

Chapter 3

Structure Provisions - arrangements underpinning a funeral plan contract

3.1 Trust and insurance arrangements:
structure provisions

Application: general

- 3.1.1 R This section applies to a *firm*:
- (1) *entering as provider into a funeral plan contract*; and
 - (2) *carrying out a funeral plan contract as provider in relation to a new funeral plan contract*.

Application: subsisting funeral plans

- 3.1.2 G The FCA encourages *firms* which carry out *subsisting funeral plans* underpinned by existing trust arrangements or insurance contracts, and the relevant trustees and insurers, to work together to seek to amend those arrangements to bring them into line with the arrangements in this chapter.
- 3.1.3 R In relation to a *subsisting funeral plan*:
- (1) under which the *funeral plan provider* undertakes to secure that sums paid by the *customer* under the contract will be held on trust for the purpose of providing the funeral; and
 - (2) where the trust instrument or such contract have been substantively amended on or after 2 March 2021 so that their terms (post-amendment) meet any of the applicable requirements in this section or the funeral plan resolution rules in ■ FPCOB 16,
- a *firm* carrying out that contract as provider must, to the extent within its powers, comply with this section from 29 July 2022 or the point in time that the amendment is made if later.

Primary purpose

- 3.1.4 R The *rules* and *guidance* in this section must be construed in accordance with the *primary purpose*.
- 3.1.5 R The *primary purpose* is to ensure that *funeral plan contracts* are underpinned by robust trust or insurance arrangements that will enable the provision, at the relevant time, of funerals in accordance with the terms of the *funeral plan contracts*.

Arrangements underpinning funeral plan contracts

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In relation to each *funeral plan contract*, a *funeral plan provider* must either:

- (1) purchase, or arrange the purchase of, a *contract of insurance* from an authorised *insurer* on the life of the *covered individual* that is sufficient for the purpose of providing the agreed funeral; or
- (2) arrange for such proportion of sums paid by the *customer* under the *funeral plan contract* that is sufficient for the purpose of providing the agreed funeral to be held on trust,

as soon as reasonably practicable after receipt of monies from the *customer*, *appointed representative* or *funeral plan intermediary*.

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When purchasing a *contract of insurance* or determining what proportion of sums paid by the *customer* under the *funeral plan contract* should be held on trust, a *funeral plan provider* should take into account its obligations under ■ FPCOB 7 to provide a funeral under an *instalment payment funeral plan* before all instalments have been paid.

Requirements in relation to contracts of insurance

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For the purpose of ■ FPCOB 3.1.6R(1), the *contract of insurance* must contain terms that will deliver the following objectives:

- (1) clearly identifies the policyholder under the *contract of insurance*;
- (2) restricts the circumstances in which the insurer can make a payment under the contract to:
 - (a) payments made to the *funeral plan provider* or funeral services provider for the purpose of delivering a *covered individual's* funeral, which must only be paid after receipt and verification of the *covered individual's* death certificate, or Certificate for Burial or Cremation (GR021 in Northern Ireland) where a death certificate is not available, in accordance with ■ FPCOB 3.1.11R(2);
 - (b) providing a *customer* refund; or
 - (c) on the *failure* of the *funeral plan provider* or if it is *in default*, payments to a *customer* or *covered individual* or (on the *covered individual's* death) to their next of kin or in accordance with a determination of the *FSCS*;

will deliver all applicable outcomes in the *funeral plan resolution rules*;

the *contract of insurance* will not terminate upon *failure* of the *funeral plan provider*;

requires the *insurer* to co-operate with the *FCA*, the *FSCS* and any insolvency practitioner appointed, or proposed to be appointed, to the *funeral plan provider* in seeking to achieve the *primary purpose* on a *failure* or potential failure of the *funeral plan provider*; and

where the whole, or relevant part, of the business of the *funeral plan provider* has been transferred to a new *funeral plan provider*,

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the *insurer* may substitute the new provider in place of the original provider.

