

Chapter 7

Assignment, subrogation,
variation or creation of rights

7.7 Funeral plan contracts and related trust arrangements and contracts of insurance

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 arrangement*, *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 contracts of insurance

- 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 arrangement 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 arrangement 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 arrangement or contract of insurance* 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.