

Chapter 3

Structure Provisions - arrangements underpinning a funeral plan contract

Form of a beneficial trust

This annex belongs to ■ FPCOB 3.1.9R.

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

Definitions

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

Beneficial provisions

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

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

Other provisions

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

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