *fair, clear and not misleading rule*, a contravention of that *rule* does not give rise to a right of action under section 138D of the *Act*.

**Cold calling**

- 4.2.11 **R** A *firm* must not make a *cold call* unless the recipient has an established existing client relationship with the *firm* and the relationship is such that the recipient envisages receiving *cold calls*.

**Promotions that are not in writing**

- 4.2.12 **R** A firm must not communicate a solicited or unsolicited *financial promotion* that is not in writing, to a *client* outside the *firm's* premises, unless the *person communicating* it:
  - (1) only does so at an appropriate time of the *day*;
  - (2) identifies themselves and the *firm* they represent at the outset and makes clear the purpose of the communication;
  - (3) clarifies if the *client* would like to continue with or terminate the communication, and terminates the communication at any time that the *client* requests it; and
  - (4) gives a contact point to any *client* with whom they arrange an appointment.

**Record keeping: financial promotions**

- 4.2.13 **R**
  - (1) A firm must make an adequate record of any *financial promotion* it communicates or approves, other than a *financial promotion* made in the course of a personal visit, telephone conversation or other interactive dialogue.
  - (2) For a telemarketing campaign, a firm must make an adequate record of copies of any scripts used.
  - (3) A firm must retain the record in relation to the *financial promotion* for six years.
- 4.2.14 **G** A firm should consider maintaining a record of why it is satisfied that the *financial promotion* complies with the *financial promotion rules*.





## Chapter 5

# Distance communications

## 5.1 Distance marketing

### Application

- 5.1.1 **R** This chapter applies to a *firm*:
- (1) in relation to its *regulated funeral plan activity*; and
  - (2) that carries on any distance marketing activity from an establishment in the *United Kingdom*, with or for a *consumer* in the *United Kingdom*.

### Guidance on the distance marketing rules

- 5.1.2 **G** *Guidance* on the application of the provisions in this section can be found in ■ FPCOB 5 Annex 1G.

### The distance marketing disclosure rules

- 5.1.3 **R** A *firm* must provide a *consumer* with the distance marketing information (■ FPCOB 5 Annex 2R) in good time before the *consumer* is bound by a *distance contract* or offer.
- 5.1.4 **G** The *rules* setting out the responsibilities of *funeral plan providers* and *funeral plan intermediaries* for producing and providing information apply to requirements in this section to provide information (see ■ FPCOB 9.1.3R).
- 5.1.5 **R** A *firm* must ensure that the distance marketing information, the commercial purpose of which must be made clear, is provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith in commercial transactions, and the legal principles governing the protection of those who are unable to give their consent.
- 5.1.6 **R** When a *firm* makes a telephone call to a *consumer*, it must make its identity and the purpose of its call explicitly clear at the beginning of the conversation.
- 5.1.7 **R** A *firm* must ensure that the information on contractual obligations to be communicated to a *consumer* during the pre-contractual phase conforms with the contractual obligations which would result from the law presumed to be applicable to the *distance contract* if that contract is concluded.

**Terms and conditions, and form**

**5.1.8** **R** A *firm* must communicate to the *consumer* all the contractual terms and conditions and the information referred to in the distance marketing disclosure *rules* in writing or another *durable medium* available and accessible to the *consumer* in good time before conclusion of any *distance contract*.

**5.1.9** **G** A *firm* will provide information, or communicate contractual terms and conditions, to a *consumer* if another *person* provides the information, or communicates the terms and conditions, to the *consumer* on its behalf.

**Commencing performance of the distance contract**

**5.1.10** **R** The performance of the *distance contract* may only begin after the *consumer* has given their approval.

**Exception: distance contract as a stage in the provision of another service**

**5.1.11** **R** This section does not apply to a *distance contract* to act as a *funeral plan intermediary*, if the *distance contract* is concluded merely as a stage in the provision of another service by the *firm* or another *person*.

**Exception: successive operations**

**5.1.12** **R** In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the *rules* in this section only apply to the initial agreement.

**5.1.13** **R** If there is no initial service agreement but the successive operations or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure *rules* will only apply:

when the first operation is performed; and

if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed to be the first in a new series of operations).

**Exception: telephone calls**

**5.1.14** **R**

- (1) In the case of a telephone call, and subject to the explicit consent of the *consumer*, only the abbreviated distance marketing information (■ FPCOB 5 Annex 3R) needs to be provided during that communication.
- (2) However, unless another exemption applies (such as the exemption for means of distance communication not enabling disclosure), a *firm* must still provide the distance marketing information (■ FPCOB 5 Annex 2R) in writing or another *durable medium* available and accessible to the *consumer* in good time before conclusion of any *distance contract*.

**Exception: means of distance communication not enabling disclosure**

**5.1.15** **R** A *firm* may provide the distance marketing information (■ FPCOB 5 Annex 2R) and the contractual terms and conditions in writing or another *durable medium* immediately after the conclusion of a *distance contract* if the contract has been concluded at a *consumer's* request using a means of distance communication that does not enable the provision of that information in that form in good time before conclusion of any *distance contract*.

**Consumer's right to request paper copies and change**

**5.1.16** **R** At any time during the contractual relationship the *consumer* is entitled, at their request, to receive the contractual terms and conditions on paper. The *consumer* is also entitled to change the means of distance communication used unless this is incompatible with the contract concluded or the nature of the service provided.

**Unsolicited services**

**5.1.17** **R**

- (1) A *firm* must not enforce, or seek to enforce, any obligations under a *distance contract* against a *consumer*, in the event of an unsolicited supply of services. The absence of a reply does not constitute consent.
- (2) This *rule* does not apply to the tacit *renewal* of a *distance contract*.

**Mandatory nature of consumer's rights**

**5.1.18** **R** If a *consumer* purports to waive any of the *consumer's* rights created or implied by the *rules* in this section, a *firm* must not accept that waiver, nor seek to rely on or enforce it against the *consumer*.

**5.1.19** **R** If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the *United Kingdom*, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this section.



## 5.2 E-Commerce

**5.2.1** **R** This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom*, with or for a *person* in the *United Kingdom*.

### Information about the firm and its products or services

**5.2.2** **R** A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

- (1) its name;
- (2) the geographic address at which it is established;
- (3) the details of the *firm*, including its e-mail address, which allow it to be contacted and communicated with in a direct and effective manner;
- (4) an appropriate statutory status disclosure statement (■ GEN 4 Annex 1R), together with a statement which explains that it is on the *Financial Services Register* and includes its Firm Reference Number;
- (5) if it is a *professional firm*:
  - (a) the name of the professional body (including any *designated professional body*) or similar institution with which it is registered;
  - (b) the professional title;
  - (c) a reference to the applicable professional rules and the means to access them; and
- (6) where the *firm* undertakes an activity that is subject to VAT, its VAT number.

**5.2.3** **R** If a *firm* refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

**5.2.4** **R** A *firm* must ensure that commercial communications which are part of, or constitute, an *information society service*, comply with the following conditions:

- (1) the commercial communication must be clearly identifiable as such;
- (2) the *person* on whose behalf the commercial communication is made must be clearly identifiable;
- (3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and
- (4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

5.2.5

**R**

An unsolicited commercial communication sent by e-mail by a *firm* must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

### Requirements relating to the placing and receipt of orders

5.2.6

**R**

A *firm* must (except when otherwise agreed by parties who are not *consumers*):

- (1) give an *ECA recipient* the following information, clearly, comprehensibly and unambiguously, and prior to the order being placed by the recipient of the service:
  - (a) the different technical steps to follow to conclude the contract;
  - (b) whether or not the concluded contract will be filed by the *firm* and whether it will be accessible;
  - (c) the technical means for identifying and correcting input errors prior to the placing of the order; and
  - (d) the languages offered for the conclusion of the contract;
- (2) indicate any relevant codes of conduct to which it subscribes and provide information on how those codes can be consulted electronically;
- (3) (when an *ECA recipient* places an order through technological means), acknowledge the receipt of the recipient's order without undue delay and by electronic means (an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them); and
- (4) make available to an *ECA recipient* appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors prior to the placing of an order.

5.2.7

**R**

For the purposes of ■ FPCOB 5.2.6R(3), an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them.

5.2.8 **R** Contractual terms and conditions provided by a *firm* to an *ECA recipient* must be made available in a way that allows the recipient to store and reproduce them.

**Exception: contract concluded by e-mail**.....

5.2.9 **R** The requirements relating to the placing and receipt of orders do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.





## Guidance on the Distance Marketing Provisions

This Annex belongs to ■ FPCOB 5.1.2G.

### Q1.What is a distance contract?

To be a *distance contract*, a contract must be concluded under an ‘organised distance sales or service-provision scheme’ run by the contractual provider of the service who, for the purpose of the contract, makes exclusive use (directly or otherwise) of one or more means of distance communication up to and including the time at which the contract is concluded.

So:

- the *firm* must have put in place facilities designed to enable a *consumer* to deal with it exclusively at a distance; and
- there must have been no simultaneous physical presence of the *firm* and the *consumer* throughout the offer, negotiation and conclusion of the contract. So, for example, contracts offered, negotiated and concluded over the internet, through a telemarketing operation or by *post*, will normally be *distance contracts*.

### Q2.What about a firm that normally operates face-to-face but occasionally uses distance means?

If a *firm* normally operates face-to-face and has no facilities in place enabling a *consumer* to deal with it customarily by distance means, there will be no *distance contract*. A one-off transaction effected exclusively by distance means to meet a particular contingency or emergency will not be a *distance contract*.

### Q3.What is meant by ‘simultaneous physical presence’?

A *consumer* may visit the *firm’s* local office in the course of the offer, negotiation or conclusion of a contract. Wherever, in the literal sense, there has been ‘simultaneous physical presence’ of the *firm* and the *consumer* at the time of such a visit, any ensuing contract will not be a *distance contract*.

### Q4.Does the mere fact that an intermediary is involved make the sale of a product or service a distance contract?

No.

### Q5.When is a contract concluded?

A contract is concluded when an offer to be bound by it has been accepted. An offer in the course of negotiations (for example, an offer by a *funeral plan provider* to consider an application) is not an offer to be bound, but is part of a pre-contractual negotiation.

A *consumer* will provide all the information a *funeral plan provider* needs to decide whether to offer a plan and to calculate the price of the plan. The *consumer* may do this orally or in writing. The response by a *funeral plan provider*, giving a quotation to the consumer specifying the price of the plan and the terms, is likely to amount to an offer of the terms on which the *funeral plan provider* will provide the plan. Agreement by the consumer to those terms is likely to be an acceptance which concludes the contract.

### Q6.How do these provisions apply to funeral plan intermediaries’ services?

The *FCA* anticipates that the provisions relating to distance marketing are likely to apply to *funeral plan intermediaries’* services only in those cases where:

- (a) the *firm* concludes a *distance contract* with a *consumer* covering its *funeral plan distribution* which is additional to any *funeral plan contract* which it is marketing; and
- (b) that *distance contract* is concluded other than merely as a stage in the entering into of a *funeral plan contract* by the *firm* or another *person*: in other words, it has some continuity independent of a *funeral plan contract*, as opposed, for example, to being concluded as part of marketing a *funeral plan contract*.

Q7.Can you give examples of when the distance marketing provisions would and would not apply to funeral plan intermediaries' services?

The *rules* in this section are unlikely to apply in the typical case where a *funeral plan intermediary* sells a *funeral plan contract* to a *consumer* on a one-off basis.

Nor will the *rules* apply if a *funeral plan intermediary*, in its terms of business, makes clear that it does not, in conducting *funeral plan distribution*, act contractually on behalf of, or for, the *consumer*.

An example of when the provisions in this section would apply would be a *distance contract* under which a *funeral plan intermediary* agrees to provide advice to a *consumer* on *funeral plan contracts*.

## Distance marketing information

This Annex belongs to ■ FPCOB 5.1.3R.

### Distance marketing information

#### The firm

- (1) The name and the main business of the *firm*, the geographical address at which it is established and any other geographical address relevant for the *consumer's* relations with the *firm*.
- (2) Where the *firm* has a representative established in the *United Kingdom*, the name of that representative and the geographical address relevant for the *consumer's* relations with the representative.
- (3) When the *consumer's* dealings are with any professional other than the *firm*, the identity of that professional, the capacity in which they are acting with respect to the *consumer*, and the geographical address relevant for the *consumer's* relations with that professional.
- (4) An appropriate statutory status disclosure statement (GEN 4), a statement that the firm is on the *Financial Services Register* and its *FCA* registration number.

#### The financial service

- (5) A description of the main characteristics of the service the *firm* will provide.
- (6) The total price to be paid by the *consumer* to the *firm* for the financial service, including all related fees, charges and expenses, and all taxes paid through the *firm* or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it.
- (7) Where relevant, notice indicating that the financial service is related to instruments involving special risks related to their specific features or the operations to be executed or whose price depends on fluctuations in the financial markets outside the *firm's* control and that past performance is no indicator of future performance.
- (8) Notice of the possibility that other taxes or costs may exist that are not paid through the *firm* or imposed by it.
- (9) Any limitations on the period for which the information provided is valid, including a clear explanation as to how long a *firm's* offer applies as it stands.
- (10) The arrangements for payment and for performance.
- (11) Details of any specific additional cost for the *consumer* for using a means of distance communication.

#### The distance contract

- (12) The existence or absence of a right to cancel under the cancellation *rules* (FPCOB 13) and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the *consumer* may be required to pay (or which may not be returned to the *consumer*) in accordance with those *rules*, as well as the consequences of not exercising the right to cancel.
- (13) The minimum duration of the contract, in the case of services to be performed permanently or recurrently.
- (14) Information on any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases.
- (15) Practical instructions for exercising any right to cancel, including the address to which any cancellation notice should be sent.
- (16) Any contractual clause on law applicable to the contract or on the competent court, or both.
- (17) In which language, or languages, the contractual terms and conditions and the other information

Distance marketing information

in this Annex will be supplied, and in which language, or languages, the *firm*, with the agreement of the *consumer*, undertakes to communicate during the duration of the contract.

