

Regulation of funeral plans: Feedback to CP21/20 and final rules

Policy Statement

PS21/15

November 2021

This relates to

Consultation Paper 21/20
which is available on our website at
www.fca.org.uk/publications

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1 Summary

- 1.1** On 5 July 2021, we published the final rules for the regulation of the pre-paid funeral plans market, [PS21/8: Feedback to CP21/4 and final rules](#), which will take effect when we become the statutory regulator for the market from 29 July 2022.
- 1.2** At the same time, we issued a further consultation, [CP21/20: Regulation of funeral plans: Further proposals](#). This set out the outcomes we want to see for consumers in the event of a firm failure. It contained proposals on the resolution of regulated funeral plan firms and Financial Services Compensation Scheme (FSCS) protection, and our proposed requirements for the structure of funeral plan providers' trust and insurance arrangements.
- 1.3** It also set out additional proposals for our regulation of funeral plans. These covered obligations for firms to notify customers and nominated representatives following a transfer of funeral plan contracts, and guidance to be added to our Funeral Plan: Conduct of Business sourcebook (FPCOB) and Perimeter Guidance Manual (PERG).
- 1.4** In this paper, we summarise the feedback to the consultation and publish our final rules. Our final rules include new guidance for funeral plan providers to help them ensure their arrangements for trust-backed funeral plans meet our requirements.
- 1.5** Following engagement with stakeholders on PS21/8, we have also made minor corrections and amendments to the rules we finalised in that paper. Details can be found in Chapter 6 of this paper. These corrections and amendments do not alter our policy intentions or the outcomes we intend to deliver with our rules.

Who this affects

- 1.6** This will affect:
- consumers that have a funeral plan (or bought one on behalf of others), or are thinking of buying one
 - solicitors or representatives of funeral plan holders
 - solicitors representing firms or investment advisers involved in selling, carrying out or advising on funeral plans in the UK, and/or insurance firms and trustees of trusts backing some funeral plans
 - investment advisers who provide advice on funeral plan contracts
 - firms that sell or carry out funeral plan contracts for funerals in the UK
 - insurance firms who provide life insurance policies that back some funeral plans
 - trustees of trusts and discretionary investment managers which manage the assets of trusts that back some funeral plans
 - trade bodies representing firms that carry out or sell funeral plan contracts
 - groups representing consumer interests
 - FSCS levy-payers

The wider context to this policy statement

Regulating the funeral plans market

- 1.7** The Government has legislated to make the FCA the statutory regulator for the funeral plans market. This legislation will take effect from 29 July 2022. This was in response to concerns raised in the media and by consumer groups over the harmful conduct of some funeral plan providers. We also flagged in our 2018/2019 Perimeter Report that we believe the funeral planning industry should be subject to our regulation.

Our previous consultations

- 1.8** In March 2021 in CP21/4 – Funeral Plans: Proposed approach to regulation, we consulted on a broad suite of proposed rules and guidance for the funeral plans sector. Our proposals were intended to protect consumers who have taken, or will take out, a pre-paid funeral plan product. Following that consultation we made final rules in PS21/8 with the aim of improving outcomes for consumers in this sector through better value products, better sales practices, and better controls so consumers can be confident they will receive the funeral they expect.
- 1.9** CP21/4 also contained initial proposals on resolution and compensation arrangements to provide backstops to customers should things go wrong with a regulated plan provider. Some of these proposals covered protection for funeral plan customers under the FSCS. We also sought views on how much funeral plan providers should be expected to reimburse to customers should they fail.
- 1.10** Following feedback on these proposals in CP21/4, we consulted further in CP21/20 on specific rules on the reimbursement amount and on FSCS protection.

What we are changing

- 1.11** In CP 21/20 we consulted on provisions to:
- minimise harm to consumers from the failure of a regulated funeral plan provider and protect their interests if the firm becomes insolvent
 - ensure an orderly resolution if regulated funeral plan providers fail
 - ensure a transfer of contracts to another provider wherever possible
 - enable the FSCS to arrange continuity of funeral plan contracts or pay appropriate compensation if it declares the regulated funeral plan provider 'in default'
 - manage any undue impact on FSCS levy-payers
- 1.12** Specifically, we set out requirements for funeral plan providers to ensure that, if they fail, payments can be made to customers from the underlying trust or insurance arrangements without undue delay. The requirements would also ensure that the plan provider's liability to their customers is not limited by any contractual term to a level below that needed to buy a replacement funeral plan.
- 1.13** We consulted on rules that would allow the FSCS - if it declares a funeral plan provider 'in default' - to secure continuity of funeral plan contracts, and vary existing rights or obligations involving the plan provider's underlying trusts or insurance arrangements. This is so the FSCS can seek recoveries from those trusts or insurance arrangements

to help mitigate the impact on levy-payers. In our consultation we explained that these rules are subject to further legislation being made by the Government.

- 1.14** Our rules would make sure that where a customer or covered individual dies while the arrangement of continuity is ongoing, the FSCS would be able to ensure a funeral is provided. We also proposed rules to clarify the treatment of costs where the FSCS arranges continuity of funeral plan contracts.

Outcomes we are seeking

- 1.15** Our final rules outlined in this paper introduce further measures to support the outcomes for the funeral plans market that we previously set out in CP 21/4. These are:
- firms sell products fairly which meet consumer needs and offer fair value
 - firms are well-run and have high conduct standards and sufficient resources and risk transfer arrangements to ensure ongoing delivery of funeral services
 - consumers have time and all the information they need to make better informed decisions when choosing between different products and are able to decide whether a funeral plan is right for them
 - protections are in place to ensure the fair treatment of consumers, many of whom may be in vulnerable circumstances
 - clear and proportionate standards that we can supervise for firms in the sector to meet

Summary of feedback and our response

- 1.16** We received 15 responses to our consultation. We had responses from funeral plan providers, industry membership bodies for funeral plan providers and funeral directors, consumer bodies, insurers, professional firms and faith bodies. We also met with stakeholders during the consultation period, including industry groups, plan providers and consumer bodies.
- 1.17** Overall, the responses were positive, with respondents supporting the proposals and our policy aims. We are now making rules which we consider best take into account the feedback received, while delivering on the above outcomes.
- 1.18** In general, respondents did not raise significant objections to our proposals. Instead, many of the responses asked questions about how the proposals to handle the existing contracts of an authorised plan provider that fails would work in practice. These questions covered issues around appropriate trust structure to ensure payments could be made to the correct beneficiaries, funding arrangements, and impacts on customers holding plans with a failed provider.
- 1.19** Most of the feedback we received focused on:
- **Level of reimbursement** - several industry bodies asked for more detail on what a 'good outcome' for the customer would entail where a reimbursement is paid, if a plan provider fails without a transfer of existing contracts to a new provider.

- **Treatment of existing customers in a transfer scenario** - several industry bodies asked how customers will be treated if their plan provider fails and contracts are transferred to a new provider. Other respondents wanted to know whether customers can expect all the features of their original contract, for example choice of funeral director, to be carried over, and if the customer would be given a choice of whether to agree to a transfer or a reimbursement.
- **FSCS pay-outs and recoveries** – including whether and how FSCS cover would pay out in different scenarios for the benefit of the relevant claimant and how it would recover its costs. One respondent asked for clarification on whether customers will receive further compensation from the FSCS if the trust assets redistributed to consumers do not amount to the full monies owed.
- **Trust structure** - including questions from several respondents on appropriate trust structure to ensure plan providers can meet all our requirements, and that payments can be made to appropriate beneficiaries, including customers, if a plan provider fails. There were also questions about powers and duties to take action against a trustee if that trustee breached obligations under the trust deed or general law.
- **Partial refunds** – flagging the inability of plan providers to pay partial refunds to customers who request them under the rules as proposed. Some industry respondents noted that the rules as drafted would not allow a plan provider to refund a customer using monies in the underlying trust if, for example, the customer downgrades, as opposed to cancels, their plan and the required payments for the plan are lower.

1.20 We give full details in the following chapters, but want to highlight the following elements in summary:

- **Level of reimbursement** – we are making our rules as consulted on. These already provide specificity on what constitutes a good outcome for customers in a reimbursement scenario. We believe they provide an appropriate level of customer protection, while ensuring prudential and solvency requirements on plan providers are sustainable and aiming to minimise the burden on FSCS levy-payers. We provide further explanation in Chapter 2.
- **Treatment of customers in a transfer scenario** – we are making our rules as consulted on. Our rules ensure that the plan provider must get prior and informed consent from each customer for future transfers to take place if the provider fails. Given the practicalities, we expect providers to seek this consent when the customer buys the plan. The consent must be for the funeral plan contract to be taken on by another plan provider (the transferee) on the same terms as the original contract. This includes the choice of funeral director. If the replacement provider were to offer different terms to customers (eg a different funeral director), it would need to agree new terms with the customer. Where the FSCS is involved to facilitate a transfer of contracts, our rules allow it to find a new plan provider that will deliver the contracts on terms which are the same in 'all material respects... so far as reasonable in the circumstances' as the existing contract. If the FSCS is not able to do so, it must give the customer the option of receiving cash compensation instead, and consider whether further consent is required from the customer for a transfer. If the customer chooses to receive this compensation, the FSCS must ensure that the provider reduces any future premiums due by an amount that the FSCS considers reasonable to reflect the change in terms. We believe this extra flexibility for the FSCS is necessary to allow it to secure a transfer of contracts, where that would generally be the more beneficial outcome for the customers. The customer will have the option not to agree to the transfer if the contract carried out

by the new provider is not on the same terms 'in all material respects'. We provide further explanation in Chapter 3.

