Response to FCA Consultation CP21/4

Funeral Plans: Proposed Approach to Regulation

April 2021

Funeral Planning Authority

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1. Overview

The Funeral Planning Authority is the current voluntary regulator of over 95% of the market. This provides us with a good insight and a fact base on what actually happens in most of the market.

It is important to understand that properly constituted funeral plans:

- Are not toxic.
- Are easily explainable and understandable, especially when compared to some investment and insurance products.
- Are a way of satisfying an eventual need that virtually all of us have.
- Provide both financial and psychological benefits.

All plans provided by FPA registered providers have provided the agreed funeral services.

It is our informed opinion that these proposals are disproportionate and costly. We expect a significant reduction in market participants, a limiting competition and choices and the proposals will thus lead to consumer harm.

As far as we are concerned any significant issues in the market relate almost exclusively to businesses outside our current regime. We feel that the FCA proposals are akin to using a hammer to crack a nut and in cost terms, completely disproportionate to the size of the problem. We believe a conservative estimate of non FPA business to be 2%-4% of the number of FPA existing plans and 2%-4% of the amount of FPA existing funds. These equate to c.30,000-60,000 and £100m-£200m respectively. In essence, the current proposals are to spend £40m at outset with on-going costs of c.£20m pa to address potential problems in some proportion of c.45,000 plans and some proportion of say £150m. In our view this falls short of any test of proportionality.

In our view, the proposals as they stand will:

- Significantly reduce competition – the opposite of the preferred statutory objective - and will skew the remaining market to the long-term benefit of large vertically integrated funeral directors.
- Increase prices for consumers.
- Reduce awareness of the product, and options for consumers to purchase from different outlets, through removal of intermediaries and funeral directors from the sales process (because they choose not to become Appointed Representatives of providers).

- Reduce the ability of consumers to use their preferred funeral director.
- Result in potentially significant harm to many existing planholders as their firms do not achieve FCA authorisation, leaving them with no protection.
- Skew the market away from trust-based models towards insurance-based models potentially to the detriment of existing customers.
- Confuse the market and consumers as to prudential soundness through use of what appear to be relatively arbitrary solvency measures that ignore the impact of guarantees.
- Potentially move the market towards 'Over 50' non-profit whole of life insurance plans which would be a poor value[1] outcome for consumers and appear to be sold at times using questionable sales practices (for example as noted by the FCA in January 2019).
- Not clearly provide the compensation that customers will expect on failure of a firm.
- Not provide a timely complaints resolution process given the purpose of the product.

There are some proposals we agree with and believe have merit in assisting consumers, these include:

- The requirement for regular statements, though we believe there is little need for these to be sent annually and this proposal would not meet a robust cost-benefit test.
- Requiring nomination of a funeral director. This is currently an FPA requirement and should be a requirement of the market.

A final fundamental point is that this is an industry new to the FCA regulatory regime and that has been, and still is, heavily involved with dealing with the consequences of the pandemic. This situation has been completely ignored in providing only a short 6-week consultation period. In the current context this short window offers a very limited opportunity for a wide range of market participants, particularly the smaller participants to understand the impact of your proposals and fully engage in the process. We regret therefore that this will become a consultation in name only or at best a consultation only for those who are large enough to devote senior resource to a worthwhile response. In this context we also note there is no trade body representing views across the market. Material issues may therefore not be raised.

2. HMT Objectives

According to the Consultation Paper 21/4 the Government's objectives for regulation of the sector as follows:

- All pre-paid funeral plan providers to be subject to robust and enforceable conduct standards.
- Enhanced oversight of providers' prudential soundness.

[1] These plans do not guarantee a funeral, may collect more money than they pay out, do not refund any money if money premiums cease after the 30 day cancellation period (although there may be an actuarial reserve in the policy), may not pay the sum assured on death the first 2 years and usually pay commission.

- Consumers to have access to appropriate dispute resolution mechanisms if things go wrong.

In compiling our comments on the consultation, we have attempted to relate them where possible to these objectives. We note there was no HMT objective to skew the market towards any particular model and we also note that FCA has a statutory objective to promote effective competition.

We recognise that in any assessment a key element of the proposed regime is that all firms carrying out the regulated activities will be subject to the same regulation and this, in itself, changes the current landscape. Given this, there is of course an argument that any sort of proposed regime would improve the current position. However, this should not be a pretext for the imposition of a regime that will adversely impact existing and potential customers and risk significantly curtailing competition in both the funeral plan and funeral markets. It remains a disappointment to us that policy makers seem unable to clearly identify the link between pre-paid and at-need funeral markets. The existence of a vibrant and competitive pre-need market alters the competition dynamics in the at-need market. This occurs for a number of reasons including the fact that pre-need relies less on high street presence and also offers a much more realistic prospect of rational shopping around than in the at-need market. Given this, it is crucially important that FCA regulation does not further diminish competition. One specific area that seems to have not received much focus in the whole process and indeed the proposed rules is the growing presence of on-line sales.

3. Impact on Consumers

Our assessment is that the proposed FCA approach will have a number of adverse effects on consumers as follows:

- **New customers will see an increase in prices.** The increased cost of compliance for firms will be material and coupled with the inevitable reduction in market participants could lead to a market failure and / or lead to scope for price increases. We believe the argument used in the consultation that commissions are driving prices is a flawed argument with little evidential basis.

- **There will be fewer options available to consumers in terms of plan providers and potentially funeral directors to purchase from / use their plan with**. The reduction in providers will remove some primarily smaller players (often serving local or niche parts of the market) in the market leading to customers having less choice of plan and funeral providers, leading to increased market positioning of larger players that are more readily able to support compliance overheads. Some funeral directors will choose not to be Appointed Representatives and some providers will not want small funeral directors as Appointed Representatives. The proposals for providers to carry out annual reviews of funeral directors carrying out funerals will if onerous (the CP is unclear to the extent of this review process) restrict the funeral directors being allocated plans and may exclude certain geographical regions from the pre-planning market.