Redress

(18)How to complain to the *firm*, whether complaints may subsequently be referred to the *Financial Ombudsman Service* and, if so, the methods for having access to it, together with equivalent information about any other applicable named complaints scheme.

(19)Whether compensation may be available from the *compensation scheme*, or any other named compensation scheme, if the *firm* is unable to meet its liabilities, and information about any other applicable named compensation scheme.

## Abbreviated distance marketing information

This Annex belongs to ■ FPCOB 5.1.14R.

Abbreviated distance marketing information	
(1)	The identity of the <i>person</i> in contact with the <i>consumer</i> and their link with the <i>firm</i> .
(2)	A description of the main characteristics of the financial service.
(3)	The total price to be paid by the <i>consumer</i> to the <i>firm</i> for the financial service, including all taxes paid through the <i>firm</i> or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the <i>consumer</i> to verify it.
(4)	Notice of the possibility that other taxes or costs may exist that are not paid through the <i>firm</i> or imposed by it.
(5)	The existence or absence of a right to cancel in accordance with the cancellation <i>rules</i> (FPCOB 13) and, where the right to cancel exists, its duration and the conditions for exercising it, including information on the amount the <i>consumer</i> may be required to pay (or which may not be returned to the <i>consumer</i> ) on the basis of those <i>rules</i> .
(6)	That other information is available on request and what the nature of that information is.



# Chapter 6

## Information about the firm and its services

## 6.1 General requirements for firms

### Application

6.1.1

**R**

This chapter applies to:

- (1) a *funeral plan intermediary*; and
- (2) a *funeral plan provider* in relation to the distribution of its own *funeral plan contracts*.

### Interaction with the customer's best interests rule and Principle 7

6.1.2

**G**

To comply with the *customer's best interests rule* and *Principle 7* (Communications with clients), a *firm* should consider the information needs of the *customer* and, if different, the *covered individual*, including:

- (1) what a *customer* and/or *covered individual* needs in order to understand the relevance of any information provided by the *firm*; and
- (2) the point in the sales process at which information will be most useful to the *customer* to enable them to make an informed decision.

### Status disclosure: general information provided by firms

6.1.3

**R**

In good time before a *customer* enters into a *funeral plan contract*:

- (1) a *firm* must provide the *customer* with at least the following information:
  - (a) its identity, address and whether it is a *funeral plan intermediary* or a *funeral plan provider*;
  - (b) the appropriate statutory status disclosure statement (see ■ GEN 4);
  - (c) the fact that it is included in the *Financial Services Register* and the means for verifying this;
  - (d) whether it provides a *personal recommendation* about the *funeral plans* offered or information;
  - (e) whose *funeral plans* it offers;
  - (f) the procedures allowing *customers* and other interested parties to register *complaints* about the *firm* with the *firm* and the *Financial Ombudsman Service* or, if the *Financial Ombudsman*



Service does not apply, information about any out-of-court complaint and redress procedures available for the settlement of disputes between the *firm* and its *customers*; and

- (2) a *funeral plan intermediary* must also provide the *customer* with the following information:
  - (a) whether it has a direct or indirect holding representing 10% or more of the voting rights or capital in a given *funeral plan provider*;
  - (b) whether a given *funeral plan provider* or its *parent undertaking* has a direct or indirect holding representing 10% or more of the voting rights or capital in the *firm*; and
  - (c) whether it is representing the *customer* or is acting for and on behalf of the *funeral plan provider*.

#### Scope of service: funeral plan intermediaries

6.1.4

**R**

- (1) Where a *funeral plan intermediary* proposes or advises on a *funeral plan contract* then in good time before the conclusion of a *funeral plan contract* and, if necessary, on its amendment, a *funeral plan intermediary* must provide the *customer* with at least information on whether the *firm*:
  - (a) gives a *personal recommendation*, on the basis of a fair and personal analysis of *funeral plans* available in the market; or
  - (b) is under a contractual obligation to conduct *funeral plan distribution* exclusively with one or more *funeral plan providers*, in which case it must provide the names of those *funeral plan providers*; or
  - (c) (i) is not under a contractual obligation to conduct *funeral plan distribution* exclusively with one or more *funeral plan providers*; and
    - (ii) does not give a *personal recommendation* on the basis of a fair and personal analysis of *funeral plans* available in the market;
 in which case it must provide its *customer* with the name of those *funeral plan providers* with which the *funeral plan intermediary* may and does conduct business.



## 6.2 Means of communication to customers

### Application

6.2.1 **R** This section applies to all information required to be provided to a *customer* in this chapter and in other chapters or sections where stated.

### Means of communication to customers: non-telephone sales

6.2.2 **R** (1) A *firm* must communicate information to a *customer* using any of the following:

- (a) paper; or
- (b) a *durable medium* other than paper; or
- (c) a website (where it does not constitute a *durable medium*) where the *website conditions* are satisfied.

(2) The *firm* must communicate the information in (1):

- (a) in a clear and accurate manner, comprehensible to the *customer*;
- (b) in English or in any other language agreed by the parties; and
- (c) free of charge.

6.2.3 **R** Where the information is communicated using a *durable medium* other than paper or by means of a website, the *firm* must, upon request and free of charge, also send the *customer* a paper copy.

6.2.4 **R** A *firm* must ensure that a *customer's* choice or consent to receive the information by means of a website (whether a *durable medium* or where the *website conditions* are satisfied) is an active and informed choice or consent.

6.2.5 **G** (1) For the purposes of **FPCOB 6.2.4R**, for example, an option to allow a change to the e-mail address to be used or an option to allow information to be provided by means of a website should be presented in a way that is clear, fair and not misleading.

(2) The following are examples of circumstances not evidencing active or informed choice or consent:

- (a) a pre-ticked box (suggesting that option has been selected) which appears in a more prominent place than an un-ticked box allowing another option to be selected; and

- (b) the *customer* electing to be informed by a website without being first given other options.

**Means of communication to customers: telephone sales**

6.2.6

**R**

In the case of telephone selling:

- (1) the information must be given in accordance with the distance marketing disclosure *rules* (see ■ FPCOB 5); and
- (2) if prior to the conclusion of the contract the information is provided orally, the *firm* must also provide the information to the *customer* in accordance with ■ FPCOB 6.2.2R immediately after the conclusion of the *funeral plan contract*.



## 6.3 Fee disclosure

### Application

---

6.3.1 **R** This section applies to a *firm* that imposes a *fee* in connection with a *funeral plan* or its *regulated funeral plan activity*.

### Fee disclosure

---

6.3.2 **R** (1) Where a *fee* is payable, the *firm* must inform its *customer* of the amount of the *fee*.

(2) The information in (1) must be given before the *customer* incurs liability to pay the *fee*, or before entering into the *funeral plan contract*, whichever is earlier.

6.3.3 **R** The *fee* disclosure requirement extends to all such *fees* that may be charged in connection with a *funeral plan* or the *firm's regulated funeral plan activity*.



## 6.4 Charging for funeral plan distribution

### Application

6.4.1 **R** This section applies to a *firm* which carries on *funeral plan distribution*.

6.4.2 **G** This section does not apply to a *funeral plan provider* in connection with its *entering as provider into funeral plan contracts*.

### Purpose

- 6.4.3 **G**
- (1) The purpose of the *rules* in this section is to ensure that *funeral plan intermediaries* act in accordance with the *customer's best interests rule* and are not improperly influenced in their *funeral plan distribution* by payments made, or benefits provided, by *funeral plan providers*. In particular, the *rules* in this section prevent a *firm* from accepting commission from a *funeral plan provider*.
  - (2) The *rules* in this section apply whether or not the relevant *funeral plan distribution* involves the provision of *investment advice*.
  - (3) *Firms* should be mindful of the *customer's best interests rule* when considering their approach to compliance with the *rules* in this section.

### Requirement to be paid by the customer

- 6.4.4 **R** A *firm* must:
- (1) only be remunerated for its *funeral plan distribution* (and any other related services provided by the *firm*) by *FP distribution charges*; and
  - (2) not solicit or accept (and ensure that none of its *associates* solicits or accepts) any other commissions, remuneration or benefit of any kind in connection with the *firm's* business of engaging in *funeral plan distribution* or any other related services, regardless of whether it intends to refund the payments or pass the benefits on to the *customer* or *covered individual*,

except as provided in this section.

**6.4.5** **R** 'Related service(s)' for the purposes of **■ FPCOB 6.4.4R** includes:

- (1) *communicating or approving financial promotions* in relation to a *funeral plan contract* or *regulated funeral plan activity*;
- (2) *recommending a funeral plan provider*.

**6.4.6** **G** **■ FPCOB 6.4.4R** prevents a *firm* from receiving any monetary or non-monetary benefit either in relation to the distribution of particular *funeral plan contracts* or in connection with its business of marketing, selling or distributing *funeral plan contracts* more generally.

**Group distribution arrangements**

**6.4.7** **R** If the *firm's funeral plan distribution* relates to *funeral plan contracts* entered into by the *firm* itself or by an *associate*, the *firm* must ensure that the level of its *FP distribution charge* is at least reasonably representative of the services associated with its *funeral plan distribution* (and related services).

**6.4.8** **G** A *firm* should consider whether the level of its *FP distribution charge* meets the requirement of **■ FPCOB 6.4.7R** by reference to whether the charge would be appropriate in the context of the service being provided by a *firm* unconnected with a *funeral plan provider*.

**Guidance on the requirement to be paid by the customer**

**6.4.9** **G** **■ FPCOB 12** restricts a *firm* engaged in *funeral plan distribution* from accepting payment other than in certain circumstances. **■ FPCOB 12** does not prevent a *funeral plan intermediary* from receiving an *FP distribution charge* from a *customer* as contemplated by this section (see **FPCOB 12.4.4R**).

**6.4.10** **G** **■ FPCOB 6.3.2R** requires a *funeral plan intermediary* to inform the customer of the amount of any *fee* payable. That disclosure should include any *FP distribution charge* payable by the *customer*.

**Payment for funerals**

**6.4.11** **G**

- (1) **■ FPCOB 6.4.4R** applies to providers of funerals (such as funeral services providers) which engage in *funeral plan distribution*. However, that *rule* only restricts the receipt of payments or benefits in connection with the business of engaging in *funeral plan distribution*.
- (2) **■ FPCOB 6.4.4R** does not prevent a provider of funerals from receiving payment for the provision of a funeral from a *funeral plan provider* under the terms of a *funeral plan contract*. For these purposes, it does not matter whether payment for the funeral is received at the time that the *customer* enters into the relevant *funeral plan contract* or at any other time thereafter.

**6.4.12** **R** A *firm* which carries on *funeral plan distribution* and is also a provider of funerals must ensure that:

- (1) the level of its *FP distribution charge* is at least reasonably representative of the cost of the services associated with its *funeral plan distribution*; and
- (2) any payments which it receives from a *funeral plan provider* under a *funeral plan contract* are reasonably representative of the cost of delivering the relevant funeral.

**6.4.13** G A payment is unlikely to be reasonably representative of the cost of delivering the relevant funeral if it is materially greater than the same payment would have been had the relevant *firm* had no involvement in the sale or distribution of the *funeral plan contract*.

**Training and support**

**6.4.14** R A *firm* may receive:

- (1) training on the *funeral plan contracts* in relation to which it carries on *funeral plan distribution*; and
- (2) appropriate support with complying with its obligations under the *regulatory system* from a *funeral plan provider*.

**6.4.15** R Any training or support received for the purposes of ■ FPCOB 6.4.14R must be:

- (1) of a scale and nature that it could not be judged to impair the firm’s compliance with its duty to act honestly, fairly and professionally in the best interests of the *customer* or *covered individual*; and
- (2) reasonable, proportionate and of a scale that is unlikely to influence the *firm’s* behaviour in any way that is detrimental to the interests of any relevant *customer* or *covered individual*.

**6.4.16** G The *rules* in this section do not preclude a *funeral plan intermediary* from receiving from a *funeral plan provider* any materials necessary for the *funeral plan intermediary* to engage in its business of *funeral plan distribution*. This may include the product information for the purposes of ■ FPCOB 9.

**Payments to employees**

**6.4.17** G The *rules* in this section do not prevent an *employee* of a *firm* receiving payment from that *firm*.

**Record keeping**

**6.4.18** R A *firm* must keep a record of the *FP distribution charges* paid by each *customer*.

## 6.5 Payments to funeral plan intermediaries

### Application

6.5.1 **R** This section applies to a *funeral plan provider*.

### Requirement not to offer commissions

6.5.2 **R** A *firm* must not offer or pay (and must ensure that none of its *associates* offers or pays) any commissions, *remuneration* or benefit of any kind to:

- (1) another *firm* in connection with that *firm's* business of engaging in *funeral plan distribution*;
- (2) another *person* in connection with:
  - that *person's* business of engaging in *funeral plan distribution*:
    - (i) for which it does not require *authorisation*; or
    - (ii) which it carries on in breach of the *general prohibition*;
  - business of that *person* which would involve engaging in *funeral plan distribution* but for an exclusion in the *Regulated Activities Order*;
- (c) that *person's* business of introducing *customers* to another *person* in relation to *funeral plan contracts*;
- (3) a *person* in (1) or (2) in relation to any related services; or
- (4) any third party for the benefit of a *person*, and in the circumstances described, in (1) to (3),

except as provided in this section.

6.5.3 **R** ■ FPCOB 6.5.2R does not apply to training or support which meet the requirements of ■ FPCOB 6.4.14R and ■ FPCOB 6.4.15R.

6.5.4 **G** ■ FPCOB 6.5.2R prevents a *funeral plan provider* from making payments, or offering benefits, to *persons* involved in distributing the *firm's funeral plan contracts*. This includes payments made, or benefits offered, to a *firm's appointed representatives*.



6.5.5

**R**

■ FPCOB 6.5.2R does not prevent a *funeral plan provider* from making payments to a *person* merely to *communicate a financial promotion*.

