

FUNERAL PLANS (No. 2) INSTRUMENT 2021**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in or under the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137D (FCA general rules: product intervention);
 - (3) section 137T (General supplementary powers);
 - (4) section 138D (Action for damages);
 - (5) section 139A (Power of the FCA to give guidance);
 - (6) section 213 (The compensation scheme);
 - (7) section 214 (General); and
 - (8) section 215 (Rights of the scheme in insolvency).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 29 July 2022.

Amendments to the Handbook

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes in this instrument listed in column (2).

(1)	(2)
Glossary	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Training and Competence sourcebook (TC)	Annex C
Funeral Plan: Conduct of Business sourcebook (FPCOB)	Annex D
Product Intervention and Product Governance sourcebook (PROD)	Annex E
Compensation sourcebook (COMP)	Annex F

- E. The Financial Conduct Authority confirms and remakes in the Glossary of definitions the defined expressions relating to any UK legislation which has been amended further to Part 2 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2021.

Amendments to material outside the Handbook

- F. The Perimeter Guidance manual (PERG) is amended in accordance with Annex G to this instrument.

Notes

- G. In the Annexes to this instrument, the “notes” shown as “**Note:**” are included for the convenience of readers, but do not form part of the legislative text.

Citation

- H. This instrument may be cited as the Funeral Plans (No. 2) Instrument 2021.

By order of the Board
21 October 2021

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

funeral plan resolution manual the manual required by *FPCOB 16.2.3R*.

funeral plan resolution rules the *rules* in *FPCOB 16*.

Amend the following definitions as shown.

<i>fair, clear and not misleading rule</i>	(1)	...
	(2)	(in relation to <i>regulated funeral plan activity</i>) <i>FPCOB 4.1.3R</i> <u><i>4.2.1R</i></u> .
	...	
<i>moratorium period</i>		the period under a <i>funeral plan contract</i> , as provided for in <i>FPCOB 7</i> or otherwise agreed between the customer and funeral plan provider , during which the <i>funeral plan provider</i> is not obliged to provide, or secure the provision of, a funeral on the death of the <i>covered individual</i> .

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

1 Application and purpose

...

1 Annex Detailed application of SYSC

1

...

Table B: Application of the common platform requirements in SYSC 4 to 10 to MiFID optional exemption firms and third country firms

...

Provision	COLUMN A MiFID optional exemption firms	COLUMN B Third country firms
...
SYSC 6.1.4CR	SYSC 6.1.4CR(2)(c) and SYSC 6.1.4CR(3) apply <u>applies</u> as specified in SYSC 6.1.4CR Otherwise not applicable	SYSC 6.1.4CR(3) applies as specified in SYSC 6.1.4CR Otherwise not applicable
...

Annex C

Amendments to the Training and Competence sourcebook (TC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 Competence

2.1 Assessing and maintaining competence

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Continuing professional development for retail investment advisers

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2.1.23G R The appropriate continuing professional development in ~~SYSC 2.1.23FR~~ TC 2.1.23FR is in addition to any other continuing professional development completed. Continuing professional development completed by a relevant employee in relation to activities other than *regulated funeral plan activities* must not be taken into account for the purpose of ~~SYSC 2.1.23FR~~ TC 2.1.23FR.

2.1.23H R For the purposes of ~~SYSC 2.1.23FR~~ TC 2.1.23FR, a *firm* must take into account the:

...

2.1.23I G ...

(2) In relation to ~~SYSC 2.1.23FR~~ TC 2.1.23FR, the 15 hours of appropriate continuing professional development can include structured and unstructured training and need not consist of only formal classroom-based learning. For examples of structured and unstructured professional development see *TC 2.1.20G* and *TC 2.1.21G*.

Annex D

Amendments to the Funeral Plan: Conduct of Business sourcebook (FPCOB)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

2 General matters

2.1 General principles

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Record keeping

- 2.1.6 G (1) This sourcebook, other than *FPCOB* 4, *FPCOB* 6.4.18R~~2~~ and *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.

...

...

3 Structure Provisions - arrangements underpinning a funeral plan contract

3.1 ~~Application: general~~ Trust and insurance arrangements: structure provisions

Application: general

...

Requirements in relation to contracts of insurance

- 3.1.8 R 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;
- (3) will deliver all applicable outcomes in the funeral plan resolution rules;
 - (4) the contract of insurance will not terminate upon failure of the funeral plan provider;
 - (5) 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
 - (6) where the whole, or relevant part, of the business of the funeral plan provider has been transferred to a new funeral plan provider, the insurer may substitute the new provider in place of the original provider.

Requirements in relation to trusts

- 3.1.9 R 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;
- (4) will deliver all applicable outcomes in the *funeral plan resolution rules*;
- (5) more than half of the trustees must be unconnected with the *funeral plan provider*;
- (6) 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;
- (7) 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;
- (8) 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);
- (9) 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*);
- (11) 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;
- (12) 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*.

