

**FUNERAL PLANS (No 4) INSTRUMENT 2022****Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in or under the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137T (General supplementary powers);
  - (2) section 139A (Power of the FCA to give guidance);
  - (3) section 213 (The compensation scheme);
  - (4) section 214 (General);
  - (5) section 215 (Rights of the scheme in insolvency); and
  - (6) section 215A (Continuity of funeral plan contracts).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 29 July 2022, immediately after the commencement of the Funeral Plans Instrument 2021.

**Amendments to the Handbook**

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes in this instrument listed in column (2).

(1)	(2)
Glossary	Annex A
Fees manual (FEES)	Annex B
Compensation sourcebook (COMP)	Annex C

**Citation**

- E. This instrument may be cited as the Funeral Plans (No 4) Instrument 2022.

By order of the Board  
23 June 2022

## Annex A

## Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

Amend the following definition as shown.

<i>compensation costs</i>	the costs incurred:	
	(a)	in paying compensation; or
	(b)	[deleted]
	(c)	[deleted]
	(d)	under section 214B or section 214D of the <i>Act</i> ; or
	(e)	by virtue of section 61 (Sources of compensation) of the Banking Act 2009; <u>or</u>
	(f)	<u>in connection with making arrangements to secure continuity of funeral plan contracts;</u>
	(including the costs of paying interest, principal and other costs of borrowing to pay such costs).	

## Annex B

## Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text.

<b>6</b>	<b>Financial Services Compensation Scheme Funding</b>			
<b>6.1</b>	<b>Application</b>			
...				
	The management expenses levy			
6.1.9	G	Section 223 of the <i>Act</i> (Management expenses) prevents the <i>FSCS</i> from recovering, through a levy, any <i>management expenses</i> attributable to a particular period in excess of the limit set in <i>COMP</i> as applicable to that period. ‘Management expenses’ are defined in section 223(3) to mean expenses incurred or expected to be incurred by the <i>FSCS</i> in connection with its functions under the <i>Act</i> , except:		
			...	
		(2)	expenses incurred as a result of the <i>FSCS</i> making the arrangements to secure continuity of insurance to make payments to or in respect of policyholders or to safeguard policyholders, under <i>PRA rules</i> made under sections 216(3) or (4), 217(1) or 217(6) of the <i>Act</i> ;	
		<u>(2A)</u>	<u>expenses incurred as a result of the <i>FSCS</i> making the arrangements to secure continuity of funeral plan contracts or to make payments under <i>FCA rules</i> made under sections 215A(3) or (4) of the <i>Act</i>;</u>	
			...	
...				
	The compensation costs levy			
...				
6.1.15	G	<i>Compensation costs</i> are principally the costs incurred in paying compensation. Costs incurred:		
		(1)	[deleted]	
			...	

			(4)	as a result of the <i>FSCS</i> being required by HM Treasury to make payments in connection with the exercise of the stabilisation power under Part 1 of the Banking Act 2009; <del>or</del>
			(5)	in paying interest, principal and other costs from borrowing to allow the <i>FSCS</i> to pay claims attributable to a particular <i>class</i> ; <u>or</u>
			(6)	<u>in connection with making arrangements to secure continuity of funeral plan contracts;</u>
				are also treated as <i>compensation costs</i> . <i>Compensation costs</i> are attributed to the <i>class</i> which gives rise to the costs up to relevant <i>levy limits</i> . <i>Classes</i> (other than the <i>deposit acceptors' contribution class</i> ) may be funded, for <i>compensation costs levies</i> beyond the <i>class levy limit</i> , by the <i>retail pool</i> .

## Annex C

### Amendments to the Compensation sourcebook (COMP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

### **3            The qualifying conditions ~~for compensation~~**

#### **3.1           Application and Purpose**

...

Purpose

- 3.1.3        G    The purpose of this chapter is to set out in general terms the conditions that must be satisfied before the *FSCS* can make an offer of compensation or secure continuity of funeral plan contracts.

Insert the following new section, COMP 3.3 (Continuity of funeral plan contracts), after COMP 3.2 (The qualifying conditions for paying compensation). The text is not underlined.