- **FSCS pay outs and recoveries** – we are making our rules as consulted on, subject to the introduction of proposed associated legislation by the Government (details in Chapter 3 paragraph 3.4). Our compensation rules provide the FSCS with options to enable it to respond effectively to a funeral plan provider or intermediary failure. The FSCS can arrange continuity of funeral plan contracts where possible, or otherwise pay cash compensation to customers or covered individuals. Where the FSCS has declared a regulated funeral plan provider 'in default' and arranged continuity or compensation for customers, our rules allow it to recover at least some of the costs of funding continuity or paying compensation, to help reduce the impact on levy-payers. We provide further explanation in Chapter 3.
- **Trust structure** – we are amending the rules as consulted on in 2 areas to respond to feedback received. These amendments are consistent with our original policy intention and are aimed at making the rules as clear as possible. To help guide plan providers towards an appropriate trust structure, we will introduce new Handbook guidance (see FPCOB 3 – Annex – form of beneficial trust) setting out the key features of the trust structure plan providers should use. This will also require consequential amendments to the rules as consulted on. We have also amended the rules to protect customers from harm that could arise where trustees are not fulfilling their obligations, but the customer is unable to take action against them and the plan provider also does not take action against them. We are making rules to require that the plan provider is appointed as an agent of the customer under the funeral plan contract to protect the customer's interests under the trust. The plan provider could then take action against the trustees if it is concerned that trustees are not fulfilling their obligations to the provider or its customers, and would have a duty as agent for the latter. While we got feedback on this issue for trust-backed plans, we believe corresponding new rules should also be made for insurance-backed plans to ensure consumers have the same protection. We give further explanation in Chapter 4.
- **Partial refunds** – we are amending our rules as consulted on in response to feedback. We consulted on rules that specified that the plan provider could withdraw money from the trust to provide a refund to a customer in the case of plan cancellation. We recognise that sometimes customers may require only a partial refund (eg if they downgrade their existing plan to one of a lower value) and we do not want to prevent this type of payment. So, we are amending the rules as consulted on to allow partial refunds in these circumstances. We provide further explanation in Chapter 4.
- **The application of the 'by way of business' test to burial societies or other religious organisations** – we are amending the guidance as consulted on. This is in response to feedback that it was not clear how the commercial element of the 'by way of business' test applied to burial societies or other religious organisations conducting funerals on a not-for-profit basis. We explain further in Chapter 5.
- **Minor amendments and corrections** – following feedback on PS 21/8 which identified a small number of cross-reference errors and other minor issues, we will correct these in our rules. These changes are needed to reflect the original policy intention and offer firms greater flexibility. We provide further explanation in Chapter 6.

Measuring success

- 1.21** We have already outlined in CP 21/4 the strong authorisation, supervisory and enforcement processes that we will put in place to ensure firms meet the standards set out in our final rules and can deliver against the outcomes we want to see in the market.
- 1.22** We also set out our plans to conduct a post-implementation review of our regime in 2026, giving the industry time to adapt to these changes. In the interim we will be actively supervising firms operating in industry against our rules and will be prepared to intervene if our supervision identifies issues in the market. The proposals in this paper do not alter our plans for the review and support our ongoing approach to supervision of the market.

How it links to our objectives

Ensuring relevant markets work well

- 1.23** These changes (as part of our overall regulation of the funeral plan sector) ensure the market works well through higher conduct standards and financial resilience, greater protection of consumers, and by promoting competition in the interests of consumers.

Consumer protection

- 1.24** These changes protect consumers in the event of the failure of an authorised funeral plans firm, including access to appropriate FSCS protection.

Competition

- 1.25** These changes should ultimately improve the conduct and financial resilience of firms operating in the market, encouraging them to compete to provide quality products and services. They will ensure consumers have good quality information to enable them to compare products which have equivalent standards of protection and redress.

Equality and diversity considerations

- 1.26** We considered the equality and diversity issues that may arise from our proposals, including through the feedback we have received to CP21/20.
- 1.27** We have concluded that our proposals do not adversely impact any of the groups with protected characteristics under the Equality Act 2010, ie age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment (in Northern Ireland, the Equality Act is not enacted, but other antidiscrimination legislation applies).
- 1.28** We contacted numerous religious organisations to engage with them on CP21/20's perimeter guidance proposals, which we understood to be of particular interest to them. We received 2 specific responses to our consultation on this issue, which we have considered and responded to in this Policy Statement.

Next steps

- 1.29** We have now made our resolution rules (Chapter 2), the bulk of our trust and insurance structure rules (Chapter 4), amendments to our Perimeter Guidance Manual (PERG) (Chapter 5), and minor corrections to rules made in PS21/8 (Chapter 6) with the publication of this paper. They will come into force on 29 July 2022, along with other rules made in PS21/8.
- 1.30** Rules relating to the FSCS (Chapter 3) are dependent on the Government's proposed legislation being introduced. We intend to finalise them subject to the legislation being made, and for them to come into force on 29 July 2022.

2 Resolution

2.1 In CP21/20 we consulted on further proposals on the resolution arrangements that regulated funeral plan firms must have in place if they fail and enter insolvency proceedings. With these proposals we aimed to protect customers and ensure good outcomes if firms fail. We proposed that a firm must have arrangements to make payments to its customers with minimal delay if it cannot transfer its contracts to another provider, and that its contracts with customers must specify that the firm will facilitate such payments. We also proposed that firms should not be able to use contractual terms to limit their liability to customers to below the level needed to buy a replacement funeral plan.

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

2.2 Respondents generally supported our resolution proposals, including the objectives of enabling a transfer to a new provider where possible, or otherwise allowing a reimbursement of available funds from the underlying trust or insurance arrangements. Some respondents asked how payments would flow across the parties involved, and how far the customers' wishes in the original funeral plan contract would be honoured if the contract was transferred to a new provider.

2.3 In response to this feedback, we are clarifying:

- **'Good outcomes'** - the meaning of 'good outcome' for a consumer where a firm enters a resolution process, including whether customers could expect a new funeral plan on the same terms as their original plan.
- **Supply chain costs** - the costs that all connected firms that feature in the supply chain will incur in meeting our requirements.
- **Existing contractual arrangements** - whether existing contracts entered into before regulation begins need to be changed to meet our proposals.
- **Guidance on customers in vulnerable circumstances** - the need for additional guidance for insolvency practitioners dealing with consumers in vulnerable circumstances in the context of funeral plan firm insolvencies.
- **Central record of plans** - whether a central record of funeral plans could be maintained, to assist an insolvency practitioner or the FSCS if a firm with inadequate records fails.
- **Enforcement powers over trustees** - whether funeral plan firms are able to take action against the trustees if the trustees fail to manage the trust appropriately.
- **Further changes to resolution rules** – we have also made further changes to the rules we consulted on.

2.4 **'Good outcomes'**
We were asked to clarify our expectations around the requirements in FPCOB 16.1.4R for funeral plan firms (particularly providers) to have arrangements that ensure 'good outcomes' for consumers and covered individuals should they fail. Respondents asked for clarification of our expectations if a plan holder opts for reimbursement.

2.5 In the case of a transfer as opposed to a reimbursement, we were also asked about how far the arrangements need to specify the terms under which the transferee must

carry out the contract, such as the choice of funeral director. One respondent also pointed out that different consumers would attach different importance to particular aspects of their funeral arrangements, for example particular importance being attached to a specific funeral director.

Our response

When we refer to 'good outcomes' we are encouraging firms to ensure that, as well as meeting our specific requirements set out in the rules, their arrangements will ensure that they achieve good outcomes for consumers. This will require firms to apply their own judgement to consider and ensure that they act in consumers' interests.

We consider the best outcome for a consumer when a funeral plan provider fails would be the transfer of their funeral plan to a new provider. Accordingly, the rules that we consulted on required firms to have arrangements in place to ensure there will be a reasonable likelihood that the relevant funeral plan contracts will continue to be carried out by another provider.

To enable such a transfer, we will require firms to get prior and informed consent from each customer for the transfer of the firm's obligations under the plan contract to another firm should it fail. The transfer would need to be on the same terms as the customer's original funeral plan contract including, for example, the choice of funeral director. We expect consent to be sought at the time of buying the plan. If the customer does not wish to consent to this type of transfer, they would probably not sign up to the specific plan on offer.

Accordingly, as the transfer in reliance of this consent would have to be on the same terms, customers can be reassured that the original requirements they specified when they originally took out the plan would be met. In some circumstances, eg where the insolvency practitioner cannot find a transferee to take on the contracts on the same terms, the customer may be asked to consent to a change in contract terms.

In the event that the FSCS arranges a transfer of plans using the proposed continuity powers, there may be different outcomes for the customer, which we discuss further in Chapter 3.

Supply chain costs

- 2.6** One respondent asked us to clarify the respective costs that would fall to different entities in the funeral plan supply chain. The respondent also felt we needed to give clearer direction to trustees and directors about level of funding needed to protect consumers in the event of failure. They suggested a minimum trust solvency threshold of 120%, rather than 110% as in PS21/8.

Our response

Our resolution rules apply to funeral plan providers. Plan providers are responsible for complying with the resolution requirements in these rules and for ensuring that the insurance contracts and trusts underpinning funeral plan contracts will deliver all the applicable outcomes in the funeral plan resolution rules.

Our CBA included in CP21/8 - and also the CBA in our original consultation, CP21/4 - set out the costs that funeral plan firms were expected to incur in meeting our requirements. The CBA focuses on the costs to funeral plan firms which we will regulate from 29 July 2022. These firms will be directly affected by our rules. It would not be reasonably practicable for us to estimate the costs that might fall to other entities in the supply chain, eg funeral service providers, as these would be a commercial matter between the funeral plan firm and the other entity.

We confirmed the 110% solvency requirement in PS21/8. We explained that we consider the prohibition on extracting surpluses below 110% solvency as the appropriate level to ensure firms have a necessary buffer in place against investment volatility or other unexpected shocks. We calibrated this to allow trusts to hold sufficient assets over liabilities to withstand events of 199 out of the next 200 years.

We would expect that in many circumstances firms would hold funds in the trust that are above the 110% requirement.

Existing contractual arrangements

- 2.7 We were asked whether firms need to update existing contractual arrangements to ensure that they meet our new requirements.

Our response

The guidance at FPCOB16.1.2G of our resolution rules explains that the resolution requirements relate to new funeral plans entered into following the start of regulation on 29 July 2022. For subsisting funeral plans (those that commenced before the start of regulation) firms should consider whether their arrangements would meet our resolution requirements. For contracts that would not, firms should consider what changes to their arrangements they could make to bring them into line with our requirements.

While providers – or trustees – are not required to change existing contractual arrangements, they should consider doing so where it is possible. We want to see firms and their customers benefit from the framework established under our rules.

Guidance on consumers in vulnerable circumstances

- 2.8 Some respondents suggested the need for additional guidance for insolvency practitioners when dealing with customers in vulnerable circumstances.

Our response

We recently published 2 documents that provide relevant guidance - Guidance for firms on the fair treatment of vulnerable customers (FG21/1) and Guidance for insolvency practitioners on how to approach regulated firms (FG21/4). This should help insolvency practitioners consider the particular needs of these customers, and our role in firm failures, before and after their appointment.

