

Chapter 10

Arrangements for the funeral

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*.