

## 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.

### Record keeping

2.1.6

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- (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 *firm* must not impose a *fee* on the *customer* for incurring or correcting the *payment shortfall*.
- 2.3.8 **R** The *firm* must not cancel the *funeral plan contract* on the basis of a *payment shortfall* unless:
- (1) The *customer*:
    - (a) has a *payment shortfall* of at least 2 consecutive payments; and
    - (b) has failed to settle the *payment shortfall* in accordance with the terms of the statement provided by the *firm* for the purposes of ■ FPCOB 2.3.5R; or
  - (2) ■ FPCOB 13.2.3R applies.
- 2.3.9 **R** If the *firm* does not cancel the *funeral plan contract* on the basis of a *payment shortfall*, it must provide the *customer* 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 *firm's* obligation to maintain insurance arrangements in accordance with ■ FPCOB 3.1.8R continues despite any *payment shortfall*.