Central record of plans

2.9 We were asked to consider the need for a central record of funeral plans.

Our response

We do not consider that establishing a central register of funeral plans should be necessary under our rules. Firms themselves must keep orderly records of their business (SYSC 9.1.1R) which would then be available to insolvency practitioners and the FSCS if they fail. Our resolution rules also require firms to maintain a single central record containing all up-to-date and pertinent information and documents relating to each funeral plan contract they have entered into and under which they have undischarged obligations. In addition, firms must maintain a funeral plan resolution manual which has information about the firm that, if the firm fails, would help in resolving its business of carrying out a funeral plan contract as provider.

Enforcement powers over trustees

2.10 We were asked whether funeral plan providers are able to take action against the trustees if the trustees fail to manage the trust appropriately.

Our response

We agree that funeral plan providers should be able to take steps to ensure the trustees operate the trust appropriately on behalf of funeral plan customers.

We have introduced a new requirement at FPCOB 16.1.5R(3)(d). This requirement means that funeral plan contracts must include terms under which customers appoint the funeral plan provider as their agent for the purpose of asserting any right or interest that they have in the relevant trust or insurance arrangement. The plan provider could then take action against the trustees or insurer if it was concerned that they were not fulfilling their obligations to either the provider or its customers. The plan provider would have a duty to take action for the customer because of its appointment as agent.

Further changes to resolution rules

- 2.11** As well as the change to FPCOB 16.1.5R(3)(d), we consider a further amendment to FPCOB 16.1.5R is necessary to meet our resolution and wider policy objectives.

Our response

We have amended the requirement at FPCOB 16.1.5R(3)(e) which means that customers (and, where appropriate, the covered individual) must give prior and informed consent for the transfer of the firm's obligation under the funeral plan contract to another funeral plan provider if it fails. This amendment makes it clear that the requirement applies to both an insolvency practitioner appointed to the firm and to the FSCS when the FSCS is securing continuity of the funeral plan contract through a transfer of business. In practice, we would expect customers would give this consent at the point that they enter into the funeral plan contract, as part of the standard terms and conditions. This will ensure that there will be no barriers to transfer if a provider fails.

Final resolution rules

- 2.12** We explained in PS21/8 that we would not finalise the resolution rules consulted on in CP21/4 while we consulted on further resolution rules in CP21/20.
- 2.13** Accordingly, we finalise the resolution rules as consulted on across CP21/20 and CP21/3, subject to the amendments detailed above. The rules are set out in the annex to this policy statement.

3 Compensation

3.1 In PS21/8 we confirmed that FSCS protection for funeral plan business would begin upon regulation of funeral plan firms on 29 July 2022, where both an authorised firm is declared 'in default' by the FSCS and claims relate to acts or omissions occurring from the date of FCA regulation. We confirmed that the FSCS would be allowed discretion to calculate compensation due to an eligible claimant to the extent that the payment of compensation is essential to provide the claimant with fair compensation. We also confirmed that FSCS costs attributed to funeral plan claims would be funded by a new 'funeral plan claims' FSCS funding class, to be funded by regulated funeral plan providers and intermediaries. The class will have a funding threshold of £5 million, after which the wider 'retail pool' of levy-payers would be required to contribute.¹

3.2 In CP21/20, we consulted on further proposals to strengthen the rules confirmed in PS21/8 relating to the FSCS:

- Firstly, to secure continuity of cover and pay appropriate compensation if that is not possible. This would enable the FSCS to have a range of available options when responding to the failure of a regulated funeral plan provider, to achieve appropriate consumer protection.
- Secondly, to give the FSCS the right to vary existing rights or obligations for funeral plan providers' underlying trust and insurance arrangements so that it can seek recoveries. This would give the FSCS additional recovery rights and thereby help reduce the impact of firm failure on FSCS levy-payers.

3.3 As we explained in CP21/20, these rules are subject to the Government proceeding with necessary legislative changes, through:

- a new Section 215A in the Financial Services and Markets Act (FSMA) - to allow us to make rules to enable the FSCS to take steps to secure continuity; and
- amending Section 215 of FSMA - to allow us to make rules to give recovery rights to the FSCS over the trust or insurance arrangements.

3.4 We also consulted on further changes involving the FSCS including to confirm that:

- a 'customer' is not entitled to claim against a failed regulated funeral plan provider in cases where a 'covered individual' is an eligible claimant.
- the FSCS may postpone the payment of compensation if either it, or an insolvency practitioner appointed to the failed provider, is trying to secure continuity of the funeral plan contract.

Continuity of cover

3.5 The proposed addition of s215A FSMA would allow us to make rules to provide the option for the FSCS to arrange continuity of funeral plan contracts rather than pay compensation, where the FSCS has declared the regulated funeral plan provider 'in default'. This means that if the failed firm's insolvency practitioner does not have enough funds available for a transfer, the FSCS would be able to arrange continuity either by:

¹ In PS21/8 we confirmed that we would review the class limit at least one year after regulation has started.

- securing or supporting the transfer of existing funeral plan contracts to a new regulated funeral plan provider; or
- arranging for a new regulated funeral plan provider to issue new funeral plan contracts as an alternative to paying compensation.

3.6 Either outcome would ensure that the customers of the failed regulated funeral plan provider (who are eligible claimants under the FSCS) are provided with equivalent (or similar) funeral plan arrangements, notwithstanding the failure of the original provider.

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

3.7 Respondents broadly agreed with our proposals to introduce rules to allow the FSCS to arrange continuity of funeral plan contracts, subject to relevant legislation being made. Most respondents agreed this would be the best outcome for consumers if the failed funeral plan provider had insufficient resources to arrange a transfer itself.

3.8 We were asked how the FSCS would in practice secure continuity, regarding:

- FSCS capacity
- Information for consumers
- Terms and conditions

FSCS capacity

3.9 We were asked if the FSCS has sufficient capacity and capability to arrange continuity or pay compensation quickly.

Our response

We consider that the FSCS has the operational capability to respond effectively to the failure of a funeral plan provider. This is demonstrated by the FSCS's track record in responding to different types of financial services failure effectively since it was established in 2001. We recognise the particular nature of funeral plan products and therefore our rules give the FSCS the ability to pay compensation to meet funeral costs should the covered individual die before continuity has been arranged or compensation has been paid.

Information for consumers

3.10 We were asked if the FSCS will provide consumers with information about how continuity will be arranged, or compensation paid, following the failure of a funeral plan provider, including implications for customers who took out a plan before regulation commenced.

Our response

We would expect the FSCS to publish general information about how it would deal with a funeral plan firm failure, along with specific information about its response to a particular firm that has been (or may be) declared 'in default'.

Terms and conditions

- 3.11** We were asked whether a customer's new or continuing funeral plan will be on the same terms as their original funeral plan contract, including with the same nominated funeral director, if the FSCS arranged continuity.

Our response

If the FSCS is able to secure continuity, eligible claimants could expect to receive a broadly similar funeral plan. However, it may not be exactly the same. Where the FSCS is involved in arranging continuity, either through transferring existing contracts or arranging new contracts, the contracts must be the same 'in all material respects' as the original contracts. It is for the FSCS to determine on the basis of the circumstances of the transfer what can reasonably be considered 'all material respects'. The FSCS may need to consider if further consent is required from the customer for a transfer. As we have explained above, our rules allow some flexibility for the FSCS to try and encourage transfers of contracts as the best outcome for consumers impacted by a regulated plan provider failure.

Final continuity rules

- 3.12** We have amended this rule to clarify that, if the FSCS cannot arrange for an offer of a contract that is the same 'in all material respects' as the original funeral plan contract, then the FSCS should offer the customer the option of receiving compensation instead. If the customer chooses continuity, the FSCS could ensure that any future payments due under the transferred or new contract are reduced to reflect the change in terms.
- 3.13** It will be for the FSCS to determine whether the terms correspond 'in all material respects' to the terms of the original funeral plan contract. However, the FSCS may consider factors such as whether the nominated funeral services provider (eg a funeral director) will change and the benefits to be paid under the funeral plan contract.
- 3.14** We will introduce our rules on continuity of cover subject to proposed Government changes to FSMA. Subject to the dependency outlined in paragraph 3.3 we will do so at the earliest opportunity.

Recoveries

- 3.15** We consulted on rules that, subject to the Government's proposed legislation, would give the FSCS the right to recover monies from the funeral plan provider's underlying trust or insurance arrangements. For this to happen, the FSCS would need to declare a regulated funeral plan provider 'in default'. The FSCS would be able to vary existing rights or obligations, or create new rights or obligations, for the funeral plan provider's trust or insurance arrangements underpinning the funeral plan contracts. These rules would help ensure that the FSCS can recover the cost of securing continuity or paying compensation, even if the funeral plan customer does not have direct rights over the trust or insurance arrangements. This in turn would help the FSCS reduce the impact on FSCS levy-payers.

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

3.16 Respondents generally agreed with our recovery proposals.

3.17 One respondent was concerned that the FSCS's additional powers under COMP 7.7 might conflict with trust law and trustees' fiduciary duties, such as in the treatment of different generations of plan holders. One respondent asked whether trustees would necessarily have the legal power under existing trust deeds to amend the trust deeds to enable the recovery of compensation costs, or whether this could have unforeseen consequences on the trust's operation.

Our response

We have considered whether there is a conflict between trustees' fiduciary duties and the requirements of COMP 7.7. We have concluded that the 2 are not in conflict. Under the rules, trustees would be complying with what the FSCS tells them is necessary, and our COMP rules allow for this.

Our recovery rules mean the FSCS has the ability to recover monies from the plan provider's trust if it declares the plan provider 'in default'. For this reason, we do not consider it necessary for trustees to amend the trust deed themselves.

Final recoveries rules

3.18 We will finalise the rules on recoveries under COMP 7 as consulted on. We have also clarified in COMP 7.7.1R that the FSCS's recoveries powers relate to relevant persons or to their successor, for example, a funeral plan firm that is 'in default'. We will introduce the rules subject to the Government introducing the required changes to FSMA to provide us with the power to make this rule.

Further proposals on the FSCS

3.19 We also consulted on further changes to the rules on the FSCS to:

- confirm under COMP 4.2.2R that a 'customer' is not entitled to claim against a failed regulated funeral plan provider, in cases where a 'covered individual' is an eligible claimant
- confirm under COMP 9.2.2R that the FSCS may postpone the payment of compensation if either it, or an insolvency practitioner appointed to the failed provider, is seeking to secure continuity of the funeral plan contract
- reflect in FEES 6.1.9G (on FSCS management expenses) that expenses incurred when arranging continuity of funeral plan contracts do not represent 'management expenses' (in line with Government proposals to amend s223 FSMA to confirm that)
- reflect in FEES 6.1.15G (on FSCS compensation costs) that costs incurred when making arrangement to secure continuity of funeral plan contracts would represent compensation costs
- include costs incurred for making arrangements to secure continuity of funeral plan contracts in our Glossary definition of 'Compensation costs'.

