

Funeral Planning Authority Rules

Effective from 1 January 2020

1. GENERAL

1.1. Interpretation

In these Rules:

"Appellant" means the party serving a Disciplinary Appeal Notice in accordance with Rule 8.9.1;

"Applicant" means a person applying for registration as a Registered Provider;

"Authority" means the Funeral Planning Authority Community Interest Company;

"Close relative" in relation to any person, means:

- (1) his spouse,
- (2) his child, parent or sibling (including any step-child, step-parent or step-sibling), or
- (3) the spouse of any person within paragraph (2) and in these Rules 'spouse' includes a person whose relationship with another person has the characteristics of the relationship of marriage or civil partnership;

"Code of Practice" means any code of practice, as made or amended from time to time, by the Authority in accordance with Rule 4.1;

"Compliance Committee" means the Compliance Committee appointed by the Authority under its Articles of Association;

"Connected Person" means, in respect of a Registered Provider, a person who is:

- (1) the Registered Provider, a partner in the Registered Provider or any company which is a member of the same group as, or an associated company of, the Registered Provider;
- (2) a director, officer or employee of the Registered Provider or any company which is a member of the same group as, or an associated company of, the Registered Provider;
- (3) a close relative of a person falling within paragraphs (1) or (2); or
- (4) an agent of any person falling within paragraphs (1) to (3);

"Defence" means a Defence served in accordance with Rule 8.1.4;

"Direction" means a Direction given in accordance with Rule 7.7;

"Disciplinary Appeal Tribunal" means a Disciplinary Appeal Tribunal appointed in accordance with Rule 8.10;

"Disciplinary Decision" means a Disciplinary Decision issued in accordance with Rule 8.4.1;

"Disciplinary Notice" means a Disciplinary Notice issued in accordance with Rule 8.1.3;

"Disciplinary Panel" means a Disciplinary Panel appointed in accordance with Rule 8.2.1;

"Guidance" means guidance issued by the Authority;

"Independent Person" means a person other than:

- (1) a Registered Provider, a partner in a Registered Provider or a shareholder of a Registered Provider or any company which is a member of the same group as, or an associated company of a Registered Provider;
- (2) a director, officer or employee of a Registered Provider or any company which is a member of the same group as, or an associated company of a Registered Provider;
- (3) a close relative of a person falling within paragraphs (1) to (3); or
- (4) an agent of any person falling within paragraphs (1) to (4), but the reference in paragraph (1) to a shareholder shall not include a person who is only a shareholder by virtue of his shareholding in a co-operative society within the meaning of the Industrial and Provident Societies Acts 1965 to 1978;

"Insurance-based Plan" means a funeral plan complying with Article 60.(1)(a) of the RAO;

"Investigation Notice" means an Investigation Notice issued in accordance with Rule 7.6;

"Misconduct" has the meaning given in Rule 8.1.1;

"Prescribed" means prescribed by the Authority;

"RAO" means The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 so far as it relates to the provision of funeral plan contracts;

"Registered Provider" means a person or business entity that provides funeral plans and is regulated by the Authority;

"Registration" includes periodic re-registration and cognate expressions shall be construed accordingly;

"Registration Appeal Decision" means a Registration Appeal Decision issued in accordance with Rule 3.8.5;

"Registration Appeal Notice" means a Registration Appeal Notice served in accordance with Rule 3.6.1;

"Registration Appeal Tribunal" means a Registration Appeal Tribunal appointed in accordance with Rule 3.7.1;

"Registration Decision Notice" means a Registration Decision Notice served in accordance with Rule 3.5;

"Response" means a Response served in accordance with Rule 3.6.5;

"Respondent" means the party served with a Disciplinary Appeal Notice in accordance with Rule 8.9.1;

"Rules" means these Rules or any of them;

"Serve", "service", "send" and cognate expressions shall be construed in accordance with Rule 1.4;

"Supplementary Registration Appeal Notice" means a Supplementary Registration Appeal Notice served in accordance with Rule 3.6.6;

"Suspension Notice" means a Suspension Notice served in accordance with Rule 7.8.2;

"Trust-based Plan" means a funeral plan complying with Article 60.(1)(b) of the RAO; and

"Trustee" means a person who is trustee of a trust under which funds forming part of the plan funds of any funeral plan provided by an Applicant or a Registered Provider are held and "trust" shall be construed accordingly.

1.2. Gender and Number

In these Rules, unless the contrary intention appears:

1.2.1 Words importing the masculine gender include the feminine and vice versa; and

1.2.2 Words in the singular include the plural and vice versa.

1.3. Employees, agents and representatives

The acts or omissions of:

1.3.1. A Registered Provider's employee, within the scope of his employment; or

1.3.2. A Registered Provider's agent, representative (or the employee of such an agent or representative) or other third party involved with the Registered Provider's business, within the scope of his actual or apparent authority; shall, for the purposes of the Rules, be taken as the acts or omissions of the Registered Provider.

1.4. Service of Documents

- 1.4.1.** The service of any notice or document under these Rules may be effected by post, facsimile, e-mail or personal service:
- 1.4.1.1.** In the case of a Registered Provider, at or to the last address, facsimile number or e-mail address for service for that Registered Provider shown in the Authority's register of Registered Providers;
 - 1.4.1.2.** In the case of a person, business or body corporate other than a Registered Provider at or to the last address, facsimile number or e-mail address of the place of business or registered office of that person, business or body corporate; and
 - 1.4.1.3.** In the case of the Authority, at or to the address of the Authority's place of business or to its e-mail address.
- 1.4.2.** Where a document is served by post and is proved to have been posted it shall be presumed to have been served 4 days from the date of posting.
- 1.4.3.** Where a document is served by leaving, it shall be presumed to have been served on the date on which it was left.
- 1.4.4.** Where a document is served by facsimile or e-mail it shall be presumed to have been served on the date on which it was transmitted.

1.5. Governing law

These Rules are governed by, and shall be construed in accordance with, English law.

2. PRINCIPLES

Underpinning these Rules are a set of governing Principles namely that the Rules:

- In all instances place the interests of customers first
- Are neutral with regard to product, business model, distribution approaches and sales models so as not to distort the market
- Promote competition in the funeral planning market to the benefit of the consumer
- Are readily enforceable
- Are proportionate to the risks the market and provider firms pose to customers
- Support the sustainability of the market.

3. REGISTRATION

3.1. Applying for registration

An application for registration or annual re-registration as a Registered Provider must be made in writing in the prescribed form and sent to the Authority together with, but subject to, the discretion of the Compliance Committee:

- 3.1.1.** The prescribed fee;
- 3.1.2.** Evidence of compliance with the RAO, the Rules and the Code of Practice;
- 3.1.3.** The Statement of the Trustees; the Statement of the directors; the Auditor's Report to the Trustees and the Authority; the Auditor's Report to the directors and the Authority; and the Actuary's Report to the Trustees and the Authority where appropriate in the form prescribed by the Authority from time to time;
- 3.1.4.** The audited accounts of the trust (where appropriate); the accounts of the applicant; and the accounts of the applicant's parent company (if any); and
- 3.1.5.** Any other prescribed information.

3.2. Fitness and propriety

An Applicant must satisfy the Authority that:

- 3.2.1.** The Applicant;
- 3.2.2.** The directors, senior management and significant shareholders of the Applicant; and
- 3.2.3.** Any Trustee;

are fit and proper persons who will comply with the Rules. In assessing the fitness and propriety of any person the matters which the Authority will take into account include, but are not limited to, the Applicant's continuing obligation to meet the requirements of the RAO, so far as they relate to the provision of funeral plan contracts.

Appendix 1 provides guidance on the Authority's approach to the assessment of fitness and propriety.

3.3. Registration Decisions

Decisions on applications for registration and annual re-registration shall be taken by the Compliance Committee. Before an application is submitted by the Authority to the Compliance Committee, the Authority may:

- 3.3.1.** Require the Applicant to answer questions or provide additional information; or

- 3.3.2. Carry out any enquiries or take account of any information which it considers appropriate;

3.4. Decision of the Compliance Committee

The Compliance Committee shall make a decision on an application taking into account all documents, information or submissions which it has received from the Applicant and the Authority. The Compliance Committee may:

- 3.4.1. Grant the application;
- 3.4.2. Grant the application subject to such conditions as it considers appropriate;
- 3.4.3. Defer making a decision to provide time for further investigation or the provision of additional information; or
- 3.4.4. Refuse the application;

and, subject to any appeal under Rule 3.6, the decision of the Compliance Committee shall be final and binding on the Applicant and the Authority.

