

Chapter 10

Arrangements for the funeral



10.1 Application and purpose

Application

10.1.1 **R** This chapter applies to a *funeral plan provider* that enters into a *funeral plan contract*, under which it undertakes to secure that another *person* provides a funeral for the *covered individual* on their death.

Purpose

10.1.2 **G** The purpose of the requirements in this chapter is to provide certainty at the point of sale of a *funeral plan contract* that an appropriate funeral services provider will provide the services required under the contract at no additional cost to the *customer* or the *covered individual's* estate.

Arrangements with the funeral services provider

10.1.3 **R** A *firm* must, within 30 days of the *customer's* purchase of a *funeral plan contract*, make appropriate arrangements for the funeral to be carried out. The arrangements must:

- (1) be legally enforceable;
- (2) be made with a funeral services provider that is located within a reasonable distance of the *covered individual's* address, unless:
 - (a) it is clear from the nature of the *funeral plan contract* that this was not the intention of both the funeral services provider and the *customer*; or
 - (b) the *customer* agrees otherwise;
- (3) identify the business name and address of the funeral services provider (including, as appropriate, the relevant branch) that will carry out the funeral; and
- (4) be such as to ensure that neither the *customer* nor the *covered individual's* estate are required to make further payments to the funeral services provider to provide the funeral in accordance with the *funeral plan contract*.

10.1.4 **R** Following compliance with **■ FPCOB 10.1.3R**, the *firm* must within 2 *business days* provide the *customer* with a notification of:

- (1) the name, address and contact details of the relevant funeral services provider; and

- (2) a summary of the arrangements made with the funeral services provider,
in accordance with ■ FPCOB 6.2 (Means of communication to customers).
- 10.1.5** **R** The *firm* must provide the notification in ■ FPCOB 10.1.4R to the nominated representative at the same time as it is provided to the *customer* unless the circumstances in ■ FPCOB 9.3.7R apply.
- 10.1.6** **R** The *firm* must regularly review the arrangements under ■ FPCOB 10.1.3R to ensure that the funeral services provider will provide the services required under the *funeral plan contract*.
- 10.1.7** **G** For the purposes of ■ FPCOB 10.1.6R, a review should take place at least every 12 *months*.
- 10.1.8** **R** If at any time after a *firm* has complied with ■ FPCOB 10.1.3R, a *firm* becomes aware that the funeral services provider is unable or likely to be unable to provide the services required under the *funeral plan contract*, the *firm* must make alternative arrangements with another funeral services provider, at no additional cost to the *customer* or *covered individual*.
- 10.1.9** **R** In accordance with ■ FPCOB 6.2, the *firm* must notify:
- (1) the *customer*; and
 - (2) the nominated representative, unless the ■ FPCOB 9.3.6R circumstances apply,
- of any new arrangements made under ■ FPCOB 10.1.8R as soon as practicable and in any event, within 2 *business days* of making the arrangements.
- 10.1.10** **G** A *funeral plan provider* should consider its arrangements in respect of *subsisting funeral plans* and whether those arrangements would meet the purpose of the requirements in this section, what steps it might take to change those arrangements as a result and what notifications to make to the *customer* and the nominated representative.
- 10.1.11** **R** [deleted]

10.2 Transfers of funeral plans

10.2.1

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- (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

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- (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

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- (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

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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

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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*.