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

3.20 Respondents supported these further proposals. We will make the rules as consulted on, subject to the Government making the necessary legislation.

Points of clarification in relation to the FSCS

3.21 Some respondents asked us to clarify aspects of our Compensation rules.

3.22 We were asked what happens if an insurance company backing funeral plans failed. Assuming that the insurance company is authorised and regulated by the Prudential Regulation Authority (PRA), customers of the insurer may be eligible for FSCS protection under the PRA's Policyholder Protection rules, depending on the nature of the business carried out by the insurer.

3.23 We were asked if the FSCS could make up any shortfall in a partial refund paid to the customer if a funeral plan provider fails and cannot provide a full refund. If a funeral plan provider fails and its underlying trust or insurance assets are not enough to meet the obligations owed to the consumer, we would typically expect the FSCS to step in and declare the firm 'in default'. The FSCS could then either arrange continuity or pay compensation, and could seek to recover from the trust or insurance assets. However, if a customer was reimbursed from the trust or insurance assets first, they would then be able to claim from the FSCS for any shortfall owed to them.

3.24 We were asked what would happen if the customer or covered individual is unable to make a claim with the FSCS. The FSCS would be able to accept a claim from a nominated representative of the eligible claimant, including an individual who holds power of attorney over the eligible claimant's affairs. If the claimant dies, the FSCS would also be able to consider a claim from the executors of the claimant's estate.

3.25 We were asked what the FSCS's approach would be if a customer has more than one funeral plan contract with different providers. Such cases would need to be considered individually by the FSCS, for example looking at why and how the customer was sold multiple plans and whether they were appropriate for the customer's needs.

4 Structure

4.1 The structure requirements in Chapter 3 of the Funeral Plan: Conduct of Business sourcebook (FPCOB) set out the requirements for the trust and insurance arrangements that funeral plan providers are required to put in place. These requirements aim to ensure that firms are able to deliver funeral services on an ongoing basis, and to manage any risks to the delivery of customers' funerals caused by, for example, poor management of trusts and insufficient funding to wind-down or transfer books, pay redress or return monies where plans are cancelled.

4.2 We confirmed most of the structure rules in PS21/8 following feedback on CP21/4. However, in CP21/20 we consulted on further changes to the structure rules, to ensure they reflect our proposed policy for the resolution of firms and the FSCS, and considering feedback following CP21/4.

4.3 We consulted on changes to the following structure rules:

- **Requirements for contracts of insurance** (FPCOB 3.1.8R) - We consulted on proposals for the circumstances in which the insurer can make payments under the funeral plan contract, and a requirement to ensure the contract of insurance does not terminate upon the failure of the regulated funeral plan provider.
- **Requirements for trusts** (FPCOB 3.1.9R) - We consulted on proposals in relation to how trust assets are held, the circumstances in which the trustees can make payments under the trust instrument, and requirements arising if a funeral plan provider became insolvent.
- **Obligations for safeguarding** (FPCOB 3.1.11R) - We proposed further changes to the safeguarding requirements consulted on in CP21/4.
- **Guidance on meeting safeguarding requirements** (FPCOB 3.1.12G) - We proposed further guidance about how safeguarding may be achieved.

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

4.4 The feedback we received following CP21/20 was largely positive about the proposed structure rules and what we were seeking to achieve.

4.5 However, we did receive some feedback and requests for clarification which have led us to reconsider aspects of the structure rules, including whether:

- payments to customers following amendments to funeral plan contracts (including those involving a partial refund to the customer), or plan cancellations were permitted under the rules relating to permitted payments pursuant to the contract of insurance or trust deed.
- it was appropriate that proposed rule FPCOB 3.1.9R specified that trust assets should typically be held on trust for the benefit of customers or covered individuals. A respondent felt that the assets should be held on trust to safeguard the rights of customers (or covered individuals), but with the funeral plan provider being the beneficiary.

- the trust deed should include a provision directing the trustees, where a funeral plan contract is transferred to a new provider, to amend the trust deed by substituting the new provider for the original funeral plan provider.
- the trust deed should be clearer about potential payments to the FSCS if the FSCS declares the funeral plan provider 'in default'.

Our response

Having considered the feedback on received on refunds, we have made the following amendments to our structure rules.

We have deleted the words 'pursuant to a request by the customer...' in FPCOB 3.1.8R(2) (b) and FPCOB 3.1.9R(d)². This makes it clearer that customers can be refunded (as a type of permitted payment from the contract or insurance or trust) in circumstances other than following a request by the customer to cancel the funeral plan contract. This includes a scenario where the customer requests a change to the terms of the plan which requires a partial refund to be paid. These types of payment to the customer are subject to rules made in PS21/8 requiring that any fees charged by the plan provider, eg for administering a refund or cancellation, must be a genuine reflection of the cost the firm incurs, and not be a source of additional profit.

Further amendments to the structure rules

- 4.6** We received feedback and requests for clarification on our requirements for trusts in FPCOB 3.1.9R on a range of issues, including appropriate trust structure and permitted payments from the trust. We are amending the rules as consulted on in response.

Our response

We have amended several aspects of the rules for trusts to ensure that the requirements are clear and meet our objectives. These changes and additional guidance should help funeral plan providers ensure that trust-backed arrangements meet our requirements and that firms structure their arrangements to protect the interests of consumers, as well as meeting our wider objectives for the funeral plans market.

- FPCOB 3.1.9R (1): We have clarified that the trust instrument should ensure that the assets are held on trust to make the types of payments set out in FPCOB 3.1.9R (3), and, when there are no more payments due or potentially due under that paragraph, on trust for the funeral plan provider.
- FPCOB 3.1.9R (3): We have clarified the permitted payments that the trust can make. As well as the change to the rules on refunds (FPCOB 3.1.8R(2) (b) and FPCOB 3.1.9R(3) (d)) detailed above, we have clarified what payments are permitted if the funeral plan provider becomes insolvent, including where the FSCS declares the firm 'in default', see FPCOB 3.1.9R(3)(e).

² This was FPCPB 3.1.9R(3)(b) in the draft of the structure rules found in CP 21/20.

- At FPCOB 3.1.9R (3) (e) (i) (A) we now specify that payments back to customers or covered individuals following insolvency (in cases where a transfer or replacement cannot be arranged) should be at 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 their funeral plan contract or, if the trust assets are insufficient, a proportional amount of the trust assets based on the full amount that would otherwise be due, see FPCOB 3.1.9R(3) (e)(i)(B)'. Under FPCOB 3.1.9R (3) (f), we have also clarified permitted payments if the funeral plan provider arranges a transfer of all or part of its business to another funeral plan provider.
- FPCOB 3.1.9R (11): We have added a requirement that, where the whole of the business of the funeral plan provider has been transferred to or replaced with a new funeral plan provider, the trustees may substitute the new provider in place of the original provider. We have also amended our requirements for contracts of insurance at FPCOB 3.1.8R (6) to ensure that insurance backed arrangements provide that the insurer may substitute the new provider in place of the original provider, where all or part of the business of the funeral plan provider has been transferred to a new provider.
- FPCOB 3.1.9R (12): We have added a requirement to ensure that the trustee acknowledges that the funeral plan provider has been appointed as an agent with a duty to enforce the customer's rights under the trust. This links with the new requirement in our resolution rules at FPCOB 16.1.5(3)(d) that was referred to in paragraph [2.11].
- In addition, we have added guidance to help firms apply the trust structure requirements under FPCOB 3.1.9R. The guidance also highlights how other requirements in FPCOB – particularly the resolution requirements – apply to trusts. The guidance has been added to FPCOB 3 as Annex 1, Form of a beneficial trust. The guidance is intended to help funeral plan providers consider whether a trust deed meets our requirements.

Points of clarification in relation to the structure rules

- 4.7** We received several further requests for clarification on aspects of our structure rules. In response we do not intend to amend our rules as consulted on.
- 4.8** Respondents asked us to clarify whether specific types of payment are permitted under FPCOB 3.1.8R (2) or 3.1.9R (3). We consider that the amendments made to these rules – as explained above – help clarify the types of payment that are permitted.
- 4.9** One respondent asked whether payments from insurers to funeral plan providers when entering into insurance backed funeral plans are allowed under FPCOB 3.1.8R. FPCOB 3.1.8R applies to the type of payments which are allowed under the contract of insurance. Such payments will be separate from any commercial fee arrangements agreed between the insurer and the funeral plan provider. However, firms need to ensure that the arrangements are consistent with the need to deliver fair value products which meet the consumer's needs.

- 4.10** One respondent asked whether, if a provider complies with the requirements under FPCOB 3.1.9R, there would be further opportunities for an insolvency practitioner to recover monies from the failed funeral plan provider. This includes from any ancillary insurance the provider has taken out covering trust-backed funeral plans. We consider this relates to how potential assets of an insolvent company are treated, which would be for the insolvency practitioner to determine.

Our response

We do not consider that these points of clarification require any further amendments to the rules consulted on in CP21/20.

Final structure rules

- 4.11** We have finalised the structure rules as consulted on in CP21/20 subject to the amendments set out above.

5 Additional proposals

5.1 In CP 21/20 we also consulted on our proposals for:

- **Notification following transfer** - an obligation for firms to notify customers and their nominated representative following a transfer of a firm's funeral plan contracts.
- **Consent to transfer** - rights of consumers around transfer of plans.
- **FPCOB guidance schedules** - guidance schedules to be added to our Funeral Plans: Conduct of business sourcebook.
- **PERG guidance** - guidance to be added to our Perimeter Guidance Manual.

Q6: *Do you agree with our additional proposals?*

Notification following transfer

5.2 We proposed rules requiring firms to notify customers and their nominated representatives if they take responsibility for another provider's funeral plan contracts, within 30 days of a transfer of those contracts. Respondents raised questions about the costs and practicalities of the proposals. One respondent flagged the burden on the firm of notifying customers. Another felt that 30 days may give too little time, particularly in situations where plan providers would need to seek replacement funeral directors.

Our response

We will make the rules as consulted on. Regarding the feedback on the burden the proposed requirement would place on firms, we do not accept that this is disproportionate. We consider that allowing 30 days for notifying customers of plan transfers should give firms enough time, given that the 30 days is from the date of completion of the transfer. If the transfer is straightforward and the FSCS is not involved, there will be no need for the new plan provider to, for example, find a new funeral director, as the transferee must take on contracts on the same terms as the original contract.