- 3.1.10 R For the purposes of FPCOB 3.1.9R(5) and (6), a person is unconnected with the funeral plan provider if that person is a person other than:
- (1) the funeral plan provider;
 - (2) a member of the same group as the funeral plan provider;
 - (3) a director, other officer or employee of the funeral plan provider, or of any member of the same group as the funeral plan provider;
 - (4) a partner of the funeral plan provider;
 - (5) a close relative of a person falling within sub-paragraphs (1), (3) or (4);
 - (6) an agent of any person falling within sub-paragraphs (1) to (5); or
 - (7) 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

- 3.1.11 R 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;
 - (2) 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

- (3) 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.

3.1.12 G 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.

After *FPCOB* 3 (Structure Provisions – arrangements underpinning a funeral plan contract), insert the following new Annex, *FPCOB* 3 Annex 1 – Form of beneficial trust. The text is not underlined.

3 Annex Form of a beneficial trust

1

G This annex belongs to *FPCOB* 3.1.9R.

1.	This annex outlines provisions that a <i>funeral plan provider</i> might include in the trust deed of a beneficial trust set up in compliance with <i>FPCOB</i> 3.1.9R.
2.	This annex does not represent legal drafting for inclusion in the trust deed. <i>Funeral plan providers</i> will need to engage legal advisers to prepare the trust deed.
3.	Where a provision is required by <i>FPCOB</i> , the annex references the <i>FPCOB rule</i> but does not set it out in full. Other provisions, not explicitly required by <i>FPCOB</i> , are also listed below which are consistent with <i>FPCOB</i> 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 <i>customer</i> has been paid into the trust pursuant to <i>FPCOB</i> 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 <i>Glossary</i> .	
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 <i>funeral plan provider</i> (<i>FPCOB</i> 3.1.9R(1));
	(2)	the assets held on trust must be kept segregated from any assets belonging to the <i>funeral plan provider</i> (<i>FPCOB</i> 3.1.9R(2));
	(3)	to pay the essential payments for the operation of the trust (<i>FPCOB</i> 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 <i>funeral plan provider</i> or funeral services provider for the purpose of delivering a <i>covered individual’s</i> funeral (<i>FPCOB</i> 3.1.9R(3)(a));
	(b)	the provision of a <i>customer</i> refund (<i>FPCOB</i> 3.1.9R(3)(d));
	(c)	on the <i>failure</i> of the <i>funeral plan provider</i> , or if it is <i>in default</i> , payments to the <i>customer</i> or <i>covered individual</i> or in accordance with a determination of the <i>FSCS</i> (<i>FPCOB</i> 3.1.9R(3)(e));
	(5)	the <i>funeral plan provider</i> 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 <i>FPCOB</i> 3.2.12R (<i>FPCOB</i> 3.1.9R(3)(g));
	(6)	in the event of the insolvency of the <i>funeral plan provider</i> , 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 <i>funeral plan contracts</i> to a new provider or making payments under <i>FPCOB</i> 3.1.9R(3)(e) (<i>FPCOB</i> 3.1.9R(3)(c));
	(7)	on a transfer of business of the <i>funeral plan provider</i> , 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 <i>insurance contracts</i> ; a certificate from an actuary will generally be required (<i>FPCOB 3.1.9R(3)(f)</i>);
	(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 termination date of the trust shall be 125 years from the date of its execution, which shall be the end of the perpetuity period for the trust;
	(10)	(a) subject to (b) below, the <i>funeral plan provider</i> 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 undischarged 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 <i>funeral plan provider</i> 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 <i>FPCOB 3.1.9R(5)</i> to (12); this includes facilitating compliance by the <i>funeral plan provider</i> with its obligations concerning trust solvency, remediation plans and remedying deficits (<i>FPCOB 3.1.9R(8)</i> and <i>FPCOB 3.2</i>);
	(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 <i>funeral plan provider</i> 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 <i>FPCOB</i> .
9.	The trust will also need to be compatible with the <i>funeral plan provider's</i> obligations to have arrangements for continuity and reimbursement on its <i>failure</i> under the <i>funeral plan resolution rules</i> (see <i>FPCOB 16.1.3R</i> and <i>FPCOB 16.1.4R</i>), in particular:	
	(1)	that there will be no cause for unreasonable delay for payments that the provider or any other <i>person</i> arranges to be made to any <i>customer</i> or <i>covered individual</i> from the trust (<i>FPCOB 16.1.4R(1)</i>);
	(2)	obligations concerning:

	(a)	another provider carrying out related funeral plans with the trustee remaining in place on the same terms (<i>FPCOB</i> 16.1.5R(1)(a) – see also <i>FPCOB</i> 3.1.9R(11));
	(b)	payments to <i>customers</i> and <i>covered individuals</i> (<i>FPCOB</i> 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 (<i>FPCOB</i> 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 (<i>FPCOB</i> 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 (<i>FPCOB</i> 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.