- **Some smaller funeral directors are likely to stop selling plans**. This will be because they cannot, or do not want to, cope with the proposed AR regime. Or, if they do wish to continue, they cannot find an acceptable principal to work. This will result in reduced competition and probably less local offering for customers, a move of funerals from smaller local funeral directors to larger corporate entities which cuts directly across the CMAs conclusions on the "at need" funeral market.

- **It is highly possible that in the prescribed timescales that providers who are unable or do not wish to continue selling plans will not have the time and resources to sell their portfolios** to other providers who will themselves be devoting scarce resources to make their own business compliant. Consequently, portfolios could be left without any regulation.

- **A significant number of existing consumers will have their plans cancelled[2] and have money returned to them. For some, this could be significantly less than they have paid in** and will be less than the price of a replacement plan or pay for an equivalent at - need funeral on the retail market. It is particularly disappointing that nothing has been said (or indeed included in the CBA) as to how such customers can be protected. This issue is in direct conflict with your statement in 1.5 that "Our proposed rules are intended to protect customers that have….a pre-paid funeral plan product."

- **The increased confidence provided to customers from the FCA logo and FCA regulation firms may be fragile.** We have serious doubts that the FOS and any proposed FSCS scheme, will provide timely actual support and satisfactory outcomes for customers. It is also unclear whether the supervision of providers will be enhanced beyond the specialist and supportive continuity of supervision provided by the FPA.

- **The banning of commissions to remove some aspects of poor conduct in the market may also remove many acceptable and responsible sales routes.** We also note that the same customer bases are likely to fit the marketing profile for Over 50 plans – where (in the context of commissions being inappropriate in funeral planning) commissions appear to be acceptable to the FCA. From an effective competition perspective, there should at the very least, be a level playing field regarding commissions.

- **Complaints may take longer to resolve.** It is not explained how FOS will adapt their current procedures to ensure complaints about impending funerals are resolved quickly.

4. Impact on Competition in the Funeral Plan / Funeral Markets

[2] This could happen before the start of FCA regulation

We believe taken together the proposals will have the following impact on competition:

- **There will be reduced number of plan providers, removing choice for consumers both for plans and funeral directors.** It is important to recognise that despite the market having three large players with a significant market share, there is regional competition from more localised providers. Our assessment is that many of these smaller players will exit the market.

- **The proposed rules are not product-neutral; they will drive the market towards insurance-based models because the requirements are less onerous.** This is significant as there is no evidence that insurance-based models provide better outcomes for customers or indeed are inherently more prudentially sound. The proposals appear to be confusing the prudential soundness of the underlying insurance firm with the ability to pay for future funerals. As it stands there is not proposal for an actuarial valuation of an insurance-based provider's assets and liabilities. Taken with a lack of restriction on the type of investment underlying the insurance arrangement the sort of issue imagined with the trust-based model would equally apply to the insurance model, particularly where there are potentially onerous guarantees.

- **The competition and innovation created in the market from responsible intermediaries will be lost.** Our expectation is in the long run this will benefit large funeral directors with significant geographical coverage and high street presence.

- **We are concerned that the proposals are onerous enough to collapse the market.** In this situation it is likely as you state that an alternative route of Over 50 plans would be used by some consumers. Given these plans pay commission and use many of the sales tactics that have been criticised in the funeral plan world this will be a perverse and poor outcome.

  The FCA should monitor the reaction of market participants to the proposals to ensure that HMTs objectives are capable of being met and that consumers are not forced into harmful alternatives or make no provision for their funeral at all. This in turn could then limit restraint on at-need funeral prices at a time when the CMA are unhappy with the at-need market.

Appendices

1. **Responses to Consultation Paper questions**
2. **Specific comments on draft handbook**

Appendix 1

Responses to Consultation Paper questions

1. ***Do you agree that our proposed rules will not have a material impact on groups with protected characteristics?***

   In all likelihood the rules will not have a material impact on groups with protected characteristics. However, the proposals may severely impact the ability of consumers to purchase through a funeral director on the local high street. This may disproportionately impact some groups with protected characteristics, in particular the elderly, and this should be assessed as part of the consultation.

2. ***Do you agree with our proposal for applying high-level standards to funeral plan firms?***

   Yes

3. ***Do you agree with our proposal to require firms to back funeral plan contracts with a trust or insurance arrangement going forward?***

   Yes, though we observe this is not an enhancement as it reflects the current regulatory framework as expressed through the exemptions in article 60 of the RAO. We think greater clarity is needed around what an acceptable insurance arrangement might be. The wording at present is very loose and could allow a wide range of insurance products. These include unit-linked plans with underlying funds that have risk / reward profiles which are significantly mismatched to the associated liability to provide the funeral. Such a mismatch position may be further accentuated by guarantees attaching to the plan.

4. ***Do you agree with our proposed rules on trust arrangements?***

   Most of the proposals are reasonable other than the requirement to publish actuarial valuations. This needs much greater thought than seems to have been given and requires detailed input from the actuarial profession. It is not clear that this has yet occurred. Without such thought the danger is that there is considerable pressure to massage solvency levels upwards (as they may become a marketing tool). This is not necessarily helpful to anyone. Linked to this is the need for clarity on the basis on which valuations should be carried out which will require consultation with and guidance from the actuarial profession. Key issues that need to be addressed here are what is meant by best estimate and how does this relate to plans with potentially onerous guarantees. We suggest no final FCA rules are published until such time as this aspect is considered.

   We believe the requirements on trusts are anti-competitive when compared with the requirements on insurance arrangements. We see little merit in the publication of actuarial reports with a danger of a rush to blandness. If actuarial valuations of trusts are to be published, then it is imperative that similar actuarial valuations are carried

out and published for insurance-based arrangements. Whether or not there is any requirement to publish, there is in our view a strong argument for insurance-based schemes to have an annual actuarial valuation. Without it we cannot see how FCA can be assured that there are sufficient assets set aside to meet future liabilities. Historically, this has mattered less as most insurance-based schemes were provided by vertically integrated businesses that could flex liabilities in response to asset movements. This is not necessarily the case in the future.

We also note that vertically integrated trust providers can potentially amend the solvency position of the trust by adjusting when they take funeral profits.

