

Chapter 3

Structure Provisions - arrangements underpinning a funeral plan contract

3.1 Trust and insurance arrangements:
structure provisions

Application: general

3.1.1

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This section applies to a *firm*:

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

Application: subsisting funeral plans

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

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In relation to a *subsisting funeral plan*:

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

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

Primary purpose

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

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

Arrangements underpinning funeral plan contracts

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

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

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

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

Requirements in relation to contracts of insurance

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

- (1) clearly identifies the policyholder under the *contract of insurance*;
- (2) restricts the circumstances in which the insurer can make a payment under the contract to:
 - (a) payments made to the *funeral plan provider* or funeral services provider for the purpose of delivering a *covered individual's* funeral, which must only be paid after receipt and verification of the *covered individual's* death certificate, or Certificate for Burial or Cremation (GR021 in Northern Ireland) where a death certificate is not available, in accordance with ■ FPCOB 3.1.11R(2);
 - (b) providing a *customer* refund; or
 - (c) on the *failure* of the *funeral plan provider* or if it is *in default*, payments to a *customer* or *covered individual* or (on the *covered individual's* death) to their next of kin or in accordance with a determination of the *FSCS*;

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

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

requires the *insurer* to co-operate with the *FCA*, the *FSCS* and any insolvency practitioner appointed, or proposed to be appointed, to the *funeral plan provider* in seeking to achieve the *primary purpose* on a *failure* or potential failure of the *funeral plan provider*; and

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

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

Requirements in relation to trusts

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

- (1) that the assets are held on trust to make the payments set out in (3), and, when there are no more payments due or potentially due under that paragraph, upon trust for the *funeral plan provider*;
- (2) that the assets held on trust are kept segregated from any assets belonging to the *funeral plan provider*;
- (3) that the trustees are required to make the following payments (and are not permitted to make any other payments) out of the trust:
 - (a) payments made to the *funeral plan provider* or funeral services provider for the purpose of delivering a *covered individual's* funeral, which must only be paid after receipt and verification of the *covered individual's* death certificate, or Certificate for Burial or Cremation (GR021 in Northern Ireland) where a death certificate is not available, in accordance with ■ FPCOB 3.1.11R(2);
 - (b) essential payments for the operation of the trust (arising out of obligations owed by either the trustees or the *funeral plan provider*), limited to taxes, trustee fees, actuary fees, custodian fees, legal fees, trust administration fees, audit fees, investment management fees (including transaction fees), trustee liability insurance, and costs of insurance arrangements to provide a funeral on death within the instalment term;
 - (c) in the event of the insolvency of the *funeral plan provider*, payments to meet a claim by an insolvency practitioner against the assets held on trust, in priority to all other claims against those assets, to meet their costs properly attributable to:
 - (i) causing the provider to continue providing or arranging funerals under existing *funeral plan contracts*;
 - (ii) effecting a transfer of those contracts to another *funeral plan provider*; or
 - (iii) making payments under (3)(e);
 - (d) providing a *customer* refund;
 - (e) on the *failure* of the *funeral plan provider* or if it is *in default*:
 - (i) except where arrangements to secure continuity (whether or not involving the *FSCS*) of *funeral plan contracts* have been implemented:
 - (A) payments to each *customer* or *covered individual* or (on the *covered individual's* death) to their next of kin of the amount that the trustees consider is a reasonable estimate of the cost, at the time of the *failure* or declaration of default, of purchasing a replacement *funeral plan contract* on terms corresponding, in all material respects, to the original *funeral plan contract*; or

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

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

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

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

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

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

the trustees must appoint, or have appointed, an independent fund manager who is an *authorised person* who has *permission* to carry on an activity of the kind specified by article 37 of the *Regulated Activities Order*, and who is a *person* that is unconnected with the *funeral plan provider*, to manage the trust assets;