### **3.3           Continuity of funeral plan contracts**

Ability to secure continuity of funeral plan contracts

- 3.3.1        R    The *FSCS* may make arrangements to secure continuity of a *funeral plan contract* for an *eligible claimant* who has a *funeral plan contract* if:
- (1)    the contract is with a *relevant person* (or, where applicable, a *successor*) that is *in default*;
  - (2)    it is reasonably practicable to do so;
  - (3)    in the opinion of the *FSCS* at the time it proposes to make the arrangements, it would be beneficial to the generality of *eligible claimants* covered by the proposed arrangements; and
  - (4)    in situations where the cost of securing continuity of *funeral plan contracts* might exceed the cost of paying compensation, any additional cost is likely to be justified by the benefits.
- 3.3.2        R    When assessing the cost of paying compensation, the *FSCS* may have regard to the likely total cost of paying compensation arising out of the *default*, net of recoveries, not just the compensation amounts likely to be payable to particular *eligible claimants* covered by the proposed arrangements for continuity.

Quality of funeral under new arrangements

- 3.3.3 R In securing continuity of a *funeral plan contract*:
- (1) the *FSCS* must seek to secure the provision of a funeral for the *eligible claimant* under the new or continuing *funeral plan contract* on terms corresponding in all material respects (so far as it appears to the *FSCS* to be reasonable in the circumstances) to those which have applied under the *funeral plan contract*;
  - (2) if the *FSCS* secures continuity of a *funeral plan contract* other than as in (1), then the *FSCS* must:
    - (a) give the *eligible claimant* the option of receiving compensation instead; and
    - (b) (if the claimant does not elect to receive compensation) ensure that any future premiums that the claimant is committed to paying under the contract will be reduced by an amount (if any) that the *FSCS* considers reasonable to reflect the change in terms.

#### Measures to be taken

- 3.3.4 R In order to secure continuity of *funeral plan contracts*, the *FSCS* may take such measures as it considers appropriate to:
- (1) secure or facilitate the transfer of the business of the *relevant person* or *successor* that is *in default* and which consists of carrying out *funeral plan contracts* or any part of that business to another *firm*; and/or
  - (2) secure the issue of *funeral plan contracts* by another *firm* to *eligible claimants* in substitution for their existing contracts.
- 3.3.5 R In making arrangements to secure continuity of *funeral plan contracts*, the *FSCS* must use its reasonable endeavours to seek the most cost-effective arrangements available.
- 3.3.6 G For *trust arrangements* and *contracts of insurance* relating to *funeral plan contracts*, *COMP 7.7* gives the *FSCS* powers to vary existing rights or obligations, and create new rights in favour of, or obligations to, the *FSCS*. These powers may be exercised to assist in securing continuity of *funeral plan contracts*.

#### Provision of funerals while seeking continuity

- 3.3.7 R (1) While the *FSCS* is seeking to secure continuity of *funeral plan contracts*, it may secure the provision of a funeral, which is due to be provided under any *protected funeral plan contract* of the *relevant person* (or, where applicable, a *successor*), on terms corresponding in all material respects (so far as it appears to the *FSCS* to be reasonable in the circumstances) to that contract.

- (2) The provision of a funeral is required regardless of whether the cost of securing its provision is more or less than the cost of paying compensation.
- (3) To secure the provision of a funeral, the *FSCS* may:
- (a) make a payment to or on behalf of the estate of an *eligible claimant*, or to any other person in connection with the provision of a funeral, on such terms (including any terms requiring repayment in whole or in part) and on such conditions as it thinks fit; or
  - (b) secure that a payment is made to or on behalf of the estate of the *eligible claimant*, or to any other person in connection with the provision of a funeral, by the liquidator, administrator or provisional liquidator of the *relevant person* (or, where applicable, a *successor*), or by the trustees of any *trust arrangement* or *insurer* of any *contract of insurance* relating to the *funeral plan contract*, by giving them an indemnity covering any such payment or any class or description of such payments.

...

Amend the following as shown.

## **6 Relevant persons and successors in default**

...

### **6.3 When is a relevant person in default?**

...

Scheme manager's power to require information

- 6.3.9 R For the purposes of section 219(1A)(b) ~~and~~ (d) and (f) of the *Act* (Scheme manager's power to require information) whether a *relevant person* is unable or likely to be unable to satisfy ~~claims~~ claims shall be determined by reference to whether it is *in default*.