5. ***Do you agree with our proposals for trust solvency and how trust solvency should be assessed?***

We agree the need for annual actuarial valuations but there is a need for dialogue with the actuarial profession on how these should be carried out. This is particularly the case if they are to be published where it is likely they will be used in a manner that was perhaps not originally intended.

It is unclear who the actuary's client will be in any scenario and this could lead to the requirement for an actuary to advise the provider and a separate actuary to advise the trustees. This may particularly be the case in proposals for remediation, where the views of the trustees and the provider may well not be aligned. In giving advice that the remediation plan is acceptable there may well be a need for an actuary to have access to or carry out some equivalent of the 'employer covenant' from the defined benefit pensions scheme on the provider. There will certainly be a requirement for actuarial guidance in this area.

We note the 110% solvency level on a best estimate basis before any surplus can be withdrawn. The suggestion that this is based on a 1 in 200 calibration should be supported by evidence not least to assist with any future proposed changes. We also think there needs to be much greater clarity about when providers can and cannot recoup costs from trusts. The contrast here with insurance arrangements, where there appears to be no restriction on for example future renewal commission being paid to a provider seems incongruous.

The proposal for the valuation to be calculated on 'best estimate' basis appears to potentially ignore the impact of guarantees (particularly around disbursements) which if considered more fully could significantly alter the reported solvency position.

All aspects relating to the actuarial valuations need detailed technical discussion with the actuarial profession prior to finalisation of the rules. As part of this discussion there needs to be a consideration of how the actuary can be clear on who is their client at any time or whether the provider and trust need separate actuaries.

If trust-based providers either choose or are forced into withdrawing from the market and cannot find a buyer, trustees will be left to manage the run-off of trusts over 20-30 years. This will create risks to solvency towards the end of the run-off as flexibility reduces and unit costs increase.

6. ***Do you agree with our proposed prudential requirements on funeral plan providers and intermediaries?***

   The basic principles for this are correct but we believe the imposition of the current full AR regime is disproportionate. This will remove a substantial group of funeral directors from the funeral plan market in any other capacity other than as the most basic of pointers to a provider. We believe this to be a bad outcome for consumers and potentially funeral directors.

7. ***Do you agree with the way we propose to apply our FPCOB rules?***

   Yes

8. ***Do you agree with our proposed general conduct of business standards for funeral plans?***

   Yes

9. ***Do you agree with our proposed ban on intermediaries receiving remuneration other than advice or arrangement fees from the customer?***

   Our starting point in assessing this question is to consider the extent of the perceived problems. Our assessment is that without publishing any research or evidence (as was the case with HMT) FCA have substantially exaggerated the extent of this and are proposing significantly disproportionate interventions. In particular the suggestion that high commissions have driven prices up is we believe actually without any foundation not least because it ignores the fact that all providers have distribution costs some of which may be higher than commissions. The consequence of this proposal will be to remove some very responsible distributors and providers. This will reduce competition and will consequently run counter to your objectives.

   The proposal is in direct contrast to the approach taken for Over 50 plans which are used in other parts of the consultation as a comparator and seem likely to drive more people to Over 50 plans. Many seem to agree that Over 50 plans are poor value products and these plans are largely distributed by intermediaries in a similar manner to funeral plans. Consequently, driving people to Over 50 plans seems like a perverse outcome.

   We believe that other options such as a cap on commission, disclosure that commissions are paid (as per Over 50 plans) or even disclosure of the amount of commission would have been better outcomes though we again note that all providers have distribution costs. In practice, other measures in the CP around prudential requirements would be likely to put downward pressure on commissions in any event.

10. ***Do you agree with our assessment that commissions are leading to mis-matched incentives and conflicts of interests between firms and customers in the funeral plan market? If you disagree, it would be helpful to explain why by reference to current commission structures and practices you are aware of in the market and, in***

particular, why you do not consider these to risk creating mis-matched incentives and conflicts of interests?

We do not agree with your overall representation because a key part of the FPA re-registration process is to explore this issue and ensure there are no incentives to market one type of product over another. However, we agree that there are some commissions being paid in a small proportion of the market that are not justifiable in terms of value being added to consumers. We also agree that these could, in some cases, result in poorer sales practices than acceptable and potential future prudential concerns. We do not believe that the solution to this activity, at the edge, is just to move to an outright ban without proper research as explained under Q9.

11. Do you agree with our assessment that commissions are leading to customers paying prices which are too high relative to the benefits the funeral plan provides?

No, we believe this is just inaccurate and a theoretical assessment of how pricing has taken place. If the FCA has evidence that supports their view they should publish it. Firms selling plans via a commission-based route are not charging prices that are noticeably different to those using other routes. The customer broadly pays the same. This issue is what then is the split between the various parties – the distributor, the funeral director, the plan provider.

Commission paid by insurers to providers has not been discussed; for example, the extent to which this can offset the published administration charge.

12. Do you agree with our assessment that intermediaries receiving commission are providing little or no benefit to customers? If you disagree, it would be helpful to explain why by reference to current commission structures and intermediary services you are aware of in the market and, in particular, how you think they provide benefit to customers.

There are many intermediaries in the market receiving modest commissions who help consumers by bringing the product to their attention, by carrying out due diligence on providers and by selling them plans that are suitable for them from a brand they feel they can trust. This provides greater market access and choice without any noticeable increase in price.

13. Do you have any comments on the alternative approaches to tackling the harms caused by commission? In particular, do you have any comments on the alternative option we would be minded to follow if we conclude that a ban is not required?

There are number of other options rather than banning which would enable customers to access plans via some perfectly acceptable current channels. If these were to operate in combination with proper control and oversight of the sales process and clear requirements in terms of amounts needed to be set aside to provide funerals a better outcome for consumers could be achieved. These options are:

- Cap commission at a level that is considered acceptable for the activity being carried out by the seller. This commission could then potentially be disclosed in line with the further points below.

- Disclose commission amounts payable to consumers.
- Disclose that commission will be payable but not the exact amount (as per over 50 plans).