3.5. Rights of appeal

If the Compliance Committee refuses an application or grants it subject to conditions, the Authority must send a Registration Decision Notice to the Applicant which sets out the Compliance Committee's decision and the reasons for it and informs the Applicant of the right of appeal.

3.6. Registration Appeals

- 3.6.1. An Applicant who has been refused registration or granted registration subject to conditions may serve a Registration Appeal Notice on the Authority within 28 days of the Authority serving a Registration Decision Notice on the Applicant.
- 3.6.2. A Registration Appeal Notice must be accompanied by any prescribed sum as an initial contribution towards the costs of the appeal and that sum may, in the discretion of the Registration Appeal Tribunal, be returned to the Applicant on the determination of the appeal.
- 3.6.3. If a Registration Appeal Notice, accompanied by any prescribed sum, is not served within the time provided in Rule 3.6.1 the Compliance Committee's decision shall be regarded as final and binding.
- 3.6.4. Any Registration Appeal Notice must set out the grounds of appeal and must contain a brief statement of all matters relied on by the Applicant.
- 3.6.5. The Authority may serve a Response on the Applicant admitting or denying any or all of the matters relied upon by the Applicant in the Registration Appeal Notice and setting out any new matters which the Authority intends to put before the Registration Appeal Tribunal but which were unavailable or otherwise could not be put before the Compliance Committee.

3.6.6. Where a Response includes new matters in accordance with Rule 3.6.5 the Applicant may, within 14 days of service of the Response, serve a Supplementary Registration Appeal Notice on the Authority setting out the Applicant's submissions on any of the new matters in the Response.

3.6.7. The Authority shall refer any appeal to the Registration Appeal Tribunal.

3.7. Registration Appeal Tribunal

3.7.1. The Registration Appeal Tribunal shall be appointed by the Authority and shall comprise a chairman who is a legally qualified Independent Person and two other persons, one of whom shall be an Independent Person.

3.7.2. No person shall serve on a Registration Appeal Tribunal if he has a direct personal or financial interest in the case or has been involved in any preliminary consideration of that case.

3.8. Registration Appeal Tribunal Procedure

3.8.1. Registration Appeal Tribunal hearings shall be in private.

3.8.2. The chairman of the Registration Appeal Tribunal shall determine the procedure for hearing an appeal having regard to the following:-

- (1) the Applicant opening his case;
- (2) the Applicant calling witnesses or producing evidence in support of the Registration Appeal Notice and any Supplementary Registration Appeal Notice;
- (3) the Authority calling witnesses and adducing evidence;
- (4) both parties cross-examining and re-examining any witnesses;
- (5) the Authority addressing the panel; and
- (6) the Applicant addressing the panel.

3.8.3. The Registration Appeal Tribunal shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before any court of law.

3.8.4. At a hearing before the Registration Appeal Tribunal an Applicant may be legally represented and, where the Applicant is not an individual, may be represented by one of its officers.

3.8.5. The Registration Appeal Tribunal shall announce its decision to the parties as soon as practicable and, within 28 days of doing so, shall serve a Registration Appeal Decision on the parties setting out the reasons for its decision.

- 3.8.6. The Registration Appeal Tribunal may allow or dismiss an appeal and, in allowing an appeal, may impose such conditions as it thinks fit or vary any condition imposed by the Compliance Committee.
- 3.8.7. The decision of the Registration Appeal Tribunal shall be final and binding upon the Applicant and the Authority.

3.9. Admission to Registration

- 3.9.1. If the Compliance Committee (or, on appeal, the Registration Appeal Tribunal) grants an application for registration, the Authority shall inform the Applicant of the decision and the Applicant shall be admitted as a Registered Provider subject to the Rules for such period as the Compliance Committee or the Registration Appeal Tribunal (as the case may be) may determine.
- 3.9.2. Where registration is made subject to any conditions, the Registered Provider shall comply with those conditions during the continuance of registration and the breach of any such condition by a Registered Provider shall constitute misconduct.

3.10. Statistics, Fees etc.

- 3.10.1. A Registered Provider must pay any fee, subscription, charge, levy or other sum within 21 days of it becoming due to the Authority. If a Registered Provider fails to make payments in accordance with this Rule it shall be regarded as misconduct and may be dealt with accordingly.
- 3.10.2. Registered Providers will provide within a reasonable time such statistics as the Authority may request. Such statistics shall be provided to the Authority who will ensure that the security of individual Registered Providers statistics is maintained. If a Registered Provider fails to provide such statistics in accordance with this Rule, it shall be regarded as misconduct and may be dealt with accordingly.

3.11. Annual re-registration

A Registered Provider must by the prescribed date complete and send to the Authority information in the prescribed form. If within 28 days of the prescribed date a Registered Provider fails to comply with this Rule it shall be regarded as misconduct and may be dealt with accordingly.

3.12. Withdrawal from Registration

A Registered Provider may withdraw from registration by the Authority by giving not less than 180 days written notice or such shorter notice as the Authority may approve, and the notice must be accompanied by such information concerning the circumstances of withdrawal as, in the opinion of the Authority, is necessary for it to determine whether any measures are necessary to protect the clients of that Registered Provider at the time the withdrawal will take effect. A Registered

Provider that for any reason ceases to be registered shall not be entitled to the refund of any subscriptions or other payments made to the Authority.

4. CONDUCT

4.1. Code of Practice

The Authority shall issue a Code of Practice and shall have the power to vary, amend or revoke any such Code of Practice as it sees fit.

4.2. Obligation on Registered Providers

In the conduct of business, a Registered Provider shall, at all times:

- 4.2.1.** Comply with, and ensure that its employees, agents or representatives comply with, the Rules and Code of Practice;
- 4.2.2.** Deal promptly and fairly with the Authority;
- 4.2.3.** Promptly inform the Authority of any matter which the Authority might reasonably expect to be disclosed;
- 4.2.4.** Ensure that all contractual documentation, advertising and promotional material, which shall include where appropriate a key features document, published in connection with a prepaid funeral plan is sufficiently clear to enable a potential client to make an informed decision about purchasing a plan; and
- 4.2.5.** Shall recognise that conformity with the Rules and Code of Practice does not absolve the Registered Provider from the need to ensure that it satisfies any other requirements imposed by law and continues to do so.

4.3. Breach of the Code

A breach of the Code of Practice shall be regarded as misconduct and may be dealt with accordingly.

5. PLAN FUNDS

5.1. Security of Funds

A Registered Provider must ensure that money received from a client to pay for a funeral plan is, as soon as practicable, either:

- 5.1.1.** Applied towards a contract of whole life assurance on the life of the client (or other person for whom the funeral is to be provided), effected and carried out by an authorised person who has permission to effect and carry out such contracts of insurance; or

5.1.2. Paid into an account maintained by a trust which has been approved by the Compliance Committee, where appropriate arrangements exist to make good any shortfall or deficiency in the value of the assets of the trust below the value of its liabilities as disclosed by an actuarial valuation, to ensure the trust has sufficient assets to discharge the Registered Provider's obligations; and

5.1.3. Where the report of an actuary produced under Rule 5.3.10.2 shows that there is a shortfall or deficiency in the value of the assets of the trust below the value of its liabilities, the Trustees will provide the Compliance Committee with their detailed response to any recommendation made by the actuary as soon as reasonably practicable but not exceeding 60 days after the signing of the report by the actuary and including a statement as to the action to be taken to make good any shortfall or deficiency in the value of the assets of the trust below the value of its liabilities.

5.2. Approval of insurance arrangements

The Compliance Committee shall satisfy itself that if the sums paid by the client are applied towards a contract of whole life assurance the contract is effected and carried out by an authorised person who has permission to effect and carry out such contracts of insurance.

5.3. Approval of trusts

The Compliance Committee shall be responsible for approving any trust under which plan funds are held and shall not approve any such trust unless the Authority is satisfied that:

5.3.1. The trust is established by means of a written instrument;

5.3.1.1. The trust ensures that the following purposes are achieved

- (a) the purpose for which the trust has been created;
- (b) that its assets are held in relation to customers' funerals;
- (c) that the assets in the trust fund are not the assets of the Registered Provider;
- (d) in the event of the insolvency of either the Registered Provider or the trust fund, any liquidator/administrator or other person who may be appointed as a consequence of the insolvency has no claim against the trust fund or its assets for purposes other than the delivery of the clients' funerals.

