Funeral Plan: Conduct of Business sourcebook

Chapter 3

Structure Provisions - arrangements underpinning a funeral plan contract

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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));
 - the assets held on trust must be kept segregated from any assets belonging to the *funeral plan provider* (FPCOB 3.1.9R(2));
 - to pay the essential payments for the operation of the trust (FPCOB 3.1.9R(3)(b));
 - 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));

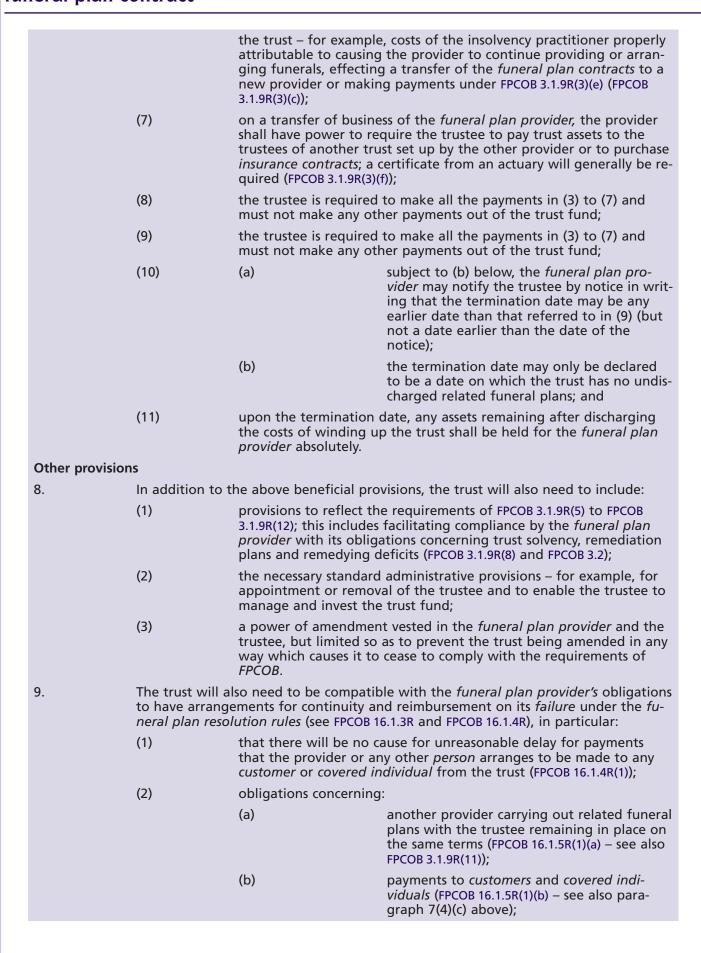
(b) the provision of a *customer* refund (FPCOB

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



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		(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 customer's or covered individual's 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.		