**Payments to employees**

---

6.5.6

**G**

- (1) The *rules* in this section do not apply to payments made by *firms* to their *employees* in relation to sales activity.
  
- (2) *Firms* should refer to ■ SYSC 19F and the *FCA's final guidance*, 'Risks to customers from financial incentives' (January 2013) when considering the structure of any incentive schemes for their *employees*.

[**Note:** see <https://www.fca.org.uk/publication/finalised-guidance/fsa-fg13-01.pdf>]



## Chapter 7

# Prohibition on entering into long-term instalment payment funeral plans



## 7.1 Application and Purpose

### Application

---

7.1.1 **R** This chapter applies to a *funeral plan provider*.

### Purpose

---

7.1.2 **G** The *rule* in this chapter ensures that, subject to an initial maximum 24-month *moratorium period*, a *customer* who chooses to pay for a *funeral plan contract* in instalments receives the funeral under that contract even if the *covered individual* dies before the end of the instalment period.



## 7.2 Prohibition

### Prohibition

7.2.1

**R**

- (1) A funeral plan provider must not enter into an *instalment payment funeral plan* under which the *customer* agrees to make payments over a period longer than the *moratorium period*.
- (2) Paragraph (1) does not apply in respect of an *instalment payment funeral plan* under the terms of which (c) and either (a) or (b) below are met:
  - (a) There is no *moratorium period*;
  - (b) There is a *moratorium period* but:
    - (i) a funeral will be unconditionally provided upon the *covered individual's* death where:
      - (A) this occurs after the *moratorium period*;
      - (B) this occurs before the end of the *moratorium period* but the death is accidental;
    - (c) After any *moratorium period* has ended, no further payment is required following the *covered individual's* death in order for the funeral specified by the *funeral plan contract* to be provided.
  - (3) The *moratorium period* must be no longer than 24 months from the date on which the relevant parties entered into the *funeral plan contract*.

### Guidance

7.2.2

**G**

This section is relevant to any *instalment payment funeral plan* which requires payments to be made over a period of more than 24 months. This may include a *funeral plan contract* under which the *customer* is required to make payments until the *covered individual* reaches a certain age or on a regular basis until the time of the *covered individual's* death.

7.2.3

**G**

This section does not affect the position where a *funeral plan contract* has been cancelled either by the *customer* or by the *funeral plan provider* in compliance with the rules in **FPCOB 13**.

7.2.4

**G**

The effect of **FPCOB 13.2.2R** is that the death of the *covered individual* (other than by reason of an accident) within the *moratorium period* is treated as a cancellation of the *funeral plan contract* (unless the *customer* and *firm* have agreed for sums outstanding to be paid under

■ FPCOB 13.2.3R). In this case, any instalments paid by the *customer* must be returned without deduction to the *customer* or (where the customer is also the *covered individual*) to their estate.

**7.2.5**

**G** A *funeral plan provider* may agree a *moratorium period* with a *customer* of less than 24 *months* provided that it remains compliant with ■ FPCOB 3.1.6R.

## Chapter 8

# Identifying client needs and advising



## 8.1 Application

### 8.1.1



This chapter applies to:

- (1) a *funeral plan intermediary*; and
- (2) a *funeral plan provider* in relation to the distribution of its own *funeral plan contracts*.





## 8.2 Demands and needs

8.2.1 **R** The sale of a *funeral plan contract* must always be accompanied by a demands and needs test.

### Demands and needs test

---

8.2.2 **R** (1) Prior to the conclusion of a *funeral plan contract*, a *firm* must identify, on the basis of information obtained from the *customer* and other sources where relevant, the demands and the needs of that *customer*.

(2) When proposing a *funeral plan contract*, a *firm* must ensure it is consistent with the *customer's* demands and needs.

(3) A statement of the demands and needs must be communicated to the *customer* prior to the *customer* entering into a *funeral plan contract*.

8.2.3 **G** A *firm* may obtain information from the *customer* in a number of ways including, for example, by asking the *customer* questions in person or by way of a questionnaire prior to any *funeral plan contract* being proposed.

8.2.4 **G** ■ FPCOB 8.2.2R(2) applies whether or not advice is given and in the same way regardless of whether that contract is sold on its own, or in connection with other goods or services.

8.2.5 **R** In determining whether a *funeral plan contract* is consistent with the *customer's* demands and needs, a *firm* must consider, amongst other things:

(1) whether any *person* has already made provision for the *covered individual's* funeral; and

(2) the length of the *moratorium period* during which the contracted funeral will not be provided.



## 8.3 Ensuring customers can make an informed decision

### Disclosing the limits of the service provided

8.3.1

R

- (1) In a sale that does not involve a *personal recommendation*, a *firm* must take reasonable steps to ensure a *customer ('C')* understands that C is responsible for deciding whether a *funeral plan* meets C's demands and needs.
- (2) If a *firm* anticipates providing, or provides, information on any main characteristic of a *funeral plan* orally during a non-advised sale, taking reasonable steps includes explaining the *customer's* responsibility orally.
- (3) A *funeral plan's* main characteristics include its significant benefits, its significant exclusions and limitations, its duration and price information.

8.3.2

R

### Means of communication to customers

The information to be provided to customers in ■ FPCOB 8.1 (Demands and needs) must be given in accordance with ■ FPCOB 6.2 (Means of communication to customers).



## 8.4 Advised sales

### Application

- 8.4.1 **R** This section applies to a *firm* that provides *advice on investments* where that advice relates to a *funeral plan contract*.

### Suitability of advice

- 8.4.2 **R** A *firm* must take reasonable care to ensure the suitability of its advice for any *customer* who is entitled to rely upon its judgement.

### Suitability guidance

- 8.4.3 **G**
- (1) In taking reasonable care to ensure the suitability of advice on a *funeral plan contract*, a *firm* should:
    - (a) establish the *customer's* demands and needs by using information readily available to the *firm* and by obtaining further relevant information from the *customer*, including details of existing alternative arrangements by which the *customer* may reasonably fund the cost of the funeral in question. For example, this could include insurance products, investments, or cash savings, or where the *customer* has already made provision for the *customer* or *covered individual's* funeral;
    - (b) take reasonable care to ensure that a *funeral plan* is suitable for the *customer's* demands and needs, taking into account its level of cover and cost, the duration of instalment payments, and relevant exclusions, limitations and conditions; and
    - (c) inform the *customer* of any demands and needs that are not met.

### Personal recommendations

- 8.4.4 **R**
- (1) This *rule* applies to a *firm* that provides a *customer* with a *personal recommendation* in relation to a *funeral plan contract*.
  - (2) The *personal recommendation* must be provided:
    - (a) on the basis of a fair and personal analysis;
    - (b) in accordance with professional criteria, regarding which *funeral plan contract* would be adequate to meet the *customer's* needs; and
    - (c) unless (3) applies, on the basis of an analysis of a sufficiently large number of *funeral plans* available on the market.

(3) If the *firm's personal recommendation* will not be provided in compliance with ■ FPCOB 8.4.4R(2)(c), the *firm* must disclose this fact and the scope of the analysis that will form the basis of its *personal recommendation* to the *customer* in good time before the provision of the *personal recommendation*.

**Personalised explanation**

8.4.5

R

Where a *firm* provides a *personal recommendation*, the *firm* must, in addition to the statement of demands and needs, provide the *customer* with a personalised explanation of why a particular *funeral plan contract* would best meet the *customer's* demands and needs.

**Means of communication**

8.4.6

R

A *firm* must provide the information in this section in accordance with ■ FPCOB 6.2 (Means of communication to customers).

# Chapter 9

## Product information

## 9.1 Producing and providing product information

### Application

- 9.1.1 **R** This chapter applies to a *firm* in relation to *funeral plan provision* and *funeral plan distribution*.

### Purpose

- 9.1.2 **G** The purpose of the *rules* in this chapter is to ensure that *customers* are provided with appropriate information before concluding a *funeral plan contract* and at relevant times thereafter, in particular when post-contractual changes to a *funeral plan contract* are proposed.

### Responsibilities for producing and providing information as between funeral plan providers and funeral plan intermediaries: general

- 9.1.3 **R**
- (1) This *rule* applies in relation to the information that must be provided to the *customer* before the conclusion of a *funeral plan contract* in compliance with the *rules* in this chapter and the distance communication *rules* (■ FPCOB 5.1).
  - (2) The *funeral plan provider* is responsible for producing the information to which this *rule* applies.
  - (3) The *funeral plan intermediary* is responsible for providing the information to which this *rule* applies to the *customer*.
  - (4) If there is no *funeral plan intermediary*, the *funeral plan provider* is responsible for providing the information to the *customer*.
  - (5) A *funeral plan provider* must produce information in good time to enable a *funeral plan intermediary* to comply with the *rules* in this chapter, or promptly on a *funeral plan intermediary's* request.
- 9.1.4 **R** A *funeral plan provider* is responsible for providing all post-contractual information to a *customer* including information required on post-contractual changes made to the *funeral plan*.
- 9.1.5 **R** A *funeral plan intermediary* is responsible for producing price information if it agrees this with a *funeral plan provider*.

## 9.2 Providing product information to customers: general

### Ensuring customers can make an informed decision: the appropriate information rule

- 9.2.1 **R** (1) A *firm* must ensure that a *customer* is given appropriate information about a *funeral plan contract* in good time before the conclusion of the contract and at relevant times thereafter, in a comprehensible form so that the *customer* can make an informed decision about the arrangements proposed.
- (2) The information must be provided to the *customer*:
- (a) whether or not a *personal recommendation* is given; and
  - (b) irrespective of whether a *funeral plan* is offered as part of a package with another product or service.
- (3) The information to be provided under this *rule* must include the full terms of the *funeral plan contract*.
- 9.2.2 **G** The appropriate information *rule* applies:
- (1) at all of the different stages of a contract and includes pre-conclusion and post-conclusion information, and also when post-contractual changes are proposed;
  - (2) in the same way to any *funeral plan*, regardless of whether that *funeral plan* is sold on its own, or in connection with other goods or services; and
  - (3) to the price of the *funeral plan*.
- 9.2.3 **G** **What level of information needs to be provided?**
- The level of information required will vary according to matters such as:
- (1) the knowledge, experience and ability of a typical *customer* for the *funeral plan*;
  - (2) the terms of the *funeral plan contract*, including its main benefits, exclusions, limitations, conditions and its duration;
  - (3) whether the *funeral plan* is bought in connection with another product or service; and

- (4) distance communication information requirements (for example, under the distance communication *rules*, less information can be given during certain telephone sales than in a sale made purely by written correspondence (see ■ FPCOB 5.1.14R (exception: telephone calls)).

9.2.4 G Cancellation rights do not affect what information it is appropriate to give to a *customer* to enable them to make an informed purchasing decision.

**Oral sales: ensuring customers can make an informed decision**

9.2.5 R (1) If a *firm* provides information orally during a sales dialogue with a *customer* on a main characteristic of a *funeral plan*, it must do so for all the *funeral plan's* main characteristics.

(2) A *firm* must take reasonable steps to ensure that the information provided orally is sufficient to enable the *customer* to take an informed decision on the basis of that information, without overloading the *customer* or obscuring other parts of the information.

9.2.6 G (1) A *funeral plan's* main characteristics include its significant benefits, its significant exclusions and limitations, its duration (if applicable) and price information.

(2) A significant exclusion or limitation is one that would tend to affect the decision of *customers* generally to buy a *funeral plan*. In determining what exclusions or limitations are significant, a *firm* should particularly consider the exclusions or limitations that relate to the significant features and benefits of a *funeral plan* and factors which may have an adverse effect on the services provided under it. Another type of significant limitation might be that the contract only operates through certain means of communication, e.g. telephone or internet.

**Funeral plan summary**

9.2.7 R A *firm* must provide a *customer* with a *funeral plan summary* in good time before the conclusion of a *funeral plan contract*.

9.2.8 G (1) The *funeral plan summary* should be provided on paper or in another *durable medium*.

(2) In the case of telephone selling, a *firm* may provide the *funeral plan summary* in accordance with the distance communication timing requirements and provide the *funeral plan summary* to the *customer* immediately after the conclusion of the *funeral plan contract*.

(3) The *funeral plan summary* should be provided on paper or in another *durable medium* and otherwise in accordance with ■ FPCOB 6.2 (Means of communication to customers).



### Responsibility for producing and providing the funeral plan summary as between funeral plan providers and funeral plan intermediaries

- 9.2.9 **R**
- (1) A *funeral plan provider* is responsible for designing and producing a *funeral plan summary*.
  - (2) A *funeral plan intermediary* is responsible for providing a *funeral plan summary* to a *customer*.
  - (3) If there is no *funeral plan intermediary*, the *funeral plan provider* is responsible for providing the *funeral plan summary* to a *customer*.

### Funeral plan contracts: importance of reading documentation

- 9.2.10 **R**
- (1) A *firm* must draw a *customer's* attention to the importance of reading the *funeral plan contract* documentation before the end of the cancellation period to check that the *funeral plan* is suitable for the *customer*.
  - (2) This must be done orally if a *firm* provides information orally on any main characteristic of a *funeral plan* but otherwise in writing.

### Price information: general

- 9.2.11 **R** A *firm* must provide price information in a way calculated to enable the *customer* to relate it to a regular budget.

- 9.2.12 **G** Price information should include at least the total price (or where it cannot be indicated, the basis for calculating it) of the *funeral plan* and, where relevant:
- (1) for *instalment payment funeral plans* with a payment schedule greater than 12 *months*, whether the payments may increase and if so, the amount of the increase (or where this cannot be indicated, the basis for calculating it) and the timing of the increase;
  - (2) other *fees* and taxes payable and potentially payable by the *customer* through the *firm*; and
  - (3) a statement identifying separately the possibility of any taxes not payable through the *firm*.

- 9.2.13 **R** Where a *firm* offers *customers* the option to pay for a *funeral plan* by instalments, it must clearly communicate the total cost of the instalment payment option.