5.3.2. The Trustees are fit and proper persons, a majority of whom are not Connected Persons and, subject to Rule 5.3.4, exercise sole control over the assets of the trust and are required by the trust to act by unanimity. Provided that the requirements for the Trustees to act by unanimity shall not apply:

- (a) in the event that one or more of the Trustees has a conflict of interest which could result in it being improper for an individual trustee to participate in the decision; or
- (b) in the event that:
 - i. not all the Trustees are able to attend a meeting of the Trustees of which proper notice has been given, and at which a decision is made; or
 - ii. only a majority of Trustees present at a meeting of which proper notice has been given, vote in favour of a decision;

The requirements of this Rule shall be deemed to have been satisfied if the majority of Trustees in favour of the decision shall be unconnected Trustees.

- 5.3.3.** All investments forming part of the plan funds are held in the names, or to the order or account, of the Trustees;
- 5.3.4.** The Trustees are required to appoint, or have appointed, to manage the assets of the trust an independent fund manager who is an authorised person as required by Article 60 (1)(b) of the RAO and is not a Connected Person;
- 5.3.5.** The Trustees are required to provide the fund manager, at least annually, with a written statement of investment principles which the fund manager is required to follow;
- 5.3.6.** The terms of the trust require the fund manager to invest cash and other assets comprising the trust fund prudently with a view to minimising the risk that the assets will be insufficient to meet the liabilities of the trust fund;
- 5.3.7.** The terms of the trust prohibit the funds from being invested in matters in which any connected person has a material interest including, but not limited to, investing in or providing loans to the Registered Provider or any business of or associated with the Registered Provider or any director of or partner in the Registered Provider;
- 5.3.8.** The terms of the trust restrict payments from the trust funds to payment on production of appropriate evidence of entitlement or to meet taxes, expenses or disbursements authorised under the trust arrangements;
- 5.3.9.** The terms of the trust set out the Registered Provider's entitlement to any surplus of funds and the circumstances in which payment of any such surplus may be made to the Registered Provider;
- 5.3.10.** The terms of the trust require:
 - 5.3.10.1.** Accounts with respect to the assets and liabilities of the trust are prepared annually in accordance with current generally accepted accounting practice, such accounts to be audited by a person

eligible for appointment as an auditor under section 485 of the Companies Act 2006, such accounts to be prepared as at a date not more than 9 months prior to the date of application for registration or re-registration, as the case may be; and

5.3.10.2. The assets and liabilities of the trust are determined, calculated and verified annually (or at such other intervals not exceeding 3 years, as the Authority may determine), to a date not more than 9 months prior to the date of application for registration or re-registration, as the case may be, by an actuary who is a fellow of the Institute and Faculty of Actuaries. Each such determination, calculation and verification shall be in accordance with any relevant actuarial standards. If such actuarial standards are not followed in any respect, the review shall explain the reason for failing to do so.

5.3.10.3. The Compliance Committee may ask for any additional information and require the preparation of an interim actuarial valuation, consistent with any relevant actuarial standards, to be prepared by the actuary who performed the last formal actuarial valuation (or such other actuary as the Authority may accept); and

5.3.10.4. Also, that if it is not reasonably practical to comply with the 9 month requirement in either 5.3.10.1 or 5.3.10.2 the Compliance Committee may, at its discretion, specify the date by which the audited accounts or actuarial valuation (as the case may be) shall be provided.

5.3.11. The trust and Trustees are covered by insurance against loss of plan funds as a consequence of fraud or negligence and the Trustees have confirmed the adequacy of such insurance.

5.3.12. The terms of the trust make adequate provision for the administration of plan funds in the event that the Registered Provider becomes insolvent or ceases trading.

5.4. Arrangements for Funerals

5.4.1. From 1 January 2020, a Registered Provider is required, within 4 weeks of a new plan being purchased by a customer, to put in place appropriate arrangements for the funeral to be carried out that:

- identify the funeral director (branch or corporate entity) that will carry out the funeral;
- are legally enforceable;
- define the amount to be paid for the funeral;
- identify who is responsible for any cost of guarantees that may exist;

- survive the Registered Provider were it to cease to exist;
 - are clearly documented.
- 5.4.2.** For plans purchased prior to 1 January 2020 a Registered Provider must provide the Authority with an annual summary of any plans not allocated to a funeral director on the basis set out in 5.4.1. Such report to be provided as part of the Registered Provider' annual re-registration.
- 5.4.3.** The Registered Provider should ensure that the accounts for the Registered Provider reflect the liabilities and risks that arise from the arrangements put in place to carry out funerals including any liabilities (contingent or otherwise) that arise from the provision of with guarantees to customers.
- 5.4.4.** The Trustees should ensure that the accounts and actuarial valuation for the Trust should reflect the liabilities and risks that arise from the arrangements put in place to carry out funerals including any liabilities (contingent or otherwise) that arise from the provision of guarantees to customers.

5.5. Transitional and provisional arrangements

- 5.5.1.** Subject to Rule 5.5.2 and 5.5.3, in the application of the Rules to any particular application to become a Registered Provider the Compliance Committee may, in its discretion, waive or vary any Rule for such time and subject to such conditions as it considers appropriate.
- 5.5.2.** In the exercise of the power conferred by Rule 5.5.1 the Compliance Committee may register as a Registered Provider an Applicant whose arrangements for the security of plan funds do not comply with all of the provisions of Rule 5.3 but only if:
- 5.5.2.1.** The Applicant will, if registered, be able to comply with the requirements of Rule 5.3 within a period not exceeding 24 months; and
 - 5.5.2.2.** The Compliance Committee is satisfied that the arrangements which the Applicant has, or by complying with any condition imposed by the Compliance Committee will have, for the security of plan funds provide a level of protection for consumers substantially similar to that required by Rule 5.3.
- 5.5.3.** Nothing in Rule 5.5.1 shall authorise the Compliance Committee to waive or vary any Rule to the extent that it would permit an Applicant in breach of an obligation under Articles 60 (1) (a) or (b) or 60 (2) of the RAO to be registered as a Registered Provider.

5.6. Record keeping

A Registered Provider must take reasonable steps to ensure that sufficient information is recorded and retained about its business and compliance with the Authority's regulatory system. Any records which the Authority requires a

Registered Provider to maintain may be inspected by a person appointed for the purpose by the Authority and must be produced promptly to that person on request.

5.7. Monitoring

5.7.1. A Registered Provider must provide to the Authority annually a report detailing how the Registered Provider accounts for outstanding funeral plans.

5.7.2. A Registered Provider must inform the Authority within 14 days of the end of every quarter the number and total value of funeral plans sold and the number of funeral plans fulfilled and the number of plans outstanding at the end of the preceding quarter.

5.7.3. In the case of an Insurance-based Plan Registered Provider:

5.7.3.1. within 30 days of the end of every quarter an officer of such Registered Provider must inform the Authority of the value of the assets held in insurance policies.

5.7.4. In the case of a Trust-based Plan Registered Provider:

5.7.4.1. within 30 days of the end of every quarter an officer of such Registered Provider must inform the Authority of the value of assets held in the trust: and

5.7.4.2. within 30 days of the trustees of such Registered Provider receiving an actuarial valuation the trustees must provide the Authority with a certificate of assets and liabilities specified in such actuarial valuation.

5.7.5. A Registered Provider must inform the Authority within 14 days of it receiving an actuarial valuation reporting a shortfall of assets available to meet its liability to provide funerals for outstanding funeral plans and, within 14 days thereafter, inform the Authority of the steps it is taking to eliminate the shortfall.

5.7.6. A Registered Provider must provide the Authority by 31 March each year with a report (Asset Adequacy Report) that confirms the adequacy of assets to provide the funeral on the assumption that the Registered Provider failed at either the previous calendar year or financial year end. The report should include reference to at least the following:

- The type and value of assets available at the calendar year or financial year end, including details of how the assets have been valued.
- The value of future instalment payments at the valuation date.
- Arrangements in place for funerals to be carried out and their legal enforceability if the Registered Provider ceased to be a provider of funeral plans.

- The Registered Provider’s view of the cost that would have to be paid on a wholesale basis to deliver the funerals to be provided under the plans taking account of the plan type, guarantees, geography and other factors that the Registered Providers consider relevant (the “wholesale cost”).
- The relationship between assets and the wholesale cost at the valuation date taking account of the legal position.
- If a material deficit exists between assets available and the wholesale cost or the report identifies other material risks an explanation of how and when that position will be remedied.

Appendix 2 provides guidance on the Authority’s requirements in respect of the Asset adequacy Report.