The focus on commission seems to us to fundamentally misread the market in terms of consumer pricing and could have unintended consequences. For example, an existing distributor who receives commission could instead become a plan provider, use an existing insurer to back the plans and receive their income as a commission from the insurer. In that way they could effectively still receive the same income and could operate exactly the same processes. Similarly, a vertically integrated provider could reduce the amount being received on each plan downwards which could create a surplus in a trust that could effectively be released as distribution income (commission in all but name) for them to spend on sales activity.

14. Do you agree that with our proposals for remuneration of plan providers?

We think the proposals are vague and do not actually add anything meaningful as a consequence.

15. Do you agree with our proposals for pre-contract disclosures?

We agree there needs to be pre-contract disclosure but think the proposals reveal a fundamental misunderstanding as to what most customers think they are buying, namely a funeral. The proposal for a two-page coloured box-based summary is interesting and it would have been helpful to provide a mock-up given that the proposed bullet point list without any explanatory text is already a third of a page.

The FPA already requires and then assesses the quality of Key Features documents, which on average are four pages long. The proposed document does not appear to have been consumer-tested against a sample of Key Features documents.

In terms of distributor disclosure the proposals feels very much like the sort of timewasting exercise that is gone through when people purchase a car and buy add on insurance like gap insurance. The customer will not want to engage and the person asking them to will have to keep apologising for having to go through a whole load of bits of paper and confirmation that various documents have been received. It protects the firm to some extent, certainly protects the FCA but does very little, in reality, for the consumer.

Providing paper copies free of charge is not consistent with other markets FCA regulates (e.g. Hargreaves Landsown charging for paper statements).

16. Do you agree with our proposals for plans sold through instalments?

No, this is a solution to a problem that in our experience just does not exist and no evidence to support the proposal has been provided. We have seen very little concern from families having to pay outstanding instalments on plans because it is a perfectly understandable requirement. The proposal effectively requires a cross subsidy from those who survive to those who die whilst instalments are still being paid (funeral plans are not insurance plans), and this position is accentuated if the cost of the insurance element cannot be recovered on a cancellation. Insurers are also likely to

price for the possible selection against them by consumers who are terminally or seriously ill. Some providers may withdraw support for instalment plans altogether. We can see a situation develop where this will severely impact the availability of instalment plans and instead customers will use either Fixed Monthly Payment funeral plans backed by Over 50 plans or just poor value Over 50 plans. This outcome will be encouraged by the availability of commission on Over 50s. Not a good customer outcome.

There is also a danger of confusion in relation to some of the wording over payment of outstanding instalments. As we understand things the FCA is not suggesting that all plans must have guaranteed disbursements included (rather than a monetary allowance). Therefore, in the situation where the monetary amount in the plan was insufficient to cover actual disbursement costs it would be acceptable for the family / estate to make any top-up payment required. This position should be clarified.

17. Do you agree with our proposed sales standards?

We agree with the ban on cold-calling and we would suggest a ban on lead generation that forces follow up calls (i.e. the phone number having to be given for a quote) though we note this practice is allowed in the insurance world.

The 'demands and needs' section again seems to misunderstand that this is a funeral that is being bought. Everyone will need one of some sort, so the 'demand and need' is simply a type of funeral which is easily established without any formal process. We are not particularly clear why general health would be a consideration and what a provider is supposed to do with that information.

18. Do you agree with our proposed approach to cancellation rights and other fees?

The cancellation period needs to be linked to the period in which there is an allocation of the plan to a funeral director.

We see no logic in the return of all instalments on a cancellation. This just makes plans more expensive for others. We also do not understand how this works for fixed monthly payment plans where the customer cancels after say 5 years. If the expectation is that all premiums will be returned, then this part of the market will collapse and customers will find their way to an equivalent Over50 plan which do not guarantee a funeral. We note such plans also rarely have surrender values.

We think the comments on fees in 5.70 are very difficult to interpret. There seems to be an intention to prevent providers making a profit, given that in most cases all the principal (i.e. non-fee money) is invested to provide the funeral. As we have said the fee is included in the price of the plan so consumers can compare the overall plan should they wish.

19. Do you have any comments on whether our proposals are likely to impact the relationship between funeral plan contracts and underlying insurance contracts?

See comment under Q18.

20. Do you agree with our proposal to require plan providers to nominate a funeral director within 30 days of the plan being purchased?

Yes, but this process and timing needs to tie in with proposed cooling-off arrangements.

Whilst we agree with the nomination of a funeral director at outset the opening comment in para 5.73 is not backed up by evidence 'we have heard'. For some the knowledge of the funeral director is paramount for others it appears to be irrelevant. The more relevant reason for nomination is to make the future liability clearer.

The proposal for firms to review funeral directors every 12 months will result in some funeral directors no longer being able to provide the funerals paid for by funeral plans as the overhead of reviewing the FD will not be justified by the volume of funerals they can carry out. This may be a particular issue in some isolated areas where there is little FD coverage. There is also a basic challenge here for firms in terms of how they make an assessment given the lack of any licencing / regulatory regime for FDs. The FCA need to be clearer on their expectations.

21. Do you agree with our proposal to require plan providers to send a letter to the customer's representative once a plan has been purchased?

We understand the sentiment behind this but think the GDPR implications are more significant than is recognised. In our experience most of the complex complaints in this market arise where there is a family dispute. It is not unusual for different family members to have different views as to who the customer's representative is.

Our experience indicates there is no systematic problem. There is little point a person buying a funeral plan and then telling no one about it. Registered providers already provide a statement of benefits which a planholder can file with their Will or give to a relative or care home etc. as appropriate. This could be a copy of a hand-completed form. The proposed letter adds nothing to this. However, there may be merit in asking how many copies of the statement a planholder would like.

Such letters will also require a database of customer representatives to be set up and maintained not least because the representative may need to change over time.

22. Do you agree with our proposal to require plan providers to send an annual letter to consumers?

In our view this is again overkill – a costly solution to a small problem but we have some understanding of the sentiment behind the proposal. We do think this is adding potentially significant cost (the argument about on-line statements needs to be set in the context of the age of the customer population and their IT access / literacy).

