

Chapter 5

Distance communications

5.1 Distance marketing

Application

- 5.1.1 **R** This chapter applies to a *firm*:
- (1) in relation to its *regulated funeral plan activity*; and
 - (2) that carries on any distance marketing activity from an establishment in the *United Kingdom*, with or for a *consumer* in the *United Kingdom*.

Guidance on the distance marketing rules

- 5.1.2 **G** *Guidance* on the application of the provisions in this section can be found in ■ FPCOB 5 Annex 1G.

The distance marketing disclosure rules

- 5.1.3 **R** A *firm* must provide a *consumer* with the distance marketing information (■ FPCOB 5 Annex 2R) in good time before the *consumer* is bound by a *distance contract* or offer.
- 5.1.4 **G** The *rules* setting out the responsibilities of *funeral plan providers* and *funeral plan intermediaries* for producing and providing information apply to requirements in this section to provide information (see ■ FPCOB 9.1.3R).
- 5.1.5 **R** A *firm* must ensure that the distance marketing information, the commercial purpose of which must be made clear, is provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith in commercial transactions, and the legal principles governing the protection of those who are unable to give their consent.
- 5.1.6 **R** When a *firm* makes a telephone call to a *consumer*, it must make its identity and the purpose of its call explicitly clear at the beginning of the conversation.
- 5.1.7 **R** A *firm* must ensure that the information on contractual obligations to be communicated to a *consumer* during the pre-contractual phase conforms with the contractual obligations which would result from the law presumed to be applicable to the *distance contract* if that contract is concluded.

Terms and conditions, and form

5.1.8 **R** A *firm* must communicate to the *consumer* all the contractual terms and conditions and the information referred to in the distance marketing disclosure *rules* in writing or another *durable medium* available and accessible to the *consumer* in good time before conclusion of any *distance contract*.

5.1.9 **G** A *firm* will provide information, or communicate contractual terms and conditions, to a *consumer* if another *person* provides the information, or communicates the terms and conditions, to the *consumer* on its behalf.

Commencing performance of the distance contract

5.1.10 **R** The performance of the *distance contract* may only begin after the *consumer* has given their approval.

Exception: distance contract as a stage in the provision of another service

5.1.11 **R** This section does not apply to a *distance contract* to act as a *funeral plan intermediary*, if the *distance contract* is concluded merely as a stage in the provision of another service by the *firm* or another *person*.

Exception: successive operations

5.1.12 **R** In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the *rules* in this section only apply to the initial agreement.

5.1.13 **R** If there is no initial service agreement but the successive operations or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure *rules* will only apply:

when the first operation is performed; and

if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed to be the first in a new series of operations).

Exception: telephone calls

5.1.14 **R**

- (1) In the case of a telephone call, and subject to the explicit consent of the *consumer*, only the abbreviated distance marketing information (■ FPCOB 5 Annex 3R) needs to be provided during that communication.
- (2) However, unless another exemption applies (such as the exemption for means of distance communication not enabling disclosure), a *firm* must still provide the distance marketing information (■ FPCOB 5 Annex 2R) in writing or another *durable medium* available and accessible to the *consumer* in good time before conclusion of any *distance contract*.

Exception: means of distance communication not enabling disclosure

5.1.15 **R** A *firm* may provide the distance marketing information (■ FPCOB 5 Annex 2R) and the contractual terms and conditions in writing or another *durable medium* immediately after the conclusion of a *distance contract* if the contract has been concluded at a *consumer's* request using a means of distance communication that does not enable the provision of that information in that form in good time before conclusion of any *distance contract*.

Consumer's right to request paper copies and change

5.1.16 **R** At any time during the contractual relationship the *consumer* is entitled, at their request, to receive the contractual terms and conditions on paper. The *consumer* is also entitled to change the means of distance communication used unless this is incompatible with the contract concluded or the nature of the service provided.

Unsolicited services

5.1.17 **R**

- (1) A *firm* must not enforce, or seek to enforce, any obligations under a *distance contract* against a *consumer*, in the event of an unsolicited supply of services. The absence of a reply does not constitute consent.
- (2) This *rule* does not apply to the tacit *renewal* of a *distance contract*.

Mandatory nature of consumer's rights

5.1.18 **R** If a *consumer* purports to waive any of the *consumer's* rights created or implied by the *rules* in this section, a *firm* must not accept that waiver, nor seek to rely on or enforce it against the *consumer*.

5.1.19 **R** If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the *United Kingdom*, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this section.