Requirements in relation to trusts

For the purposes of ■ FPCOB 3.1.6R(2), the trust must be established by a written instrument which contains terms that will deliver the following objectives:

- (1) that the assets are held on trust to make the payments set out in (3), and, when there are no more payments due or potentially due under that paragraph, upon trust for the *funeral plan provider*;
- (2) that the assets held on trust are kept segregated from any assets belonging to the *funeral plan provider*;
- (3) that the trustees are required to make the following payments (and are not permitted to make any other payments) out of the trust:
 - (a) payments made to the *funeral plan provider* or funeral services provider for the purpose of delivering a *covered individual's* funeral, which must only be paid after receipt and verification of the *covered individual's* death certificate, or Certificate for Burial or Cremation (GR021 in Northern Ireland) where a death certificate is not available, in accordance with ■ FPCOB 3.1.11R(2);
 - (b) essential payments for the operation of the trust (arising out of obligations owed by either the trustees or the *funeral plan provider*), limited to taxes, trustee fees, actuary fees, custodian fees, legal fees, trust administration fees, audit fees, investment management fees (including transaction fees), trustee liability insurance, and costs of insurance arrangements to provide a funeral on death within the instalment term;
 - (c) in the event of the insolvency of the *funeral plan provider*, payments to meet a claim by an insolvency practitioner against the assets held on trust, in priority to all other claims against those assets, to meet their costs properly attributable to:
 - (i) causing the provider to continue providing or arranging funerals under existing *funeral plan contracts*;
 - (ii) effecting a transfer of those contracts to another *funeral plan provider*; or
 - (iii) making payments under (3)(e);
 - (d) providing a *customer* refund;
 - (e) on the *failure* of the *funeral plan provider* or if it is *in default*:
 - (i) except where arrangements to secure continuity (whether or not involving the *FSCS*) of *funeral plan contracts* have been implemented:
 - (A) payments to each *customer* or *covered individual* or (on the *covered individual's* death) to their next of kin of the amount that the trustees consider is a reasonable estimate of the cost, at the time of the *failure* or declaration of default, of purchasing a replacement *funeral plan contract* on terms corresponding, in all material respects, to the original *funeral plan contract*; or

(B) if the trust assets are insufficient to pay each *customer* or *covered individual* the full amount required by (A), a proportional amount of the trust assets based on that full amount required by (A); or

(ii) payments in accordance with a determination of the *FSCS*;

(f) on a transfer by the *funeral plan provider* of all or part of its *funeral plan* business to another *funeral plan provider*, payment to the trustees of another trust set up by the other provider or to purchase *insurance contracts*, as directed by the *funeral plan provider*, provided that an actuary, who is a fellow of the Institute and Faculty of Actuaries, has certified the sufficiency of the arrangements for the purpose of providing the agreed funerals under the *funeral plan contracts* transferred and any contracts which are not transferred;

(g) surpluses to a *funeral plan provider*, where ■ FPCOB 3.2.12R applies;

will deliver all applicable outcomes in the *funeral plan resolution rules*;

more than half of the trustees must be unconnected with the *funeral plan provider*;

the trustees must appoint, or have appointed, an independent fund manager who is an *authorised person* who has *permission* to carry on an activity of the kind specified by article 37 of the *Regulated Activities Order*, and who is a *person* that is unconnected with the *funeral plan provider*, to manage the trust assets;

annual accounts in respect of the assets and liabilities of the trust must be prepared, and audited by a *person* who is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006;

the trustees must send a copy of the annual accounts to the *funeral plan provider* to facilitate its financial reporting, and must otherwise co-operate with, and provide information to, the *funeral plan provider* to facilitate compliance with its obligations under the *rules* (as amended from time to time);

the trustees must co-operate with the *FCA*, the *FSCS* and any insolvency practitioner appointed, or proposed to be appointed, to the *funeral plan provider* in seeking to achieve the *primary purpose* on a *failure* or potential *failure* of the *funeral plan provider*;

(10) that the written instrument can and must be amended if and to the extent that the *funeral plan provider* is required to seek an amendment by the *FCA* (by a *rule* or *requirement*);

(12) where the whole of the business of the *funeral plan provider* has been transferred to another *funeral plan provider*, the trust may make provision for the substitution of the new provider in place of the original provider;

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(13) an acknowledgement by the trustee that the *funeral plan provider* has been appointed by *customers* as an agent with a duty to enforce their rights under the trust (see ■ FPCOB 16.1.5(3)(d)).