Providers would have to design and operate a database to print and then despatch the statements. Bespoke funeral providers will have to somehow cater for multiple options. And the smaller community-based providers operate successfully without sophisticated computer systems so would face substantial investment in IT systems.

The same objective could equally be met by sending copies of the original statement say every 3-5 years.

We also note that at present the FPA runs a free tracing service with the cooperation of FPA registered firms which will disappear once FCA regulation begins. Commercial entities may attempt to create a replacement service though the volumes may not justify the investment.

23. Do you agree with our proposed rules for plan redemption?

In principle we agree with this, though the issue arises as to how the funeral plan company makes an assessment of how the funeral director carried out the funeral. The intention is to make this a responsibility of the planning company and we wonder whether that is practicable particularly given the volumes and where there may be a family dispute over the funeral. These family dispute cases that lead to complaints tend to be the most complex to resolve as they inevitably lead to questions over who has particular rights.

24. Do you agree with our proposals for rules to apply to plans entered into before 29 July 2022?

We think the proposal to communicate with previously nominated representatives without a check with the planholder in advance runs the risk of creating more problems than it resolves.

The imposition of annual statements is an unjustified direct additional cost on providers in a retrospective manner. This will be significant where new systems have to be created and databases populated – a cost not priced in existing plans (nor properly addressed in your CBA). Providers who wish to continue selling funeral plans will, if the proposed annual statements are mandated, need to set up new systems and loading the back book will be a substantial project.

25. Do you agree with our proposed product oversight and governance requirements for funeral plan manufacturers?

These proposals are an unnecessary carry over from the investment world. A funeral plan is a relatively simple product which satisfies an obvious and perfectly understandable need. They create unnecessary bureaucracy and thus likely to increase the disincentives for providers to continue in the market.

26. Do you agree with our proposed product oversight and governance requirements for funeral plan distributors?

As for Q.25. These are likely to be a significant disincentive for distributers to continue in the market just because of the overhead burden.

27. Do you agree with our proposed rules on fair value for funeral plans?

No as they create a series of unmeasurable comparisons. For example, if a funeral plan is 10% more expensive than the equivalent "at need" funeral is this fair value? The factors that have to be brought into that assessment are potentially quite specific to the individual e.g. health and location. In our view the rules taken together would imply that funeral plans should always be more expensive than the equivalent "at need" funeral as the service is the same and the plan provider has to account for their costs in selling and administering the plan, their risk cost of exposure to inflation and the cost of capital. The consequence would appear to be an increase in plan prices.

We would add here that funeral plans are priced clearly, so consumers can shop around should they wish. And there is more time to do this than for at-need funerals.

28. Do you agree with our proposed resolution rules?

Firstly, we are surprised you are not aware of any firm failures in the market, not least because we have raised concerns about firms that have subsequently failed with you over recent years. None were registered with the FPA but we can provide details of these failed firms on request.

In our view the overriding principle needs to be that customers get the funeral they have purchased as per 7.9. Anything else would not provide the protection that has been alluded to by the Government.

As we read the proposals it seems that there needs to be a pseudo guarantee that means the customer can always get their money back. This will of course have costs, will restrict investment options in trusts and insurance-based arrangements and ultimately have to be paid for by consumers. We also believe that there are genuine practical issues that relate to when customers paid money in, what has happened in terms of investment returns and the fair return of any monies. For example, consider a firm with two customers and FTSE100 investments. The first customer paid £3000 on 28 Feb 2020 and the other customer paid £3000 on 1 April 2020. The value of the fund at end September when the firm becomes insolvent is £5000 – who should get what?

We do agree, however, that a resolution manual is a positive idea for the market.

29. Do you have any views on reimbursement and what amount should be considered adequate noting option 1(to reimburse an amount equal to the retail cost of an equivalent replacement plan), option 2 (an amount linked to monies paid by the consumer), and other options that sit between these e.g. sums paid by the consumer that have been paid into a trust plus a pro-rated share of the remainder of the trust assets?

The issue here is it depends on what is available, but our fundamental point is, that on firm failure customers should get their funeral when it is needed. It is also worth noting that trusts will have existing provisions, so regulations forcing changes may involve some interesting legal challenges for trustees.

30. Do you have any views on how these reimbursement options could be funded? In particular, how could funeral plan arrangements be structured in such a way as to ensure that the funeral plan provider's obligations could be met at all times?

Customers could pay more as ultimately more money will require to be set aside to provide for the circumstance arising.

31. Do you have any views and evidence on the costs and benefits of these options, including relating to consumer protection and commercial impact on firms? We also welcome any evidence on the likely differential between the amounts relating to options 1 and 2, and between these amounts and the amount available from trust and insurance arrangements.

No

32. Do you agree with the proposal to introduce FSCS protection for certain funeral plan activities in relation to firms that are declared "in default" by FSCS, and for acts or omission arising, from the date FCA takes on regulation of the funeral plan activity?

Yes

33. Do you agree with the scope of proposed FSCS?

In our view for FSCS to be effective and meaningful to consumers the scheme should arrange for the purchased funeral to be provided when needed as compensation. Returning contributions made or premiums paid will not allow the customer to achieve this in many cases, given funeral cost inflation.

34. Do you agree with the proposed approach to FSCS quantification, the payment of compensation and the compensation limit?

There is not enough detail in the consultation to allow those new to FCA regulation (most of this market) to make a clear response to this question.

35. Do you agree with the proposal to introduce a new funeral plan activity FSCS funding class as set out above? If not, please set out an alternative funding approach with justification.

There is not enough detail in the consultation to allow those new to FCA regulation (most of this market) to make a clear response to this question.

36. Do you agree that an initial class limit of £5 million for the new funeral plan activity FSCS funding class would be appropriate, on the basis that this limit will be reviewed at least one year after regulation commences?

There is not enough detail in the consultation to allow those new to FCA regulation (most of this market) to make a clear response to this question.

37. Do you have any other comments on the proposals in relation to FSCS?

The basic point is that customers need to be provided with the funeral they purchased not some monetary refund.

