

FUNERAL PLANS (No 5) 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 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers);
 - (3) section 139A (Power of the FCA to give guidance);
 - (4) section 213 (The compensation scheme);
 - (5) section 214 (General);
 - (6) section 215 (Rights of the scheme in insolvency); and
 - (7) 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.

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 of definitions	Annex A
Funeral Plan: Conduct of Business sourcebook (FPCOB)	Annex B
Compensation sourcebook (COMP)	Annex C

- E. The FCA confirms and remakes in the Glossary of definitions the defined expressions “Regulated Activities Order” and “Exemption Order”.

Citation

- F. This instrument may be cited as the Funeral Plans (No 5) Instrument 2022.

By order of the Board
15 July 2022

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

Amend the following definition as shown.

[*Editor's note:* Annex A takes into account the changes made in FCA 2021/26, which comes into force on 29 July 2022.]

*subsisting
funeral plan* a *funeral plan contract* that was entered into before 29 July 2022 and is still in force, including a contract meeting this criterion which is transferred in circumstances where *FPCOB* 10.2.2R applies.

Annex B

Amendments to the Funeral Plan: Conduct of Business sourcebook (FPCOB)

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

[*Editor's note:* Annex B takes into account the changes made in FCA 2021/26, which comes into force on 29 July 2022.]

1 Application and purpose

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1.2 General application: who? what? where?

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New, ~~and~~ subsisting and transferred funeral plans

1.2.8 R All of the *rules* in this sourcebook apply in relation to *new funeral plans*, unless otherwise stated.

1.2.9 R The *rules* in certain sections of this sourcebook also apply in relation to *subsisting funeral plans*.

1.2.9A R Any references in this sourcebook, other than that at FPCOB 16.1.5R(3)(e), to a transfer of a funeral plan contract or a transfer of the business of a funeral plan provider should be read to include circumstances where funeral plan contracts are transferred using the mechanism referred to in FPCOB 10.2.2R.

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10 Arrangements for the funeral

10.1 Application and purpose

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Arrangements with the funeral services provider

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10.1.11 R (1) ~~This rule applies to a funeral plan provider which has assumed the undertaking under a funeral plan contract to provide, or secure the provision of, a funeral as a result of a transfer of the contract.~~
[deleted]

- (2) ~~The *firm* must notify the *customer* and nominated representative that a transfer of the *funeral plan contract* has taken place within 30 *days* of the completion of the transfer.~~
- (3) ~~The *firm* must ensure that arrangements meeting the requirements of *FPCOB 10.1.3R* are in place within 30 *days* of the completion of the transfer.~~
- (4) ~~If, as a result of the *firm's* compliance with this *rule*, there are any changes to the arrangements under the contract, the *firm* must notify the *customer* and the nominated representative in compliance with *FPCOB 10.1.4R* and *FPCOB 10.1.5R*.~~

Insert the following new section, FPCOB 10.2 (Transfers of funeral plans), directly after FPCOB 10.1 (Application and purpose). The text is all new and is not underlined.

10.2 Transfers of funeral plans

- 10.2.1 R (1) This *rule* applies to a *funeral plan provider* which has assumed the undertaking under a *funeral plan contract* to provide, or secure the provision of, a funeral as a result of a transfer of the contract.
- (2) The *firm* must notify the *customer* and nominated representative that a transfer of the *funeral plan contract* has taken place within 30 *days* of the completion of the transfer and, where an undertaking is given in accordance with *FPCOB 10.2.2R(2)*, a copy must be provided.
 - (3) The *firm* must ensure that arrangements meeting the requirements of *FPCOB 10.1.3R* are in place within 30 *days* of the completion of the transfer.
 - (4) If, as a result of the *firm's* compliance with this *rule*, there are any changes to the arrangements under the contract, the *firm* must notify the *customer* and the nominated representative in compliance with *FPCOB 10.1.4R* and *FPCOB 10.1.5R*.
- 10.2.2 R (1) This *rule* applies to a *funeral plan provider* in circumstances described in article 59(3) to (6) of the *Regulated Activities Order* who:
- (a) intends to give an equivalent or substantially similar undertaking to a *customer* or a defined group of *customers* to replace an existing undertaking to provide, or secure the provision of, a funeral under a *funeral plan contract* between that *customer* and another person or *funeral plan provider*; and

- (b) will not otherwise assume the existing undertaking by novation, assignment or operation of law.
- (2) On or before the date notified to the *FCA* under article 59(3)(e)(ii) of the *Regulated Activities Order*, where the receiving *funeral plan provider's* undertaking will replace the existing undertaking under the *funeral plan contract* which the *customer* had with the transferring *firm*, the receiving *funeral plan provider* must give a written undertaking to the *customer*:
- (a) to provide a funeral on equivalent or substantially similar terms to the existing undertaking; and
 - (b) which provides the *customer* with a legally binding claim against it without the need for *customer* acceptance or any other action on the part of the *customer*.
- (3) At the same time that the written undertaking is provided to the *customer* under *FPCOB* 10.2.2R(2), the *funeral plan provider* must notify the *FCA* that the undertaking has been given and provide a copy of the undertaking.
- (4) The *funeral plan provider* must:
- (a) publish and maintain a copy of the written undertaking provided to the *customer* under *FPCOB* 10.2.2R(2) on its website; and
 - (b) maintain appropriate records, including records of the undertaking and the *customers* to whom it applies,
- until such time as there are no longer any *customers* to whom the undertaking applies.
- (5) On request by the *customer* or their nominated representative, the *funeral plan provider* must promptly provide a further copy of the undertaking by post and/or by email.
- 10.2.3 G (1) The effect of *FPCOB* 10.2.2R is that a *customer* for whom a *funeral plan provider* becomes responsible in regulatory terms following a transfer of business is provided with a binding undertaking from that receiving provider, which will provide a civil cause of action against that *firm* should it be needed.
- (2) An example of where such a civil cause of action may be needed is if the *funeral plan provider* became insolvent and the *customer* or their estate wanted to make a claim to the *compensation scheme*.
- (3) The fact that *FPCOB* 10.2.2R is actionable under s.138D of *FSMA* at the suit of a private person means a *customer* to whom (in breach

of that *rule*) a written undertaking is not made will in any event have a claim against that *funeral plan provider*.