- 9.2.14 **R** If a *firm* has more than one payment option available for its *funeral plans* and does not present all the payment options to *customers*, it must also make it clear to *customers* that other payment options are available.

- 9.2.15 **G** For the purposes of the *fair, clear and not misleading rule*:
- (1) the total price of the instalment payment option should be given equal prominence and emphasis as the price of the single payment option; and
  - (2) the total price of the instalment payment option should not be presented in a way that gives the impression that it is equivalent to the price of the single payment option (unless this is actually the case).

- 9.2.16 **G** Price information should be given in writing or another *durable medium* in good time before conclusion of the contract. This is in addition to any requirement or decision to provide the information orally. In the case of a *distance contract* concluded over the telephone, it may be provided in writing or another *durable medium* no later than immediately after conclusion.

## 9.3 Post-contract information: funeral plan contracts

### Application

- 9.3.1 **R** This section applies to a *funeral plan provider* in relation to:
- (1) the activities of *entering into a funeral plan contract and carrying out a funeral plan contract*;
  - (2) *new funeral plans and subsisting funeral plans*.

### Post-contractual changes

- 9.3.2 **R**
- (1) Throughout the term of a *funeral plan*, a *firm* must provide a *customer* with information about any change to:
    - (a) the price of the *funeral plan*, unless the change conforms to a previously disclosed formula; and
    - (b) any term of the *funeral plan*, together with an explanation of any implications of the change where necessary.
  - (2) This information must be provided in writing or another *durable medium* in good time before the change takes effect or, if the change is at the *customer's* request, as soon as is practicable provided the *firm* explains the implications of the change before it takes effect.
- 9.3.3 **R** A *firm* must notify each *customer* and their nominated representative in good time about any material change to the information concerning potential *funeral plan provider failure* provided in the *funeral plan summary* or the *nominated representative document*, together with an explanation of any implications of the change where necessary. This information must be provided in writing or another *durable medium*.
- 9.3.4 **G**
- (1) When explaining the implications of a change, a *firm* should explain any changes to the benefits and significant or unusual exclusions arising from the change.
  - (2) *Firms* will need to consider whether post-contractual changes are compatible with the original *funeral plan*, in particular whether it reserves the right to vary the price of the *funeral plan*, charges or other terms. *Firms* also need to ensure that any terms which reserve the right to make variations are not themselves unfair under the *Unfair Terms Regulations* (for contracts entered into before 1 October 2015) or the *CRA*.

**Nominated representative document**

**9.3.5** **G** The purpose of the rules relating to the *nominated representative document* is to ensure that a *customer's* nominated representative is aware of the *funeral plan contract*, its features and the procedure to be followed upon the *covered individual's* death.

**9.3.6** **R** A *firm* must provide the *nominated representative document* to the *customer's* nominated representative within 5 *business days* of the date of conclusion of the *funeral plan contract*.

**9.3.7** **R** ■ FPCOB 9.3.6R does not apply if:

- (1) the *customer* has expressly stated that they do not wish their nominated representative to be contacted; or
- (2) the *customer* is not the *covered individual* and the *customer* has confirmed that no nominated representative is to be appointed.

**9.3.8** **G** For the purposes of ■ FPCOB 9.3.7R(1), 'expressly states' means that the *customer* has actively opted out of the nominated representative being contacted.

**9.3.9** **R** In relation to *subsisting funeral plans*, a *firm* must consider whether the information provided to date to the *customer's* nominated representative is sufficient to achieve the purpose of this section, and if not, provide the *nominated representative document* to the *customer's* nominated representative as soon as reasonably practicable after [29 July 2022].

**9.3.10** **R** The requirement to provide the *nominated representative document* in ■ FPCOB 9.3.9R only applies to *funeral plan contracts* where the *firm* already has the nominated representative's contact details and consent to contact the nominated representative.

**Plan statement - requirement for funeral plan providers**

**9.3.11** **R**

- (1) A *firm* must provide the *customer* with a plan statement (■ FPCOB 9 Annex 3) regarding the *funeral plan contract* at least once every 3 years.
- (2) In relation to *subsisting funeral plans*, a *firm* must provide a *customer* with the first plan statement no later than 31 August 2023.



## 9.4 Means of communication

### Means of communication

9.4.1

**R**

The information in ■ FPCOB 9 must, unless stated otherwise in this chapter, be provided in accordance with ■ FPCOB 6.2 (Means of communication to customers).



## Funeral plan summary

This annex belongs to ■ FPCOB 9.2.7R.

- 1 What information needs to be contained in the funeral plan summary?
- 1.1 R The *funeral plan summary* must contain the following information:
- (1) a summary of the significant features of the *funeral plan*;
  - (2) a summary of the main exclusions or limitations of the *funeral plan*;
  - (3) an explanation of whether changes can be made to the *funeral plan*, and if so, the process and any related costs;
  - (4) price and payment information;
  - (5) the consequences of non-payment;
  - (6) the existence and duration of the right of cancellation;
  - (7) how to complain to the *firm* and that complaints may subsequently be referred to the *Financial Ombudsman Service*;
  - (8) details on whether compensation is available from the *compensation scheme*, if the *firm* cannot meet its liabilities.
- 12 G A *firm*, when providing the information in the *funeral plan summary*, should consider:
- (1) the *rules* and *guidance* on: providing appropriate information to customers in FPCOB 9.2, post contractual changes in FPCOB 9.3 and price information in FPCOB 9.2;
  - (2) the order of the information and priority of the information to be provided;
  - (3) the information needs of the *firm's* typical *customer* for the *funeral plan*;
  - (4) using colours, images and other ways to make the document more accessible, easy-to-read, and eye-catching; and
  - (5) whether to provide additional information to the *customer*, for example, to assist the *customer's* understanding of the proposed arrangements. If a *firm* does provide additional information, the additional information should not disguise, diminish or obscure important information contained in the *funeral plan summary* document.
- Name and company logo of the funeral plan provider
- 13 R (1) The name of the *funeral plan provider*, its statutory status (GEN 4 Annex 1R) and its firm reference number should follow the title 'Funeral Plan summary document' at the top of the first page.
- (2) The provider may insert its company logo to the right of the title.
- Purpose of the document and reference to complete pre-contractual and contractual information
- 14 R The *funeral plan summary* should state the purpose of the document and that complete pre-contractual and contractual information about the *funeral plan* is provided to the *customer* in other documents. The following wording should be used and placed immediately below the name of the provider in a way that it is likely to maximise *customers'* awareness that it is a summary only:
- This document explains what is and is not included in your funeral plan, how you will pay for your plan and information on cancelling your plan, making a complaint and your entitlement to compensation. Please ensure you read this carefully. Please note this is a summary of your plan; please refer to our pre-contractual documentation and terms & conditions or contact us using the contact details below for further details.*
- 2 How must the summary be presented and formatted?

21 R The *funeral plan summary* must:

- (1) be a short and standalone document;
- (2) be presented and laid out in a way that is clear and easy to read, using characters of a readable size; and
- (3) be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white.

Length

22 R The summary document must be set out on no more than two sides of A4-sized paper when printed.

Plain language

23 The *funeral plan summary* must be drafted in plain language, facilitating the *customer's* understanding of the content of that document, and must focus on key information which the *customer* needs to make an informed decision. Jargon must be avoided.

Presentation

24 G A *firm*, when providing the information in the *funeral plan summary*, should consider:

- (1) the use of tables to display costs and other ways to make the document and information more accessible and easy-to-read; and
- (2) the use of bold and italic text to highlight key information.

Headings, corresponding information and order of content

25 R The subheadings must be in this sequence and have the following corresponding information:

- (1) 'What products and services are included in my funeral plan?'

This section should clearly set out using green tick boxes and text the key products and services the *funeral plan* provides.

- (2) 'What products and services are not included in my funeral plan?'

This section should clearly set out through red cross boxes and red text the key products and services the *funeral plan* would not provide that the *customer* would typically expect to be included in their funeral (e.g. catering, flowers). A *firm* should also highlight where the cost of a feature (e.g. burial plot) may exceed the allocated allowance.

This section should also clearly set out any additional costs the *customer* may face (e.g. the need to appoint a new funeral services provider due to the *covered individual's* change of address).

If applicable, a *firm* should prominently state that other exclusions will apply and explain where to find relevant information.

- (3) 'How do I make changes to my plan?'

This section should set out if a *customer* can make changes to their plan, how they can do so and any related costs. It should also refer to the cancellation process should their needs change.

- (4) 'When and how do I pay?'

A *firm* should set out the payment options on offer and the timings of these payments. For example, whether payment is in monthly instalments or a lump sum/single payment.

A *firm* should set out clearly and prominently if the cost of the plan will increase as a result of paying with a different payment option and if so, the cost of each payment option. If applicable, a *firm* should clearly state the *moratorium period* in which the funeral will not be provided if the *covered individual* dies.

A *firm* should set out clearly and prominently any *fees* which are, or may be, payable (including the circumstances in which they are payable).

A *firm* should clearly set out where a customer can find additional information.



5) 'What happens if I miss a payment?'

This section should clearly set out any impact of missing payments, including any *fees* or potential cancellation.

A *firm* should clearly pinpoint where a *customer* can find additional information.

6) 'How do I cancel my plan?'

A *firm* should set out the *customer's* right to cancel – including how long they have to cancel without incurring a cancellation *fee*.

A *firm* should set out clearly and prominently any cancellation *fee*.

A *firm* should clearly pinpoint where a *customer* can find additional information.

7) 'How do I make a complaint?'

A *customer* should complain to the *firm* in the first instance. The *firm* should provide information regarding its internal procedures for the reasonable and prompt handling of complaints.

If the *customer* is unhappy with the *firm's* response, they may be able to refer the matter to the *Financial Ombudsman Service*.

8) 'Financial Services Compensation Scheme'

A *firm* should explain that if it is unable to meet its liabilities, the *customer* or *covered individual* (or their estate, if the *customer* or *covered individual* has died) may be entitled to compensation from the *compensation scheme*.

A *firm* should clearly state where *customers* and *covered individuals* can find further information in relation to the *compensation scheme*.

9) Information concerning potential funeral plan provider failure'

A *firm* should briefly explain the arrangements in place to ensure that in the event of its *failure*:

- (a) 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
- (b) 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* or *covered individual* will promptly receive a payment corresponding to the *funeral plan customer balance*.

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.



## Nominated representative document

This annex belongs to ■ FPCOB 9.3.6R.

### 1 Format

The document must:

- 11 R (1) be short and stand alone;
- (2) be presented and laid out in a way that is clear and easy to read, using characters of a readable size; and
- (3) be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white.

### 2 Length

- 21 R The document must be set out on no more than 2 sides of A4-sized paper when printed.

### 3 Presentation

- 31 G A *firm*, when providing the information in the document, should consider:

- (1) the use of tables to display costs and other ways to make the document and information more accessible and easy-to-read;
- (2) the use of bold and italic text to highlight key information.

### 4 Headings, corresponding information and order of content

- 41 R The document must contain the following information, and use the headings in (4) to (10), in this sequence:
- (1) a clear statement outlining the purpose of the document, including the name of the *customer* and, if different, the *covered individual* and why it is important that the nominated representative reads the document;
- (2) a clear statement explaining the nominated representative's obligations regarding the plan;
- (3) a clear and prominent statement explaining that the document is a summary of the plan, that complete contractual information is available in other documents and the *customer's* duties and obligations;
- (4) 'What is the procedure to follow when the *covered individual* dies?'
- A *firm* should explain the procedure that the nominated representative should follow when the *covered individual* dies, include contact information for the funeral services provider and specify what documents will be needed.
- (5) 'What is included in the funeral plan?'
- This section should clearly set out using green tick boxes and text the key products and services provided by the *funeral plan*.
- (6) 'What additional costs could there be for me?'
- This section should clearly state the items which are not included in the cost of the plan and which will need to be paid for separately.
- This section should use red cross boxes and text to outline the key products and services NOT included in the plan. These must include any products the *customer* may reasonably expect to be included in their funeral.

A *firm* should also specify if there is a cost to changing funeral services provider and explain that there may be additional costs if the nominated representative chooses alternative items which are not included in the plan.

(7) 'What happens if the *covered individual* dies before payments are completed?'

A *firm* should provide a clear explanation of the coverage of the funeral plan contract if the *covered individual* dies before payments are completed, including any associated *fees*.

(8) 'How do I make a complaint?'

A *firm* should explain that a *customer's* nominated representative should complain to the *firm* in the first instance. The *firm* should provide information regarding its internal procedures for the reasonable and prompt handling of complaints.

If the nominated representative is unhappy with the *firm's* response, they may be able to refer the matter to the *Financial Ombudsman Service*. The representative may need to show that they are authorised to complain on behalf of the *customer*.

(9) 'Financial Services Compensation Scheme'

A *firm* should explain that if it is unable to meet its liabilities, the *customer* (or their estate, if the *customer* has died) may be entitled to compensation from the *compensation scheme*.

A *firm* should clearly state where *customers* and nominated representatives can find further information in relation to the *compensation scheme*.

(10) Information concerning potential provider failure'

A *firm* should briefly explain the arrangements in place to ensure that in the event of its *failure*:

- (a) 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
- (b) 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* or *covered individual* will promptly receive a payment corresponding to the *funeral plan customer balance*.

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.

## Plan Statement

This annex belongs to ■ FPCOB 9.3.11R.