Note: *Guidance* on the preparation of a trust deed to meet these objectives is in ■ FPCOB 3 Annex 1.

For the purposes of ■ FPCOB 3.1.9R(5) and ■ FPCOB 3.1.9R(6), a *person* is unconnected with the *funeral plan provider* if that person is a *person* other than:

the *funeral plan provider*;

a member of the same *group* as the *funeral plan provider*;

a director, other officer or employee of the *funeral plan provider*, or of any member of the same *group* as the *funeral plan provider*;

a partner of the *funeral plan provider*;

a close relative of a *person* falling within sub-paragraphs (1), (3) or (4);

an agent of any *person* falling within sub-paragraphs (1) to (5); or

any other *person* whose business or domestic relationship with the *funeral plan provider* (or other *person* in sub-paragraphs (1) to (6)) might reasonably be expected to give rise to a community of interest between them and the *funeral plan provider* which may involve a conflict of interest in dealings with third parties.

Safeguarding – obligations in relation to money received from a customer, trust or insurance provider

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A *funeral plan provider* must:

(1) make arrangements to safeguard monies it has received:

(a) from a *customer*, *appointed representative*, or *funeral plan intermediary* under a *funeral plan contract*, and which are sufficient for the purpose of providing the agreed funeral, between receipt and applying the monies in accordance with ■ FPCOB 3.1.6R;

(b) pursuant to a *contract of insurance* prior to delivering a *covered individual's* funeral, providing a *customer* refund, or pursuant to ■ FPCOB 3.1.8R(2)(c); or

(c) from a trust prior to delivering a *covered individual's* funeral, providing a *customer* refund, or pursuant to ■ FPCOB 3.1.9R(3)(e),

to ensure that such monies are not at any stage, including on its *failure*, assets of the *funeral plan provider*;

(d) provide to an *insurer* or trustee, as applicable, a copy of the *covered individual's* death certificate, or Certificate for Burial or Cremation (GR021 in Northern Ireland) where a death certificate is not available, prior to, or at the time of, requesting money under the terms of an applicable *contract of insurance* or in accordance

with the terms of a trust for the purpose of delivering or arranging a funeral; and

- (i) pay monies received from an *insurer* or a trust for the funeral of a *covered individual* to the funeral services provider that has agreed to provide a funeral for the *covered individual* as soon as reasonably practicable following receipt.

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Examples of how the safeguarding required by ■ FPCOB 3.1.11R may be achieved include:

- (1) where monies are contractually owed to the *funeral plan provider* under the *funeral plan contract*, requiring payments made by a customer under a *funeral plan contract* to be made directly to the *insurer* or the trustee, as applicable;
- (2) requiring payments used to deliver a *covered individual's* funeral and payments to a *customer* to be provided by the *insurer* or trustee, as applicable, directly to the funeral services provider, or the *customer*, as appropriate; and
- (3) the *funeral plan provider* holding the received monies on trust for the benefit of the *customer*. This arrangement would need to include keeping the monies segregated from any other monies held by the *funeral plan provider* and keeping an appropriate record of these monies.

Systems and controls

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Firms are reminded of *Principle 3* which provides that a *firm* must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

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- (1) A *firm* must ensure that the systems and controls, including procedures and arrangements, used to comply with the requirements in this chapter are adequate, effective and appropriate for the scale and nature of its business.
- (2) Sub-paragraph (1) applies in particular to systems and controls concerning:
 - (a) the adequacy of the trust and insurance arrangements that a *firm* must put in place in accordance with ■ FPCOB 3.1.6R;
 - (b) whether a proposed price for a *funeral plan contract* is likely to lead to, as applicable, an under-funded trust arrangement or an insufficient insured sum to provide the funeral contracted for; and
 - (c) the price of the *funeral plan contract*, bearing in mind the cost of the funeral to the *firm*.