Consent to transfer

5.3 One respondent asked whether customers could be given cancellation rights if they are not happy with the choice of the new provider. Another respondent noted that requiring a firm to obtain consent from the customer before transferring contracts would impose a significant burden on firms. They also asked what would happen if some customers refused to give consent, didn't respond or lacked the mental capacity to give informed consent.

5.4 Two respondents also expressed concern over both the potential costs of individually notifying customers of transfers and seeking their consent, and the time given to do so.

Our response

We do not believe that it would be proportionate to introduce an obligation to require transferee providers to offer cancellation rights, given the administration involved. However, our rules do not prevent them from offering this option, should they wish.

With regard to the feedback we received which raised issues with the cost providers would incur, this was focused on costs arising in notifying customers of a transfer before that transfer is completed. But, our proposed rules are for a notification after the completion of a transfer. We do not consider this would place an undue burden on firms.

In a failure scenario, our rules at FPCOB 16.1.5R (3)(e) require each customer to give informed consent for future transfers to take place. Given the practicalities, we expect firms to seek this consent as a term of the contract when the customer buys the plan. The consent must be for the funeral plan contract to be taken on by another plan provider (the transferee) on the same terms as the contract the customer entered into with the firm. If the customer does not give consent at the point of sale, then we would expect that they will not take the contract out. For the plan provider to proceed with the sale the plan holder (or their representative) should have capacity to agree to the terms in the contract.

FPCOB guidance schedules

- 5.5** We did not receive any feedback on this proposal and so will make the rules as consulted on.

PERG guidance

- 5.6** One respondent noted that it was not clear how faith-based insurance co-operatives fall within our perimeter. Another respondent noted that, as in the consultation, the additional proposals could be read to only cover the commercial element of the 'by way of business' test. They asked us to clarify that religious organisations operating on a non-commercial basis would not be considered to be doing funeral planning by way of business.

Our response

We have amended the guidance to clarify how the 'by way of business test' applies in the case of burial societies and other religious organisations operating on a not-for-profit basis. Our amendments make clear that in our view where a burial society or other religious organisation operates on a non-commercial basis to provide a burial that complies with religious teachings, it is unlikely that it will be carrying out funeral plans by way of business. An important factor to consider in this is that the overall context for the organisation is clearly not commercial, and that if profits are made, they should be used to, for example, maintain burial grounds or buy new land.

6 Minor changes and corrections

Corrections and amendments to rules made in PS 21/8

- 6.1** Following the publication of PS 21/8 on 5 July 2021, we received feedback on typographical and other minor errors in the rules made then. We are using this opportunity to correct them and give stakeholders clarity.
- 6.2** The rules published with PS 21/8 contained several incorrect cross-references to Handbook as follows:
- FPCOB 14.1.8R contained an incorrect reference to 7.1.3R.
 - FPCOB 8.2.4G cross-referred to 8.1.3R
 - FPCOB 4.1.3R was referred to but does not exist
 - TC 2.1.23GR, 2.1.23HR and 2.1.23IG all refer to SYSC 2.1.23F R
 - SYSC 1 Annex 1 Table B referred to SYSC 6.1.4C R(2) c, which does not exist
 - A reference to PROD 7.2.2R which does not exist
 - PROD 7.2.34 R contained an incorrect reference to PROD 7.2.35R(1)(a) and (b) which do not exist
 - COMP 11.2.1A R refers to COMP 1.2.2R which does not exist
- 6.3** We have corrected these erroneous references in the made rules annexed to this paper so that they refer to the correct Handbook provision or have removed them entirely in some cases.
- 6.4** We are also amending the following provisions to make them clearer:
- FPCOB 6.5.5R to make clear that payments for financial promotions only are acceptable, while other forms of payment are not.
 - FPCOB 11.1.7R to make clearer our requirement that only distributors can be remunerated by funeral plan distribution charges.
 - FPCOB 7.2.5G to clarify rules around the moratorium requirement.
 - FPCOB 3.1 to clarify sub-headings.
- 6.5** All of these changes are in line with the original policy intent of our rules as made in PS 21/8.

7 Cost benefit analysis

7.1 In this chapter, we summarise the responses to the question in CP21/20 on the cost benefit analysis (CBA) and our view on these responses.

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

7.2 Most respondents to the consultation did not have any comments on our CBA. Two respondents providing feedback offered broader comments on the introduction of statutory regulation of the sector by us, noting that they have concerns over costs and timelines. One of these respondents also highlighted their view that there will be a more significant impact on smaller businesses which may be less able to cope with the demands of statutory regulation than larger firms, and consequently may leave the market.

7.3 Additionally, one other respondent felt that we had underestimated the legal review costs associated with compliance.

7.4 None of the responses we received changes our assessment of the impacts set out in our CBA.

Our response

We welcome the further feedback on our CBA. We think the low response level indicates that our analysis is broadly correct. We do not agree that the cost benefit analysis in CP21/20 underestimates the wider cost of the introduction of statutory regulation to the market. We recognise that the industry will face new costs, both one-off and on an ongoing basis from being brought into our regulatory perimeter. The broader costs of the introduction of the FCA's regulation were outlined in our first funeral plans consultation (CP21/4). Only those additional costs resulting from our resolution, FSCS and structure proposals were covered in the CBA for CP21/20. When both sets of figures are looked at together, stakeholders can see the full reflection of costs to industry, along with the benefits we expect to see.

Our CBAs for both consultations followed engagement with a wide range of stakeholders, including smaller firms. As we also said in CP21/43, we based our cost estimates on average costs estimated by funeral plan survey respondents. Therefore, we do not accept that we have insufficiently considered the impact of the proposals on small and medium enterprises (SMEs). We recognise that there are specific challenges some firms may face, but we believe it is important that customers are appropriately protected whichever firm they use, and as such we are applying the same resolution, structure and FSCS rules across the sector. We used our standardised cost model, that we use across industry, to estimate the legal review costs in our CBA. The

assumptions underpinning the model are based on evidence such as consultation with firms and trade bodies, a review of previous CBAs, and desk-based research (for further detail see ['How we analyse the costs and benefits of our policies'](#)).

Annex 1

List of non-confidential respondents

Golden Charter

Philip J Milton & Company Plc

Retirement & Beyond Consultancy Services

Womble Bond Dickinson

Annex 2

Abbreviations used in this paper

Abbreviation	Description
CBA	Cost benefit analysis
COMP	The Compensation Sourcebook of the FCA Handbook
CP	Consultation Paper
FCA	Financial Conduct Authority
FEES	Fees Manual
FG	Finalised Guidance
FPCOB	The Funeral Plan: Conduct of Business Sourcebook of the FCA Handbook
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act
PERG	The Perimeter Guidance Manual
PRA	The Prudential Regulation Authority
PROD	Product Intervention and Product Governance Sourcebook
PS	Policy Statement
SMEs	Small and medium-sized enterprises
SYSC	The Senior Management Arrangements, Systems and Controls Sourcebook of the FCA Handbook
TC	Training and Competence

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Appendix 1

Made rules (legal instrument)

FUNERAL PLANS (No. 2) INSTRUMENT 2021

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in or under the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137D (FCA general rules: product intervention);
 - (3) section 137T (General supplementary powers);
 - (4) section 138D (Action for damages);
 - (5) section 139A (Power of the FCA to give guidance);
 - (6) section 213 (The compensation scheme);
 - (7) section 214 (General); and
 - (8) section 215 (Rights of the scheme in insolvency).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 29 July 2022.

Amendments to the Handbook

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes in this instrument listed in column (2).

(1)	(2)
Glossary	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Training and Competence sourcebook (TC)	Annex C
Funeral Plan: Conduct of Business sourcebook (FPCOB)	Annex D
Product Intervention and Product Governance sourcebook (PROD)	Annex E
Compensation sourcebook (COMP)	Annex F

- E. The Financial Conduct Authority confirms and remakes in the Glossary of definitions the defined expressions relating to any UK legislation which has been amended further to Part 2 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2021.

Amendments to material outside the Handbook

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

Notes

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

Citation

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

By order of the Board
21 October 2021

Annex A

Amendments to the Glossary of definitions

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

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

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

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

Amend the following definitions as shown.

<i>fair, clear and not misleading rule</i>	(1)	...
	(2)	(in relation to <i>regulated funeral plan activity</i>) <i>FPCOB</i> 4.1.3R <u>4.2.1R</u> .
	...	
<i>moratorium period</i>		the period under a <i>funeral plan contract</i> , as provided for in <i>FPCOB</i> 7 or otherwise agreed between the customer and funeral plan provider , during which the <i>funeral plan provider</i> is not obliged to provide, or secure the provision of, a funeral on the death of the <i>covered individual</i> .

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

1 Application and purpose

...

1 Annex Detailed application of SYSC

1

...

Table B: Application of the common platform requirements in SYSC 4 to 10 to MiFID optional exemption firms and third country firms

...

Provision	COLUMN A MiFID optional exemption firms	COLUMN B Third country firms
...
SYSC 6.1.4CR	SYSC 6.1.4CR(2)(c) and SYSC 6.1.4CR(3) apply <u>applies</u> as specified in SYSC 6.1.4CR Otherwise not applicable	SYSC 6.1.4CR(3) applies as specified in SYSC 6.1.4CR Otherwise not applicable
...

Annex C

Amendments to the Training and Competence sourcebook (TC)

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

2 Competence

2.1 Assessing and maintaining competence

...

Continuing professional development for retail investment advisers

...

2.1.23G R The appropriate continuing professional development in ~~SYSC 2.1.23FR~~ TC 2.1.23FR is in addition to any other continuing professional development completed. Continuing professional development completed by a relevant employee in relation to activities other than *regulated funeral plan activities* must not be taken into account for the purpose of ~~SYSC 2.1.23FR~~ TC 2.1.23FR.

2.1.23H R For the purposes of ~~SYSC 2.1.23FR~~ TC 2.1.23FR, a *firm* must take into account the:

...

2.1.23I G ...

(2) In relation to ~~SYSC 2.1.23FR~~ TC 2.1.23FR, the 15 hours of appropriate continuing professional development can include structured and unstructured training and need not consist of only formal classroom-based learning. For examples of structured and unstructured professional development see *TC 2.1.20G* and *TC 2.1.21G*.

Annex D

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

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

2 General matters

2.1 General principles

...