1	Format	
		The plan statement must:
		(1) be a short and standalone document;
		(2) be presented and laid out in a way that is clear and easy to read, using characters of a readable size; and
		(3) be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white.
2	Length	
2.1	R	The plan statement must be set out on no more than 1 side of A4-sized paper when printed.
3	Presentation	
3.1	G	A <i>firm</i> , when providing the information in the plan statement, should consider:
		(1) the use of tables to display costs and other ways to make the document and information more accessible and easy-to-read;
		(2) the use of bold and italic text to highlight key information.
3.2	G	The <i>funeral plan provider</i> may insert its company logo to the right of the title.
4	Headings, corresponding information and order of content	
		(1) a clear and prominent statement outlining the purpose of the plan statement;
		(2) a clear and prominent statement that the <i>customer</i> should review the information in the document to consider whether the plan still meets their needs;
		(3) 'How much have I got left to pay?'
		This section should clearly set out: the <i>customer's</i> monthly payment (as appropriate), the total cost of their plan, and the amount paid to date.
		This section should also prominently set out details of the outstanding balance and the duration of the remaining payments.
		(4) 'What does my plan provide?'
		This section should set out a brief summary of what is included in, and excluded from, the plan and where further information can be found. This should also include the name of the relevant funeral services provider.
		(5) 'How do I make changes to my plan?'
		A <i>firm</i> should explain whether a <i>customer</i> can make changes to the plan, how to do so, what changes they can make (e.g. paying it off more quickly, adding items to the plan) and any related costs. A <i>firm</i> should also explain where to find further information.

- (6) 'How do I cancel my plan?'  
A *firm* should set out clearly and prominently the *customer's* right to cancel and identify any cancellation *fees*.
- (7) 'Financial Services Compensation Scheme'  
A *firm* should explain that if it is unable to meet its liabilities, the *customer* or *covered individual* (or their estate, if the *customer* or *covered individual* has died) may be entitled to compensation from the *compensation scheme*.  
A *firm* should clearly state where *customers* or *covered individuals* can find further information in relation to the *compensation scheme*.
- (8) 'Contact us'  
A *firm* should provide its contact details for the *customer*.

# Chapter 10

## Arrangements for the funeral



## 10.1 Application and purpose

### Application

10.1.1 **R** This chapter applies to a *funeral plan provider* that enters into a *funeral plan contract*, under which it undertakes to secure that another *person* provides a funeral for the *covered individual* on their death.

### Purpose

10.1.2 **G** The purpose of the requirements in this chapter is to provide certainty at the point of sale of a *funeral plan contract* that an appropriate funeral services provider will provide the services required under the contract at no additional cost to the *customer* or the *covered individual's* estate.

### Arrangements with the funeral services provider

10.1.3 **R** A *firm* must, within 30 days of the *customer's* purchase of a *funeral plan contract*, make appropriate arrangements for the funeral to be carried out. The arrangements must:

- (1) be legally enforceable;
- (2) be made with a funeral services provider that is located within a reasonable distance of the *covered individual's* address, unless:
  - (a) it is clear from the nature of the *funeral plan contract* that this was not the intention of both the funeral services provider and the *customer*; or
  - (b) the *customer* agrees otherwise;
- (3) identify the business name and address of the funeral services provider (including, as appropriate, the relevant branch) that will carry out the funeral; and
- (4) be such as to ensure that neither the *customer* nor the *covered individual's* estate are required to make further payments to the funeral services provider to provide the funeral in accordance with the *funeral plan contract*.

10.1.4 **R** Following compliance with **FPCOB 10.1.3R**, the *firm* must within 2 *business days* provide the *customer* with a notification of:

- (1) the name, address and contact details of the relevant funeral services provider; and



- (2) a summary of the arrangements made with the funeral services provider,  
in accordance with ■ FPCOB 6.2 (Means of communication to customers).
- 10.1.5 **R** The *firm* must provide the notification in ■ FPCOB 10.1.4R to the nominated representative at the same time as it is provided to the *customer* unless the circumstances in ■ FPCOB 9.3.7R apply.
- 10.1.6 **R** The *firm* must regularly review the arrangements under ■ FPCOB 10.1.3R to ensure that the funeral services provider will provide the services required under the *funeral plan contract*.
- 10.1.7 **G** For the purposes of ■ FPCOB 10.1.6R, a review should take place at least every 12 *months*.
- 10.1.8 **R** If at any time after a *firm* has complied with ■ FPCOB 10.1.3R, a *firm* becomes aware that the funeral services provider is unable or likely to be unable to provide the services required under the *funeral plan contract*, the *firm* must make alternative arrangements with another funeral services provider, at no additional cost to the *customer* or *covered individual*.
- 10.1.9 **R** In accordance with ■ FPCOB 6.2, the *firm* must notify:
- (1) the *customer*; and
  - (2) the nominated representative, unless the ■ FPCOB 9.3.6R circumstances apply,
- of any new arrangements made under ■ FPCOB 10.1.8R as soon as practicable and in any event, within 2 *business days* of making the arrangements.
- 10.1.10 **G** A *funeral plan provider* should consider its arrangements in respect of *subsisting funeral plans* and whether those arrangements would meet the purpose of the requirements in this section, what steps it might take to change those arrangements as a result and what notifications to make to the *customer* and the nominated representative.
- 10.1.11 **R** [deleted]

## 10.2 Transfers of funeral plans

### 10.2.1

**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 notify the *customer* and nominated representative that a transfer of the *funeral plan contract* has taken place within 30 days of the completion of the transfer and, where an undertaking is given in accordance with ■ FPCOB 10.2.2R(2), a copy must be provided.
- (3) The *firm* must ensure that arrangements meeting the requirements of ■ FPCOB 10.1.3R are in place within 30 days of the completion of the transfer.
- (4) If, as a result of the *firm's* compliance with this *rule*, there are any changes to the arrangements under the contract, the *firm* must notify the *customer* and the nominated representative in compliance with ■ FPCOB 10.1.4R and ■ FPCOB 10.1.5R.

### 10.2.2

**R**

- (1) This *rule* applies to a *funeral plan provider* in circumstances described in article 59(3) to (6) of the *Regulated Activities Order* who:
  - (a) intends to give an equivalent or substantially similar undertaking to a *customer* or a defined group of *customers* to replace an existing undertaking to provide, or secure the provision of, a funeral under a *funeral plan contract* between that *customer* and another person or *funeral plan provider*; and
  - (b) will not otherwise assume the existing undertaking by novation, assignment or operation of law.
- (2) On or before the date notified to the *FCA* under article 59(3)(e)(ii) of the *Regulated Activities Order*, where the receiving *funeral plan provider's* undertaking will replace the existing undertaking under the *funeral plan contract* which the *customer* had with the transferring *firm*, the receiving *funeral plan provider* must give a written undertaking to the *customer*:
  - (a) to provide a funeral on equivalent or substantially similar terms to the existing undertaking; and
  - (b) which provides the *customer* with a legally binding claim against it without the need for *customer* acceptance or any other action on the part of the *customer*.
- (3) At the same time that the written undertaking is provided to the *customer* under ■ FPCOB 10.2.2R(2), the *funeral plan provider* must

notify the *FCA* that the undertaking has been given and provide a copy of the undertaking.

- (4) The *funeral plan provider* must:
- (a) publish and maintain a copy of the written undertaking provided to the *customer* under ■ FPCOB 10.2.2R(2) on its website; and
  - (b) maintain appropriate records, including records of the undertaking and the *customers* to whom it applies, until such time as there are no longer any *customers* to whom the undertaking applies.
- (5) On request by the *customer* or their nominated representative, the *funeral plan provider* must promptly provide a further copy of the undertaking by post and/or by email.

10.2.3

G

- (1) The effect of ■ FPCOB 10.2.2R is that a *customer* for whom a *funeral plan provider* becomes responsible in regulatory terms following a transfer of business is provided with a binding undertaking from that receiving provider, which will provide a civil cause of action against that *firm* should it be needed.
- (2) An example of where such a civil cause of action may be needed is if the *funeral plan provider* became insolvent and the *customer* or their estate wanted to make a claim to the *compensation scheme*.
- (3) The fact that ■ FPCOB 10.2.2R is actionable under s.138D of *FSMA* at the suit of a private person means a customer to whom (in breach of that *rule*) a written undertaking is not made will in any event have a claim against that *funeral plan provider*.

10.2.4

G

An example of a legally binding undertaking which would fulfil the requirement at ■ FPCOB 10.2.2R includes a deed poll executed by the *funeral plan provider* in favour of a *customer* or defined group of *customers*.

10.2.5

G

The obligation in ■ FPCOB 10.2.2R(4)(a) does not require the receiving *funeral plan provider* to publish information on its website which meets the definition of personal data under the *General Data Protection Regulation*.



# Chapter 11

## Fees

## 11.1 Application and purpose

### Application

- 11.1.1 **R** This chapter applies to a *firm* in relation to *funeral plan provision* and *funeral plan distribution*.

### Purpose

- 11.1.2 **G** *Principle 6* requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. A *firm* is also under an obligation to comply with the *customer's best interests rule* and, as a consequence of this sourcebook's *customer communication* requirements, to communicate information to *customers* in a clear, fair and not misleading way. This chapter reinforces these requirements by preventing a *firm* from imposing *fees* which amount to profit.

### Instalment payment fee

- 11.1.3 **R** ■ FPCOB 11.1.4R applies to a *firm* that charges an *instalment payment fee*.
- 11.1.4 **R** A *firm* must not impose an *instalment payment fee* on a *customer* unless it is equal to or lower than the aggregate of:
- (1) a reasonable pre-estimate of any costs incurred by the *firm* as a result of the *customer* paying in instalments rather than in a single payment; and
  - (2) a reasonable pre-estimate of any lost investment gain which is a result of that *customer* paying in instalments rather than in a single payment.
- 11.1.5 **R** A *firm* must be able to objectively justify that the calculation of the *instalment payment fee* does not include profit above that which the *firm* would make, or which would have been generated by *trust arrangements* or *insurance-based investment products*, if the *customer* paid for the *funeral plan contract* in a single payment.
- 11.1.6 **G** For the purposes of ■ FPCOB 11.1.4R(2), 'lost investment gain' refers to a reasonable estimate of the difference between:
- (1) the investment return that instalment payments under an *instalment payment funeral plan* will make when invested under the *trust*

*arrangements or insurance-based investment products* over the period of time that instalments in that plan are agreed; and

- (2) the investment return that would have been expected from the *customer's* payment if the *customer* had paid for the *funeral plan contract* in a single payment at the date the *funeral plan contract* was entered into and that payment (less any charges or deductions the *firm* would ordinarily have made) had been invested under the *trust arrangements or insurance-based investment products* for the period of time used when estimating the amount in paragraph (1).

#### Other fees

11.1.7

**R**

A *firm* must ensure that any *fee*, other than an *instalment payment fee* or *FP distribution charge*, imposed on a *customer* is based upon a reasonable reflection of the costs incurred by the *firm*, in providing the service to which the *fee* relates, and not with a view to profit.





## Chapter 12

# Handling of payments by intermediaries

## 12.1 Application and purpose

### Application

- 12.1.1 **R** This chapter applies to a *firm* in relation to *funeral plan provision* and *funeral plan distribution*.
- 12.1.2 **G** A *firm* (including a *funeral plan provider*) that has accepted responsibility for *funeral plan distribution* undertaken by an *appointed representative* must ensure that the representative complies with this chapter as if it was an intermediary *firm* (see ■ FPCOB 1.2.4R).

### Purpose

- 12.1.3 **G** The *rules* in this chapter mitigate the risk of loss to *customers* on the insolvency of a *firm* engaged in *funeral plan distribution*. Such a *firm* cannot receive or handle payments for a *funeral plan contract* except in some limited circumstances by cheque or in the form of cash and can only receive or handle a cash payment if that contract will be effective from the moment of receipt.



## 12.2 Obligations on intermediaries

**12.2.1** **R** A firm engaged in funeral plan distribution must not accept payments which are payable to a funeral plan provider under a funeral plan contract unless:

- (1) the payment is:
  - (a) received as agent for the funeral plan provider;
  - (b) made in cash;
  - (c) made at the time the funeral plan contract is entered into by the firm as agent of the funeral plan provider; and
  - (d) deemed received by the funeral plan provider on receipt by the agent under the following contracts:
    - (i) the funeral plan contract;
    - (ii) the contract between the funeral plan provider and the agent; and
    - (iii) (where the firm is using an appointed representative) the contract between the firm and the representative; or
- (2) [deleted]
- (3) the payment is made by cheque payable to the funeral plan provider and:
  - (a) is paid into the bank account of the funeral plan provider promptly and, in any event, no later than three business days after receipt; or
  - (b) is forwarded to the funeral plan provider promptly and, in any event, no later than 3 business days after receipt.

**12.2.3** **G** The effect of **FPCOB 12.2.1R** is that a firm engaging in funeral plan distribution can only accept payment for a funeral plan contract if the payment is made by cheque payable to the funeral plan provider or in cash and, if cash, the funeral plan provider will be bound by that contract from the moment that any cash payment is received by the firm.

**12.2.4** **R** **FPCOB 12.2.1R** does not apply to:

- (1) a funeral plan provider when distributing its own funeral plan contracts directly to customers; or
- (2) a payment which is an FP distribution charge.

## 12.3 Obligations on providers

### 12.3.1

**R**

A *funeral plan provider* must ensure that its arrangements for another *firm* or an *appointed representative* to distribute *funeral plan contracts*:

- (1) prohibit that *person* from accepting payments payable to a *funeral plan provider*; or
- (2) prohibit such payments other than by cheque or in cash and:
  - (a) are compatible with the requirements of ■ FPCOB 12.2.1R; and
  - (b) (for arrangements with a *firm*) make clear whether or not the *firm* is permitted to appoint *appointed representatives* to act as agent for the *funeral plan provider* in receiving contractual payment in cash.



## 12.4 Appointed representatives

- 12.4.1** **G** A firm which appoints an *appointed representative* to distribute *funeral plan contracts* should prohibit the representative from accepting payments which are payable to a *funeral plan provider* under a *funeral plan contract* (other than an *FP distribution charge*) unless the conditions at ■ FPCOB 12.2.1R are satisfied.
- 12.4.2** **G** For the purposes of ■ FPCOB 12.2.1R (1)(c) a *funeral plan contract* would be entered into at the point that an *appointed representative* acting as agent of a *funeral plan provider* bound that *funeral plan provider* to its terms.
- 12.4.3** **G** Where a *funeral plan provider* appoints another *firm* to undertake *funeral plan distribution* in relation to its *funeral plan contracts* and that *firm* has an *appointed representative* who it permits to accept cash payment for that contract, ■ FPCOB 12.2.1(1)(d) would be satisfied where the *appointed representative* receives the cash payment as sub-agent for the *funeral plan provider* and the contracts which underpin the arrangements ensure this (including the contract between the *firm* and its representative).