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A *firm's* systems and controls must be developed to:

- (1) factor in the risk of inflation when considering pricing decisions; and

(2) if applicable, factor in the volatility of trust assets.

3.2 Trusts: solvency assessment, remediation and other requirements

Application

- 3.2.1 **R** This section applies to a *funeral plan provider* in relation to *funeral plan contracts* (including *subsisting funeral plans*) under which sums paid by the *customer* are held on trust for the purpose of providing the funeral.

Annual preparation of solvency assessment report

- 3.2.2 **R** A *funeral plan provider* must arrange for a *solvency assessment report* to be produced at least once every 12 *months* by an actuary who is a fellow of the Institute and Faculty of Actuaries.

Contents of solvency assessment report

- 3.2.3 **R** The *solvency assessment report* must:
- (1) within 12 *months* of the:
 - (a) last report obtained by the *funeral plan provider*; or
 - (b) trust being established,determine, calculate and verify the assets and liabilities of the trust by applying a *best estimate* basis;
 - (2) include, as a minimum, the following information:
 - (a) the actuarial valuation date;
 - (b) an actuarial valuation of the assets and liabilities of the trust;
 - (c) the solvency level of the trust (ratio of trust assets over trust liabilities as a percentage) on a *best estimate* basis;
 - (d) the assumptions adopted with respect to the valuation of the trust assets and trust liabilities;
 - (e) the number of undrawn or live plans categorised by payment method;
 - (f) the total plan values in relation to undrawn or live plans categorised by payment method;
 - (g) the average plan value categorised by payment method;
 - (h) the investment of trust assets at fair value by asset class at the actuarial valuation date;

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- (i) the investment of trust assets at fair value by investment manager at the actuarial valuation date;
 - (j) the level of all monies deducted from the trust over the period and identification of how the deductions have been spent; and
 - (k) the details of any liability sub-contracted to funeral services providers;
 - (3) be produced taking account of any relevant actuarial professional and technical standards, guidance and codes;
 - (4) be published by the *funeral plan provider* on its website within 30 days of the date on which the actuary completes the valuation and, in any case, no later than 6 weeks from the date an actuary is appointed to produce a *solvency assessment report*; and
 - (5) be made available free of charge on request.
- (1) For the purposes of ■ FPCOB 3.2.3R(2)(b), the liabilities of the trust should be assessed against ■ FPCOB 3.1.6R(2).
 - (2) For the purposes of ■ FPCOB 3.2.3R(2)(e), (f) and (g), the payment method should be categorised into:
 - (i) single payments;
 - (ii) instalment payments fully paid; and
 - (iii) instalment payments not fully paid.
 - (3) For the purposes of ■ FPCOB 3.2.3R(2)(k), details of any liability sub-contracted to funeral services providers may include inflation.

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Sending the solvency assessment report to the FCA

- (1) A *funeral plan provider* must send a copy of the *solvency assessment report* to the FCA within 7 days of it being received by the *funeral plan provider*.
- (2) If the *solvency assessment report* concludes that the assets of the trust are not sufficient to cover the liabilities of the trust, the *funeral plan provider* must provide a notification of that fact with the *solvency assessment report* at the same time as providing a copy of the *solvency assessment report*, in accordance with ■ SUP 15.7.1R.

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When a remediation plan is required

If a *solvency assessment report* concludes that the assets of the trust are not sufficient to cover the liabilities of the trust, a *funeral plan provider* must prepare a *remediation plan* that is approved by an actuary who is a fellow of the Institute and Faculty of Actuaries.

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Contents of the remediation plan

The *funeral plan provider* must ensure the *remediation plan* sets out the following:

- (1) how the deficit in the trust that has been identified by the *solvency assessment report* will be remedied before the next annual *solvency assessment report* is due; and
- (2) any assumptions that have been made in relation to any of the remedial steps or actions that the *funeral plan provider* intends to implement to remedy the deficit in the trust.

Sending the remediation plan to the FCA

- 3.2.8** **R** The *funeral plan provider* must submit the *remediation plan* to the *FCA* for review, in accordance with **■ SUP 15.7.1R**, as soon as possible and no later than 30 days from the submission date of the relevant *solvency assessment report* to the *FCA*.