Record keeping

- 2.1.6 G (1) This sourcebook, other than *FPCOB 4*, *FPCOB 6.4.18R*, ~~and *FPCOB 15* and *FPCOB 16*~~, does not generally have detailed record-keeping requirements: *firms* will need to decide what records they need to keep in line with the high-level record-keeping requirements and their own business needs.

...

...

3 Structure Provisions - arrangements underpinning a funeral plan contract

3.1 ~~Application: general~~ Trust and insurance arrangements: structure provisions

Application: general

...

Requirements in relation to contracts of insurance

- 3.1.8 R For the purpose of *FPCOB 3.1.6R(1)*, the *contract of insurance* must contain terms that will deliver the following objectives:
- (1) clearly identifies the policyholder under the *contract of insurance*;
 - (2) restricts the circumstances in which the insurer can make a payment under the contract to:
 - (a) payments made to the *funeral plan provider* or funeral services provider for the purpose of delivering a *covered individual's* funeral, which must only be paid after receipt and verification of the *covered individual's* death certificate, or Certificate for Burial or Cremation (GR021 in Northern

Ireland) where a death certificate is not available, in accordance with FPCOB 3.1.11R(2);

- (b) providing a customer refund; 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;
- (3) will deliver all applicable outcomes in the funeral plan resolution rules;
 - (4) the contract of insurance will not terminate upon failure of the funeral plan provider;
 - (5) requires the insurer to co-operate with the FCA, the FSCS and any insolvency practitioner appointed, or proposed to be appointed, to the funeral plan provider in seeking to achieve the primary purpose on a failure or potential failure of the funeral plan provider; and
 - (6) where the whole, or relevant part, of the business of the funeral plan provider has been transferred to a new funeral plan provider, the insurer may substitute the new provider in place of the original provider.

Requirements in relation to trusts

- 3.1.9 R For the purposes of FPCOB 3.1.6R(2), the trust must be established by a written instrument which contains terms that will deliver the following objectives:
- (1) that the assets 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;
- (4) will deliver all applicable outcomes in the *funeral plan resolution rules*;
- (5) more than half of the trustees must be unconnected with the *funeral plan provider*;
- (6) 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;
- (7) 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;
- (8) 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);
- (9) 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*);
- (11) 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;
- (12) 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*.

- 3.1.10 R For the purposes of FPCOB 3.1.9R(5) and (6), a person is unconnected with the funeral plan provider if that person is a person other than:
- (1) the funeral plan provider;
 - (2) a member of the same group as the funeral plan provider;
 - (3) a director, other officer or employee of the funeral plan provider, or of any member of the same group as the funeral plan provider;
 - (4) a partner of the funeral plan provider;
 - (5) a close relative of a person falling within sub-paragraphs (1), (3) or (4);
 - (6) an agent of any person falling within sub-paragraphs (1) to (5); or
 - (7) any other person whose business or domestic relationship with the funeral plan provider (or other person in sub-paragraphs (1) to (6)) might reasonably be expected to give rise to a community of interest between them and the funeral plan provider which may involve a conflict of interest in dealings with third parties.

Safeguarding – obligations in relation to money received from a customer, trust or insurance provider

- 3.1.11 R A funeral plan provider must:
- (1) make arrangements to safeguard monies it has received:
 - (a) from a customer, appointed representative, or funeral plan intermediary under a funeral plan contract, and which are sufficient for the purpose of providing the agreed funeral, between receipt and applying the monies in accordance with FPCOB 3.1.6R;
 - (b) pursuant to a contract of insurance prior to delivering a covered individual's funeral, providing a customer refund, or pursuant to FPCOB 3.1.8R(2)(c); or
 - (c) from a trust prior to delivering a covered individual's funeral, providing a customer refund, or pursuant to FPCOB 3.1.9R(3)(e),

to ensure that such monies are not at any stage, including on its failure, assets of the funeral plan provider;
 - (2) provide to an insurer or trustee, as applicable, a copy of the covered individual's death certificate, or Certificate for Burial or Cremation (GR021 in Northern Ireland) where a death certificate is not available, prior to, or at the time of, requesting money under the terms of an applicable contract of insurance or in accordance with

the terms of a trust for the purpose of delivering or arranging a funeral; and

- (3) pay monies received from an *insurer* or a trust for the funeral of a *covered individual* to the funeral services provider that has agreed to provide a funeral for the *covered individual* as soon as reasonably practicable following receipt.

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

- (1) where monies are contractually owed to the *funeral plan provider* under the *funeral plan contract*, requiring payments made by a *customer* under a *funeral plan contract* to be made directly to the *insurer* or the trustee, as applicable;
- (2) requiring payments used to deliver a *covered individual's* funeral and payments to a *customer* to be provided by the *insurer* or trustee, as applicable, directly to the funeral services provider, or the *customer*, as appropriate; and
- (3) the *funeral plan provider* holding the received monies on trust for the benefit of the *customer*. This arrangement would need to include keeping the monies segregated from any other monies held by the *funeral plan provider* and keeping an appropriate record of these monies.

After *FPCOB* 3 (Structure Provisions – arrangements underpinning a funeral plan contract), insert the following new Annex, *FPCOB* 3 Annex 1 – Form of beneficial trust. The text is not underlined.

3 Annex Form of a beneficial trust

1

G This annex belongs to *FPCOB* 3.1.9R.

1.	This annex outlines provisions that a <i>funeral plan provider</i> might include in the trust deed of a beneficial trust set up in compliance with <i>FPCOB</i> 3.1.9R.
2.	This annex does not represent legal drafting for inclusion in the trust deed. <i>Funeral plan providers</i> will need to engage legal advisers to prepare the trust deed.
3.	Where a provision is required by <i>FPCOB</i> , the annex references the <i>FPCOB rule</i> but does not set it out in full. Other provisions, not explicitly required by <i>FPCOB</i> , are also listed below which are consistent with <i>FPCOB</i> 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 <i>customer</i> has been paid into the trust pursuant to <i>FPCOB 3.1.6R(2)</i> .	
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 <i>Glossary</i> .	
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 <i>funeral plan provider</i> (<i>FPCOB 3.1.9R(1)</i>);
	(2)	the assets held on trust must be kept segregated from any assets belonging to the <i>funeral plan provider</i> (<i>FPCOB 3.1.9R(2)</i>);
	(3)	to pay the essential payments for the operation of the trust (<i>FPCOB 3.1.9R(3)(b)</i>);
	(4)	in respect of each related funeral plan, to raise and pay one of the following payments:
	(a)	a payment to the <i>funeral plan provider</i> or funeral services provider for the purpose of delivering a <i>covered individual’s</i> funeral (<i>FPCOB 3.1.9R(3)(a)</i>);
	(b)	the provision of a <i>customer</i> refund (<i>FPCOB 3.1.9R(3)(d)</i>);
	(c)	on the <i>failure</i> of the <i>funeral plan provider</i> , or if it is <i>in default</i> , payments to the <i>customer</i> or <i>covered individual</i> or in accordance with a determination of the <i>FSCS</i> (<i>FPCOB 3.1.9R(3)(e)</i>);
	(5)	the <i>funeral plan provider</i> 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 <i>FPCOB 3.2.12R</i> (<i>FPCOB 3.1.9R(3)(g)</i>);
	(6)	in the event of the insolvency of the <i>funeral plan provider</i> , 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 <i>funeral plan contracts</i> to a new provider or making payments under <i>FPCOB 3.1.9R(3)(e)</i> (<i>FPCOB 3.1.9R(3)(c)</i>);
	(7)	on a transfer of business of the <i>funeral plan provider</i> , 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 <i>insurance contracts</i> ; a certificate from an actuary will generally be required (<i>FPCOB</i> 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 termination date of the trust shall be 125 years from the date of its execution, which shall be the end of the perpetuity period for the trust;
	(10)	(a) subject to (b) below, the <i>funeral plan provider</i> 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 <i>funeral plan provider</i> 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 <i>FPCOB</i> 3.1.9R(5) to (12); this includes facilitating compliance by the <i>funeral plan provider</i> with its obligations concerning trust solvency, remediation plans and remedying deficits (<i>FPCOB</i> 3.1.9R(8) and <i>FPCOB</i> 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 <i>funeral plan provider</i> 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 <i>FPCOB</i> .
9.	The trust will also need to be compatible with the <i>funeral plan provider's</i> obligations to have arrangements for continuity and reimbursement on its <i>failure</i> under the <i>funeral plan resolution rules</i> (see <i>FPCOB</i> 16.1.3R and <i>FPCOB</i> 16.1.4R), in particular:	
	(1)	that there will be no cause for unreasonable delay for payments that the provider or any other <i>person</i> arranges to be made to any <i>customer</i> or <i>covered individual</i> from the trust (<i>FPCOB</i> 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 (<i>FPCOB</i> 16.1.5R(1)(a) – see also <i>FPCOB</i> 3.1.9R(11));
	(b)	payments to <i>customers</i> and <i>covered individuals</i> (<i>FPCOB</i> 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 (<i>FPCOB</i> 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 (<i>FPCOB</i> 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 (<i>FPCOB</i> 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.

Amend the following as shown.

...

6 Information about the firm and its services

...

6.5 Payments to funeral plan intermediaries

...

Requirement not to offer commissions

...

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

...

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

7.1 Application and Purpose

...

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

...

- 7.2.1 R (1) A *funeral plan provider* must not enter into an *instalment payment funeral plan* under which the *customer* agrees to make payments over a period ~~of more than 24 months~~ 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) a funeral will be unconditionally provided upon the covered individual's death where:~~
- ~~(i) this occurs more than 24 months after the date on which the relevant parties entered into the funeral plan contract; or~~
- ~~(ii) (if earlier) the death is accidental; and~~
- ~~(b) no further payment is required following the covered individual's death in order for the funeral specified by the funeral plan contract to be provided.~~
- (a) There is no moratorium period;
- (b) There is no 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.

...

8 Identifying client needs and advising

...

8.2 Demands and needs

...

Demands and needs test

...

8.2.4 G ~~FPCOB 8.1.3R(2)~~ 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.

...

9 Product information

...

9.3 Post-contract information: funeral plan contracts

...

Post-contractual changes

...

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 Annex Funeral plan summary

1

...

...	...		
	Headings, corresponding information and order of content		
2.5	R	The subheadings must be in this sequence and have the following corresponding information:	
		...	

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

9 Nominated representative document

Annex 2

This annex belongs to *FPCOB 9.3.6R*.