# Chapter 13

## Cancellation



## 13.1 Application

13.1.1

**R**

This chapter applies to a *firm* entering into a *funeral plan contract*.





## 13.2 The right to cancel

**13.2.1** **R** A *customer* has a right within the longer of:

- (1) 30 *days*; or
- (2) 7 *days* of being notified of the appointed funeral services provider (■ FPCOB 10.1.4R); or in the case of an *instalment payment funeral plan contract*, 30 *days* or the *moratorium period*, whichever is longer; or
- (3) in the case of an *instalment payment funeral plan contract*, the *moratorium period*,

to cancel the *funeral plan contract*, without giving any reason and without being required to pay any amount to do so.

**13.2.2** **R** The following events in relation to an *instalment payment funeral plan contract* must, for the purposes of this chapter, be taken to be a cancellation:

- (1) the death of the *covered individual* (other than as a result of an accident) within the *moratorium period*;
- (2) the cancellation by the *firm*, having complied with the payment shortfall rules (■ FPCOB 2.3), of the *funeral plan* due to the *customer's* failure to settle a *payment shortfall*.

**13.2.3** **R** ■ FPCOB 13.2.2R does not apply where the *customer* and *firm* have agreed that any party may pay sums outstanding under the *instalment payment funeral plan* and the *funeral plan* be redeemed.

**13.2.4** **G** A *firm* may provide longer or additional cancellation rights voluntarily, but if it does these should be on terms at least as favourable to the *customer* as those in this chapter, and any differences should be clearly explained.

### Exception to the right to cancel

**13.2.5** **R** The right to cancel does not apply to a *funeral plan contract* under which a redemption request has been made or the funeral has been provided.

**Start of the cancellation period**

---

13.2.6

**R**

The cancellation period begins either:

- (1) from the *day* the *customer* is informed that the contract has been concluded; or
- (2) from the *day* on which the *customer* receives the contractual terms and conditions and any other pre-contractual information required under this sourcebook, if that is later than the date referred to above.

**Exercising a right to cancel**

---

13.2.7

**R**

If a *customer* exercises the right to cancel:

- (1) they must notify this to the *firm* before the expiry of the relevant deadline;
- (2) a *firm* must enable a *customer* to make the notification via the same medium by which the *customer* purchased the *funeral plan contract*; and
- (3) the deadline shall be deemed to have been observed if the notification, if on paper or another *durable medium*, is dispatched before the deadline expires.

13.2.8

**G**

A *firm* may provide additional methods by which the *customer* can make a notification of cancellation to the *firm*.

## 13.3 Effects of cancellation

### Termination of contract

- 13.3.1 **R** By exercising the right to cancel, the *customer* withdraws from the *funeral plan contract* and the contract is terminated.

### Firm's obligation on cancellation

- 13.3.2 **R**
- (1) This *rule* applies where a *funeral plan contract* is:
    - (a) cancelled by the customer in accordance with ■ FPCOB 13.2.1R; or
    - (b) deemed cancelled by the *funeral plan provider* (■ FPCOB 13.2.2R) during the *moratorium period*.
  - (2) A *firm* must, without any undue delay and no later than within 30 *days*, return to a *customer* any sums it has received from them in accordance with the contract, except as specified in this section.
  - (3) This period shall begin from the *day* on which the *firm* receives the notification of cancellation.



## Chapter 14

# Funeral plan redemption



## 14.1 Application and purpose

### Application

- 14.1.1 **R** (1) This chapter applies to a *funeral plan provider* in relation to the activity of *carrying out a funeral plan contract*.
- (2) This chapter applies in relation to *subsisting funeral plans* unless compliance would be contrary to a term of the *subsisting funeral plan* agreed with the *customer* prior to 29 July 2022.

### Purpose

- 14.1.2 **G** This chapter concerns the conduct of a *funeral plan provider* in relation to the redemption of a *funeral plan contract* upon the death of the *covered individual*.

### Redemption

- 14.1.3 **R** A *funeral plan provider* must:
- (1) handle the redemption of a *funeral plan* promptly and fairly;
  - (2) provide reasonable guidance and appropriate information to help a *customer* or a nominated representative to make arrangements, in accordance with the *funeral plan contract*; and
  - (3) not unreasonably reject a request to redeem a *funeral plan* (including by cancelling a *funeral plan contract*).

### Services required for the funeral plan contract

- 14.1.4 **R** Upon notification of the *covered individual's* death, the *funeral plan provider* must ensure that the services required for the *funeral plan contract* are delivered:
- (1) to a satisfactory quality and standard by the appointed funeral services provider, or if that funeral services provider is unable to provide the required services, appoint another funeral services provider at no additional cost to the *customer* or *covered individual's* estate; and
  - (2) in a timely manner,
- in accordance with the terms of the *funeral plan contract*.

14.1.5 **G** In relation to ■ FPCOB 14.1.4R, where a *firm* uses outsourcing arrangements to fulfil this obligation, it retains the regulatory responsibility for achieving the required outcome (■ FPCOB 2.1.5G).

14.1.6 **R** Other than as set out in ■ FPCOB 14.1.7R, a *firm* must not seek or obtain further payments from the *customer* or from the *covered individual's* estate to secure the funeral services as set out in the *funeral plan contract*.

**Outstanding payments**

14.1.7 **R** If upon the *covered individual's* death, further payments are due to the *firm* under the *funeral plan contract*, the *firm* must inform the *customer* and *covered individual's* estate within 24 hours of receiving notification of the *covered individual's* death of the following matters:

- (1) that further payments are due to the *firm* under the *funeral plan contract*;
- (2) the sums received under the *funeral plan contract*; and
- (3) the amount of the shortfall.

14.1.8 **R** ■ FPCOB 14.1.7R does not apply where the effect of ■ FPCOB 7.2.1R is that a funeral will be provided on the death of the *covered individual* even where payments are outstanding under an *instalment payment funeral plan contract*.





# Chapter 15

## Prudential requirements

## 15.1 Application and purpose

### General application

15.1.1 **R** Subject to **■** FPCOB 15.1.2R, this chapter applies to *firms* with a *Part 4A permission for regulated funeral plan activities*.

15.1.2 **R** This chapter does not apply to a *PRA-authorised person*.

### Purpose

- 15.1.3 **G**
- (1) The purpose of **■** FPCOB 15 is to set out the detailed prudential obligations that apply to *regulated funeral plan activity*.
  - (2) Adequate financial resources are necessary for the effective management of prudential risks. The *rules* in this chapter therefore impose requirements relating to the financial resources of a *firm* to which this chapter applies.
  - (3) The *rules* concern the adequacy of the financial resources that a *firm* needs to hold in order to be able to meet its liabilities as they fall due (the *general solvency requirement*). These resources include both capital and liquidity resources.
  - (4) The *rules* also place a *core capital resources* requirement on a *firm* to which this chapter applies. This *core capital resources requirement* varies depending on the nature of the activities undertaken by the *firm*.



## 15.2 General solvency requirement

- 15.2.1** **R** A *firm* must at all times maintain overall financial resources which are adequate, both as to amount and quality, to ensure that there is no significant risk that its liabilities cannot be met as they fall due. This includes capital resources and liquidity resources.
- 15.2.2** **G** The liabilities referred to in the *general solvency requirement* include:
- (1) a *firm's* contingent and prospective liabilities;
  - (2) liabilities that arise both in scenarios where the *firm* is a going concern and where the *firm* ceases to be a going concern; and
  - (3) claims that could be made against a *firm* which ought to be paid in accordance with fair treatment of *customers*, even if such claims could not be legally enforced.
- 15.2.3** **G** The liabilities referred to in the *general solvency requirement* exclude liabilities that might arise from transactions that a *firm* has not entered into and which it could avoid. This could include, for example, taking realistic management actions such as ceasing to transact new business after a suitable period of time has elapsed.
- 15.2.4** **G** A *firm* should therefore make its assessment of adequate financial resources on realistic valuation bases of assets and liabilities, taking into account the actual amounts and timings of cash flows under realistic adverse projections.
- 15.2.5** **G** Risks may be addressed through holding capital to absorb losses that unexpectedly materialise. The ability to pay liabilities as they fall due also requires liquidity. Therefore, *firms* should consider both capital and liquidity needs in assessing the adequacy of their financial resources. A *firm* should also consider the quality of its financial resources, such as the loss-absorbency of different types of capital and the time required to liquidate different types of asset.
- 15.2.6** **G** As part of its day-to-day supervision of a *firm*, the *FCA* may review whether the amount and quality of capital and liquidity resources that a *firm* holds to comply with its *general solvency requirement* is sufficient.

- 15.2.7 **G** Where necessary, the *FCA* may consider the use of its powers under section 166 of the *Act* (Reports by skilled persons) to assist with the review referred to in ■ FPCOB 15.2.6.
- 15.2.8 **G**
- (1) Following such a review, the *FCA* may conclude that a *firm* should hold an additional amount or quality of capital or liquidity resources to comply with the *general solvency requirement*.
  - (2) Where this is the case, the *FCA* will normally specify an amount or quality of capital or liquidity resources that the *firm* should hold by:
    - (a) issuing *individual capital guidance*;
    - (b) issuing *individual liquidity guidance*; or
    - (c) imposing a *requirement* on the *firm*.
  - (3) The amounts in (2) will typically represent the *FCA*'s assessment of the *firm's general solvency requirement*. However, in some cases, it may be specified on a different basis (such as by reference to a specific component of the *general solvency requirement* or to a particular risk or harm).
  - (4) The *FCA* may choose to conduct reviews of the *regulated funeral plans activities* sector, or aspects of it. In such cases, the *FCA* may subsequently choose to issue *guidance* on a sectoral basis or to impose additional *requirements* on all, or only a subset of, the entities included within that review. The *guidance* or *requirement* may relate to:
    - (a) additional amounts or quality of capital or liquidity resources that such *firms* must hold; or
    - (b) other actions that such *firms* must undertake.
- 15.2.9 **G** The *FCA* will determine whether a *requirement* or *guidance* is more appropriate. Where the *FCA* chooses to issue *guidance*, this will normally explain how the *FCA* will approach supervising the *general solvency requirement* in relation to the *firm*. The *FCA* expects that the *firm* would normally confirm to the *FCA* that the *firm* will hold the amounts specified in that *guidance* going forward (and will therefore hold the relevant capital and or liquidity resources to comply with the *general solvency requirement*), unless the *firm* subsequently determines that higher amounts are required.
- 15.2.10 **G** Where the *FCA* considers that it is appropriate to apply a *requirement* in connection with the *general solvency requirement*, it may invite a *firm* to make a voluntary application under section 55L(5) of the *Act* to impose a *requirement* on the *firm* to hold the level of capital or liquidity resources that the *FCA* has assessed as being required by the *firm* in order to meet the *general solvency requirement*.
- 15.2.11 **G** *Guidance* on the *general solvency requirement* issued by the *FCA* will apply until the *FCA* issues revised *guidance* (or varies or removes the *requirement* relating to the *general solvency requirement*) in relation to the *firm*.

- 15.2.12 **G** If a *firm* subsequently determines, as a result of its own assessment, that it needs to hold a higher level or quality of capital or liquidity resources to satisfy the *general solvency requirement*, it must hold that higher level. This is because the *FCA's* assessment (or a *requirement* applied to the *firm* by the *FCA*) reflects an assessment carried out at that point in time and does not relieve the *firm* of its obligation to ensure that it is meeting the *general solvency requirement* at all times.
- 15.2.13 **G** A *firm's* business model or operating model may undergo a significant change, with the result that the *firm* considers that the amount or quality of capital or liquidity resources specified in the *guidance* issued by, or the requirement applied by, the *FCA* exceeds the amount or quality of capital or liquidity resources that the *firm* requires to comply with the *general solvency requirement*. In this case, the *firm*:
- (a) should undertake its own assessment of the amounts that the *firm* now requires to comply with the *general solvency requirement* or, where applicable, to address the risks in relation to which the *requirement* was imposed; and
  - (b) having undertaken the determination in (a), may contact the *FCA* to request a review of the existing *guidance* or *requirement*.
- 15.2.14 **G** The *FCA* will not give *individual capital guidance* or *individual liquidity guidance* to the effect that the amount of capital advised in that *guidance* is lower than the amount of capital which a *firm* should hold to meet its *core capital resources requirement*.

**15.3 Core capital resources requirement**

15.3.1

**R**

A firm must at all times maintain *capital resources* equal to or in excess of its *core capital resources requirement*.



**15.4 Capital resources: relevant accounting principles**

15.4.1

**R**

A *firm* must recognise an asset or liability, and measure its amount, in accordance with the relevant accounting principles applicable to it for the purpose of preparing its *annual financial statements*.

## 15.5 Core capital resources requirement for funeral plan provision activities

- 15.5.1** **R** Subject to ■ FPCOB 15.7.1R, for a *firm* with a *Part 4A permission* to carry on regulated funeral plan provision activities to which ■ FPCOB 15.6.1R does not apply, the *core capital resources requirement* is the higher of:
- (1) £20,000;
  - (2) 2.5% of the *firm's annual income*; or
  - (3) the sum of:
    - (a) the number of undrawn *funeral plan contracts* backed by *trust arrangements*, multiplied by the median of the amounts that would be payable to the *firm* under each *trust arrangement* if a funeral were required on the day following the end of the *firm's* previous period for submitting its funeral plan financials return in accordance with ■ SUP 16.12, multiplied by 0.5%; and
    - (b) the number of undrawn *funeral plan contracts* backed by a *whole of life insurance policy*, multiplied by the median of the amounts payable to the *firm* under each *whole of life insurance policy* if a funeral were required on the day following the end of the *firm's* previous period for submitting its Funeral plan financials return in accordance with ■ SUP 16.12, multiplied by 0.5%.
- 15.5.2** **R** The calculation in ■ FPCOB 15.5.1R(3) does not include any undrawn *legacy funeral plan contracts* held by the *firm*.