Amend the following as shown.

...

6 Information about the firm and its services

...

6.5 Payments to funeral plan intermediaries

...

Requirement not to offer commissions

...

6.5.5 R *FPCOB* 6.5.2R does not prevent a *funeral plan provider* from making payments to a *person* merely ~~other than~~ to *communicate a financial promotion*.

...

7 Prohibition on entering into long-term instalment payment funeral plans

7.1 Application and Purpose

...

Purpose

- 7.1.2 G The *rule* in this chapter ensures that, subject to an initial maximum 24-month moratorium period, a *customer* who chooses to pay for a *funeral plan contract* in instalments receives the funeral under that contract even if the *covered individual* dies before the end of the instalment period.

7.2 Prohibition

...

- 7.2.1 R (1) A *funeral plan provider* must not enter into an *instalment payment funeral plan* under which the *customer* agrees to make payments over a period ~~of more than 24 months~~ longer than the moratorium period.
- (2) Paragraph (1) does not apply in respect of an *instalment payment funeral plan* under the terms of which (c) and either (a) or (b) below are met:
- (a) ~~a funeral will be unconditionally provided upon the covered individual's death where:~~
- (i) ~~this occurs more than 24 months after the date on which the relevant parties entered into the funeral plan contract; or~~
- (ii) ~~(if earlier) the death is accidental; and~~
- (b) ~~no further payment is required following the covered individual's death in order for the funeral specified by the funeral plan contract to be provided.~~
- (a) There is no moratorium period;
- (b) There is no moratorium period but:
- (i) a funeral will be unconditionally provided upon the covered individual's death where:
- (A) this occurs after the moratorium period;
- (B) this occurs before the end of the moratorium period but the death is accidental;
- (c) After any moratorium period has ended, no further payment is required following the covered individual's death in order for the funeral specified by the funeral plan contract to be provided.
- (3) The moratorium period must be no longer than 24 months from the date on which the relevant parties entered into the funeral plan contract.

...

8 Identifying client needs and advising

...

8.2 Demands and needs

...

Demands and needs test

...

8.2.4 G ~~FPCOB 8.1.3R(2)~~ 8.2.2R(2) applies whether or not advice is given and in the same way regardless of whether that contract is sold on its own, or in connection with other goods or services.

...

9 Product information

...

9.3 Post-contract information: funeral plan contracts

...

Post-contractual changes

...

9.3.3 R A firm must notify each customer and their nominated representative in good time about any material change to the information concerning potential funeral plan provider failure provided in the funeral plan summary or the nominated representative document, together with an explanation of any implications of the change where necessary. This information must be provided in writing or another durable medium.

...

9 Annex Funeral plan summary

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...

...	...		
	Headings, corresponding information and order of content		
2.5	R	The subheadings must be in this sequence and have the following corresponding information:	
		...	

		(9)	<p><u>‘Information concerning potential funeral plan provider failure’</u></p> <p><u>A firm should briefly explain the arrangements in place to ensure that in the event of its failure:</u></p>
		(a)	<p><u>there will be a reasonable likelihood that the relevant funeral plan contracts will continue to be carried out by another firm, identifying particular terms in its contracts with customers, including relating to prior consents from customers, and explaining how they operate; and</u></p>
		(b)	<p><u>in the event that the relevant funeral plan contract will not continue to be carried out by the firm or another firm, the relevant customer or covered individual will promptly receive a payment corresponding to the funeral plan customer balance.</u></p>
			<p><u>A firm should also explain the particular risks to the carrying out of funeral plan contracts in the event of its failure, including the possibility that funeral plan contracts may cease to be carried out before the covered individual’s death, and that customers may need to make arrangements with an alternative provider and potentially incur associated costs.</u></p>

9 Nominated representative document
Annex
2

This annex belongs to *FPCOB 9.3.6R*.

...	...		
4		Headings, corresponding information and order of content	
4.1	R	The document must contain the following information, and use the headings in (4) to (9 10), in this sequence:	
		...	
		(10)	<p><u>‘Information concerning potential provider failure’</u></p> <p><u>A firm should briefly explain the arrangements in place to ensure that in the event of its failure:</u></p>
		(a)	<p><u>there will be a reasonable likelihood that the relevant funeral plan contracts will continue to be carried out by another firm, identifying particular terms in its contracts with customers, including relating to prior consents from customers, and explaining how they operate; and</u></p>
		(b)	<p><u>in the event that the relevant funeral plan contract will not continue to be carried out by the firm or another firm, the relevant customer or</u></p>

			<u>covered individual will promptly receive a payment corresponding to the funeral plan customer balance.</u>
			<u>A firm should also explain the particular risks to the carrying out of funeral plan contracts in the event of its failure, including the possibility that funeral plan contracts may cease to be carried out before the covered individual's death, and that customers may need to make arrangements with an alternative provider and potentially incur associated costs.</u>

9 Plan Statement

Annex

3

This annex belongs to ~~FPCOB 9.3.10R~~ 9.3.11R.