...	...		
4		Headings, corresponding information and order of content	
4.1	R	The document must contain the following information, and use the headings in (4) to (9 10), in this sequence:	
		...	
		(10)	<p><u>‘Information concerning potential provider failure’</u></p> <p><u>A firm should briefly explain the arrangements in place to ensure that in the event of its failure:</u></p>
		(a)	<p><u>there will be a reasonable likelihood that the relevant funeral plan contracts will continue to be carried out by another firm, identifying particular terms in its contracts with customers, including relating to prior consents from customers, and explaining how they operate; and</u></p>
		(b)	<p><u>in the event that the relevant funeral plan contract will not continue to be carried out by the firm or another firm, the relevant customer or</u></p>

			<u>covered individual will promptly receive a payment corresponding to the funeral plan customer balance.</u>
			<u>A firm should also explain the particular risks to the carrying out of funeral plan contracts in the event of its failure, including the possibility that funeral plan contracts may cease to be carried out before the covered individual's death, and that customers may need to make arrangements with an alternative provider and potentially incur associated costs.</u>

9 Plan Statement

Annex

3

This annex belongs to ~~FPCOB 9.3.10R~~ 9.3.11R.

...

10 Arrangements for the funeral

10.1 Application and purpose

...

Arrangements with the funeral services provider

...

- 10.1.11 R (1) This rule applies to a *funeral plan provider* which has assumed the undertaking under a *funeral plan contract* to provide, or secure the provision of, a funeral as a result of a transfer of the contract.
- (2) The firm must 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.

...

11 Fees

11.1 Application and purpose

...

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.

...

14 Funeral plan redemption

14.1 Application and purpose

...

Outstanding payments

...

- 14.1.8 R *FPCOB* 14.1.7R does not apply where the effect of ~~FPCOB 7.1.3R~~ *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*.

...

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 16.1.5R will assist both the appointed insolvency practitioner and the *FSCS* in the event of the *firm*'s *failure*.
- (5) However, when considering whether its arrangements will ensure a good outcome in accordance with *FPCOB* 16.1.4R, a *firm* should not make any assumptions as to whether the *FSCS* will determine the *firm* to be in *default* and take any other steps under the relevant provisions of *COMP*.

Guidance on arrangements with other firms for continuity

- 16.1.7 G A *firm* may enter into an arrangement with another *firm*, which has the permission to carry out a funeral plan contract as provider, under which the other *firm* agrees to take over the obligations under the funeral plan contract in the event of its *failure*. But it should only do this in a way that does not impair its compliance with *FPCOB* 16.1.3R(2). This means that the arrangement with the other *firm* must not prevent any similar agreements being made, at the time or in future, with other *firms*.

Further guidance on arrangements for continuity and reimbursement

- 16.1.8 G (1) When designing its arrangements under *FPCOB* 16.1.3R and *FPCOB* 16.1.4R, a *firm* should take into account the general law to ensure that the insolvency of the *firm* does not prejudice the operation of arrangements that the *firm* has put in place. In particular, the arrangements should be such that an insolvency practitioner appointed to the *firm* in its *failure* would be in a position to:
- (a) recognise a *customer*'s or *covered individual*'s rights under or in respect of the relevant trust or *contract of insurance* arranged under *FPCOB* 3.1.6R;
 - (b) rely on a *customer*'s consent as described in *FPCOB* 16.1.5R(3)(e); and

- (c) exercise any rights of the *firm* under the provisions described in *FPCOB* 16.1.5R(1) to give effect to a transfer or payment to the *customer* or *covered individual*.
- (2) A *firm* should consider the need to obtain professional advice on the adequacy of its arrangements, including in the event of insolvency. For example, a *firm* may benefit from obtaining legal advice or advice from a qualified insolvency practitioner on the likelihood of its arrangements securing the outcome of those *funeral plan contracts* continuing to be *carried out* by another *firm* or the relevant *customer* or *covered individual* receiving a payment where the relevant *funeral plan contracts* will not continue to be *carried out* by the *firm* or another *firm*.
- (3) In assessing the adequacy of its arrangements, a *firm* should consider, in particular:
- (a) whether any terms included in relevant contracts as part of its arrangements are enforceable and by whom, for example terms in trust deeds, insurance policies, and customer, service and supplier contracts; and
- (b) the extent to which other practical obstacles could foreseeably prevent the implementation of the arrangements or frustrate the required outcome.
- (4) *Firms* may find it useful to refer to the *FCA's* Wind-down Planning Guide (*WDPG*) when designing their arrangements.

Guidance on disclosures

- 16.1.9 G (1) *Firms* are reminded of the disclosure requirements in *FPCOB* 9.2.7R (Funeral plan summary) and *FPCOB* 9.3.6R (Nominated representative document).
- (2) In relation to *subsisting funeral plans*, a *firm* should consider:
- (a) notifying each *customer* and their nominated representative of any arrangements put in place as a result of the guidance in *FPCOB* 16.1.2G(2);
- (b) notifying each *customer* and their nominated representative of any subsequent changes to those arrangements; and
- (c) where the *firm* makes such a notification, making it alongside the annual statement required under the *rule* at *FPCOB* 9.3.11R.
- 16.1.10 G *Firms* are reminded of the disclosure requirements under *Principle* 11 and in *SUP* 16.3.21R (Insolvency, bankruptcy and winding up).

16.2 Funeral Plan Resolution Manual

Application

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

Contents of the funeral plan resolution manual

- 16.2.3 R A firm must produce and keep up-to-date a funeral plan resolution manual which contains information about the firm that, in the event of the firm's failure, would assist in resolving the firm's business of carrying out a funeral plan contract as provider. It must, as a minimum, include a written explanation of each of the following:
- (1) *how the firm conducts the business of carrying out a funeral plan contract as provider, what the day-to-day operation of that business entails, and what resources would be needed to continue that business if the firm failed, including a specification of:*
 - (a) *critical staff and their respective roles*;
 - (b) *critical premises*;
 - (c) *the firm's IT systems*;
 - (d) *the firm's record-keeping systems, including how records are organised*;
 - (e) *all relevant bank accounts and payment facilities*;
 - (f) *all relevant persons outside of the firm, and their respective roles, including any outsourced service providers*;
 - (g) *all relevant legal documentation, including trust deeds, insurance policies, 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.

...

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.

<u>Handbook reference</u>	<u>Subject of record</u>	<u>Content of record</u>	<u>When record must be made</u>	<u>Retention period</u>
<u>FPCOB 3.1.11R, 3.1.12G(3)</u>	<u>Monies held on trust for customers</u>	<u>Location and amount of monies held on trust for particular customers</u>	<u>When making safeguarding arrangements specified in FPCOB 3.1.11R</u>	<u>Not specified</u>
<u>FPCOB 4.2.13R(1)</u>	<u>Financial promotion</u>	<u>A financial promotion communicated or approved (subject to exemptions)</u>	<u>When communicated or approved</u>	<u>6 years</u>
<u>FPCOB 4.2.13R(2)</u>	<u>Telemarketing scripts</u>	<u>Copy of any script used</u>	<u>Date script used</u>	<u>6 years</u>
<u>FPCOB 6.4.18R</u>	<u>FP distribution charges</u>	<u>FP distribution charges paid by each customer</u>	<u>Date paid by customer</u>	<u>Not specified</u>
<u>FPCOB 15.9.4G</u>	<u>Calculation of core capital resources</u>	<u>Reasons for any difference between the deficit reduction amount and any public commitment to provide funding in respect of a defined benefit occupational pension scheme</u>	<u>When calculating its capital resources for the core capital resources requirement</u>	<u>Not specified</u>
<u>FPCOB 15.10.5R</u>	<u>Risk assessments</u>	<u>Assessments required under FPCOB 15.10.4R including major sources of risk and how the firm intends to deal with them</u>	<u>When assessments are made under FPCOB 15.10.4R</u>	<u>At least 3 years</u>
<u>FPCOB 16.1.5R(4)</u>	<u>Single central record</u>	<u>Single central record containing all up-to-date and pertinent information and documents relating to each funeral plan contract</u>	<u>Date firm entered into funeral plan contract</u>	<u>Not specified</u>
<u>FPCOB 16.2.3R</u>	<u>The firm's most recent funeral</u>	<u>As stated in the rule</u>	<u>When the funeral plan resolution</u>	<u>None specified (but see</u>

	<u>plan resolution manual</u>		<u>manual is made or updated</u>	<u>FPCOB 16.2.4R)</u>
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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.

<u>Handbook reference</u>	<u>Matter to be notified</u>	<u>Contents of notification</u>	<u>Trigger event</u>	<u>Time allowed</u>
<u>FPCOB 3.2.5R(1)</u>	<u>Solvency assessment report</u>	<u>A copy of the solvency assessment report to the FCA</u>	<u>Funeral plan provider's receipt of solvency assessment report</u>	<u>Within 7 days of receipt of solvency assessment report</u>
<u>FPCOB 3.2.5R(2)</u>	<u>Assets of the trust are insufficient to cover the liabilities</u>	<u>If the solvency assessment report concludes that assets of the trust are insufficient to cover the trust's liabilities, notification of that fact with the report</u>	<u>Conclusion in the report that the assets of the trust are insufficient to cover the trust's liabilities</u>	<u>In accordance with SUP 15.7.1R, at the same time as providing a copy of the solvency assessment report, see also FPCOB 3.2.5R(1)</u>
<u>FPCOB 3.2.8R</u>	<u>Remediation plan</u>	<u>Remediation plan to the FCA for review</u>	<u>Submission date of the relevant solvency assessment report to the FCA</u>	<u>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</u>
<u>FPCOB 3.2.10R(1)</u>	<u>Concerns with implementation of the remediation plan</u>	<u>Funeral plan provider to notify the FCA that it will not be able to fully implement the remediation plan in</u>	<u>Funeral plan provider's suspicion that it will not be able to fully implement the</u>	<u>In accordance with SUP 15.7.1R, as soon as the funeral plan provider suspects that it will not be able to fully</u>

		<u>accordance with its terms</u>	<u>remediation plan in accordance with its terms</u>	<u>implement the remediation plan in accordance with its terms</u>
<u>FPCOB 3.2.10R(2)</u>	<u>Inability to fully implement the remediation plan</u>	<u>Notify the FCA if the solvency level of the trust remains below 100% following the funeral plan provider's attempts to implement the remediation plan</u>	<u>Inability to fully implement the remediation plan</u>	<u>In accordance with SUP 15.7.1R, immediately</u>
<u>FPCOB 3.2.11R(3)</u>	<u>Remediation of trust deficit</u>	<u>Remediation of trust deficit</u>	<u>Remediation of trust deficit</u>	<u>In accordance with SUP 15.7.1R and SUP 15.7.11G, as soon as reasonably practicable after the trust shortfall has been remedied</u>
<u>FPCOB 10.1.4R</u>	<u>Funeral arrangements</u>	<u>Notify the customer 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</u>	<u>Compliance with FPCOB 10.1.3R</u>	<u>As soon as practicable and in any event within 2 business days of compliance with FPCOB 10.1.3R</u>

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.

