

## Chapter 10

# Arrangements for the funeral

## 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

		<p>notify the <i>FCA</i> that the undertaking has been given and provide a copy of the undertaking.</p> <p>(4) The <i>funeral plan provider</i> must:</p> <ul style="list-style-type: none"> <li>(a) publish and maintain a copy of the written undertaking provided to the <i>customer</i> under ■ FPCOB 10.2.2R(2) on its website; and</li> <li>(b) maintain appropriate records, including records of the undertaking and the <i>customers</i> to whom it applies, until such time as there are no longer any <i>customers</i> to whom the undertaking applies.</li> </ul> <p>(5) On request by the <i>customer</i> or their nominated representative, the <i>funeral plan provider</i> must promptly provide a further copy of the undertaking by post and/or by email.</p>
10.2.3	G	<p>(1) The effect of ■ FPCOB 10.2.2R is that a <i>customer</i> for whom a <i>funeral plan provider</i> 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 <i>firm</i> should it be needed.</p> <p>(2) An example of where such a civil cause of action may be needed is if the <i>funeral plan provider</i> became insolvent and the <i>customer</i> or their estate wanted to make a claim to the <i>compensation scheme</i>.</p> <p>(3) The fact that ■ FPCOB 10.2.2R is actionable under s.138D of <i>FSMA</i> at the suit of a private person means a customer to whom (in breach of that <i>rule</i>) a written undertaking is not made will in any event have a claim against that <i>funeral plan provider</i>.</p>
10.2.4	G	<p>An example of a legally binding undertaking which would fulfil the requirement at ■ FPCOB 10.2.2R includes a deed poll executed by the <i>funeral plan provider</i> in favour of a <i>customer</i> or defined group of <i>customers</i>.</p>
10.2.5	G	<p>The obligation in ■ FPCOB 10.2.2R(4)(a) does not require the receiving <i>funeral plan provider</i> to publish information on its website which meets the definition of personal data under the <i>General Data Protection Regulation</i>.</p>