...

10 Arrangements for the funeral

10.1 Application and purpose

...

Arrangements with the funeral services provider

...

- 10.1.11 R (1) This *rule* applies to a *funeral plan provider* which has assumed the undertaking under a *funeral plan contract* to provide, or secure the provision of, a funeral as a result of a transfer of the contract.
- (2) The firm must notify the customer and nominated representative that a transfer of the funeral plan contract has taken place within 30 days of the completion of the transfer.

...

11 Fees

11.1 Application and purpose

...

Other fees

- 11.1.7 R A firm must ensure that any *fee*, other than an *instalment payment fee* or *FP distribution charge*, imposed on a *customer* is based upon a reasonable reflection of the costs incurred by the *firm*, in providing the service to which the *fee* relates, and not with a view to profit.

...

14 Funeral plan redemption**14.1 Application and purpose**

...

Outstanding payments

...

- 14.1.8 R *FPCOB* 14.1.7R does not apply where the effect of ~~FPCOB 7.1.3R~~ *FPCOB* 7.2.1R is that a funeral will be provided on the death of the *covered individual* even where payments are outstanding under an *instalment payment funeral plan contract*.

...

16 Resolution requirements**16.1 Arrangements for funeral plan continuity or customer reimbursement on firm failure**Application

- 16.1.1 R In accordance with *FPCOB* 1.2 (General application), this chapter applies to a *firm*:
- (1) *entering as provider into a funeral plan contract;*
 - (2) *carrying out a funeral plan contract as provider,*
- in respect of *new funeral plans*.
- 16.1.2 G (1) As a result of *FPCOB* 16.1.1R(2), this chapter applies to a *firm* in relation to *new funeral plans* it carries out as provider as a result of a transfer of those *funeral plan contracts* from another *firm*.
- (2) Where a *firm* has entered into or carries out subsisting *funeral plans*, it should consider whether its arrangements in respect of those *funeral plan contracts* would meet the requirements in this section and, if not, what changes to its arrangements it could make to bring them more into line with these requirements.

Obligation to have arrangements for continuity

- 16.1.3 R (1) A *firm* must have arrangements in place to ensure that, in the event of its *failure*, there will be a reasonable likelihood that the relevant *funeral plan contracts* will continue to be carried out by another *firm* that has *permission* to continue to carry out the *funeral plan contract* as provider.

- (2) However, the arrangements must not be restricted to only a particular firm or particular firms taking over those services. There must be a reasonable likelihood of the funeral plan contracts being carried out by any firm of that description.

Obligation to have arrangements for reimbursement

16.1.4 R A firm must also have arrangements in place to ensure that, in the event of its failure and where the relevant funeral plan contracts will not continue to be carried out by the firm or another firm, there will be a good outcome for customers and covered individuals and, in particular:

- (1) there will be no cause for unreasonable delay to any payment that the firm or any other person arranges to be made to any customer or covered individual from the relevant trust or contract of insurance arranged under FPCOB 3.1.6R; and
- (2) the firm's liability towards any customer or covered individual who may be entitled to a payment in respect of a funeral plan contract (whether from the relevant trust or contract of insurance arranged under FPCOB 3.1.6R or from the firm's own assets, or both) will not be limited by any contract term to a level below that which would be needed, at the time of the firm's failure, to purchase a replacement funeral plan contract on terms corresponding, in all material respects, to the funeral plan contract that the firm had entered into.

Minimum detailed arrangements for continuity and reimbursement

16.1.5 R A firm's arrangements under FPCOB 16.1.3R and FPCOB 16.1.4R must, as a minimum, include the following elements:

- (1) The rights and obligations under any contract or deed entered into by the firm with a trustee or insurer under FPCOB 3.1.6R in respect of the relevant funeral plan contracts must make appropriate provision for, and should not frustrate, in the event of the firm's failure:
- (a) any other firm (that has the appropriate permission) carrying out as provider those funeral plan contracts with the trustee or insurer remaining in place on the same terms; and
- (b) any payment which customers or covered individuals may be in a position to claim from the trust or contract of insurance, or from the firm in respect of the trust or contract of insurance.
- (2) The contract or deed referred to in (1) must also require that the trustee or insurer cannot unreasonably withhold its consent to a transfer to another firm that would carry out funeral plan contracts as provider.
- (3) As well as including in each relevant funeral plan contract any terms necessary to ensure compliance with FPCOB 16.1.4R(2), each

relevant funeral plan contract entered into by the firm with a customer must provide that:

