

Chapter 16

Resolution requirements



16.1 Arrangements for funeral plan continuity or customer reimbursement on firm failure

Application

16.1.1 **R** In accordance with **■ FPCOB 1.2** (General application), this chapter applies to a *firm*:

- (1) *entering as provider into a funeral plan contract;*
- (2) *carrying out a funeral plan contract as provider, in respect of new funeral plans.*

16.1.2 **G**

- (1) As a result of **■ FPCOB 16.1.1R(2)**, this chapter applies to a firm in relation to *new funeral plans it carries out as provider* as a result of a transfer of those *funeral plan contracts* from another *firm*.
- (2) Where a *firm* has entered into or *carries out subsisting funeral plans*, it should consider whether its arrangements in respect of those *funeral plan contracts* would meet the requirements in this section and, if not, what changes to its arrangements it could make to bring them more into line with these requirements.

Obligation to have arrangements for continuity

16.1.3 **R**

- (1) A *firm* must have arrangements in place to ensure that, in the event of its *failure*, there will be a reasonable likelihood that the relevant *funeral plan contracts* will continue to be *carried out* by another *firm* that has permission to continue to *carry out the funeral plan contract as provider*.
- (2) However, the arrangements must not be restricted to only a particular *firm* or particular *firms* taking over those services. There must be a reasonable likelihood of the *funeral plan contracts* being *carried out* by any *firm* of that description.

Obligation to have arrangements for reimbursement

16.1.4 **R** A *firm* must also have arrangements in place to ensure that, in the event of its *failure* and where the relevant *funeral plan contracts* will not continue to be *carried out* by the *firm* or another *firm*, there will be a good outcome for *customers and covered individuals* and, in particular:

- (1) there will be no cause for unreasonable delay to any payment that the *firm* or any other *person* arranges to be made to any *customer* or *covered individual* from the relevant trust or *contract of insurance* arranged under ■ FPCOB 3.1.6R; and
- (2) the *firm's* liability towards any *customer* or *covered individual* who may be entitled to a payment in respect of a *funeral plan contract* (whether from the relevant trust or *contract of insurance* arranged under ■ FPCOB 3.1.6R or from the *firm's* own assets, or both) will not be limited by any contract term to a level below that which would be needed, at the time of the *firm's failure*, to purchase a replacement *funeral plan contract* on terms corresponding, in all material respects, to the *funeral plan contract* that the *firm* had entered into.

Minimum detailed arrangements for continuity and reimbursement

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A *firm's* arrangements under ■ FPCOB 16.1.3R and ■ FPCOB 16.1.4R must, as a minimum, include the following elements:

- (1) The rights and obligations under any contract or deed entered into by the *firm* with a trustee or *insurer* under ■ FPCOB 3.1.6R in respect of the relevant *funeral plan contracts* must make appropriate provision for, and should not frustrate, in the event of the *firm's failure*:
 - (a) any other *firm* (that has the appropriate permission) *carrying out as provider* those *funeral plan contracts* with the trustee or *insurer* remaining in place on the same terms; and
 - (b) any payment which *customers* or *covered individuals* may be in a position to claim from the trust or *contract of insurance*, or from the *firm* in respect of the trust or *contract of insurance*.
- (2) The contract or deed referred to in (1) must also require that the trustee or *insurer* cannot unreasonably withhold its consent to a transfer to another *firm* that would *carry out funeral plan contracts as provider*.
- (3) As well as including in each relevant *funeral plan contract* any terms necessary to ensure compliance with ■ FPCOB 16.1.4R(2), each relevant *funeral plan contract* entered into by the *firm* with a customer must provide that:
 - (a) if the *firm* fails it will be obliged to take all necessary steps to ensure that:
 - (i) in the case of a *funeral plan contract* for which there is *contract of insurance* arranged under ■ FPCOB 3.1.6R(1) under which the policyholder is the *firm*, the *customer*, *covered individual* or (on the *covered individual's* death) their next of kin will be able to make a claim themselves under the *contract of insurance* directly to the *insurer*;
 - (ii) in the case of a *funeral plan contract* for which there is a trust under ■ FPCOB 3.1.6R(2), the *customer* or *covered individual* will be paid their entitlement from the relevant trust (and the *funeral plan contract* must specifically provide for whether payment will be made to the *customer* or *covered individual*) ; and

- (b) the obligation under (a) will arise on any of the following situations occurring (whichever comes first):
 - (i) the *firm* ceases to be able to provide funeral services under the *funeral plan contract* upon the death of the *covered individual*;
 - (ii) the *firm* no longer intends to provide funeral services under the *funeral plan contract* upon the death of the *covered individual*; or
 - (iii) the *firm* is neither attempting, nor will it attempt, a transfer of the *funeral plan contract* to another *firm* that has permission to *carry out funeral plan contracts as provider*;
 - (c) the obligation under (a) is not owed if the *firm* achieves such a transfer;
 - (d) the *customer* irrevocably appoints the *firm*, for the duration of the *funeral plan contract*, as an agent for the purposes of asserting any right or interest that they have in the relevant trust or *contract of insurance* arranged under ■ FPCOB 3.1.6R, such appointment being without prejudice to the possibility of the *customer* or *covered individual* asserting their rights or interests themselves;
 - (e) the *customer* gives prior and informed consent for the transfer of the *firm's* obligations (towards the *customer* or, where appropriate, the *covered individual*) under the *funeral plan contract* to another *funeral plan provider* in the event of its *failure*, and that such prior consent:
 - (i) must not be limited to a transfer only to a particular *firm* or particular *firms*; and
 - (ii) must only be to:
 - (A) transfers arranged by an insolvency practitioner appointed to the *firm* that will result in the *funeral plan contract* being *carried out* by the transferee on the same terms as the *funeral plan contract* the *customer* entered into with the *firm*; and
 - (B) transfers arranged by the FSCS, in securing continuity of the *funeral plan contract* under ■ COMP 3.3.3R, with consent to the contract being varied so as to result in the *funeral plan contract* being *carried out* by the transferee on terms corresponding in all material respects (so far as it appears to the FSCS to be reasonable in the circumstances) to those which applied under the *funeral plan contract* entered into with the *firm*; and
 - (f) no consent is required from any *covered individual* to the matters in paragraph (e).
- (4) The *firm* must maintain a single central record containing all up-to-date and pertinent information and documents relating to each *funeral plan contract* that it has entered into (including through agents) and under which it has any undischarged obligations. The central record must be capable of identifying:
- (a) every *funeral plan contract* that could be transferred to another *firm*;