6. COMPLAINTS

The Authority provides an independent conciliation and arbitration service through The Independent Dispute Resolution Service in an endeavour to resolve any complaint or dispute which arises between a Registered Provider and a client, another Registered Provider or a third party. The procedure to resolve disputes is:

- resolution with the Registered Provider;
- referral to the Authority's conciliation service with the conciliator being appointed by The Independent Dispute Resolution Service;
- referral to the Authority's arbitration service with the arbitrator being appointed by The Independent Dispute Resolution Service.

6.1. Client Complaints to Registered Providers

If a client is dissatisfied with the service he has received from a Registered Provider, the client is expected in the first instance to inform the Registered Provider, at which time the Registered Provider will deal with the complaint in accordance with the Registered Provider's written complaints procedure. The Registered Provider must reply to a client in writing within seven working days of receiving a complaint.

6.2. Registered Provider’s Complaints Procedures

A Registered Provider must provide the Compliance Committee with a copy of the Registered Provider’s written procedures for ensuring that complaints from clients are promptly and effectively dealt with and which, in particular, must ensure that:

- 6.2.1.** The Registered Provider's employees, agents and representatives and any other third party used by the Registered Provider are fully aware of, have received adequate training in and comply with, the procedure;
- 6.2.2.** The procedure provides for complaints to be dealt with by a person of appropriate seniority;

- 6.2.3. All appropriate action is taken to remedy a complaint;
- 6.2.4. The Registered Provider shall offer maximum co-operation with local consumer advisers or any other intermediary consulted by the client;
- 6.2.5. Where a complaint is not remedied the client is advised of how the complaint may be pursued further, including referral to the Authority;
- 6.2.6. Appropriate records are made;
- 6.2.7. The Registered Provider shall not refuse to allow a complaint to be considered elsewhere if the client so chooses.

6.3. Complaints reporting

The Registered Provider must provide the Authority with an annual report of Complaints received in the previous period which identifies at least the following:

- Total number of Complaints Received.
- Number of Complaints referred to the FPA.
- Number of Complaints referred to the FPAs Dispute Resolution Process.
- Breakdown of key Complaint types.
- Average time to resolution.
- Percentage of Complaints upheld.
- Summary of the Process for Root Cause Analysis Process and of the Outcomes.

7. MONITORING, COMPLIANCE AND ENFORCEMENT

7.1. Monitoring

The Compliance Committee shall monitor:

- 7.1.1. The Registered Provider's compliance with the Rules and the Code of Practice; and
- 7.1.2. The conduct of Registered Providers to ensure that they remain fit and proper persons.

7.2. Compliance powers

For the purposes of Rule 7.1 the Compliance Committee may:

- 7.2.1. Upon reasonable notice, cause an authorised member or officer of the Authority to enter a Registered Provider's business premises;

- 7.2.2. Upon reasonable notice, require a Registered Provider to attend, or to take all reasonable steps to procure that an employee, agent or representative of the Registered Provider attends, at a specified date, time and place to answer questions and explain any matter that the Compliance Committee considers relevant for the purposes of the Rule;
- 7.2.3. Interview a Registered Provider or an employee, agent or representative of the Registered Provider and require them to answer questions and give explanations for the purpose of enabling the Compliance Committee to obtain information about any matter which it considers relevant to its monitoring function;
- 7.2.4. Require the production by a Registered Provider or an employee, agent or representative of the Registered Provider, of documents and records where information is held other than in legible form, to require the production of that information as a legible document or record.

7.3. Legal professional privilege

Nothing in Rule 7.2 shall require the production by a Registered Provider or an employee, agent or representative of the Registered Provider of a document or record, or the provision of any information, which is the subject of legal professional privilege.

7.4. Disclosure of Information

- 7.4.1. The Authority and members of the Compliance Committee shall treat as confidential any information which they obtain under the Rules and which relates to the affairs of an individual or particular business entity and shall not disclose or use such information without the consent of the person or business entity concerned.
- 7.4.2. Rule 7.4.1 shall not apply to any disclosure of information made by the Authority:
 - 7.4.2.1. For the purpose of facilitating the performance of any function of the Authority or any committee, officer or person appointed by it;
 - 7.4.2.2. With a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings;
 - 7.4.2.3. In connection with the investigation of any criminal offence triable in the United Kingdom or any criminal proceedings before a United Kingdom court;
 - 7.4.2.4. At the request of the Financial Conduct Authority and Prudential Regulation Authority when exercising their powers under the Financial Services and Markets Act 2000, the Competition & Markets Authority or a Government Department when exercising a statutory function.

7.5. Investigations

As part of our overall approach to enforcement of our Rules the Compliance Committee are granted a range of investigatory and enforcement powers. Appendix 3 provides an overview of the fuller enforcement process and provides guidance on how the various elements of the process work together to ensure a robust enforcement framework.

The Compliance Committee may investigate any matter including (but not limited to):

- 7.5.1.** The fitness and propriety of a Registered Provider;
- 7.5.2.** The fitness and propriety of the Trustees of a funeral plan trust;
- 7.5.3.** An alleged breach or anticipated breach of the Rules or the Code of Practice by a Registered Provider which includes employees, agents, representatives or any other third party used by the Registered Provider;

7.6. Notice of investigations

Where the Compliance Committee commences an investigation it must serve on the Registered Provider concerned an Investigation Notice which states that an investigation has been commenced and contains a brief description of the matter under investigation. Following the service of an Investigation Notice, the Compliance Committee may require a Registered Provider to appear before it at a specified date, time and place to answer questions and explain any matter which the Compliance Committee consider relevant to the investigation. The Compliance Committee shall send copies of any Investigation Notice to the directors of the Authority.

7.7. Directions

- 7.7.1.** If it appears to the Compliance Committee that a Registered Provider has ceased to be a fit and proper person or has failed, or intends or is likely to fail to comply with the Rules or the Code of Practice the Compliance Committee may serve a Direction on that Registered Provider specifying:
 - 7.7.1.1.** The circumstances that have caused the Compliance Committee to believe that the Registered Provider has ceased to be a fit and proper person;
 - 7.7.1.2.** The act or omission which the Compliance Committee believes constitutes, or would constitute failure to comply with the Rules or the Code of Practice; and
 - 7.7.1.3.** The action which the Compliance Committee requires the Registered Provider to take to meet the requirement of fitness and propriety or to remedy or avoid the failure to comply and the date and time at or by which action must be taken.

7.7.2. In addition the Compliance Committee may propose:

7.7.2.1. The appointment of a suitably qualified person to independently report on the matter under investigation. The Terms of Reference for such report to be determined by the Compliance Committee taking into account the reasonable representations of the Registered Provider. The fees in respect of such report to be met by the Registered Provider. Prior to the appointment of any such person the Compliance Committee has to provide a report to the Authority's Board setting out the reasons for the proposed appointment and the estimated cost of the appointment. The Authority's Board has to consider the Compliance Committee's argument and approve or otherwise the proposal to make the appointment. If no such agreement is forthcoming the Compliance Committee cannot make an appointment in respect of the matter being investigated.

7.7.2.2. A financial penalty up to a maximum of £10,000 reflecting the Compliance Committee's view of the seriousness of the circumstances. In addition, the Compliance Committee may require the Registered Provider to meet the Compliance Committee's reasonable costs incurred in carrying out the investigation. If a penalty is levied under this Rule then those circumstances leading to the penalty cannot be used as the basis for disciplinary action under section 8 of these Rules without the emergence of new evidence.

7.7.2.3. An intention to make a public statement regarding any contravention of the Rules. Such statement can only be made after the Provider has had opportunity to make representations under 7.7.3.

7.7.3. A Registered Provider may within 14 days of service of a Direction make representations to the Compliance Committee to vary or revoke the terms of the Direction, and the Compliance Committee shall consider any representations made and may confirm, vary or revoke the Direction.

7.7.4. The Compliance Committee may at any time vary or revoke a Direction by written notice to the Registered Provider.

7.7.5. A Registered Provider on whom a Direction has been served shall not without reasonable excuse act in breach of it and the burden of proving such reasonable excuse shall be on the Registered Provider.