...

#### **6.3A When is a successor in default?**

...

- 6.3A.5 R For the purposes of section 219(1A)(b) ~~and~~ (d) and (f) of the *Act* (Scheme manager's power to require information) whether a *relevant person* is unable

or likely to be unable to satisfy ~~claims~~ claims shall be determined by reference to whether it is *in default*.

## 7 **Assignment, ~~or~~ subrogation, variation or creation of rights**

### 7.1 **Application**

...

Purpose

7.1.3 G The *FSCS* may (and in some cases must) make an offer of compensation conditional on the assignment of rights to it by a claimant. The *FSCS* may also be subrogated automatically to the claimant's rights. The purpose of this chapter is to make provision for and set out the consequences of an assignment or subrogation of the claimant's rights.

7.1.4 G In relation to *claims* in connection with *funeral plan provision activity*, the *FSCS* may:

- (1) vary existing rights and obligations in connection with *trust arrangements and contracts of insurance* relating to the relevant *funeral plan contract* entered into or carried out by the relevant *person or successor*; and
- (2) create new rights in favour of, or obligations to, the *FSCS* that override such existing rights or obligations.

This chapter also makes provision for and sets out the consequences of such a variation or creation of new rights and/or obligations: see *COMP 7.7*.

### 7.2 **How does the assignment of rights work?**

7.2.1 R The *FSCS* may make any payment of compensation to a claimant in respect of any *protected claim* or, where applicable, may make a payment to secure continuity of *funeral plan contracts* in accordance with *COMP 3.3*, conditional on the claimant assigning the whole or any part of ~~his~~ their rights against any one or more of the *relevant person*, any third party, or, where applicable, a *successor*, to the *FSCS* on such terms as the *FSCS* thinks fit.

...

### 7.3 **Automatic subrogation**

General

7.3.1 R ...

...

Rights and obligations against the relevant persons, successors and third parties

- 7.3.8 R The *FSCS* may determine that:
- (1) the payment of compensation by the *FSCS*; or
  - (2) ~~{deleted}~~ a payment by the *FSCS* in connection with securing continuity of funeral plan contracts;

shall have all or any of the following effects:

...

- 7.3.9 R The *FSCS* may alternatively or additionally make the actions in *COMP* ~~7.3.8R(1)~~ 7.3.8R conditional on the claimant assigning or transferring the whole or any part of all such rights as ~~he~~ they may have against the *relevant person* (or, where applicable, a *successor*) and/or any third party on such terms as the *FSCS* determines are appropriate.

...

## **7.6 Treatment of recoveries**

...

- 7.6.2 R Unless compensation was paid under *COMP* 9.2.3R, if a claimant assigns or transfers ~~his~~ their rights to the *FSCS* or a claimant's rights and claims are otherwise subrogated to the *FSCS* and the *FSCS* subsequently makes recoveries through those rights or claims, those recoveries must be paid to the claimant:
- (1) ...
  - (2) in circumstances where the amount recovered does not exceed the amount of compensation paid, to the extent that failure to pay any sums recovered to the claimant would leave a claimant who had promptly accepted an offer of compensation or whose rights and claims had been subrogated to the *FSCS* at a disadvantage relative to a claimant who had delayed accepting an offer of compensation or whose claims had not been subrogated (see *COMP* 7.6.4R); or
  - (3) where the *FSCS* has secured continuity of a funeral plan contract, to the extent that the amount recovered exceeds the cost of securing that continuity as estimated on a reasonable basis by the *FSCS*.

Insert the following new section, *COMP* 7.7 (Funeral plan contracts and related trusts and insurance policies), after *COMP* 7.6 (Treatment of recoveries). The text is not underlined.

## **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.

Amend the following as shown.

## **9 Time limits for payment and postponing payment**

...

### **9.2 When must compensation be paid?**

...

9.2.2 R The *FSCS* may postpone paying compensation if:

(1) ...

...

(5) the claimant has been charged with an offence arising out of or in relation to *money laundering*, and those proceedings have not yet been concluded; or

(6) [deleted]

- (7) it or an insolvency practitioner appointed to the *relevant person* (or, where applicable, a *successor*) is seeking to secure continuity of the relevant *funeral plan contract*.