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(b) for each *funeral plan contract*:

(i) the name and contact details of the *customer*, the *covered individual* (if different to the *customer*) and any nominated representative; and

(ii) the amount paid to the *firm* by the *customer* that has, in accordance with ■ FPCOB 3.1.6R, been applied towards a *contract of insurance* or paid into a trust.

(1) In the event of a *firm's failure*, any insolvency practitioner appointed to the *firm* will have duties under insolvency law in respect of the *firm's* creditors, who may include any *customer* or *covered individual* towards whom the *firm* has undischarged contractual obligations at the point of *failure*.

(2) Such *customers* or *covered individuals* may be entitled to recover amounts from the relevant trust or *contract of insurance* arranged by the *firm* under ■ FPCOB 3.1.6R and may also have separate claims against the *firm* itself.

(3) Depending on how the insolvency practitioner proposes to address the rights of such *customers* or *covered individuals* and the nature of any potential claims against the *firm* that they may have, the FSCS may declare the *firm* in default and take further steps under the relevant provisions of COMP.

(4) A *firm's* compliance with the requirements in ■ FPCOB 16.1.3R to ■ FPCOB 16.1.5R will assist both the appointed insolvency practitioner and the FSCS in the event of the *firm's failure*.

(5) However, when considering whether its arrangements will ensure a good outcome in accordance with ■ FPCOB 16.1.4R, a *firm* should not make any assumptions as to whether the FSCS will determine the *firm* to be in *default* and take any other steps under the relevant provisions of COMP.

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Guidance on arrangements with other firms for continuity

A *firm* may enter into an arrangement with another *firm*, which has the *permission* to carry out a *funeral plan contract as provider*, under which the other *firm* agrees to take over the obligations under the *funeral plan contract* in the event of its *failure*. But it should only do this in a way that does not impair its compliance with ■ FPCOB 16.1.3R(2). This means that the arrangement with the other *firm* must not prevent any similar agreements being made, at the time or in future, with other *firms*.

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Further guidance on arrangements for continuity and reimbursement

(1) When designing its arrangements under ■ FPCOB 16.1.3R and ■ FPCOB 16.1.4R, a *firm* should take into account the general law to ensure that the insolvency of the *firm* does not prejudice the operation of arrangements that the *firm* has put in place. In particular, the arrangements should be such that an insolvency practitioner appointed to the *firm* in its *failure* would be in a position to:

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recognise a *customer's* or *covered individual's* rights under or in respect of the relevant trust or *contract of insurance* arranged under ■ FPCOB 3.1.6R;

rely on a *customer's* consent as described in ■ FPCOB 16.1.5R(3)(e); and

exercise any rights of the *firm* under the provisions described in ■ FPCOB 16.1.5R(1) to give effect to a transfer or payment to the *customer* or *covered individual*.

- (2) A *firm* should consider the need to obtain professional advice on the adequacy of its arrangements, including in the event of insolvency. For example, a *firm* may benefit from obtaining legal advice or advice from a qualified insolvency practitioner on the likelihood of its arrangements securing the outcome of those *funeral plan contracts* continuing to be *carried out* by another *firm* or the relevant *customer* or *covered individual* receiving a payment where the relevant *funeral plan contracts* will not continue to be *carried out* by the *firm* or another *firm*.

In assessing the adequacy of its arrangements, a *firm* should consider, in particular:

- (a) whether any terms included in relevant contracts as part of its arrangements are enforceable and by whom, for example terms in trust deeds, insurance policies, and *customer*, service and supplier contracts; and
 - (b) the extent to which other practical obstacles could foreseeably prevent the implementation of the arrangements or frustrate the required outcome.
- (4) *Firms* may find it useful to refer to the FCA's Wind-down Planning Guide (WDPG) when designing their arrangements.

Guidance on disclosures

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- (1) *Firms* are reminded of the disclosure requirements in ■ FPCOB 9.2.7R (Funeral plan summary) and ■ FPCOB 9.3.6R (Nominated representative document).

- (2) In relation to *subsisting funeral plans*, a *firm* should consider:
- (a) notifying each *customer* and their nominated representative of any arrangements put in place as a result of the guidance in ■ FPCOB 16.1.2G(2);
 - (b) notifying each *customer* and their nominated representative of any subsequent changes to those arrangements; and
 - (c) where the *firm* makes such a notification, making it alongside the annual statement required under the rule at ■ FPCOB 9.3.11R.

16.1.10

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Firms are reminded of the disclosure requirements under Principle 11 and in ■ SUP 16.3.21R (Insolvency, bankruptcy and winding up).