7.8. Suspension of Registration

7.8.1. If it appears to the Compliance Committee that a Registered Provider:

7.8.1.1. Has ceased to be a fit and proper person or has committed, or is likely to commit, an act of misconduct; and

- 7.8.1.2.** That, in consequence, it is necessary for the protection of consumers to do so; the Compliance Committee may suspend the registration of that Registered Provider.
- 7.8.2.** Suspension of registration in accordance with Rule 7.8.1 shall be effected by means of a Suspension Notice which shall be in writing and shall specify:
- 7.8.2.1.** The matters, acts, or omissions which lead the Compliance Committee to consider that the Registered Provider has ceased to be a fit and proper person or has committed, or is likely to commit, an act of misconduct;
- 7.8.2.2.** The reasons why the Compliance Committee consider that suspension of registration is necessary for the protection of consumers;
- 7.8.2.3.** The time and date from which suspension will take effect and the period (if any) for which it will operate, and the Authority's intended public communication of the suspension.
- 7.8.3.** A Registered Provider on whom a Suspension Notice is served may:
- 7.8.3.1.** Appeal against the issue of the Suspension Notice to the Disciplinary Panel as if the Suspension Notice was a Disciplinary Notice; and
- 7.8.3.2.** If the registered provider so chooses, apply for the operation of the Suspension Notice, including any public communication to be stayed pending the outcome of that appeal.
- 7.8.4.** An application to stay the operation of a Suspension Notice shall be made to the chairman of the Disciplinary Panel and the Authority shall make arrangements for such applications to be heard promptly and in any event within 48 hours of a Suspension Notice coming into operation.

7.9. Urgent Action

- 7.9.1.** If it appears to the Chairman of the Compliance Committee that urgent action needs to be taken in respect of any matter relating to a Registered Provider, he shall be authorised to exercise such powers of the Compliance Committee as he considers appropriate.
- 7.9.2.** Where the Chairman of the Compliance Committee takes any action in accordance with Rule 7.9.1 he shall give written notice to the other members of the Compliance Committee within 24 hours of doing so and at the same time shall give notice of a meeting of the Compliance Committee (which shall be held within 7 days of the date of that notice) at which the other members of the Compliance Committee may receive a full report from the Chairman and, if appropriate, ratify the action he has taken.

7.10. Reports to the Authority

The Compliance Committee shall within 7 days of:

- 7.10.1.** Exercising its compliance powers;
- 7.10.2.** Concluding any investigation; or
- 7.10.3.** Serving any Direction or Suspension Notice;

give written notice to the directors of the Authority so that they are aware of the action taken and can decide whether it is appropriate to commence disciplinary proceedings against the Registered Provider concerned.

8. DISCIPLINE

8.1. Disciplinary proceedings

8.1.1. The Authority may institute disciplinary proceedings against a Registered Provider where it considers that the Registered Provider:

8.1.1.1. Is guilty of misconduct; or

8.1.1.2. Has ceased to be a fit and proper person; and in these Rules "misconduct" means a breach of the Rules or Code of Practice, breach of any condition of registration, failure to comply with a Direction or the provision to the Authority of information (including information for the purposes of obtaining registration) which is false, misleading or inaccurate in a material particular.

8.1.2. A Registered Provider has a continuing obligation to be able to satisfy the Authority that it is, and remains, fit and proper.

8.1.3. Where the Authority decides to institute disciplinary proceedings it shall serve a Disciplinary Notice on the Registered Provider concerned setting out the acts of misconduct or reasons why the Registered Provider has ceased to be fit and proper together with a summary of the facts relied upon.

8.1.4. The Registered Provider may, within 28 days from service of a Disciplinary Notice, serve on the Authority a Defence responding to all or any of the allegations in the Disciplinary Notice and giving reasons and if within that period the Registered Provider has not served a Defence the Disciplinary Notice shall be deemed to be accepted by that Registered Provider.

8.2. Disciplinary Panel

8.2.1. The Disciplinary Panel shall be appointed by the Authority and shall comprise a chairman who is a legally qualified Independent Person and two other persons, one of whom shall be an Independent Person.

- 8.2.2.** No person shall serve on a Disciplinary Panel if he has a direct personal or financial interest in the case or has been involved in any preliminary consideration of that case.

8.3. Disciplinary Panel Procedure

- 8.3.1.** Disciplinary Panel hearings shall be in private.
- 8.3.2.** The chairman of the Disciplinary Panel shall determine the procedure for hearing an appeal having regard to the following:-
- (1) the Authority opening its case;
 - (2) the Authority calling witnesses or producing evidence in support of the Disciplinary Notice;
 - (3) the Registered Provider calling witnesses and adducing evidence;
 - (4) both parties cross-examining and re-examining any witnesses;
 - (5) the Authority addressing the panel;
 - (6) the Registered Provider addressing the panel.
- 8.3.3.** Except where otherwise provided in the Rules, in proceedings before the Disciplinary Panel the burden of proof shall be on the Authority.
- 8.3.4.** The Disciplinary Panel shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before any court of law.
- 8.3.5.** At a hearing before the Disciplinary Panel a Registered Provider may be legally represented and, where the Registered Provider is not an individual, may be represented by one of its officers.

8.4. Decision

- 8.4.1.** Within 28 days of announcing its decision the Disciplinary Panel shall serve a Disciplinary Decision Notice on the parties setting out its findings of fact, the reasons for its decision and any penalty to be imposed on the Registered Provider.
- 8.4.2.** The Disciplinary Decision Notice shall inform the parties of their right of appeal.
- 8.4.3.** Where the Disciplinary Panel is satisfied that the Registered Provider has committed an act of misconduct it shall take into account any representations made by the parties before deciding the penalty to be imposed, whether registration should be terminated or continue subject to conditions, and the terms and conditions, compensation and costs to be imposed or ordered.

- 8.4.4.** Where the Disciplinary Panel is satisfied that the Registered Provider is no longer fit and proper it shall take into account any representations made by the parties before deciding whether the termination of registration should be subject to conditions and the terms and conditions, compensation and costs to be imposed or ordered.

8.5. Penalties

- 8.5.1.** The Disciplinary Panel may impose one or more of the penalties set out below taking into account any material antecedent history of the Registered Provider and any acts of misconduct other than those charged which the Registered Provider admits and wishes to take into consideration. The penalties are:

8.5.1.1. A reprimand;

8.5.1.2. A fine of up to a maximum of 5% of turnover as recorded in the Statement of Comprehensive Income included in the Registered Provider's most recent filed accounts or if less £100,000. If no such Statement of Comprehensive Income exists an equivalent value of Turnover will be assessed, by the FPA, based on generally accepted accounting practices prevailing at that time.

- 8.5.2.** Where the Disciplinary Panel is satisfied that a Registered Provider is no longer fit and proper it shall terminate the registration of that Registered Provider.

- 8.5.3.** The Disciplinary Panel may impose such conditions as appropriate and may include a requirement that a Registered Provider takes steps to remediate any customer detriment and remedy or avoid a breach of the Rules or a condition on the registration of that Registered Provider.

- 8.5.4.** Unless the Disciplinary Panel determines otherwise, any penalty imposed shall come into effect upon service of the Disciplinary Decision Notice.

- 8.5.5.** The Disciplinary Panel may at its sole discretion advise the Authority to make the results of the Disciplinary Decision Notice public after any appeal submitted under Rule 8.9 has been considered.

8.6. Compensation

- 8.6.1.** The Disciplinary Panel may make an order requiring a Registered Provider to pay compensation to a client where, on an application made by or on behalf of the client, the Disciplinary Panel is satisfied that the client has suffered a quantifiable financial loss as a consequence of the Registered Provider's misconduct.

- 8.6.2.** The amount of compensation to be paid by the Registered Provider shall be such amount (not exceeding £10,000) as the Disciplinary Panel considers appropriate in all the circumstances of the case, having regard to the financial loss sustained.

8.7. Costs

- 8.7.1.** The Disciplinary Panel may order any party to the proceedings to pay costs, and such costs may include, but shall not be limited to, the remuneration of members of the Disciplinary Panel, administrative costs and costs incurred in the investigation, preparation and presentation of the case.
- 8.7.2.** Costs may be awarded against the Authority but only if, in the opinion of the Disciplinary Panel, the Authority has behaved unreasonably in the commencement or conduct of the proceedings.

