

Funeral Plan: Conduct of Business sourcebook

Schedule 3 Right of action for damages

Sch 3.1 G

The table below sets out the *rules* in *FPCOB* the contravention of which by an *authorised person* may be actionable under section 138D of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.

Sch 3.2 G

If a "Yes" appears in the column headed "For private person?", the *rule* may be actionable by a "*private person*" under section 138D (or, in certain circumstances, that person's fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A "Yes" in the column headed "Removed" indicates that the *FCA* has removed the right of action under section 138D(2) of the *Act*. If so, a reference to the rule in which it is removed is also given.

Sch 3.3 G

The column headed "For other person?" indicates whether the *rule* may be actionable by a *person* other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* may be actionable is given.

Rights of action under section 138D					
Chapter	Section/ Annex	Paragraph	For private person?	Removed?	Removed?
	The <i>fair, clear and not misleading rule</i> in FPCOB 4.2.1R		Yes	In part (Note 1)	No
	Any <i>rule</i> in <i>FPCOB</i> which prohibits an <i>authorised person</i> from seeking to make provision excluding or restricting any duty or liability		Yes	No	Yes Any other person
	The prudential <i>rules</i> for <i>firms</i> carrying on <i>regulated funeral plan activity</i> in FPCOB 15		No	Yes (see FPCOB 15.11.1R)	No
	All other <i>rules</i> in <i>FPCOB</i>		Yes	No	No
Notes					
1.	FPCOB 4.2.10R provides that if, in relation to a particular communication or <i>financial promotion</i> , a <i>firm</i> takes reasonable steps to ensure it complies with the <i>fair, clear and not misleading rule</i> , a contravention of that <i>rule</i> does not give rise to a right of action under section 138D of the <i>Act</i> .				