38. Do you agree with our proposal to apply the SM&CR to funeral plan providers?

Yes

39. Do you agree with our proposals to treat funeral plan firms (that have no other regulatory permissions) as Core firms, except for intermediaries whose primary business is not funeral plan intermediation and who only have permission to carry on funeral plan mediation activity, which we propose would be Limited Scope?

Yes

40. Do you agree with our proposed fit and proper requirements, including criminal record checks and regulatory references?

Yes

41. Do you agree with our proposed approach to applying the Conduct Rules to funeral plan firms?

Yes

42. Do you agree with our proposal above to extend the rules and guidance for ARs to funeral plan firms?

In principle, but the outcome may be that significant numbers of funeral directors will no longer sell funeral plans. The potential solution to this would be to operate a separate regime for funeral directors to other intermediaries. However, in the absence of a clear definition of a funeral director this does not at present seem possible to us and in any event requires an assumption that a funeral director will operate as a more compliant seller than others. This is a good example of the sort of issue that would have made a more joined up approach to regulation of the whole funeral market (pre-need and at-need) a much more sensible way forward.

43. Do you agree with our proposal above to apply the existing Approved Persons Regime to funeral plan firms?

Yes, but see Q42.

44. Do you agree with our proposal to require funeral plan principal firms to notify us of changes in relation to their ARs as detailed above?

Yes, but see Q42.

45. Do you agree with our approach to apply our complaint handling rules and guidance in DISP, including the compulsory jurisdiction of the ombudsman service, to all authorised funeral plan providers and which will also apply to intermediaries (e.g. appointed representatives)?

In part but there must be a triage service to identify complaints that need urgent resolution where they relate to an impending funeral. There cannot be an 8 week delay followed by however long FOS resolution takes where a deceased individual's family are waiting for a FOS decision before the funeral can take place.

46. ***Do you think there are any gaps in ombudsman service coverage in the scenarios discussed above or are there any other issues you have identified? If so, please provide details****.*

See answer to Q45

47. Do you agree with our assessment that it is not necessary to make any changes to the rules on eligible complainants?

We agree though we believe there will be a number of challenges to this in relation to families in dispute. We note this may run into matters well beyond the funeral plan into the execution of the funeral and suggest clarity is needed as to where the FOS line is drawn and how aspects of a complaint relating to the funeral can be addressed.

48. Do you agree that this covers all likely forms of redress? If you consider further categories are needed please provide details in your response.

Agreed

49. Do you agree with the ombudsman service's proposal to expand the scope of the voluntary jurisdiction in this manner?

We have no strong view on this though think it may be an unnecessary complication in a regime which will already be relatively complex for a customer to navigate. For example, could a customer with a plan taken out before 29 July 2022 use this arrangement (whether their plan was with an FPA registered firm or not).

50. Do you have any comments on the proposals in Table 1 on the application of our FEES rules and guidance to Funeral plan providers and intermediaries, in particular the proposal to create a new Funeral plan provider and Intermediary industry block with the tariff base based on annual income subject to a minimum fee?

There are a relatively small number of providers, so if there is little scope to spread costs and a major provider was to have a significant number of complaints. It is not clear to us how the fee basis would address this.

51. Do you agree with our proposed application of the existing SUP rules to funeral plan firms?

Yes

52. Do you agree with the notification requirements and guidance we are introducing into SUP 15?

Yes

53. Do you have any comments on the reporting requirements set out in this CP?

On Prudential information the CP seems to suggest half yearly reporting including a Solvency Assessment Report – which elsewhere (4.30) it is suggested is carried out annually. The need for half-yearly assessments are not in our view necessary.

We think some of the timings required for preparation and submission of such reports may be challenging and require significant changes to models. This is particularly the case where the report has to be agreed by both Trustees and the provider.

54. Do you agree with the proposal for the FCA to impose an administration fee on funeral plan firms for late submission?

Yes

55. Do you have any comments on our proposal to apply the same approach to enforcement investigations and actions to funeral Plan firms as we do to other regulated firms, as set out in EG?

We agree with this proposal in broad terms. However, there is a question as to the degree to which events that occurred prior to FCA regulation can be considered as part of any enforcement process. We believe any such retrospective approach would be inappropriate and the Rules should be clear that this is the case.

56. Do you have any comments on our proposal to follow the same procedures for decision-making and imposing penalties in relation to funeral plan firms and individuals set out in DEPP?

Yes, but see answer to Q.55.

57. Do you have any comments on our cost benefit analysis?

The consultation when together does not reveal a sufficient understanding of the product or the market. We acknowledge that you have engaged with some providers, but presumably only those with the resources to do so and with the motivation to influence the regulations to their advantage.

The questionnaire sent to providers would have been completed with no appreciation of the scope of your eventual proposals. Especially by those providers with no experience of FCA regulations.

The quantification of harm is fundamentally flawed as it relies on out-of-date information (Fairer Finance report from a market that is radically different than exists today) and anecdotal information to extrapolate to the whole market. For example, the assertion that commission leads to increased prices is wrong, commission rates for different products do not tend to vary and clawback is in place for very many providers. This extrapolation overstates the harm and overstates the potential benefit of any changes to a material extent.

Paragraph 20 of the CBA makes an assertion about concerns over solvency of trust-based models without justifying in any way why the FCA do not have similar concerns over insurance-based models. In this sense we are referring to solvency not in terms of provider failure but in terms of being able to meet future liabilities – that is, how the Plan Provider can be satisfied that the proceeds of an insurance plan will be sufficient to pay for the funeral.

The ban on instalment plans without an insurance guarantee fundamentally misunderstands the market and is likely to lead to a harmful shift to Over 50 plans. The costs of this will be borne by the consumers. The benefits will be enjoyed by the distributors of Over50s through commission and, of course, by the insurance companies providing the products. You do not indicate why you find this product acceptable in spite of its flaws.

Paragraph 32, in particular Figures 2 and 3, is, we believe, flawed. To suggest these proposals will lead to lower consumer prices is frankly astonishing. We believe that the FCA have got this wrong and that these changes will result in increased costs, reduced competition and thousands of existing customers losing out. We question how this can be justified and be a price worth paying by consumers.