Implementing the remediation plan

- 3.2.9** **R** The *funeral plan provider* must begin to implement the *remediation plan*:
- (1) as soon as possible and in any event within 30 days of submitting it to the *FCA*;
 - (2) in accordance with the terms of the *remediation plan* (or any amendments agreed with the *FCA* or imposed by the *FCA* by requirement).

Failure of remediation plan: notification to the FCA

- 3.2.10** **R** A *funeral plan provider* that is in the process of implementing a *remediation plan* must:
- (1) notify the *FCA*, in accordance with **■ SUP 15.7.1R**, as soon as it suspects that it will not be able to fully implement the *remediation plan* in accordance with its terms; and
 - (2) notify the *FCA*, in accordance with **■ SUP 15.7.1R**, immediately if the solvency level of the trust remains below 100% following the expiration of the *remediation plan*, which is the time at which the next *solvency assessment report* is due.

Obligation to remedy a trust deficit

- 3.2.11** **R**
- (1) If, following the expiration of the *remediation plan*, the assets of the trust remain insufficient to cover the liabilities of the trust, the *funeral plan provider* must remedy any shortfall using its own resources so that the solvency level of the trust is returned to 100% or more (when assessed on a *best estimate* basis).
 - (2) The obligation in (1) must be fulfilled as soon as practicable and in any case within 3 months of the date the expiration of the *remediation plan*.
 - (3) The *funeral plan provider* must notify the *FCA*, in accordance with **■ SUP 15.7.1R**, when the shortfall has been remedied.

3.2.12	<div><div>R</div><div><p>Prohibition on the withdrawal of monies from a trust</p><p>A <i>funeral plan provider</i> must not withdraw any surpluses from the trust except and only to the extent that:</p><div><div>(1)</div><div>the solvency level of the trust is above 110% when calculated on a <i>best estimate</i> basis; and</div></div><div><div>(2)</div><div>the withdrawal has been approved by an actuary who is a fellow of the Institute and Faculty of Actuaries.</div></div></div></div>
3.2.13	<div><div>R</div><div><p>Sending trust accounts to the FCA</p><p>A <i>funeral plan provider</i> must send a copy of the annual accounts of the trust to the <i>FCA</i> as part of its next financial report.</p></div></div>

Form of a beneficial trust

This annex belongs to ■ FPCOB 3.1.9R.

1.

This annex outlines provisions that a *funeral plan provider* might include in the trust deed of a beneficial trust set up in compliance with FPCOB 3.1.9R.
2.

This annex does not represent legal drafting for inclusion in the trust deed. *Funeral plan providers* will need to engage legal advisers to prepare the trust deed.
3.

Where a provision is required by FPCOB, the annex references the FPCOB rule but does not set it out in full. Other provisions, not explicitly required by FPCOB, are also listed below which are consistent with FPCOB generally and which will make the trust operable.

Definitions

4.

“Related funeral plan” means a funeral plan in respect of which a proportion of the sums paid by the *customer* has been paid into the trust pursuant to FPCOB 3.1.6R(2).
5.

“Undischarged related funeral plan” means a related funeral plan in respect of which the Trustees remain under a liability, or a potential liability, to make a payment under paragraph 7(4) below.
6.

Terms in italics have the meaning in the *Glossary*.

Beneficial provisions

7.

The trustees shall hold the trust fund upon trust as follows:
- (1)

to make the payments in (3) to (7) and, when there are no more payments due or potentially due under those paragraphs, upon trust for the *funeral plan provider* (FPCOB 3.1.9R(1));

(2)

the assets held on trust must be kept segregated from any assets belonging to the *funeral plan provider* (FPCOB 3.1.9R(2));

(3)

to pay the essential payments for the operation of the trust (FPCOB 3.1.9R(3)(b));

(4)

in respect of each related funeral plan, to raise and pay one of the following payments:

(a)

a payment to the *funeral plan provider* or funeral services provider for the purpose of delivering a *covered individual's* funeral (FPCOB 3.1.9R(3)(a));

