

Chapter 2

General matters

2.1 General principles

Application

- 2.1.1
- R
- (1) This section applies to a *firm* in relation to its *regulated funeral plan activity*.

(2) This section applies in relation to a *firm’s customers* under *subsisting funeral plans*, unless otherwise stated.

The customer’s best interests rule

- 2.1.2
- R
- A *firm* must act honestly, fairly and professionally in accordance with the best interests of:

(1) its *customer*; and

(2) if different, the *covered individual*.

Exclusion of liability

- 2.1.3
- R
- A *firm* must not seek to exclude or restrict, or rely on any exclusion or restriction of, any duty or liability it may have to a *customer* or *covered individual* unless it is reasonable for it to do so and the duty or liability arises other than under the *regulatory system*.

- 2.1.4
- G
- The general law, including the *Unfair Terms Regulations* (for contracts entered into before 1 October 2015) and the *CRA*, also limits the scope for a *firm* to exclude or restrict any duty or liability to a *consumer*.

Reliance on others

- 2.1.5
- G
- (1) Where it is compatible with the nature of the obligation imposed by a particular *rule*, including the *customer’s best interests rule*, and with the *Principles*, in particular *Principles* 1 (Integrity), 2 (Skill, care and diligence) and 3 (Management and control), *firms* may rely on third parties in order to comply with the *rules* in this sourcebook.

(2) For example, where a *rule* requires a *firm* to take reasonable steps to achieve an outcome, it will generally be reasonable for a *firm* to rely on information provided to it in writing by an unconnected *authorised person* or a *professional firm*, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information. However, a *firm* cannot delegate its responsibility under the *regulatory system*.

For example, where a *rule* imposes an absolute obligation (such as the requirement on a *funeral plan provider* in ■ FPCOB 14.1.4R regarding the services required for a *funeral plan contract*) although a *firm* could use outsourcing arrangements to fulfil its obligation, it retains regulatory responsibility for achieving the outcome required.

2.1.6

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Record keeping

- (1) This sourcebook, other than ■ FPCOB 4, ■ FPCOB 6.4.18R, ■ FPCOB 15 and ■ FPCOB 16, does not generally have detailed record-keeping requirements: *firms* will need to decide what records they need to keep in line with the high-level record-keeping requirements and their own business needs.
- (2) In order to deal with requests for information from the *FCA*, as well as queries and complaints from *customers* and *covered individuals*, *firms* may require evidence of matters such as:
 - (a) the reasons for *personal recommendations*;
 - (b) what documentation has been provided to a *customer* or *covered individual*; and
 - (c) how redemptions have been settled and why.
- (3) A *firm* may be subject to record-keeping requirements elsewhere in the *FCA Handbook*, including in:
 - (a) the Training and Competence sourcebook (*TC*) (see ■ TC 3.1.1R);
 - (b) the Senior Management Arrangements, Systems and Controls sourcebook (*SYSC*) (see ■ SYSC 9.1.1R, ■ SYSC 10.1.6R and ■ SYSC 28A.3.1R); and
 - (c) chapter 7 of the Product Intervention and Product Governance sourcebook (*PROD*) when *manufacturing or distributing a funeral plan product*.

2.2 Inducements

2.2.1

G

- (1) *Principle 8* requires a *firm* to manage conflicts of interest fairly, both between itself and its *customers* and between a *customer* and another *client*. This principle extends to soliciting or accepting inducements where this would conflict with a *firm's* duties to its *customers*. A *firm* that offers such inducements should consider whether doing so conflicts with its obligations under:
 - (a) *Principles 1* and *6* to act with integrity and treat *customers* fairly; and
 - (b) the *customer's best interests rule*.
- (2) An inducement is a benefit offered to a *firm*, or any *person* acting on its behalf, with a view to that *firm*, or that *person*, adopting a particular course of action. This can include, but is not limited to, cash, cash equivalents, *commission*, goods, hospitality or training programmes.
- (3) *Firms* should also refer to the *rules* on charging for funeral plan distribution and payments to *funeral plan intermediaries* (■ FPCOB 6.4 and ■ FPCOB 6.5).

2.3 Customers with a payment shortfall

Application

2.3.1 **R** This section applies to a *funeral plan provider* dealing with a *customer* that has:

- (1) an *instalment payment funeral plan* entered into on or after 29 July 2022; and
- (2) a *payment shortfall* in relation to that *instalment payment funeral plan*.

2.3.2 **G** In relation to a *subsisting funeral plan*, a *funeral plan provider* should deal with *customers* fairly and, as far as possible, in a manner that is compatible with the *customer's best interests rule*.

Purpose

2.3.3 **G** This section amplifies *Principle 6* (Customers' interests) in respect of the information and service that *firms* should provide to *customers* who have payment difficulties or shortfalls.

Dealing fairly with customers with a payment shortfall

2.3.4 **R** The *firm* must deal fairly with the *customer* in relation to the *payment shortfall*.

2.3.5 **R** Where the *customer* has a *payment shortfall* of 2 consecutive payments, the *firm* must, as soon as possible, and in any event within 5 *business days* of the second missed payment, provide the *customer* with a statement in a *durable medium* of:

- (1) the individual payments due;
- (2) the total amount of the *payment shortfall*; and
- (3) information on the consequences and potential consequences under the *funeral plan contract*, if the *payment shortfall* is not settled within 10 *business days* of the date of the *customer* communication.

2.3.6 **R** The *firm* must allow the *payment shortfall* to be settled within 10 *business days* of the date of the communication, without penalty.

2.3.7	R	The <i>firm</i> must not impose a <i>fee</i> on the <i>customer</i> for incurring or correcting the <i>payment shortfall</i> .
2.3.8	R	<p>The <i>firm</i> must not cancel the <i>funeral plan contract</i> on the basis of a <i>payment shortfall</i> unless:</p> <p>(1) The <i>customer</i>:</p> <ul style="list-style-type: none">(a) has a <i>payment shortfall</i> of at least 2 consecutive payments; and(b) has failed to settle the <i>payment shortfall</i> in accordance with the terms of the statement provided by the <i>firm</i> for the purposes of ■ FPCOB 2.3.5R; or <p>(2) ■ FPCOB 13.2.3R applies.</p>
2.3.9	R	If the <i>firm</i> does not cancel the <i>funeral plan contract</i> on the basis of a <i>payment shortfall</i> , it must provide the <i>customer</i> with a further statement in accordance with the requirements of ■ FPCOB 2.3.5R following each further consecutive missed payment.
2.3.10	R	A <i>firm's</i> obligation to maintain insurance arrangements in accordance with ■ FPCOB 3.1.8R continues despite any <i>payment shortfall</i> .