- (a) if the firm fails it will be obliged to take all necessary steps to ensure that:
 - (i) in the case of a funeral plan contract for which there is contract of insurance arranged under FPCOB 3.1.6R(1) under which the policyholder is the firm, the customer, covered individual or (on the covered individual's death) their next of kin will be able to make a claim themselves under the contract of insurance directly to the insurer;
 - (ii) in the case of a funeral plan contract for which there is a trust under FPCOB 3.1.6R(2), the customer or covered individual will be paid their entitlement from the relevant trust (and the funeral plan contract must specifically provide for whether payment will be made to the customer or covered individual) ; and
- (b) the obligation under (a) will arise on any of the following situations occurring (whichever comes first):
 - (i) the firm ceases to be able to provide funeral services under the funeral plan contract upon the death of the covered individual;
 - (ii) the firm no longer intends to provide funeral services under the funeral plan contract upon the death of the covered individual; or
 - (iii) the firm is neither attempting, nor will it attempt, a transfer of the funeral plan contract to another firm that has permission to carry out funeral plan contracts as provider;
- (c) the obligation under (a) is not owed if the firm achieves such a transfer;
- (d) the customer irrevocably appoints the firm, for the duration of the funeral plan contract, as an agent for the purposes of asserting any right or interest that they have in the relevant trust or contract of insurance arranged under FPCOB 3.1.6R, such appointment being without prejudice to the possibility of the customer or covered individual asserting their rights or interests themselves;
- (e) the customer gives prior and informed consent for the transfer of the firm's obligations (towards the customer or, where appropriate, the covered individual) under the funeral plan

contract to another funeral plan provider in the event of its failure, and that such prior consent:

(i) must not be limited to a transfer only to a particular firm or particular firms; and

(ii) must only be to:

A. transfers arranged by an insolvency practitioner appointed to the firm that will result in the funeral plan contract being carried out by the transferee on the same terms as the funeral plan contract the customer entered into with the firm; and

B. transfers arranged by the FSCS, in securing continuity of the funeral plan contract under COMP 3.3.3R, with consent to the contract being varied so as to result in the funeral plan contract being carried out by the transferee on terms corresponding in all material respects (so far as it appears to the FSCS to be reasonable in the circumstances) to those which applied under the funeral plan contract entered into with the firm; and

(f) no consent is required from any covered individual to the matters in paragraph (e).

(4) The firm must maintain a single central record containing all up-to-date and pertinent information and documents relating to each funeral plan contract that it has entered into (including through agents) and under which it has any undischarged obligations. The central record must be capable of identifying:

(a) every funeral plan contract that could be transferred to another firm;

(b) for each funeral plan contract:

(i) the name and contact details of the customer, the covered individual (if different to the customer) and any nominated representative; and

(ii) the amount paid to the firm by the customer that has, in accordance with FPCOB 3.1.6R, been applied towards a contract of insurance or paid into a trust.

16.1.6 G (1) In the event of a firm's failure, any insolvency practitioner appointed to the firm will have duties under insolvency law in respect of the firm's creditors, who may include any customer or covered individual

towards whom the *firm* has undischarged contractual obligations at the point of *failure*.

- (2) Such *customers* or *covered individuals* may be entitled to recover amounts from the relevant trust or *contract of insurance* arranged by the *firm* under FPCOB 3.1.6R and may also have separate claims against the *firm* itself.
- (3) Depending on how the insolvency practitioner proposes to address the rights of such *customers* or *covered individuals* and the nature of any potential claims against the *firm* that they may have, the FSCS may declare the *firm* in *default* and take further steps under the relevant provisions of COMP.
- (4) A *firm's* compliance with the requirements in FPCOB 16.1.3R to 16.1.5R will assist both the appointed insolvency practitioner and the FSCS in the event of the *firm's* *failure*.
- (5) However, when considering whether its arrangements will ensure a good outcome in accordance with FPCOB 16.1.4R, a *firm* should not make any assumptions as to whether the FSCS will determine the *firm* to be in *default* and take any other steps under the relevant provisions of COMP.

Guidance on arrangements with other firms for continuity

- 16.1.7 G A *firm* may enter into an arrangement with another *firm*, which has the *permission* to *carry out a funeral plan contract as provider*, under which the other *firm* agrees to take over the obligations under the *funeral plan contract* in the event of its *failure*. But it should only do this in a way that does not impair its compliance with FPCOB 16.1.3R(2). This means that the arrangement with the other *firm* must not prevent any similar agreements being made, at the time or in future, with other *firms*.

Further guidance on arrangements for continuity and reimbursement

- 16.1.8 G (1) When designing its arrangements under FPCOB 16.1.3R and FPCOB 16.1.4R, a *firm* should take into account the general law to ensure that the insolvency of the *firm* does not prejudice the operation of arrangements that the *firm* has put in place. In particular, the arrangements should be such that an insolvency practitioner appointed to the *firm* in its *failure* would be in a position to:
- (a) recognise a *customer's* or *covered individual's* rights under or in respect of the relevant trust or *contract of insurance* arranged under FPCOB 3.1.6R;
 - (b) rely on a *customer's* consent as described in FPCOB 16.1.5R(3)(e); and