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

the trustees must send a copy of the annual accounts to the *funeral plan provider* to facilitate its financial reporting, and must otherwise co-operate with, and provide information to, the *funeral plan provider* to facilitate compliance with its obligations under the *rules* (as amended from time to time);

the trustees must co-operate with the *FCA*, the *FSCS* and any insolvency practitioner appointed, or proposed to be appointed, to the *funeral plan provider* in seeking to achieve the *primary purpose* on a *failure* or potential *failure* of the *funeral plan provider*;

(10) that the written instrument can and must be amended if and to the extent that the *funeral plan provider* is required to seek an amendment by the *FCA* (by a *rule* or *requirement*);

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

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

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

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

the *funeral plan provider*;

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

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

a partner of the *funeral plan provider*;

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

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

any other *person* whose business or domestic relationship with the *funeral plan provider* (or other *person* in sub-paragraphs (1) to (6)) might reasonably be expected to give rise to a community of interest between them and the *funeral plan provider* which may involve a conflict of interest in dealings with third parties.

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

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A *funeral plan provider* must:

(1) make arrangements to safeguard monies it has received:

(a) from a *customer*, *appointed representative*, or *funeral plan intermediary* under a *funeral plan contract*, and which are sufficient for the purpose of providing the agreed funeral, between receipt and applying the monies in accordance with ■ FPCOB 3.1.6R;

(b) pursuant to a *contract of insurance* prior to delivering a *covered individual's* funeral, providing a *customer* refund, or pursuant to ■ FPCOB 3.1.8R(2)(c); or

(c) from a trust prior to delivering a *covered individual's* funeral, providing a *customer* refund, or pursuant to ■ FPCOB 3.1.9R(3)(e),

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

(d) provide to an *insurer* or trustee, as applicable, a copy of the *covered individual's* death certificate, or Certificate for Burial or Cremation (GR021 in Northern Ireland) where a death certificate is not available, prior to, or at the time of, requesting money under the terms of an applicable *contract of insurance* or in accordance

		<p>with the terms of a trust for the purpose of delivering or arranging a funeral; and</p> <p>(i) pay monies received from an <i>insurer</i> or a trust for the funeral of a <i>covered individual</i> to the funeral services provider that has agreed to provide a funeral for the <i>covered individual</i> as soon as reasonably practicable following receipt.</p>
3.1.12	G	<p>Examples of how the safeguarding required by ■ FPCOB 3.1.11R may be achieved include:</p> <p>(1) where monies are contractually owed to the <i>funeral plan provider</i> under the <i>funeral plan contract</i>, requiring payments made by a customer under a <i>funeral plan contract</i> to be made directly to the <i>insurer</i> or the trustee, as applicable;</p> <p>(2) requiring payments used to deliver a <i>covered individual's</i> funeral and payments to a <i>customer</i> to be provided by the <i>insurer</i> or trustee, as applicable, directly to the funeral services provider, or the <i>customer</i>, as appropriate; and</p> <p>(3) the <i>funeral plan provider</i> holding the received monies on trust for the benefit of the <i>customer</i>. This arrangement would need to include keeping the monies segregated from any other monies held by the <i>funeral plan provider</i> and keeping an appropriate record of these monies.</p>
		<p>Systems and controls</p>
3.1.13	G	<p><i>Firms</i> are reminded of <i>Principle 3</i> which provides that a <i>firm</i> must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.</p>
3.1.14	R	<p>(1) A <i>firm</i> must ensure that the systems and controls, including procedures and arrangements, used to comply with the requirements in this chapter are adequate, effective and appropriate for the scale and nature of its business.</p> <p>(2) Sub-paragraph (1) applies in particular to systems and controls concerning:</p> <p>(a) the adequacy of the trust and insurance arrangements that a <i>firm</i> must put in place in accordance with ■ FPCOB 3.1.6R;</p> <p>(b) whether a proposed price for a <i>funeral plan contract</i> is likely to lead to, as applicable, an under-funded trust arrangement or an insufficient insured sum to provide the funeral contracted for; and</p>

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

(c) the price of the *funeral plan contract*, bearing in mind the cost of the funeral to the *firm*.

- (1) factor in the risk of inflation when considering pricing decisions; and
- (2) if applicable, factor in the volatility of trust assets.