

Chapter 5

Distance communications

Guidance on the Distance Marketing Provisions

This Annex belongs to ■ FPCOB 5.1.2G.

Q1.What is a distance contract?

To be a *distance contract*, a contract must be concluded under an 'organised distance sales or service-provision scheme' run by the contractual provider of the service who, for the purpose of the contract, makes exclusive use (directly or otherwise) of one or more means of distance communication up to and including the time at which the contract is concluded.

So:

- the *firm* must have put in place facilities designed to enable a *consumer* to deal with it exclusively at a distance; and
- there must have been no simultaneous physical presence of the *firm* and the *consumer* throughout the offer, negotiation and conclusion of the contract. So, for example, contracts offered, negotiated and concluded over the internet, through a telemarketing operation or by *post*, will normally be *distance contracts*.

Q2.What about a firm that normally operates face-to-face but occasionally uses distance means?

If a *firm* normally operates face-to-face and has no facilities in place enabling a *consumer* to deal with it customarily by distance means, there will be no *distance contract*. A one-off transaction effected exclusively by distance means to meet a particular contingency or emergency will not be a *distance contract*.

Q3.What is meant by 'simultaneous physical presence'?

A *consumer* may visit the *firm's* local office in the course of the offer, negotiation or conclusion of a contract. Wherever, in the literal sense, there has been 'simultaneous physical presence' of the *firm* and the *consumer* at the time of such a visit, any ensuing contract will not be a *distance contract*.

Q4.Does the mere fact that an intermediary is involved make the sale of a product or service a distance contract?

No.

Q5.When is a contract concluded?

A contract is concluded when an offer to be bound by it has been accepted. An offer in the course of negotiations (for example, an offer by a *funeral plan provider* to consider an application) is not an offer to be bound, but is part of a pre-contractual negotiation.

A *consumer* will provide all the information a *funeral plan provider* needs to decide whether to offer a plan and to calculate the price of the plan. The *consumer* may do this orally or in writing. The response by a *funeral plan provider*, giving a quotation to the consumer specifying the price of the plan and the terms, is likely to amount to an offer of the terms on which the *funeral plan provider* will provide the plan. Agreement by the consumer to those terms is likely to be an acceptance which concludes the contract.

Q6.How do these provisions apply to funeral plan intermediaries' services?

The *FCA* anticipates that the provisions relating to distance marketing are likely to apply to *funeral plan intermediaries' services* only in those cases where:

- (a) the *firm* concludes a *distance contract* with a *consumer* covering its *funeral plan distribution* which is additional to any *funeral plan contract* which it is marketing; and
- (b) that *distance contract* is concluded other than merely as a stage in the entering into of a *funeral plan contract* by the *firm* or another *person*: in other words, it has some continuity independent of a *funeral plan contract*, as opposed, for example, to being concluded as part of marketing a *funeral plan contract*.

Q7.Can you give examples of when the distance marketing provisions would and would not apply to funeral plan intermediaries' services?

The *rules* in this section are unlikely to apply in the typical case where a *funeral plan intermediary* sells a *funeral plan contract* to a *consumer* on a one-off basis.

Nor will the *rules* apply if a *funeral plan intermediary*, in its terms of business, makes clear that it does not, in conducting *funeral plan distribution*, act contractually on behalf of, or for, the *consumer*.

An example of when the provisions in this section would apply would be a *distance contract* under which a *funeral plan intermediary* agrees to provide advice to a *consumer* on *funeral plan contracts*.