- (c) exercise any rights of the firm under the provisions described in FPCOB 16.1.5R(1) to give effect to a transfer or payment to the customer or covered individual.
- (2) A firm should consider the need to obtain professional advice on the adequacy of its arrangements, including in the event of insolvency. For example, a firm may benefit from obtaining legal advice or advice from a qualified insolvency practitioner on the likelihood of its arrangements securing the outcome of those funeral plan contracts continuing to be carried out by another firm or the relevant customer or covered individual receiving a payment where the relevant funeral plan contracts will not continue to be carried out by the firm or another firm.
- (3) In assessing the adequacy of its arrangements, a firm should consider, in particular:
- (a) whether any terms included in relevant contracts as part of its arrangements are enforceable and by whom, for example terms in trust deeds, insurance policies, and customer, service and supplier contracts; and
- (b) the extent to which other practical obstacles could foreseeably prevent the implementation of the arrangements or frustrate the required outcome.
- (4) Firms may find it useful to refer to the FCA's Wind-down Planning Guide (WDPG) when designing their arrangements.

Guidance on disclosures

- 16.1.9 G (1) Firms are reminded of the disclosure requirements in FPCOB 9.2.7R (Funeral plan summary) and FPCOB 9.3.6R (Nominated representative document).
- (2) In relation to subsisting funeral plans, a firm should consider:
- (a) notifying each customer and their nominated representative of any arrangements put in place as a result of the guidance in FPCOB 16.1.2G(2);
- (b) notifying each customer and their nominated representative of any subsequent changes to those arrangements; and
- (c) where the firm makes such a notification, making it alongside the annual statement required under the rule at FPCOB 9.3.11R.
- 16.1.10 G Firms are reminded of the disclosure requirements under Principle 11 and in SUP 16.3.21R (Insolvency, bankruptcy and winding up).

16.2 Funeral Plan Resolution Manual

Application

- 16.2.1 R This section applies to a *firm* that carries out as provider:
- (1) *new funeral plans;*
 - (2) *subsisting funeral plans.*
- 16.2.2 G (1) As a result of FPCOB 16.2.1R, this chapter applies to a *firm* in relation to any *funeral plan contract* that it is carrying out as a *provider*, regardless of when it entered into that contract or when the *firm* from which it took on the responsibilities under that contract entered into that contract.
- (2) *Firms* should consider whether their *funeral plan resolution manual* should make different provision for *new funeral plans* and *subsisting funeral plans*.

Contents of the funeral plan resolution manual

- 16.2.3 R A *firm* must produce and keep up-to-date a *funeral plan resolution manual* which contains information about the *firm* that, in the event of the *firm's* failure, would assist in resolving the *firm's* business of carrying out a *funeral plan contract as provider*. It must, as a minimum, include a written explanation of each of the following:
- (1) how the *firm* conducts the business of carrying out a *funeral plan contract as provider*, what the day-to-day operation of that business entails, and what resources would be needed to continue that business if the *firm* failed, including a specification of:
 - (a) critical staff and their respective roles;
 - (b) critical premises;
 - (c) the *firm's* IT systems;
 - (d) the *firm's* record-keeping systems, including how records are organised;
 - (e) all relevant bank accounts and payment facilities;
 - (f) all relevant *persons* outside of the *firm*, and their respective roles, including any outsourced service providers;
 - (g) all relevant legal documentation, including trust deeds, insurance policies, and customer, service and supplier contracts, including any contracts with funeral directors; and

- (h) the firm's group, using a structure chart showing:
 - (i) the legal entities in the group;
 - (ii) the ownership structure of those entities; and
 - (iii) the jurisdiction of those entities;
- (2) any steps that would need to be implemented under any arrangements in place to ensure that:
 - (i) funeral plan contracts entered into by the firm will continue to be carried out by another firm; and
 - (ii) any payments will be paid to customers or covered individuals where the relevant funeral plan contracts will not continue to be carried out by the firm or another firm.
- (3) any terms in contracts that may need to be relied on to ensure the outcomes referred to in (2)(i) and (2)(ii);
- (4) how to access any record of each funeral plan contract facilitated by the firm, including where this is required under FPCOB 16.1.5R; and
- (5) how the firm's systems can produce the detail specified in FPCOB 9 Annex 3 (Plan Statement) for each funeral plan contract entered into by it.

Requirement to make the funeral plan resolution manual available

- 16.2.4 R A firm must put in place arrangements to ensure that its funeral plan resolution manual would be immediately available to:
- (1) an administrator, receiver, trustee, liquidator or analogous officer appointed in respect of the firm or any material part of its property;
 - (2) the FCA, on request; and
 - (3) the FSCS and any other person to whom the firm might want to provide it.

...

Schedule 1 Recordkeeping requirements

- Sch 1.1 G The aim of the guidance in the following table is to give the reader a quick overall view of the relevant record keeping requirements in FPCOB.
- Sch 1.2 G It is not a complete statement of those requirements and should not be relied on as if it were.