We believe you should disclose which industry participants you consulted in the period July to November 2020. We note you did not ask the FPA for any information relating to complaints about instalments. In fact, there were no such complaints referred to us in 2020.

Plan drawdowns increased in 2020 for two principal reasons. First the number of excess deaths which could reasonably account for around c. 15.000-20,000 drawdowns and then the fact that the number of plans having been in force for longer has increased. Using the 99,000 number from CMA in 2018 understates future drawdowns.

We are astonished by the suggested on-off cost of c. £40m and only mildly less astonished by the annual cost suggested. To then leap to these leading to lower prices for consumers does in our view require some imagination. However, we fear that the costs are still understated, and we also note that the benefits require some blind faith to get anywhere near justifying the costs. In terms of costs understatement, our assessment is the following:

- Nowhere in the analysis is any cost attributed to those existing plan holders who will lose out as a consequence of their firm not being authorised. We believe this could be thousands of individuals and the costs could be very significant.

Paragraph 217 discusses this but does not attempt to quantify. This is a material gap in the analysis. The working assumption appears to be that this impact will be minimised by other providers providing the funerals, which appears to us to ignore the lack of economic incentive to do so and the legal difficulties in actually making such a transfer happen.

- Familiarisation costs are understated. This is an industry new to FCA regulation that is being asked to respond and become authorised in a compressed timescale. This will inevitably involve additional costs and the suggestion that the document can be read ***and understood*** in 3.5hours (particularly given cross references to other parts of the Handbook) is hugely misleading.

- We note no costs are included for supervision and reporting. The FCA proposals increase reporting on firms and require compression of reporting timescales. The fact that some reporting will be public is likely to further increase costs.

- The lack of any costs for the use of trust or insurance models ignores the fact that the proposed rules provide a strong incentive for providers to potentially move from trust-based models to insurance models. This will result in costs either in transferring to, or in running new business on, an insurance model whilst potentially maintaining the existing trust.

- Actuarial costs are likely to increase as a consequence of increased publication and also potentially because actuarial work will be required for both trust and provider in a way that was not previously necessary.

- FSCS costs are ignored –an estimate should be included for these?

- The additional costs of actually dealing with FOS complaints seem to be ignored. Given this is about increasing consumer protection we assume that there will be an increased number of complaints as those non FPA customers currently without a clear complaints escalation route will have one. We are also not sure why a figure of £394 makes any sense as the actual number of complaints in the industry dealt with by individual firms is significantly more than used in your analysis.

- We believe the costs around annual statements are significantly understated. This is in terms of system implementation, data capture, statement production and distribution as well as resulting queries. In particular the on-going cost relates to new plans rather than existing plans. This would move the annual cost to something closer to up to £1.5m pa increasing by c. £100k pa.

- We also note in Paragraph 99 that you acknowledge the FPA does not allow cold calling and you do not know how many firms outside the FPA regime use cold calling. Given this we assume the benefit to customers is small.

- Paragraph 112-119 demonstrates a lack of awareness of the significance of the commission proposals. The costs of implementing this will be significant either as a need to radically restructure the business or through the business not continuing with the consequent impact on existing customers.

- Paragraph 143 seems to ignore the due diligence and review costs for firms who use independent funeral directors to sell plans.

- The analysis in Paragraph 144 seems to be misleading and comparing apples with oranges, not least because the amounts bear little relation to what we see as sums assured and inflation appears to be ignored.

- Paragraph 154-158 relating to instalments, accept there will be additional costs to firms (particularly arising from cancellations requiring the full amount to be returned – not netting off any insurance cost). This cost will most likely find its way to increase in prices to address a problem that is not actually material.

- Paragraph 171 suggests there will be similar requirement for insurance backed plans in respect of actuarial valuations. This does not seem to accord with the CP? Given the proposal for valuations to be public we believe this will increase costs.

- Paragraph 182 refers to capital requirements. We believe there may be an issue for firms where the funeral plan provider is a small part of a larger entity and the 2.5% of annual income may bite. This would be the case for some regional Coops but may also impact others and, unless addressed, could significantly understate the capital requirements in the CBA.

- We note the comments in Paragraph 224 and agree with them. The fact that one of the mitigating factors suggested in Paragraph 226 is use of Over 50 life plans suggests the mitigation is weak and raises questions about FCA meeting its statutory objective to promote effective competition.

On benefits our main point is the benefits are largely described but not quantified. In a commercial enterprise the idea that £40m set up costs plus £20m a year would be spent on not very clearly defined benefits would be treated with some scepticism. Representing this as a cost of existing plans (most of which most people accept will be delivered as required) is misleading.

Appendix 2

Specific comments on draft handbook

Page (of 177)	Sourcebook / Document Reference	Comment
4	Glossary – Definition of best estimate	Makes no allowance for guarantees which may or may not impact in different scenarios.
5	Glossary – Definition of Funeral Plans Authority	Should be Funeral Planning Authority (see also definition of former scheme).
6	Glossary – definition of regulated funeral plan activity	Does (h) inadvertently cover advisors providing investment advice to trustees?
21	SYSC 4.4.6	Not obvious "funeral plan firms" is defined.
32	TC – 2.1.23F	Requirement for 15 hours CPD exclusively for Funeral Plan business seems excessive and is likely to act against smaller market participants.
38	FEES – Class 7	Does inclusion of managing investments, safeguarding, advising investments inadvertently draw fund managers / insurers into this category?
38	FEES – Definition of annual eligible income	Definition seems to conflict with definition of annual income in FPCOB.
40	PROD – 1.7.4R	This would imply that models where an FD effectively utilises the back office of a provider will become more difficult as the FD will be deemed the manufacturer. This needs to be clarified.
42	PROD – 7.2.4 G	The list should refer to guarantees real and implied and how these are costed.
43	PROD – 7.2.4 G (7)	This is vague and should be clarified – these plans do not provide "cover".
46	PROD – 7.2.17 R	It is not clear how this rule relates to consumer research or indeed the circumstances of a customer that may justify differential pricing e.g. remote location.
46	PROD – 7.2.19E (1)	We do not see how this works in any meaningful manner for a vertically integrated providers.
49	PROD 7.2.27	It would be very useful for FCA to provide some guidance on the sort of scenarios being referred to – for example guarantees.
81	DISP 3.6.5 G	Not clear 'former Ombudsman' is defined.
96	FPCOB -2.3.2G	This should have some reference to the