			<u>Rights of action under section 138D</u>			
<u>Chapter</u>	<u>Section/ Annex</u>	<u>Paragraph</u>	<u>For private person?</u>	<u>Removed?</u>	<u>For other person?</u>	
		<u>The fair, clear and not misleading rule in FPCOB 4.2.1R</u>	<u>Yes</u>	<u>In part (Note 1)</u>	<u>No</u>	
		<u>Any rule in FPCOB which prohibits an authorised person from seeking to make provision excluding or restricting any duty or liability</u>	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>Any other person</u>
		<u>The prudential rules for firms carrying on regulated funeral plan activity in FPCOB 15</u>	<u>No</u>	<u>Yes (see FPCOB 15.11.1R)</u>	<u>No</u>	
		<u>All other rules in FPCOB</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	
<u>Notes</u>						
<u>1.</u>	<u>FPCOB 4.2.10R provides that 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.</u>					

Annex E

Amendments to the Product Intervention and Product Governance sourcebook (PROD)

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

7 **Product governance: funeral plans**

...

7.2 **Manufacture of funeral plans**

...

Product governance arrangements: product approval

...

7.2.2 G (1) *PROD 7.2.1R(1) includes any funeral plan product whether a new product manufactured on or after 29 July 2022 or any existing funeral plan product. In relation to an existing funeral plan product, references in PROD 7.2 and 7.3 to ‘marketing’ or ‘distributing’ includes reference to any future activity regardless of whether the product has previously been made available for marketing or distribution.*

(2) For the purposes of *PROD ~~7.2.2R(2)~~ 7.2.1R(2)*:

...

...

Distribution channels: information disclosure to distributors

...

7.2.34 R ...

(2) A manufacturer is not required to disclose specific information objectively considered to be commercially sensitive if the information it does make available would still allow *distributors* to meet *PROD 7.2.34R(1)* and *PROD 7.2.35R(1)(a)* and (b).

Annex F

Amendments to the Compensation sourcebook (COMP)

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

3 The qualifying conditions ~~for compensation~~

...

3.2 The qualifying conditions for paying compensation

...

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

(1) ...

...

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

...

4 Eligible claimants

...

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

...

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

4.2.2 R This table belongs to *COMP* 4.2.1R

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

Annex G

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text.

2 Authorisation and regulated activities

...

2.3 The business element

...

- 2.3.4B G (1) The *funeral plan* sector gives an example of how the ‘by way of business’ requirement referred to in *PERG 2.3.1G* should be interpreted.
- (2) A burial society or other religious organisation operating within a particular religion and serving a defined religious community of members of that religion may provide a *funeral plan* to its members to facilitate their burial in a manner which complies with the teachings of that religion. In doing that, it may be carrying on *funeral plan provision activity*. However, if the provider does so on a not-for-profit basis, it is unlikely to do so by way of business.
- (3) One should look at whether the provider carries on its activities on a not-for-profit basis in a realistic way. So one should take into account:
- (a) whether the services benefit, or are provided as part of, wider commercial activities carried on by the provider or by an affiliate or by their members; and
- (b) any benefits an affiliate may get as well as those the provider gets.
- (4) If the provider’s *funeral plan* activities generate a profit, that does not mean that it acts by way of business as long as the surplus is used for the purposes of its funeral activities, for example to buy new land for burials or to maintain its graveyards.
- (5) An important factor in this example is that the overall context is clearly non-commercial. The recipients of the services are not acting commercially. The funerals and the *funeral plan* activities take place within a religious community whose activities cover a much broader range of non-commercial activities. The funerals and the *funeral plan* activities are an integral part of those wider religious activities.

- (6) This non-commercial context means that the burial society or other religious organisation does not carry on the *funeral plan* activities by way of business just because:
- (a) it carries on the *funeral plan* activities on a continuing basis;
 - (b) it carries on the *funeral plan* activities on an extensive scale;
or
 - (c) (in the case of a burial society) the *funeral plan* activities are a major part of what the society does.

Appendix 2

Near-final rules (draft instrument)

FUNERAL PLANS (No. 3) INSTRUMENT 202X

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in or under the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137T (General supplementary powers);
 - (2) section 139A (Power of the FCA to give guidance);
 - (3) section 213 (The compensation scheme);
 - (4) section 214 (General);
 - (5) section 215 (Rights of the scheme in insolvency); and
 - (6) section 215A (Continuity of funeral plan contracts).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on *[date]*.

Amendments to the Handbook

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes in this instrument listed in column (2).

(1)	(2)
Glossary	Annex A
Fees Manual (FEES)	Annex B
Compensation sourcebook (COMP)	Annex C

Citation

- E. This instrument may be cited as the Funeral Plans (No. 3) Instrument 202X.

By order of the Board
[date]

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

Amend the following definition as shown.

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

Annex B

Amendments to the Fees manual (FEES)

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

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

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

Annex C

Amendments to the Compensation sourcebook (COMP)

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

3 ~~The qualifying conditions for compensation~~

3.1 Application and Purpose

...

Purpose

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

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

3.3 Continuity of funeral plan contracts

Ability to secure continuity of funeral plan contracts

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

Quality of funeral under new arrangements

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

Measures to be taken

- 3.3.4 R In order to secure continuity of *funeral plan contracts*, the *FSCS* may take such measures as it considers appropriate to:
- (1) secure or facilitate the transfer of the business of the *relevant person* or *successor* that is *in default* and which consists of carrying out *funeral plan contracts* or any part of that business, to another *firm*; and/or
 - (2) secure the issue of *funeral plan contracts* by another *firm* to *eligible claimants* in substitution for their existing contracts.
- 3.3.5 R In making arrangements to secure continuity of *funeral plan contracts*, the *FSCS* must use its reasonable endeavours to seek the most cost-effective arrangements available.
- 3.3.6 G For trust arrangements and insurance policies relating to *funeral plan contracts*, *COMP 7.7* gives the *FSCS* powers to vary existing rights or obligations, and create new rights in favour of, or obligations to, the *FSCS*. These powers may be exercised to assist in securing continuity of *funeral plan contracts*.

Provision of funerals while seeking continuity

- 3.3.7 R (1) While the *FSCS* is seeking to secure continuity of *funeral plan contracts*, it may secure the provision of a funeral, which is due to be provided under any *protected funeral plan contract* of the *relevant person* (or, where applicable, a *successor*), on terms corresponding in all material respects (so far as it appears to the *FSCS* to be reasonable in the circumstances) to that contract.

- (2) The provision of a funeral is required regardless of whether the cost of securing its provision is more or less than the cost of paying compensation.
- (3) To secure the provision of a funeral, the *FSCS* may:
 - (a) make a payment to or on behalf of the estate of an *eligible claimant*, or to a funeral services provider, on such terms (including any terms requiring repayment in whole or in part) and on such conditions as it thinks fit; or
 - (b) secure that a payment is made to or on behalf of the estate of the *eligible claimant*, or to a funeral services provider, by the liquidator, administrator or provisional liquidator of the *relevant person* (or, where applicable, a *successor*), or by the trustees of any trust arrangement or *insurer* of any *contract of insurance* relating to the *funeral plan contract*, by giving them an indemnity covering any such payment or any class or description of such payments.

Amend the following as shown.

...

6 Relevant persons and successors in default

...

6.3 When is a relevant person in default?

...

Scheme manager's power to require information

- 6.3.9 R For the purposes of section 219(1A)(b), ~~and (d) and (f)~~ of the *Act* (Scheme manager's power to require information) whether a *relevant person* is unable or likely to be unable to satisfy ~~claims~~ claims shall be determined by reference to whether it is *in default*.

...

6.3A When is a successor in default?

...

- 6.3A.5 R For the purposes of section 219(1A)(b), ~~and (d) and (f)~~ of the *Act* (Scheme manager's power to require information) whether a *relevant person* is unable or likely to be unable to satisfy ~~claims~~ claims shall be determined by reference to whether it is *in default*.

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

7.1 **Application**

...

Purpose

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

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

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

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

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

7.2 **How does the assignment of rights work?**

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

...

7.3 **Automatic subrogation**

General

7.3.1 R ...

...

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

7.3.8 R The *FSCS* may determine that:

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

...

(2A) a payment by the FSCS in connection with securing continuity of funeral plan contracts;

shall have all or any of the following effects:

...

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

...

7.6 Treatment of recoveries

...

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

(1) ...

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

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

Insert the following new section, COMP 7.7 (Funeral plan contracts and related trusts and insurance policies), after COMP 7.6 (Treatment of recoveries). The text is not underlined.

7.7 Funeral plan contracts and related trusts and insurance policies

Application

- 7.7.1 R This section applies:

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

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

General

7.7.3 R The following provisions apply in relation to this section making any necessary changes:

- (1) *COMP 7.3.2R* and *COMP 7.3.3R* (General);
- (2) *COMP 7.3.4R* (Determinations by the *FSCS*);
- (3) *COMP 7.3.5R* (Verification of determinations); and
- (4) *COMP 7.3.6R* (Effect of this section on other provisions in this sourcebook etc).

Rights and obligations in respect of trust arrangements and insurance policies

7.7.4 R If the *FSCS*:

- (1) has paid, or has decided to make a payment of, compensation; or
- (2) has made a payment, or has decided to make a payment, in connection with securing continuity of *funeral plan contracts*,

the *FSCS* may make a determination with all or any of the following effects as set out in the determination:

- (3) to vary existing rights or obligations under or in respect of the trust or *contract of insurance*; such variation may, in particular, provide for the right to be transferred, or obligation to be owed, to a different *person* and, in either case, to subsist between that different *person* and the trustees or *insurer* respectively provided that the different *person* (if not the *eligible claimant*) has consented;
- (4) to create new rights under the trust or *contract of insurance* in favour of, or obligations by the trustees or *insurer* to, the *FSCS*; those new rights or obligations may, in particular, override existing rights or obligations;

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

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

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

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

Duty to pursue recoveries

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

Amend the following as shown.

9 Time limits for payment and postponing payment

...

9.2 When must compensation be paid?

...

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

(1) ...

...

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

(6) [deleted]

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