<u>Handbook reference</u>	<u>Subject of record</u>	<u>Content of record</u>	<u>When record must be made</u>	<u>Retention period</u>
<u>FPCOB 3.1.11R, 3.1.12G(3)</u>	<u>Monies held on trust for customers</u>	<u>Location and amount of monies held on trust for particular customers</u>	<u>When making safeguarding arrangements specified in FPCOB 3.1.11R</u>	<u>Not specified</u>
<u>FPCOB 4.2.13R(1)</u>	<u>Financial promotion</u>	<u>A financial promotion communicated or approved (subject to exemptions)</u>	<u>When communicated or approved</u>	<u>6 years</u>
<u>FPCOB 4.2.13R(2)</u>	<u>Telemarketing scripts</u>	<u>Copy of any script used</u>	<u>Date script used</u>	<u>6 years</u>
<u>FPCOB 6.4.18R</u>	<u>FP distribution charges</u>	<u>FP distribution charges paid by each customer</u>	<u>Date paid by customer</u>	<u>Not specified</u>
<u>FPCOB 15.9.4G</u>	<u>Calculation of core capital resources</u>	<u>Reasons for any difference between the deficit reduction amount and any public commitment to provide funding in respect of a defined benefit occupational pension scheme</u>	<u>When calculating its capital resources for the core capital resources requirement</u>	<u>Not specified</u>
<u>FPCOB 15.10.5R</u>	<u>Risk assessments</u>	<u>Assessments required under FPCOB 15.10.4R including major sources of risk and how the firm intends to deal with them</u>	<u>When assessments are made under FPCOB 15.10.4R</u>	<u>At least 3 years</u>
<u>FPCOB 16.1.5R(4)</u>	<u>Single central record</u>	<u>Single central record containing all up-to-date and pertinent information and documents relating to each funeral plan contract</u>	<u>Date firm entered into funeral plan contract</u>	<u>Not specified</u>
<u>FPCOB 16.2.3R</u>	<u>The firm's most recent funeral</u>	<u>As stated in the rule</u>	<u>When the funeral plan resolution</u>	<u>None specified (but see</u>

	<u>plan resolution manual</u>		<u>manual is made or updated</u>	<u>FPCOB 16.2.4R)</u>
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Schedule 2 Notification and reporting requirements

Sch 2.1 G The aim of the guidance in the following table is to give the reader a quick overall view of the relevant notification and reporting requirements in FPCOB.

Sch 2.2 G It is not a complete statement of those requirements and should not be relied on as if it were.

<u>Handbook reference</u>	<u>Matter to be notified</u>	<u>Contents of notification</u>	<u>Trigger event</u>	<u>Time allowed</u>
<u>FPCOB 3.2.5R(1)</u>	<u>Solvency assessment report</u>	<u>A copy of the solvency assessment report to the FCA</u>	<u>Funeral plan provider's receipt of solvency assessment report</u>	<u>Within 7 days of receipt of solvency assessment report</u>
<u>FPCOB 3.2.5R(2)</u>	<u>Assets of the trust are insufficient to cover the liabilities</u>	<u>If the solvency assessment report concludes that assets of the trust are insufficient to cover the trust's liabilities, notification of that fact with the report</u>	<u>Conclusion in the report that the assets of the trust are insufficient to cover the trust's liabilities</u>	<u>In accordance with SUP 15.7.1R, at the same time as providing a copy of the solvency assessment report, see also FPCOB 3.2.5R(1)</u>
<u>FPCOB 3.2.8R</u>	<u>Remediation plan</u>	<u>Remediation plan to the FCA for review</u>	<u>Submission date of the relevant solvency assessment report to the FCA</u>	<u>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</u>
<u>FPCOB 3.2.10R(1)</u>	<u>Concerns with implementation of the remediation plan</u>	<u>Funeral plan provider to notify the FCA that it will not be able to fully implement the remediation plan in</u>	<u>Funeral plan provider's suspicion that it will not be able to fully implement the</u>	<u>In accordance with SUP 15.7.1R, as soon as the funeral plan provider suspects that it will not be able to fully</u>

		<u>accordance with its terms</u>	<u>remediation plan in accordance with its terms</u>	<u>implement the remediation plan in accordance with its terms</u>
<u>FPCOB 3.2.10R(2)</u>	<u>Inability to fully implement the remediation plan</u>	<u>Notify the FCA if the solvency level of the trust remains below 100% following the funeral plan provider's attempts to implement the remediation plan</u>	<u>Inability to fully implement the remediation plan</u>	<u>In accordance with SUP 15.7.1R, immediately</u>
<u>FPCOB 3.2.11R(3)</u>	<u>Remediation of trust deficit</u>	<u>Remediation of trust deficit</u>	<u>Remediation of trust deficit</u>	<u>In accordance with SUP 15.7.1R and SUP 15.7.11G, as soon as reasonably practicable after the trust shortfall has been remedied</u>
<u>FPCOB 10.1.4R</u>	<u>Funeral arrangements</u>	<u>Notify the customer and (unless the circumstances in FPCOB 9.3.7R apply) nominated representative with relevant funeral director's name, address, contact details and summary of arrangements</u>	<u>Compliance with FPCOB 10.1.3R</u>	<u>As soon as practicable and in any event within 2 business days of compliance with FPCOB 10.1.3R</u>

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.