- 10.2.4 G An example of a legally binding undertaking which would fulfil the requirement at *FPCOB* 10.2.2R includes a deed poll executed by the *funeral plan provider* in favour of a *customer* or defined group of *customers*.
- 10.2.5 G The obligation in *FPCOB* 10.2.2R(4)(a) does not require the receiving *funeral plan provider* to publish information on its website which meets the definition of personal data under the *General Data Protection Regulation*.

Amend the following as shown.

12 Handling of payments by intermediaries

12.1 Application and purpose

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Purpose

- 12.1.3 G The *rules* in this chapter mitigate the risk of loss to *customers* on the insolvency of a *firm* engaged in *funeral plan distribution*. Such a *firm* cannot receive or handle payments for a *funeral plan contract* except in some limited circumstances by cheque or in the form of cash and can only receive or handle a cash payment if that contract will be effective from the moment of receipt.

12.2 Obligations on intermediaries

- 12.2.1 R A *firm* engaged in *funeral plan distribution* must not accept payments which are payable to a *funeral plan provider* under a *funeral plan contract* unless:

- (1) the payment is:
- (a) received as agent for the *funeral plan provider*;
 - (b) made in cash;
 - (c) made at the time the *funeral plan contract* is entered into by the *firm* as agent of the *funeral plan provider*; and
 - (d) deemed received by the *funeral plan provider* on receipt by the agent under the following contracts:
 - (i) the *funeral plan contract*;

- (ii) the contract between the *funeral plan provider* and the agent; and
 - (iii) (where the *firm* is using an *appointed representative*) the contract between the *firm* and the representative; or
- (2) ~~the following contracts each provide that the payment is deemed received by the *funeral plan provider* on receipt by the agent:~~
[deleted]
- ~~(a) the *funeral plan contract*;~~
 - ~~(b) the contract between the *funeral plan provider* and the agent; and~~
 - ~~(c) (where the *firm* is using an *appointed representative*) the contract between the *firm* and the representative.~~
- (3) the payment is made by cheque payable to the *funeral plan provider* and:
- (a) is paid into the bank account of the *funeral plan provider* promptly and, in any event, no later than three *business days* after receipt; or
 - (b) is forwarded to the *funeral plan provider* promptly and, in any event, no later than 3 *business days* after receipt.
- 12.2.3 G The effect of *FPCOB* 12.2.1R is that a *firm* engaging in *funeral plan distribution* can only accept payment for a *funeral plan contract* if the payment is made by cheque payable to the *funeral plan provider* or in cash and, if cash, the *funeral plan provider* will be bound by that contract from the moment that ~~the~~ any cash payment is received by the *firm*.

...

12.3 Obligations on providers

- 12.3.1 R A *funeral plan provider* must ensure that its arrangements for another *firm* or an *appointed representative* to distribute *funeral plan contracts*:
- (1) prohibit that *person* from accepting payments payable to a *funeral plan provider*; or
 - (2) prohibit such payments other than by cheque or in cash and, for cash payments:
 - (a) are compatible with the requirements of *FPCOB* 12.2.1R; and

- (b) (for arrangements with a *firm*) make clear whether or not the *firm* is permitted to appoint *appointed representatives* to act as agent for the *funeral plan provider* in receiving contractual payment in cash.

12.4 Appointed representatives

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- 12.4.3 G Where a *funeral plan provider* appoints another *firm* to undertake *funeral plan distribution* in relation to its *funeral plan contracts* and that *firm* has an *appointed representative* who it permits to accept cash payment for that contract, ~~FPCOB 12.2.1R(2)~~ FPCOB 12.2.1(1)(d) would be satisfied where the *appointed representative* receives the cash payment as sub-agent for the *funeral plan provider* and the contracts which underpin the arrangements ensure this (including the contract between the *firm* and its representative).

Annex C

Amendments to the Compensation sourcebook (COMP)

In this Annex, the text is all new and is not underlined.

Insert the following new section, COMP 12A.6 (Funeral plans), immediately after COMP 12A.5 (Claims arising under COMP 3.2.4R).

12A.6 Funeral plans

- 12A.6.1 R (1) The *FSCS* may make payments to, or on behalf of, a relevant *funeral plan provider* or to the administrator or liquidator of a *funeral plan provider*, in respect of any reasonable fees, costs, charges or other expenses incurred for the purpose of the administrator or liquidator of that *funeral plan provider* complying with a request of the *FSCS* under section 215B of the *Act*.
- (2) In paragraph (1), ‘reasonable fees, costs, charges or other expenses’ means those fees, costs, charges or other expenses that the *FSCS* is satisfied:
- (a) have been reasonably incurred;
 - (b) have been exclusively incurred for the purpose of an administrator or liquidator complying with a request under section 215B of the *Act*; and
 - (c) only to the extent that such fees, costs, charges or other expenses cannot otherwise be met.
- 12A.6.2 G Section 215B of the *Act* (Scheme manager’s power to require assistance from liquidator etc. in relation to funeral plan contracts) confers a power on the *FSCS* to require the administrator or liquidator of a *funeral plan provider* to provide any assistance to the *FSCS* that the *FSCS* considers necessary to enable it to administer the compensation scheme and secure continuity of cover in relation to *funeral plan contracts*.