		existing contract that the customer and provider willingly entered into.
97	FPCOB – 2.3.5 / 6R	Why in a durable medium – and 10 days seems relatively short in (3).
97	FPCOB – 2.3.10R	We do not understand this rule in the context of a situation where no payments are coming from a customer.
97	FPCOB 3.1.2G	We think this is effectively impossible for instalment arrangements already in place and the guidance should address this.
98	FPCOB 3.1.7G	Focus appears to be on instalments rather than ensuring enough money is set aside in general. The guidance here should be much wider.
99	FPCOB 3.1.8 R	The fact (1) is a placeholder and has been asked about specifically in the consultation is concerning. It is a fundamental issue that needs to be addressed. What is suitable will depend on other measures that are placed around insurance-based models. At the very least there should be a requirement for a consideration about the relationship between the insurance policy payout and the future cost of the funeral.
100	FPCOB 3.1.9 R (10)	Has any consideration been given to what happens if the requirements of Trust Law conflict with cooperation with the FCA, FSCS etc?
101	FPCOB 3.1.11R (3)	This appears incorrect to us in a situation where the policy / trust payout is greater than the agreed amount to be paid to the FD.
102	FPCOB 3.1.15 R(2)	Why is there no requirement to factor in the volatility of insurance policy proceeds (e.g. if a unit linked policy)?
103	FPCOB 3.2.3 R	Best estimate basis could imply can ignore the potential for guarantees to bite. This rule needs input from and link to guidance from the actuarial professions.
103	FPCOB 3.2.3 R (5)	Dates are very confusing and practically impossible. Need clarity over – date actuary appointed, “as at” dates, delivery to provider / trust date, publication date.
104	FPCOB 3.2.4 R (1)	We do not know what this means – “assessed against” does not make any sense in this context. Perhaps “by reference” to or “taking account of” may be more helpful. However, it does appear as if 3.1.6 R(2) is a point in time amount rather than a future liability reference.
104	FPCOB 3.2.5 R	Timescale needs considered in light of over

		timescales. If it needs to be considered by a Board – 7 days does not seem reasonable.
104	FPCOB 3.2.6 R	Actuarial guidance is needed as is further guidance from FCA as to what an actuary should be considering in assessing whether to approve. For example, is a provider covenant required?
105	FPCOB 3.2.12 R	We think this needs a much greater analysis and some caveats to reflect the nature of the liabilities and the degree of risk in the underlying asset mix. It also needs guidance from the actuarial profession in relation to (2).
106	FPCOB 3.2.13 R	It is not clear what is meant by 'next financial report'.
108	FPCOB 4.2.11 R	A 'cold call' is not defined.
122	FPCOB 6.4.4 R / 6.4.6G	We do not understand what this is trying to say but it appears that a provider firm selling on its own behalf cannot take any income in respect of that sales activity.
122	FPOB 6.4.7 R	This appears to contradict 6.4.4 R but only for vertically integrated firms.
123	FPCOB 6.4.11 G (2)	This appears to say a customer could pay for their whole funeral up front to a provider who could then pay a "provider of funerals" – which is undefined – any amount they see fit as long as enough set aside to pay for the funeral. This seems to be rather a large loophole.
125/6	FPCOB 7.2.1 R (2b)	This should be clarified to make it clear that additional payments are allowed to make up any shortfall in disbursement costs against any disbursement allowance.
128	FPCOB 8.3.3 G	This appears to be FCA promoting a view that there is no merit in taking a funeral plan. This is contrary to HMT's stated position but if it is the FCA position why do you not opt for a ban on the product. It ignores customers wishing to put their own or their family's affairs in order, people on their own, people choosing what they want, people shopping around etc.
132	FPCOB 9.2.15 G	As an alternative / addition the age at which instalment payments exceed current cost of plan could be shown.
134	FPCOB 9.3.9 R	This is onerous from a practical perspective and will be extremely expensive (even allowing for 9.3.10). There may well be GDPR implications as well.

134	FPCOB 9.3.11R	We think from a proportionality perspective annually is far to frequently. However, we note the Rules refers to "at least" annually which is clearly inappropriate. We also wonder how this requirement fits with the green agenda.
143/4	FPCOB 10.1.2 G	This is vague and should say "no additional cost for the services defined in the plan". These may be different to what is agreed between the customer and the funeral director. (see also 10.1.3 R (4)
144	FPCOB 10.1.3 R (2)	What is a reasonable distance – needs defined – e.g. for a complaint? Also not clear this works where there is no funeral director – e.g. direct cremation.
145/6	FPCOB 11.1.4 R (1)	Should include "any costs arising from the need to ensure payment of missing instalments where customers die before instalment term is complete".
146	FPCOB 11.1.6 G	This refers to trusts but instalments also available under insurance plans.
147	FPCOB 13.1.1 R	We see no reason why there is a longer period for instalments.
147	FPCOB 13.1.3 R	The purpose of this rule is unclear.
150	FPCOB 15.2.1 R	It is not clear whether in making this assessment a firm is only looking at its own liabilities or whether it means a look through to trust and / or insurance assets. If the latter then an actuarial assessment on other than 'best estimate' feels like it is necessary.
151	FPCOB 15.2.4 G	It is not clear what is meant by 'realistic adverse projections'. This appears inconsistent with best estimate measures used elsewhere in particular in allowing withdrawal of surplus. This point suggests that firms need to consider the trust (or insurance) assets and liabilities as in certain adverse scenarios they may be required to remediate a deficit position.
152	FPCOB 15.5.1 R	There should be a justification / explanation of the rationale behind this calculation.
153	FPCOB 15.5.2 R	We see no logical reason for these to be excluded.