8.8. Rights of appeal

A Registered Provider or the Authority may appeal to the Disciplinary Appeal Tribunal against a decision by the Disciplinary Panel or any term or condition set out in a Disciplinary Decision

8.9. Disciplinary Appeals

- 8.9.1.** A party to a Disciplinary Decision ("the Appellant") may serve a Disciplinary Appeal Notice on the other party ("the Respondent") within 14 days of the service of that Disciplinary Decision.
- 8.9.2.** If a Disciplinary Appeal Notice is not served within the time provided in Rule 8.9.1 the Disciplinary Decision shall be regarded as final and binding on the parties.
- 8.9.3.** Any Disciplinary Appeal Notice must set out the grounds of appeal and must contain a brief statement of all matters relied upon by the Appellant.
- 8.9.4.** The grounds of appeal may be any one or more of the following:
 - 8.9.4.1.** That the Disciplinary Panel misdirected itself;
 - 8.9.4.2.** That the Disciplinary Panel's decision was one that no reasonable Disciplinary panel could have reached;
 - 8.9.4.3.** That the Disciplinary Panel's decision was not supported by the evidence or was against the weight of the evidence;
 - 8.9.4.4.** That the Disciplinary Panel's decision was based upon an error of law or a misinterpretation of the Rules;
 - 8.9.4.5.** That the penalty imposed or compensation awarded by the Disciplinary Panel was excessive or, where the Appellant is the Authority, was insufficient.
- 8.9.5.** The Disciplinary Appeal Tribunal shall consider submissions made by the parties but, subject to Rule 8.9.6, shall hear no new evidence
- 8.9.6.** Where the Appellant is a Registered Provider he may appeal on the ground that fresh evidence is available which he could not by reasonable diligence

have adduced before the Disciplinary Panel but, had it been adduced, the Disciplinary Panel could reasonably have come to a different decision.

8.10. Disciplinary Appeal Tribunal

- 8.10.1.** The Disciplinary Appeal Tribunal shall be appointed by the Authority and shall comprise a chairman who is a legally qualified Independent Person and two other persons, one of whom shall be an Independent Person.
- 8.10.2.** No person shall serve on a Disciplinary Appeal Tribunal if he has a direct personal or financial interest in the case or has been involved in any preliminary consideration of that case.

8.11. Disciplinary Appeal Tribunal Procedure

- 8.11.1.** Disciplinary Appeal Tribunal hearings shall be in private.
- 8.11.2.** The chairman of the Disciplinary Appeal Tribunal shall determine the procedure for hearing an appeal having regard to the following:-
- (1) the Appellant opening his case;
 - (2) where fresh evidence is adduced under Rule 8.9.6, the Appellant presenting that evidence;
 - (3) the Respondent cross-examining any witnesses called by the Appellant;
 - (4) the Appellant re-examining any such witnesses;
 - (5) the Respondent making closing submissions;
 - (6) the Appellant making closing submissions.
- 8.11.3.** The Disciplinary Appeal Tribunal shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before any court of law.
- 8.11.4.** At a hearing before the Disciplinary Appeal Tribunal a party may be legally represented and, where the party is not an individual, may be represented by one of its officers.
- 8.11.5.** The Disciplinary Appeal Tribunal shall announce its decision to the parties as soon as practicable and, within 28 days of doing so, shall serve a Registration Appeal Decision on the parties setting out the reasons for its decision.
- 8.11.6.** The Disciplinary Appeal Tribunal may dismiss or allow an appeal, may increase or decrease any penalty imposed or the amount of compensation awarded and, in allowing an appeal, may impose such conditions as it thinks fit or vary any condition imposed by the Disciplinary Panel.

- 8.11.7.** Rule 8.7 relating to costs shall apply to the Disciplinary Appeal tribunal as it applies to the Disciplinary Panel.
- 8.11.8.** The decision of the Disciplinary Appeal Tribunal shall be final and binding upon the parties.

9. PLEDGE TO CUSTOMERS

Registered Providers shall co-operate in the delivery of the Authority's "Pledge to Customers" by which, in the event of the insolvency of a Registered Provider, the other Registered Providers will examine ways in which the Authority might assist in arranging delivery of the funerals of customers of the insolvent Registered Provider. The extent of this cooperation will be at the discretion of the individual Registered Providers.

GUIDANCE ON FITNESS AND PROPRIETY

The Rules of Funeral Planning Authority (“the Authority”) refer to applicants, plan providers and trustees as being “fit and proper” persons. In view of this, it is appropriate to publish this guidance out the criteria that will be considered by the Authority’s Compliance Committee when considering applications for registration and re-registration.

The primary obligation is on Applicants and Registered Providers to consider this matter and to inform the Authority of any matter that might cast doubt on the fitness of either the Applicant, Registered Provider or the Trustees. The application / re-registration process will ask specific questions regarding individuals and this will give the Applicant the opportunity to provide any relevant information. It is for Applicants and Registered Providers to decide what information should be made available to the Authority. This Guidance is descriptive and is not exhaustive.

When considering fitness and propriety the Authority may take into account any matters it sees fit, including but not limited to the following:

- the activities, experience and competency of the person concerned;
- any matter relating to any individual who is or will be an employee, agent or representative of that person;
- if the person is a body corporate, any matter which relates to any director, owner or part owner of that body corporate;
- if the Applicant is a partnership, any matter which relates to any of the partners; and
- if the Applicant is an unincorporated association, any matter relating to a member of the governing body or any officer of the association.

The Authority must be satisfied that an Applicant, Registered Provider or trustee meets high standards of integrity in all respects and is financially sound. Failure to satisfy the Authority in relation to any of these criteria will result in refusal of an application for registration or proceedings to terminate registration.

In determining whether an Applicant, Registered Provider or Trustee has satisfied the Authority as to its integrity the Authority may have regard to matters affecting the propriety of its conduct, whether or not such conduct may have resulted in the commission of an offence or the institution of legal or disciplinary proceedings of any nature. In considering issues affecting integrity, the Authority may have regard to any factors including but not limited to whether the Applicant, Registered Provider or any Trustee has:-

- had any conviction involving fraud or other dishonesty or violence;
- ever been the subject of disciplinary proceedings by a self-regulatory, trade or professional body, or any government body or agency;
- had a refusal or restriction imposed on their right to carry on a trade, business or profession requiring a licence, registration or other authority;

- had an adverse finding in a civil action by any court of competent jurisdiction of fraud, misfeasance or other misconduct
- had an order of disqualification as a director or to act in the management or conduct of the affairs of corporation by a court of competent jurisdiction;
- been a director, partner or concerned in the management of a company or partnership which has gone into insolvent liquidation, or has been declared bankrupt or entered into an insolvent voluntary arrangement;
- been censured, disciplined or publicly criticised by or made the subject of a court order at the instigation of any regulatory authority or any officially appointed inquiry;
- has been candid and truthful in all its dealings with the Authority;

Any non-disclosure of an issue that could be considered to impact the Authority's assessment of fitness and propriety would be seen as prima facie evidence of a lack of fitness and propriety.

April 2019

ASSET ADEQUACY REPORT GUIDANCE

1. Introduction

Rule 5.7.6 requires Registered Providers to provide an annual report to the Authority that confirms the adequacy of assets to provide the funeral, on the assumption that the Registered Provider failed at the previous calendar year or financial year end. This Asset Adequacy Report (AAR) should include reference to at least the following:

- The type and value of assets available at the calendar year or financial year end, including details of how the assets have been valued.
- The value of future instalment payments at the valuation date.
- Arrangements in place for funerals to be carried out and their legal enforceability if the Registered Provider ceased to be a provider of funeral plans.
- The Registered Provider's view of the cost that would have to be paid on a wholesale basis to deliver the funerals to be provided under the plans taking account of the plan type, guarantees, geography and other factors that the Registered Providers consider relevant (the "wholesale cost").
- The relationship between assets and the wholesale cost at the valuation date taking account of the legal position.
- If a material deficit exists between assets available and the wholesale cost or the report identifies other material risks an explanation of how that position will be remedied.

This guidance is intended to provide Registered Providers with assistance in compiling their report so as to meet the Authority's requirements. It is envisaged this guidance will be updated in light of emerging best practice.

2. Purpose of the Asset Adequacy Report

In setting the requirement for an AAR the FPA is primarily interested in ensuring that at any point in time if a provider were to cease to trade that there are adequate assets available to ensure that customers receive the funeral they have purchased when it is needed. To deliver that assurance there is a clear need to understand the financial position in terms of assets available, but consideration also needs to be given to how the liabilities might change were the provider to fail. This may be because existing arrangements for the provision of the funeral are subject to change in such a situation.

The FPA is also interested in ensuring that Registered Providers and Trustees, where relevant, have given due consideration to the operational arrangements that would be required in the event of a provider failure including how plans will be administered and funerals delivered.

The FPA sees the AAR as an important part of our assurance that arrangements are satisfactory and also as an important tool for Registered Providers and Trustees, where relevant, to consider the issues that may arise were they to cease to trade.