			<u>Rights of action under section 138D</u>			
<u>Chapter</u>	<u>Section/ Annex</u>	<u>Paragraph</u>	<u>For private person?</u>	<u>Removed?</u>	<u>For other person?</u>	
		<u>The fair, clear and not misleading rule in FPCOB 4.2.1R</u>	<u>Yes</u>	<u>In part (Note 1)</u>	<u>No</u>	
		<u>Any rule in FPCOB which prohibits an authorised person from seeking to make provision excluding or restricting any duty or liability</u>	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>Any other person</u>
		<u>The prudential rules for firms carrying on regulated funeral plan activity in FPCOB 15</u>	<u>No</u>	<u>Yes (see FPCOB 15.11.1R)</u>	<u>No</u>	
		<u>All other rules in FPCOB</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	
<u>Notes</u>						
1.	<u>FPCOB 4.2.10R provides that 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.</u>					

Annex E

Amendments to the Product Intervention and Product Governance sourcebook (PROD)

In this Annex, underlining indicates new text and striking through indicates deleted text.

7 Product governance: funeral plans

...

7.2 Manufacture of funeral plans

...

Product governance arrangements: product approval

...

7.2.2 G (1) *PROD 7.2.1R(1)* includes any *funeral plan product* whether a new product *manufactured* on or after 29 July 2022 or any *existing funeral plan product*. In relation to an *existing funeral plan product*, references in *PROD 7.2* and *7.3* to ‘marketing’ or ‘distributing’ includes reference to any future activity regardless of whether the product has previously been made available for marketing or distribution.

(2) For the purposes of *PROD ~~7.2.2R(2)~~ 7.2.1R(2)*:

...

...

Distribution channels: information disclosure to distributors

...

7.2.34 R ...

(2) A manufacturer is not required to disclose specific information objectively considered to be commercially sensitive if the information it does make available would still allow *distributors* to meet *PROD 7.2.34R(1)* and *PROD 7.2.35R(1)(a)* and (b).

Annex F

Amendments to the Compensation sourcebook (COMP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

3 The qualifying conditions ~~for compensation~~

...

3.2 The qualifying conditions for paying compensation

...

3.2.3 G Examples of the circumstances covered by *COMP* 3.2.2R are:

(1) ...

...

(6) in relation to a funeral plan claim which was bought by one individual to provide a funeral on the death of another individual, when the first individual makes a claim.

...

4 Eligible claimants

...

4.2 Who is eligible to benefit from the protection provided by the FSCS?

...

Persons not eligible to claim unless *COMP* 4.3 applies (see *COMP* 4.2.1R)

4.2.2 R This table belongs to *COMP* 4.2.1R

(1)	...
...	
(21)	<u>In relation to a claim in connection with funeral plan provision activity, a customer where the FSCS consider that the claim could be made by a different covered individual who is an eligible claimant.</u>

Annex G

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text.

2 Authorisation and regulated activities

...

2.3 The business element

...

- 2.3.4B G (1) The *funeral plan* sector gives an example of how the ‘by way of business’ requirement referred to in *PERG 2.3.1G* should be interpreted.
- (2) A burial society or other religious organisation operating within a particular religion and serving a defined religious community of members of that religion may provide a *funeral plan* to its members to facilitate their burial in a manner which complies with the teachings of that religion. In doing that, it may be carrying on *funeral plan provision activity*. However, if the provider does so on a not-for-profit basis, it is unlikely to do so by way of business.
- (3) One should look at whether the provider carries on its activities on a not-for-profit basis in a realistic way. So one should take into account:
- (a) whether the services benefit, or are provided as part of, wider commercial activities carried on by the provider or by an affiliate or by their members; and
- (b) any benefits an affiliate may get as well as those the provider gets.
- (4) If the provider’s *funeral plan* activities generate a profit, that does not mean that it acts by way of business as long as the surplus is used for the purposes of its funeral activities, for example to buy new land for burials or to maintain its graveyards.
- (5) An important factor in this example is that the overall context is clearly non-commercial. The recipients of the services are not acting commercially. The funerals and the *funeral plan* activities take place within a religious community whose activities cover a much broader range of non-commercial activities. The funerals and the *funeral plan* activities are an integral part of those wider religious activities.

- (6) This non-commercial context means that the burial society or other religious organisation does not carry on the *funeral plan* activities by way of business just because:
- (a) it carries on the *funeral plan* activities on a continuing basis;
 - (b) it carries on the *funeral plan* activities on an extensive scale;
or
 - (c) (in the case of a burial society) the *funeral plan* activities are a major part of what the society does.