(b)

the provision of a *customer* refund (FPCOB 3.1.9R(3)(d));

(c)

on the *failure* of the *funeral plan provider*, or if it is *in default*, payments to the *customer* or *covered individual* or in accordance with a determination of the FSCS (FPCOB 3.1.9R(3)(e));

(5)

the *funeral plan provider* shall have the power to require the trustee to pay to it a sum equal to any surplus in the trust which satisfies the requirements of FPCOB 3.2.12R (FPCOB 3.1.9R(3)(g));

(6)

in the event of the insolvency of the *funeral plan provider*, any insolvency practitioner shall have power to require the trustee to discharge certain costs in priority to any other claim on the assets of

- the trust – for example, costs of the insolvency practitioner properly attributable to causing the provider to continue providing or arranging funerals, effecting a transfer of the *funeral plan contracts* to a new provider or making payments under FPCOB 3.1.9R(3)(e) (FPCOB 3.1.9R(3)(c));
- (7) on a transfer of business of the *funeral plan provider*, the provider shall have power to require the trustee to pay trust assets to the trustees of another trust set up by the other provider or to purchase *insurance contracts*; a certificate from an actuary will generally be required (FPCOB 3.1.9R(3)(f));
 - (8) the trustee is required to make all the payments in (3) to (7) and must not make any other payments out of the trust fund;
 - (9) the trustee is required to make all the payments in (3) to (7) and must not make any other payments out of the trust fund;
 - (10)
 - (a) subject to (b) below, the *funeral plan provider* may notify the trustee by notice in writing that the termination date may be any earlier date than that referred to in (9) (but not a date earlier than the date of the notice);
 - (b) the termination date may only be declared to be a date on which the trust has no undis-charged related funeral plans; and
 - (11) upon the termination date, any assets remaining after discharging the costs of winding up the trust shall be held for the *funeral plan provider* absolutely.

Other provisions

8. In addition to the above beneficial provisions, the trust will also need to include:
 - (1) provisions to reflect the requirements of FPCOB 3.1.9R(5) to FPCOB 3.1.9R(12); this includes facilitating compliance by the *funeral plan provider* with its obligations concerning trust solvency, remediation plans and remedying deficits (FPCOB 3.1.9R(8) and FPCOB 3.2);
 - (2) the necessary standard administrative provisions – for example, for appointment or removal of the trustee and to enable the trustee to manage and invest the trust fund;
 - (3) a power of amendment vested in the *funeral plan provider* and the trustee, but limited so as to prevent the trust being amended in any way which causes it to cease to comply with the requirements of FPCOB.
9. The trust will also need to be compatible with the *funeral plan provider's* obligations to have arrangements for continuity and reimbursement on its *failure* under the *funeral plan resolution rules* (see FPCOB 16.1.3R and FPCOB 16.1.4R), in particular:
 - (1) that there will be no cause for unreasonable delay for payments that the provider or any other *person* arranges to be made to any *customer* or *covered individual* from the trust (FPCOB 16.1.4R(1));
 - (2) obligations concerning:
 - (a) another provider carrying out related funeral plans with the trustee remaining in place on the same terms (FPCOB 16.1.5R(1)(a) – see also FPCOB 3.1.9R(11));
 - (b) payments to *customers* and *covered individuals* (FPCOB 16.1.5R(1)(b) – see also paragraph 7(4)(c) above);

	(c)	the trustee not unreasonably withholding consent to the transfer of related funeral plans to another provider (FPCOB 16.1.5R(2));
	(3)	that an insolvency practitioner would be in a position to recognise a <i>customer's</i> or <i>covered individual's</i> rights under the trust (FPCOB 16.1.8G(1)(a));
	(4)	that an insolvency practitioner would be in a position to exercise the rights of the provider concerning transfer of related funeral plans or payment as in (2)(a) and (b) above (FPCOB 16.1.8G(1)(c)).
10.	The trust should not contain any provision that is in conflict with the <i>funeral plan provider's</i> obligations under the <i>FCA's rules</i> or under any <i>requirement</i> specific to the provider.	