**15.6 Core capital resources requirement for a firm that only undertakes funeral plan distribution activity**

**15.6.1**

**R**

Subject to ■ FPCOB 15.7.1R, for a *firm* with a *Part 4A permission* to carry on *funeral plan distribution activity* that does not also carry on any other *regulated funeral plan activity*, the *core capital resources requirement*, is the higher of:

£10,000; or

2.5% of the *firm's annual income*.

**15.7** Core capital resources requirement for a firm carrying on other regulated activity

- 15.7.1** **R** Where a *firm* to which this chapter applies also has a *Part 4A permission* to carry on other *regulated activities*, the capital resources requirement is the higher of:
- (1) the *core capital resources requirement* in ■ FPCOB 15.5.1R or ■ FPCOB 15.6.1R; and
  - (2) a capital resources requirement (however described) applied to the *firm* by any other *rule or requirement*.



## 15.8 Calculation of annual income

### Annual income

15.8.1 **R** A *firm's annual income* refers to all income received or receivable, whether arising from the *firm's permitted activities* or not, as reported in its most recent audited *annual financial statements*.

### Annual income: periods of less than 12 months

15.8.2 **R** If the *firm's most recent annual financial statement* does not cover a 12-month period, the *annual income* is taken to be the amount in the statement converted, proportionally, to a 12-month period.

### Annual income: no financial statements

15.8.3 **R** If the *firm* does not have *annual financial statements*, the *annual income* is to be taken from the forecast or other appropriate accounts which the *firm* has submitted to the *FCA* in accordance with its reporting obligations in **SUP 16.12**.

15.8.4 **R** If a *firm* is a *principal*, its *annual income* includes amounts due to its *appointed representative* in respect of activities for which the *firm* has accepted responsibility.

15.8.5 **R** If a *firm* is a *network*, it should include the relevant income due to all of its *appointed representatives* in its *annual income*.



## 15.9 Calculation of core capital resources

### The calculation of a firm's core capital resources

**15.9.1** **R** A firm must calculate its *capital resources* for the *core capital resources requirement* from the items that are eligible to contribute to a firm's *capital resources*, as set out in items 1 to 6 in the table in ■ FPCOB 15.9.3R.

**15.9.2** **R** In arriving at its calculation of its capital resources for the *core capital resources requirement* a firm must deduct the items set out in items 1 to 5 in the table in ■ FPCOB 15.9.5R.

**15.9.3** **R** The items that are eligible to contribute to the *capital resources* of a firm are set out in the following table:

Item	Additional explanation
1	<p><i>Share capital</i> This must be fully paid and may include:</p> <ul style="list-style-type: none"> <li>(1) ordinary <i>share capital</i>; or</li> <li>(2) preference <i>share capital</i> (excluding preference <i>shares</i> redeemable by shareholders within 2 years).</li> </ul>

Item	Additional explanation
<p>2 Cap-ital other than share capital (for example, the capital of a sole trader, partnership or limited liability partnership)</p>	<p>The capital of a <i>sole trader</i> is the net balance on the <i>firm's</i> capital account and current account.</p> <p>(2) The capital of a <i>partnership</i> is the capital made up of the <i>partners'</i>:</p> <p>(a) Capital account, which is the account:</p> <p>(i) into which capital contributed by the <i>partners</i> is paid; and</p> <p>(ii) from which, under the terms of the <i>partnership</i> agreement, into which capital contributed by the <i>partners</i> is paid; and from which an amount representing capital may be withdrawn by a <i>partner</i> only if:</p> <p>(A) the person ceases to be a <i>partner</i> and an equal amount is transferred to another such account by their former <i>partners</i> or any person replacing them as their <i>partner</i>, or</p> <p>(B) the <i>partnership</i> is otherwise dissolved or wound up; and</p> <p>(b) Current accounts according to the most recent financial statement.</p> <p>For the purpose of the calculation of capital resources in respect of a <i>defined benefit occupational pension scheme</i>:</p> <p>(1) a <i>firm</i> must derecognise any <i>defined benefit asset</i>;</p> <p>(2) a <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's deficit reduction amount</i>, provided that the election is applied consistently in respect of any one <i>financial year</i>.</p>
<p>3 Re-serves (Note)</p>	<p>These are (subject to the Note) the audited accumulated profits retained by the <i>firm</i> (after deduction of tax, dividends and proprietors' or <i>partners'</i> drawings) and other reserves created by appropriations of share premiums and similar realised appropriations. Reserves also include gifts of capital, for example, from a <i>parent undertaking</i>.</p> <p>For the purposes of calculating capital resources, a <i>firm</i> must make the following adjustments to its reserves, where appropriate:</p> <p>(1) a <i>firm</i> must deduct any unrealised gains or, where applicable, add back in any unrealised losses on debt instruments held, or formerly held, in the available-for-sale financial assets category;</p> <p>(2) a <i>firm</i> must deduct any unrealised gains or, where applicable, add back in any unrealised losses on cash flow hedges of financial instruments measured at cost or amortised cost;</p> <p>(3) in respect of a <i>defined benefit occupational pension scheme</i>:</p> <p>(a) a <i>firm</i> must derecognise any <i>defined benefit asset</i>;</p> <p>(b) a <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's reduction amount</i>, provided that the election is applied consistently in respect of any one <i>financial year</i>.</p>

Item	Additional explanation
4	In- If a <i>firm</i> seeks to include interim net profits in the calculation of terimits capital resources, the profits must (subject to the Note), be veri- net fied by the <i>firm's</i> external auditor, net of tax, anticipated divi- profits or proprietors' drawings and other appropriations. (Note)
5	Re- [Editor's note: Deliberately left blank.] valu- ation reserves
6	Sub- Subordinated loans/debt must be included in capital on the basis or- of the provisions in this chapter that apply to subordinated loans/ din- debts. ated loans/ debt

**Note: Reserves**

Reserves must be audited, and interim net profits, general and collective provisions must be verified by the *firm's* external auditor unless the *firm* is exempt from the provisions of Part 16 of the Companies Act 2006 (section 477 (Small companies: conditions for exemption from audit)) relating to the audit of accounts.

**15.9.4** **G** A *firm* should keep a record of and be ready to explain to its supervisory contacts in the *FCA* the reasons for any difference between the *deficit reduction amount* and any commitment the *firm* has made in any public document to provide funding in respect of a *defined benefit occupational pension scheme*.

**15.9.5** **R** In arriving at its calculation of its capital resources for the *core capital resources requirement* a *firm* must deduct the items set out in the following table:

Item	Additional explanation
1	<i>Investments</i> in own <i>shares</i>
2	<i>Investments</i> in <i>subsidiaries</i> (Note 1)
3	Intangible assets (Note 2)
4	Interim net losses (Note 3)
5	Excess of drawings over profits for a <i>sole trader</i> or a <i>partnership</i> (Note 3)
Notes:	<p>1. <i>Investments</i> in subsidiaries are the full balance sheet value.</p> <p>2. Intangible assets are the full balance sheet value.</p> <p>3. The interim net losses in row 4, and the excess of drawings in row 5, are in relation to the accounting period following the date as at which the <i>capital resources</i> are being computed.</p>

**Personal assets**

15.9.6 **R** In relation to a sole trader's *firm* or a *firm* which is a *partnership*, the *sole trader* or a *partner* in the *firm* may use personal assets to meet the *core capital resources requirement*, to the extent necessary to make up any shortfall in meeting that requirement, unless:

- (1) those assets are needed to meet other liabilities arising from:
  - (a) personal activities; or
  - (b) another business activity not regulated by the *FCA*; or
- (2) the *firm* holds *client money* or other *client assets* in relation to *regulated activities* other than *regulated funeral plan activity*.

15.9.7 **G** A *sole trader* or a *partner* may use any personal assets, including property, to meet the capital requirements of this chapter, but only to the extent necessary to make up a shortfall.

**Subordinated loans**

15.9.8 **R** A subordinated loan/debt must not form part of the *capital resources* for the *core capital resources requirement* of the *firm* unless it meets the following conditions:

- (1) it has an original maturity of:
  - (a) at least 5 years; or
  - (b) it is subject to 5 years' notice of repayment;
- (2) the claims of the subordinated creditors must rank behind those of all unsubordinated creditors;
- (3) the only events of default must be non-payment of any interest or principal under the debt agreement or the winding up of the *firm*;
- (4) the remedies available to the subordinated creditor in the event of non-payment or other default in respect of the subordinated loan/debt must be limited to petitioning for the winding up of the *firm* or proving the debt and claiming in the liquidation of the *firm*;
- (5) the subordinated loan/debt must not become due and payable before its stated final maturity date, except on an event of default complying with (3);
- (6) the agreement and the debt are governed by the law of England and Wales, or of Scotland or of Northern Ireland;
- (7) to the fullest extent permitted under the rules of the relevant jurisdiction, creditors must waive their right to set off amounts they owe the *firm* against subordinated amounts owed to them by the *firm*;

(8) the terms of the subordinated loan/debt must be set out in a written agreement that contains terms that provide for the conditions set out in this *rule*; and

(9) the loan/debt must be unsecured and fully paid up.

15.9.9

**R**

When calculating its *capital resources*, the *firm* must exclude any amount by which the aggregate amount of its subordinated loans/debts exceeds the amount calculated as follows:

A - B

where:

A is equal to the sum of items 1 to 6 (inclusive) in the table of items in ■ FPCOB 15.9.3R, which are eligible to contribute to a *firm's capital resources*.

B is equal to the sum of items 1 to 5 (inclusive) in the table of items in ■ FPCOB 15.9.5R which must be deducted in arriving at *firm's capital resources*.





## 15.10 Systems, strategies, processes and reviews

### Purpose

- 15.10.1 **G** In addition to adequate financial resources, adequate systems and controls are necessary for the effective management of prudential risks. The rules in this section therefore impose *requirements* relating to such systems and controls.
- 15.10.2 **G** This section also has *rules* requiring a *firm* to identify, assess and document:
- (1) risks to it being able to meet its liabilities as the fall due;
  - (2) how it intends to mitigate these risks; and
  - (3) the amount and nature of financial resources that the *firms* consider necessary to address any remaining risks.
- 15.10.3 **G** The *FCA* may review this assessment as part of its own assessment of the adequacy of a *firm's* financial resources.

### Systems, strategies, processes

- 15.10.4 **R** A *firm* must use sound, effective and comprehensive systems, strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of financial resources that it considers adequate to cover:
- (1) the nature and level of the risks to which it is or might be exposed; and
  - (2) the risk that the *firm* might not be able to meet its *core capital resources requirement* and *general solvency requirement* in the future.

### Documentation of risk assessments

- 15.10.5 **R** A *firm* must make a written record of the assessments required under **FPCOB 15.10.4R**. In particular, it must make a written record of:
- (1) the major sources of risk identified in accordance with **FPCOB 15.10.4R**; and
  - (2) how it intends to deal with those risks.

- 
- 15.10.6** **R** A *firm* must retain the records of its assessments referred to in **■ FPCOB 15.10.5R** for at least 3 years.
- 15.10.7** **G** The *FCA* may review the written record of the assessment as set out under **■ FPCOB 15.10.5R** as part of its own assessment of the adequacy of a *firm's* financial resources as part of its day-to-day supervision of *firms*.



15.11 Action for damages

15.11.1

**R**

A contravention of the *rules* in ■ FPCOB 15 does not give rise to a right of action by a *private person* under section 138D of the *Act* and each of those *rules* is specified under section 138D(3) of the *Act* as a provision giving rise to no such right of action.



# Chapter 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 *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 the *funeral plan contract* must specifically provide for whether payment will be made to the *customer* or *covered individual*) ; 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*; or
  - (iii) the *firm* is neither attempting, nor will it attempt, a transfer of the *funeral plan contract* to another *firm* that has permission to *carry out funeral plan contracts as provider*;
- (c) the obligation under (a) is not owed if the *firm* achieves such a transfer;
- (d) the *customer* irrevocably appoints the *firm*, for the duration of the *funeral plan contract*, as an agent for the purposes of asserting any right or interest that they have in the relevant trust or *contract of insurance* arranged under ■ FPCOB 3.1.6R, such appointment being without prejudice to the possibility of the *customer* or *covered individual* asserting their rights or interests themselves;
- (e) the *customer* gives prior and informed consent for the transfer of the *firm's* obligations (towards the *customer* or, where appropriate, the *covered individual*) under the *funeral plan contract* to another *funeral plan provider* in the event of its *failure*, and that such prior consent:
  - (i) must not be limited to a transfer only to a particular *firm* or particular *firms*; and
  - (ii) must only be to:
    - (A) transfers arranged by an insolvency practitioner appointed to the *firm* 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*; and
    - (B) transfers arranged by the *FSCS*, in securing continuity of the *funeral plan contract* under ■ COMP 3.3.3R, with consent to the contract being varied so as to result in the *funeral plan contract* being *carried out* by the transferee on terms corresponding in all material respects (so far as it appears to the *FSCS* to be reasonable in the circumstances) to those which applied under the *funeral plan contract* entered into with the *firm*; and
- (f) no consent is required from any *covered individual* to the matters in paragraph (e).
- (4) 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 ■ FPCOB 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*.

16.1.7

G

**Guidance on arrangements with other firms for continuity**

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:

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;

rely on a *customer's* consent as described in ■ FPCOB 16.1.5R(3)(e); and

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*.

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

R

(1) *Firms* are reminded of the disclosure requirements in ■ FPCOB 9.2.7R (Funeral plan summary) and ■ FPCOB 9.3.6R (Nominated representative document).

(2) In relation to *subsisting funeral plans*, a *firm* should consider:

(a) notifying each *customer* and their nominated representative of any arrangements put in place as a result of the guidance in ■ FPCOB 16.1.2G(2);

(b) notifying each *customer* and their nominated representative of any subsequent changes to those arrangements; and

(c) where the *firm* makes such a notification, making it alongside the annual statement required under the rule at ■ FPCOB 9.3.11R.

