

Chapter 4

Communications and financial promotions

4.2 Communications and financial promotions: the obligations

Fair, clear and not misleading rule

4.2.1 **R** A *firm* must ensure that a communication or a *financial promotion* is fair, clear and not misleading.

4.2.2 **G** ■ FPCOB 4.1.1R(2) does not limit the application of the *fair, clear and not misleading rule* under ■ FPCOB 4.1.1R(1). So, for example, a *financial promotion* that could lawfully be *communicated* by an *unauthorised person* without *approval* will still be subject to the *fair, clear and not misleading rule* to the extent that it is a communication with a *customer* or *covered individual* in relation to *regulated funeral plan activity*.

4.2.3 **G** If a communication or a *financial promotion* names the *FCA*, the *PRA* or both as the regulator of a *firm* or other provider, and refers to matters not regulated by the *FCA*, the *PRA* or both, the *firm* should ensure that the communication or *financial promotion* makes clear that those matters are not regulated by the *FCA*, the *PRA* or both.

4.2.4 **G** Part 7 (Offences relating to Financial Services) of the Financial Services Act 2012 creates criminal offences relating to certain misleading statements and practices.

4.2.4A **G** A *firm* is reminded of its obligations under ■ ESG 4.3.1R when it *communicates* or *approves* a *financial promotion* that references the *sustainability characteristics* of a product or service.

Financial promotions to be balanced and with appropriate warnings

4.2.5 **R** A *firm* must ensure that a communication or *financial promotion*:

- (1) includes the name of the *firm*;
- (2) is accurate;
- (3) is balanced and, in particular, does not emphasise any potential benefits without also giving a fair and prominent indication of any relevant risks;

- (4) is appropriate for, and presented at a level and in a form that is comprehensible to the average *funeral plan customer*;
- (5) does not disguise, omit, diminish or obscure important items, statements or warnings; and
- (6) where it contains a comparison or contrast, presents the comparison or contrast in a fair and balanced way and ensures that it is meaningful.

4.2.6 G A *firm* should consider whether the omission of any relevant fact will result in a communication or *financial promotion* being insufficient, unclear, unfair or misleading.

Marketing communications.....

4.2.7 R A *firm* must ensure that a *financial promotion* in relation to a funeral plan or *regulated funeral plan activity* is clearly identifiable as such.

Approving financial promotions.....

4.2.8 R

- (1) Before a *firm* approves a *financial promotion*, it must take reasonable steps to ensure that the *financial promotion* complies with the *financial promotion rules*.
- (2) If, subsequently, a *firm* becomes aware that a *financial promotion* no longer complies with the *financial promotion rules*, it must withdraw its *approval* and notify any *person* that it knows to be relying on its *approval* as soon as reasonably practicable.

4.2.9 R A *firm* must not *approve* a *financial promotion* to be made in the course of a personal visit, telephone conversation or other interactive dialogue.

4.2.9A G

- (1) The effect of section 55NA of the *Act* is that a *firm* is unable to *approve* a *financial promotion* unless:
 - (a) the *firm* is a *permitted approver* in relation to the *financial promotion*; or
 - (b) an *approver permission exemption* applies.
- (2) ■ SUP 6A contains *guidance* on applying for *approver permission*.

The reasonable steps defence to an action for damages.....

4.2.10 R If, in relation to a particular communication or *financial promotion*, a *firm* takes reasonable steps to ensure it complies with the *fair, clear and not misleading rule*, a contravention of that *rule* does not give rise to a right of action under section 138D of the *Act*.

Cold calling

4.2.11 **R** A *firm* must not make a *cold call* unless the recipient has an established existing client relationship with the *firm* and the relationship is such that the recipient envisages receiving *cold calls*.

Promotions that are not in writing

4.2.12 **R** A *firm* must not *communicate* a solicited or unsolicited *financial promotion* that is not in writing, to a *client* outside the *firm's* premises, unless the *person communicating* it:

- (1) only does so at an appropriate time of the *day*;
- (2) identifies themselves and the *firm* they represent at the outset and makes clear the purpose of the communication;
- (3) clarifies if the *client* would like to continue with or terminate the communication, and terminates the communication at any time that the *client* requests it; and
- (4) gives a contact point to any *client* with whom they arrange an appointment.

Record keeping: financial promotions

4.2.13 **R** (1) A *firm* must make an adequate record of any *financial promotion* it *communicates* or *approves*, other than a *financial promotion* made in the course of a personal visit, telephone conversation or other interactive dialogue.

(2) For a telemarketing campaign, a *firm* must make an adequate record of copies of any scripts used.

(3) A *firm* must retain the record in relation to the *financial promotion* for six years.

4.2.14 **G** A *firm* should consider maintaining a record of why it is satisfied that the *financial promotion* complies with the *financial promotion rules*.