3. Guidance on Specific Requirements

3.1. The type and value of assets available at the calendar year or financial year end, including details of how the assets have been valued.

The FPA see this as being the market value of any assets held to provide funerals with appropriate adjustments to reflect plans that are in the process of being set up and / or being redeemed through delivery of the funeral or cancellation. Where no market value is available we would expect a valuation supported by a professional opinion. In essence, we would expect the value of assets to be equivalent to the value of assets used for year-end financial statements. For insurance policies we would expect the current death benefit at the valuation date to be used as the value of assets.

3.2. The value of future instalment payments

The FPA is aware that over recent years instalment based plans have taken on increasing significance and are a major part of some providers' book of plans. It is important therefore that in considering assets that would be available to deliver plans appropriate allowance is made for future instalments. We do not prescribe how that allowance is calculated but would expect the AAR to set out clearly how instalment based plans have been allowed for both in terms of liabilities and the valuation placed on future instalments including any discount rates used and assumptions with regard to cancellation and mortality. We would also expect any allowance for future instalments to take account of the costs of collecting these instalments in a scenario where the provider did not exist.

3.3. Arrangements in place for funerals to be carried out and their legal enforceability if the Registered Provider ceased to be a provider of funeral plans.

The FPA would expect the report to set out the arrangements that a Registered Provider has put in place for funerals to be carried out and for an explanation as to what would happen to these arrangements both in terms of their on-going legal status and also the financial impact were the provider to cease to trade.

3.4. The Registered Provider's view of the wholesale cost of funerals to be provided under the plans taking account of the plan type, guarantees, geography and other factors that the Registered Providers consider relevant.

The FPA recognises that each Registered Provider's business model is different and that this itself changes the nature of what might be considered a wholesale price of a funeral. In seeking that Registered Provider's address this point we are looking for an internal assessment as to what would be needed from a financial perspective were the provider to cease to exist and an alternative delivery mechanism for the funerals needed to be sourced. In making this assessment we understand that different plan types, geography and what is and isn't guaranteed will potentially have a significant impact on the wholesale cost. We are not

expecting providers to state a definitive view but we are expecting a well reasoned and considered view on the potential costs were we, or another party, to have to seek new arrangements for the funerals to be carried out. This may involve exploring different scenarios and looking at a range of different outcomes.

3.5. The relationship between assets and the wholesale cost at the valuation date taking account of the legal position.

Having identified the assets available and allowed for instalment costs we are interested in the degree to which there would be sufficient assets to cover the wholesale costs established in 3.4.

3.6. If a material deficit exists between assets available and the wholesale cost or the report identifies other material risks an explanation of how and when that position will be remedied.

The FPA is seeking Registered Providers to identify action that can mitigate any risks that arise for the various elements of the assessment above. What we do not want to do is to precipitate action that will increase the probability of the Registered Provider ceasing to trade, but we do believe the development of these reports may well provide useful insight to Registered Providers in managing the risks that may arise through the situation where the Registered Provider ceases to trade. If no remedy is proposed or remedies are not actioned we would expect this to lead to a formal investigation under the Rules.

April 2019

INVESTIGATION AND DISCIPLINARY PROCESS

1. Introduction

The FPA Rules set out in detail the FPA process when looking at matters of concern from investigatory work through to the disciplinary process and any resulting action. This Appendix is intended to provide a guide to that process and not to replace the Rules. If there is any conflict at any time between this guidance and the Rules then the Rules will have precedence. This guidance will be updated from time to time in light of emerging practice and feedback.

2. Outline of the Overall Process

The FPA's overall approach to regulation is to prevent consumer detriment rather than wait until things go wrong and then punish the miscreants. However, we recognise that there will be circumstances where Registered Providers are alleged to have breached or do breach our Rules or Code of Practice (Code). Given this we need an approach that addresses any such allegations or breaches and ensures that where appropriate customer detriment is resolved and action is taken to ensure that there will be no repeat of any breach. The first stage in such an approach will be the Registered Provider engaging with the FPA management to provide an initial factual summary. Having obtained that information the FPA will then consider what, if any, further action is necessary.

In deciding the next stage the matter will be referred to the Authority's Compliance Committee who can under the Rules, instigate a formal Investigation. If they choose to do so they will:

- Let the provider know that an investigation has commenced and ask for input from the provider.
- Potentially seek evidence from a skilled person.
- Consider the evidence and potentially place some requirements on the provider.
- Potentially level a fine with a limit of £10,000.
- Monitor any follow up actions.
- Potentially recommend disciplinary action.
- Potentially make a public statement of action taken.

The process does allow the Registered Provider to make representations and appeal any decisions.

If because either the provider appeals any decision from this part of the process or the Authority decides the issue is sufficiently serious to require disciplinary action, then the Rules provide for a separate Disciplinary Process.

The Disciplinary Process is overseen by an independent Disciplinary Panel who will consider the appeal from the Registered Provider against the Compliance Committee's Directions from an investigation or the authority's case against a Registered Provider. Both parties will be given the opportunity to submit evidence and the Panel will then come to a decision. If the Panel find against the Registered Provider then they can levy penalties, require compensatory payments to be made and potentially remove registration.

Either the Registered Provider or the Authority can appeal the Panel's decision, and in that case a separate Disciplinary Appeals Tribunal hears that appeal. The acceptable reasons for an appeal are largely procedural, though a Registered Provider can in limited circumstances introduce new evidence. The decision of the Tribunal is final and binding on both parties.

The remaining sections of this guidance expand further on both the investigatory process and the disciplinary process.

3. The Compliance Committee Investigatory and Enforcement Powers

Under the FPA Rules power to formally investigate lies principally with The Compliance Committee. They may investigate any matter but the key driver to the initiation of an investigation is a breach or potential breach of the FPA Rules or Code of Practice.

The first stage of an investigation involves the Compliance Committee advising the Registered Provider in writing that an investigation has commenced. This document (Investigation Notice) will give an outline of the matter being investigated. Following serving an Investigation Notice the Compliance Committee will then seek evidence in relation to the matter being considered. The Compliance Committee may seek written input and may also require the Registered Provider to attend investigatory hearings. The Registered Provider will be given fair opportunity to present their version of events in relation to the matter under investigation.

If, following the investigation the Compliance Committee determines that the Registered Provider has breached the Rules or Code or, is unable to meet them, then the Committee can serve a "Direction" on the Registered Provider. This is a formal notice that will set out:

- The reasons why the Compliance Committee believes that the Registered Provider has breached the Rules or Code or is unable to meet them.
- The action the Compliance Committee requires the Registered Provider to take and by when to remedy the failure.

In addition to these requirements the Compliance Committee can propose:

- The appointment of a skilled person to investigate the matter further. The Registered Provider would meet the cost of this investigation and the skilled persons appointment would need to be separately agreed by the FPA Board.
- A financial penalty up to a maximum of £10,000 reflecting the Compliance Committee's view of the seriousness of the circumstances. In addition the Compliance Committee may require the Registered Provider to meet the Compliance Committee's reasonable costs incurred in carrying out the investigation.
- To make a public statement regarding any contravention of the Rules. Such statement can only be made after the Provider has had opportunity to make representations.

In any event, the Registered Provider may within 14 days of the service of a Direction make representations on any aspect of the Direction. Following receipt of any such representations, the Compliance Committee shall consider any representations made and may confirm, vary or revoke the Direction.

The Compliance Committee may at any time vary or revoke a Direction by written notice to the Registered Provider. This may be because they determine sufficient remedial progress has been made or other relevant circumstances have altered.

It is important for Registered Providers to understand that if a Direction has been served, then the Registered Provider shall not, without reasonable excuse, act in breach of it and the burden of proving such reasonable excuse shall be on the Registered Provider.

If it appears to the Compliance Committee following an investigation or otherwise that a Registered Provider has not complied or can no longer comply with the FPA Rules or Code, and it is therefore necessary to protect customers, then the Compliance Committee may suspend the registration of that Registered Provider.

For such a suspension the Compliance Committee must serve a written Suspension Notice which sets out the reasons for the Suspension, when it takes effect and the Authority's intended public communication of the suspension.

The Registered Provider may then appeal against the issue of the Suspension Notice to a separate Disciplinary Panel (see below for the Disciplinary Process) on the basis the Suspension Notice was a Disciplinary Notice.

If the Registered Provider chooses to appeal then they can also apply for the operation of the Suspension Notice, including any public communication to be stayed pending the outcome of that appeal. In that case the application shall be made to the chairman of the Disciplinary Panel and the Authority shall make arrangements for such applications to be heard promptly and in any event within 48 hours of a Suspension Notice coming into operation.