16.1.10

**G**

*Firms* are reminded of the disclosure requirements under *Principle 11* and in ■ SUP 16.3.21R (Insolvency, bankruptcy and winding up).

## 16.2 Funeral Plan Resolution Manual

### Application

16.2.1

**R**

This section applies to a *firm* that carries out as provider:

- (1) *new funeral plans*;
- (2) *subsisting funeral plans*.

16.2.2

**G**

- (1) As a result of **■ FPCOB 16.2.1R**, this chapter applies to a *firm* in relation to any *funeral plan contract* that it is *carrying out as a provider*, regardless of when it entered into that contract or when the *firm* from which it took on the responsibilities under that contract entered into that contract.
- (2) *Firms* should consider whether their *funeral plan resolution manual* should make different provision for *new funeral plans* and *subsisting funeral plans*.

### Contents of the funeral plan resolution manual

16.2.3

**R**

A *firm* must produce and keep up-to-date a *funeral plan resolution manual* which contains information about the *firm* that, in the event of the *firm's failure*, would assist in resolving the *firm's* business of *carrying out a funeral plan contract as provider*. It must, as a minimum, include a written explanation of each of the following:

- (1) how the *firm* conducts the business of *carrying out a funeral plan contract as provider*, what the day-to-day operation of that business entails, and what resources would be needed to continue that business if the *firm failed*, including a specification of:
  - (a) critical staff and their respective roles;
  - (b) critical premises;
  - (c) the *firm's* IT systems;
  - (d) the *firm's* record-keeping systems, including how records are organised;
    - 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 to ensure that:
  - (i) *funeral plan contracts* entered into by the *firm* will continue to be *carried out* by another *firm*; and
  - (ii) any 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*.
- (3) any terms in contracts that may need to be relied on to ensure the outcomes referred to in (2)(i) and (2)(ii);
- (4) how to access any record of each *funeral plan contract* facilitated by the *firm*, including where this is required under ■ FPCOB 16.1.5R; 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 the *firm* 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.



## Chapter 17

# Application of other parts of the Handbook



## 17.1 Application and purpose

**17.1.1** **G** This chapter applies to a *firm* carrying out *regulated funeral plan activities*. It is intended to draw a *firm's* attention to the application of other key parts of the *FCA Handbook* to *firms*, as set out in the table at ■ FPCOB 17.1.2G.

**17.1.2** **G** Application of other parts of the Handbook and of Regulatory Guides

Module	Relevance to Funeral Plan Firms
The Principles for Businesses ( <i>PRIN</i> )	The Principles for Businesses ( <i>PRIN</i> ) set out high-level requirements imposed by the <i>FCA</i> . They provide a general statement of regulatory requirements. The <i>Principles</i> apply to all <i>firms</i> .
Senior Management Arrangements, Systems and Controls ( <i>SYSC</i> )	<a href="#">SYSC 1</a> , <a href="#">SYSC 4</a> to <a href="#">SYSC 10</a> , <a href="#">SYSC 18</a> , <a href="#">SYSC 19F.3</a> , <a href="#">SYSC 21</a> , <a href="#">SYSC 22</a> , <a href="#">SYSC 23</a> , <a href="#">SYSC 24</a> , <a href="#">SYSC 27</a> and <a href="#">SYSC 28A</a> apply to <i>firms</i> carrying out <i>regulated funeral plan activities</i> .
Code of Conduct ( <i>COCON</i> )	This contains <i>rules</i> and <i>guidance</i> that are directly applicable to a <i>firm's</i> <i>SMF managers</i> , <i>certification employees</i> and other <i>conduct rules staff</i> . It also contains <i>guidance</i> for <i>firms</i> on giving their staff training about <i>COCON</i> and general factors to which the <i>FCA</i> will have regard when assessing compliance with the <i>COCON rules</i> .
Threshold Conditions ( <i>COND</i> )	In order to become <i>authorised</i> under the <i>Act</i> all <i>firms</i> must meet the <i>threshold conditions</i> . The threshold conditions must be met on a continuing basis by <i>firms</i> . Failure to meet one of the conditions is sufficient grounds for the exercise by the <i>FCA</i> of its powers.
Statements of Principle and Code of Practice for Approved Persons ( <i>APER</i> )	<i>APER</i> applies to <i>FCA approved persons</i> working within an <i>appointed representative</i> and so is not relevant to a <i>firm</i> without <i>appointed representatives</i> .  The <i>Statements of Principle</i> are <i>rules</i> made under section 64A(1)(a) of the <i>Act</i> (Rules of conduct).



Module	Relevance to Funeral Plan Firms
<p>The Fit and Proper test for Employees and Senior Personnel (<i>FIT</i>)</p>	<p>The <i>Code of Practice for Approved Persons</i> sets out descriptions of conduct which, in the opinion of the <i>FCA</i>, do or do not comply with a <i>Statement of Principle</i>. The <i>Code of Practice for Approved Persons</i> also sets out, in certain cases, factors which, in the opinion of the <i>FCA</i>, are to be taken into account in determining whether or not an <i>approved person's</i> conduct complies with a <i>Statement of Principle</i>.</p> <p>The purpose of <i>FIT</i> is to set out and describe the criteria that a <i>firm</i> should consider when assessing the fitness and propriety of a <i>person</i>:</p> <ul style="list-style-type: none"> <li>(1) in respect of whom an application is being made for approval to undertake a <i>controlled function</i> under the senior managers regime;</li> <li>(2) who has already been approved;</li> <li>(3) who is a <i>certification employee</i>;</li> <li>or</li> <li>(4) whom a <i>firm</i> is considering appointing to be a <i>certification employee</i>.</li> </ul> <p>It also sets out and describes criteria that the <i>FCA</i> will consider when assessing the fitness and propriety of a <i>candidate for a controlled function</i> position and that it may consider when assessing the continuing fitness and propriety of <i>approved persons</i>.</p>
<p>Training and Competence (<i>TC</i>)</p>	<p><i>TC</i> sets out rules and guidance regarding the competence of a <i>firm's</i> employees, continuing professional development and associated record keeping requirements.</p>
<p>General Provisions (<i>GEN</i>)</p>	<p><i>GEN</i> contains <i>rules</i> and <i>guidance</i> on general matters, including interpreting the <i>FCA Handbook</i>, statutory status disclosure, the <i>FCA's</i> logo and insurance against financial penalties.</p>
<p>Fees manual (<i>FEES</i>)</p>	<p>This manual sets out the fees applying to <i>firms</i>.</p>
<p>Product Intervention and Product Governance Sourcebook (<i>PROD</i>)</p>	<p>The purpose of <i>PROD</i> is to improve <i>firms'</i> product oversight and governance processes. For <i>funeral plan products</i>, this sets out the systems and controls which need to be established by product <i>manufacturers</i> and <i>distributors</i> to deliver fair value products. <i>PROD</i> also sets out the <i>FCA's</i> statement of policy on mak-</p>

Module	Relevance to Funeral Plan Firms
Supervision manual ( <i>SUP</i> )	<p>ing temporary and permanent product intervention rules.</p> <p><i>SUP</i> sets out the relationship between the <i>FCA</i> and <i>firms</i>. As a general rule, <i>SUP</i> contains material that is of continuing relevance after authorisation.</p>
Decision, Procedure and Penalties manual ( <i>DEPP</i> )	<p><i>DEPP</i> sets out:</p> <p>(1) the <i>FCA</i>'s decision-making procedure for giving <i>statutory notices</i>. These are <i>warning notices</i>, <i>decision notices</i> and <i>supervisory notices</i> (<i>DEPP</i> 1.2 to <i>DEPP</i> 5); and</p> <p>(2) the <i>FCA</i>'s policy with respect to the imposition and amount of penalties under the Act (see <i>DEPP</i> 6).</p>
Dispute Resolution: Complaints ( <i>DISP</i> )	<p><i>DISP</i> sets out <i>rules</i> and <i>guidance</i> in relation to treating complainants fairly and the <i>Financial Ombudsman Service</i>.</p>
Compensation ( <i>COMP</i> )	<p><i>COMP</i> sets out <i>rules</i> relating to the scheme for compensating <i>consumers</i> when authorised <i>firms</i> are unable, or likely to be unable, to satisfy claims against them.</p>
Professional Firms ( <i>PROF</i> )	<p><i>PROF</i> is relevant to <i>exempt professional firms</i> and <i>authorised professional firms</i> which engage in <i>funeral plan distribution</i>.</p>
The Enforcement Guide ( <i>EG</i> )	<p>The Enforcement Guide (<i>EG</i>) describes the <i>FCA</i>'s approach to exercising the main enforcement powers given to it by the <i>Act</i> and by other legislation.</p>
Financial Crime Guide: A firm's guide to countering financial crime risks ( <i>FCG</i> ) and Financial Crime Thematic Reviews ( <i>FCTR</i> )	<p><i>FCG</i> and <i>FCTR</i> provide <i>guidance</i> on steps that a <i>firm</i> can take to reduce the risk that it might be used to further <i>financial crime</i>.</p>
The Perimeter Guidance Manual ( <i>PERG</i> )	<p>The purpose of <i>PERG</i> is to give <i>guidance</i> about the circumstances in which <i>authorisation</i> is required, or <i>exempt person</i> status is available, including <i>guidance</i> on the activities which are regulated under the <i>Act</i> and the exclusions which are available.</p>
The Unfair Contract Terms and Consumer Notices Regulatory Guide ( <i>UNFCOG</i> )	<p><i>UNFCOG</i> explains the <i>FCA</i>'s policy on how it will use its powers under the Consumer Rights Act 2015 in relation to unfair terms and consumer notices.</p>

# Funeral Plan: Conduct of Business sourcebook

## Schedule 1 Recordkeeping requirements

### Sch 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*.

### Sch 1.2 G

It is not a complete statement of those requirements and should not be relied on as if it were.

Handbook reference	Subject of record	Content of record	When record must be made	Retention period
FPCOB 3.1.11R, 3.1.12G(3)	Monies held on trust for <i>customers</i>	Location and amount of monies held on trust for particular <i>customers</i>	When making safeguarding arrangements specified in FPCOB 3.1.11R	Not specified
FPCOB 4.2.13R(1)	<i>Financial promotion</i>	<i>A financial promotion communicated or approved</i> (subject to exemptions)	When <i>communicated or approved</i>	6 years
FPCOB 4.2.13R(2)	Telemarketing scripts	Copy of any script used	Date script used	6 years
FPCOB 6.4.18R	<i>FP distribution charges</i>	<i>FP distribution charges</i> paid by each <i>customer</i>	Date paid by <i>customer</i>	Not specified
FPCOB 15.9.4G	Calculation of <i>core capital resources</i>	Reasons for any difference between the <i>deficit reduction amount</i> and any public commitment to provide funding in respect of a <i>defined benefit occupational pension scheme</i>	When calculating its capital resources for the <i>core capital resources requirement</i>	Not specified
FPCOB 15.10.5R	Risk assessments	Assessments required under FPCOB 15.10.4R including major sources of risk and how the	When assessments are made under FPCOB 15.10.4R	At least 3 years

Handbook reference	Subject of record	Content of record	When record must be made	Retention period
FPCOB 16.1.5R(4)	Single central record	<i>firm</i> intends to deal with them 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
FPCOB 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 FPCOB 16.2.4R)

## Funeral Plan: Conduct of Business sourcebook

### Schedule 2 Notification and reporting requirements

#### Sch 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*.

#### Sch 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
FPCOB 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>
FPCOB 3.2.5R(2)	Assets of the trust are insufficient to cover the liabilities	If the <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 the report that the assets of the trust are insufficient to cover the trust's liabilities	In accordance with SUP 15.7.1R, at the same time as providing a copy of the <i>solvency assessment report</i> , see also FPCOB 3.2.5R(1)
FPCOB 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 SUP 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>
FPCOB 3.2.10R(1)	Concerns with implementation of the <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	<i>Funeral plan provider's</i> suspicion that it will not be able to fully implement the <i>remediation plan</i> in accord-	In accordance with SUP 15.7.1R, as soon as the <i>funeral plan provider</i> suspects that it will not be able to fully

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
FPCOB 3.2.10R(2)	Inability to fully implement the <i>remediation plan</i>	Notify the <i>FCA</i> if the solvency level of the trust remains below 100% following the <i>funeral plan provider's</i> attempts to implement the <i>remediation plan</i>	Inability to fully implement the <i>remediation plan</i>	In accordance with SUP 15.7.1R, immediately
FPCOB 3.2.11R(3)	Remediation of trust deficit	Remediation of trust deficit	Remediation of trust deficit	In accordance with SUP 15.7.1R and SUP 15.7.11G, as soon as reasonably practicable after the trust shortfall has been remedied
FPCOB 10.1.4R	Funeral arrangements	Notify the <i>customer</i> and (unless the circumstances in FPCOB 9.3.7R apply) nominated representative with relevant funeral director's name, address, contact details and summary of arrangements	Compliance with FPCOB 10.1.3R	As soon as practicable and in any event within 2 business days of compliance with FPCOB 10.1.3R

## Funeral Plan: Conduct of Business sourcebook

### Schedule 3 Right of action for damages

#### Sch 3.1 G

The table below sets out the *rules* in *FPCOB* the 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.

#### Sch 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, that person's 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.

#### Sch 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 his 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.

Rights of action under section 138D					
Chapter	Section/ Annex	Paragraph	For private person?	Removed?	Removed?
	The <i>fair, clear and not misleading rule</i> in FPCOB 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 provision excluding or restricting any duty or liability		Yes	No	Yes Any other person
	The prudential <i>rules</i> for <i>firms</i> carrying on <i>regulated funeral plan activity</i> in FPCOB 15		No	Yes (see FPCOB 15.11.1R)	No
	All other <i>rules</i> in <i>FPCOB</i>		Yes	No	No
Notes					
1.	FPCOB 4.2.10R 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> .				