There are also provisions in the Rules if it appears to the Chair of the Compliance Committee that urgent action needs to be taken in respect of any matter relating to a Registered Provider, they shall be authorised to exercise such powers of the

Compliance Committee, as they consider appropriate. Where that happens the chair must give written notice to the other members of the Compliance Committee within 24 hours of doing so and at the same time shall give notice of a meeting of the Compliance Committee (which shall be held within 7 days of the date of that notice) at which the other members of the Compliance Committee may receive a full report from the Chairman and, if appropriate, ratify the action he has taken.

The Compliance Committee has further requirements to give written notice to the Authority's directors within 7 days of:

- Exercising its compliance powers;
- Concluding any investigation; or
- Serving any Direction or Suspension Notice.

The directors of the Authority can decide whether it is appropriate to commence disciplinary proceedings against the Registered Provider concerned.

4. The Disciplinary Process

Further to any process that may or may not have been undertaken by the Compliance Committee, the Authority may institute disciplinary proceedings against a Registered Provider where it considers that the Registered Provider is guilty of misconduct or has ceased to be a fit and proper person. Misconduct is specifically defined in the Rules as a breach of the Rules or Code of Practice, breach of any condition of registration, failure to comply with a Direction or the provision to the Authority of information (including information for the purposes of obtaining registration) which is false, misleading or inaccurate in a material particular.

The first stage of the Disciplinary process is that the Authority serves a Disciplinary Notice on the Registered Provider concerned setting out the acts of misconduct or reasons why the Registered Provider has ceased to be fit and proper together with a summary of the facts relied upon.

Following serving of the Disciplinary Notice the Registered Provider may, within 28 days serve on the Authority a Defence responding to all or any of the allegations in the Disciplinary Notice and giving reasons.

If the Registered Provider has served no such Defence within 28 days, then the Disciplinary Notice shall be deemed to be accepted by that Registered Provider.

A Disciplinary Panel appointed by the Authority will undertake the Disciplinary Process. This Panel shall comprise a chairman who is a legally qualified Independent Person and two other persons, one of whom shall be an Independent Person. No person shall serve on a Disciplinary Panel if he has a direct personal or financial interest in the case or has been involved in any preliminary consideration of that case including any Compliance Committee investigation.

Disciplinary Panel hearings will be held in private and the chairman of the Disciplinary Panel will shall determine the procedure allowing for:

- the Authority opening its case;
- the Authority calling witnesses or producing evidence in support of the Disciplinary Notice;
- the Registered Provider calling witnesses and adducing evidence;
- both parties cross-examining and re-examining any witnesses;
- the Authority addressing the panel;
- the Registered Provider addressing the panel.

Except where otherwise provided in the Rules, in proceedings before the Disciplinary Panel the burden of proof shall be on the Authority.

The Disciplinary Panel shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before any court of law. At a hearing before the Disciplinary Panel a Registered Provider may be legally represented and, where the Registered Provider is not an individual, may be represented by one of its officers.

Within 28 days of announcing its decision the Disciplinary Panel shall serve a Disciplinary Decision on the parties setting out its findings of fact, the reasons for its decision and any penalty to be imposed on the Registered Provider. This notice should advise the parties of their right of appeal (see below).

Where the Disciplinary Panel is satisfied that the Registered Provider has committed an act of misconduct, it shall take into account any representations made by the parties before deciding the penalty to be imposed, whether registration should be terminated or continue subject to conditions, and the terms and conditions, compensation and costs to be imposed or ordered.

Where the Disciplinary Panel is satisfied that the Registered Provider is no longer fit and proper it shall take into account any representations made by the parties before deciding whether the termination of registration should be subject to conditions and the terms and conditions, compensation and costs to be imposed or ordered.

The Disciplinary Panel may impose one or more of the penalties set out below taking into account any material history of the Registered Provider and any acts of misconduct other than those charged which the Registered Provider admits and wishes to take into consideration. The penalties are:

- A reprimand.
- A fine of up to a maximum of 5% of Turnover as recorded in the Statement of Comprehensive Income included in the Registered Provider's most recent filed accounts or if less £100,000. If no such Statement of Comprehensive Income exists an equivalent value for Turnover will be assessed, by the FPA, based on generally accepted accounting practices prevailing at that time.

Where the Disciplinary Panel is satisfied that a Registered Provider is no longer fit and proper it shall terminate the registration of that Registered Provider.

The Disciplinary Panel may impose such conditions as appropriate and may include a requirement that a Registered Provider takes steps to remediate any customer detriment and remedy or avoid a breach of the Rules or a condition on the registration of that Registered Provider.

Unless the Disciplinary Panel determines otherwise, any penalty imposed shall come into effect upon service of the Disciplinary Decision Notice.

The Disciplinary Panel may at its sole discretion advise the Authority to make the results of the Disciplinary Decision Notice public but only after any opportunity to Appeal has been exhausted.

In addition to any penalty, the Disciplinary Panel may make an order requiring a Registered Provider to pay compensation to a client where, on an application made by or on behalf of the client, the Disciplinary Panel is satisfied that the client has suffered a quantifiable financial loss as a consequence of the Registered Provider's misconduct. It should be noted that the Authority could make such an application on behalf of a client or group of clients.

The amount of compensation to be paid by the Registered Provider shall be such amount (not exceeding £10,000 – per client) as the Disciplinary Panel considers appropriate in all the circumstances of the case, having regard to the financial loss sustained.

The Disciplinary Panel may order any party to the proceedings to pay costs and such costs may include but shall not be limited to the remuneration of members of the Disciplinary Panel, administrative costs and costs incurred in the investigation, preparation and presentation of the case. Costs may be awarded against the Authority but only if, in the opinion of the Disciplinary Panel, the Authority has behaved unreasonably in the commencement or conduct of the proceedings.

An important part of the process is that both the Registered Provider and the Authority have the right to appeal to a separate body (the Disciplinary Appeal Tribunal) against a decision by the Disciplinary Panel or any term or condition set out in a Disciplinary Decision.

The Disciplinary Appeal Tribunal shall be appointed by the Authority and shall comprise a chairman who is a legally qualified Independent Person and two other persons, one of whom shall be an Independent Person. As for the Disciplinary Panel, no-one with a direct personal or financial interest in the case or previous involvement can be a member of the Disciplinary Appeal Tribunal.

To lodge an appeal either the Registered Provider or the Authority must serve a notice (Disciplinary Appeal Notice) on the other party ("the Respondent") within 14 days of the service of that Disciplinary Decision. If no notice is served within the 14 day time period then the Disciplinary Decision shall be regarded as final and binding on the parties.

Any Disciplinary Appeal Notice must set out the grounds of appeal and must contain a brief statement of all matters relied upon by the Appellant. The grounds of appeal may be any one or more of the following:

- That the Disciplinary Panel misdirected itself.
- That the Disciplinary Panel's decision was one that no reasonable Disciplinary panel could have reached.
- That the Disciplinary Panel's decision was not supported by the evidence or was against the weight of the evidence.
- That the Disciplinary Panel's decision was based upon an error of law or a misinterpretation of the Rules.
- That the penalty imposed or compensation awarded by the Disciplinary Panel was excessive or, where the Appellant is the Authority, was insufficient.

The Disciplinary Appeal Tribunal shall consider submissions made by the parties and shall hear no new evidence other than where the Registered Provider is appealing on the grounds that fresh evidence is available which he could not by reasonable diligence have adduced before the Disciplinary Panel but, had it been adduced, the Disciplinary Panel could reasonably have come to a different decision.

Disciplinary Appeal Tribunal hearings shall be in private and the chairman of the Disciplinary Appeal Tribunal shall determine the procedure for hearing an appeal allowing both parties to be legally represented and to present and cross exam on the reasons for the appeal.

The Disciplinary Appeal Tribunal shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before any court of law.

The Disciplinary Appeal Tribunal shall announce its decision to the parties as soon as practicable and, within 28 days of doing so, shall serve a Registration Appeal Decision on the parties setting out the reasons for its decision.

The Disciplinary Appeal Tribunal may dismiss or allow an appeal may increase or decrease any penalty imposed or the amount of compensation awarded and, in allowing an appeal, may impose such conditions as it thinks fit or vary any condition imposed by the Disciplinary Panel.

The costs associated with any appeal shall follow the same process as the costs of the Disciplinary Panel.

The decision of the Disciplinary Appeal Tribunal shall be final and binding upon the parties.

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