

Title: Bringing all funeral plan providers within the remit of the FCA IA No: N/A RPC Reference No: N/A Lead department or agency: HM Treasury Other departments or agencies: N/A	Impact Assessment (IA)		
	Date: 02/06/2019		
	Stage: Development/Options		
	Source of intervention: Domestic		
	Type of measure: Secondary legislation		
	Contact for enquiries: David Reeves, 0207 270 4586		

Summary: Intervention and Options	RPC Opinion: Not Applicable
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Cost of Preferred (or more likely) Option (in 2016 prices)

Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
£-2.6m	£-2.6m	£0.1m	Non qualifying provision

What is the problem under consideration? Why is government intervention necessary?

Funeral plan providers are currently excluded from FCA regulation if they offer plans that are either insurance- or trust-backed. In recent years, concerns have been raised about the risk of consumer detriment in the pre-paid funeral plan market. Accordingly, the government launched a call for evidence to seek views and information on how to strengthen the regulatory framework for the sector. Responses to the call for evidence confirmed that consumer detriment is present in the market and were broadly supportive of the sector coming under compulsory regulation. The government considers that the most appropriate and proportionate approach is to bring all funeral plan providers within the remit of the FCA.

What are the policy objectives and the intended effects?

The government's objectives for the future regulatory framework are to ensure that: (1) all pre-paid funeral plan providers are subject to robust and enforceable conduct standards; (2) there is enhanced oversight of providers' prudential soundness; and (3) consumers have access to appropriate dispute resolution mechanisms if things go wrong. FCA regulation would be able to effectively and proportionately meet these objectives and tackle the consumer detriment that had been identified as part of the call for evidence.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The government has considered three options for strengthening the regulation of pre-paid funeral plans: the 'do nothing' option (baseline); establishing a new statutory regulator; and the preferred option, of bringing all funeral plan providers within the FCA's regulatory remit.

The preferred option is for the government to establish a stronger regulatory regime by bringing all funeral plan providers within the remit of the FCA. The FCA has a broad suite of supervision and enforcement powers that will effectively address the consumer detriment identified and meet the government's stated objectives for the future regulatory framework. Both the sale and administration of funeral plans contracts will be regulated activities to ensure providers adhere to appropriate conduct and prudential standards. The government considers that complaints relating to funeral plans should, under the amended regulatory framework, be dealt with by the Financial Ombudsman Service, which will result in a more coherent regulatory framework.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: Month/Year (TBC)

Does implementation go beyond minimum EU requirements?	N/A			
Is this measure likely to impact on trade and investment?	No			
Are any of these organisations in scope?	Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: None		Non-traded: None	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: n/a	High: n/a	Best Estimate: -2.9

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	n/a	n/a	n/a
High	n/a	n/a	n/a
Best Estimate	2.7	0.3	5.1

Description and scale of key monetised costs by 'main affected groups'

All costs to funeral plan providers are indicative, to be revised following analysis of the responses to the funeral plans consultation:

The one-off costs are expected to be:

- Regulatory transfer to the FCA (~£1.5m)
- The costs of applying for FCA authorisation (~£0.2m)
- Administrative process for Appointed Representatives (~£1m)

The expected ongoing costs will arise from:

- The FCA levy (~£0.2m)
- Fees for Appointed Representatives (~£0.2m)

Other key non-monetised costs by 'main affected groups'

Further costs to funeral plans providers will arise once the FCA designs and implements its more detailed rules, the impact of which will be assessed when the rules are consulted upon and designed.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/a	n/a	n/a
High	n/a	n/a	n/a
Best Estimate	0	0.3	2.5

Description and scale of key monetised benefits by 'main affected groups'

The monetised benefit of bringing all funeral plan providers within the remit of the FCA will result from those plan providers who are currently registered with the FPA no longer having to pay membership fees. The government considers that this benefit will equate roughly to £0.4m per annum, after the implementation period. The FPA's fees would be replaced by an FCA levy on funeral plan providers.

Other key non-monetised benefits by 'main affected groups'

Benefits for consumers: increased confidence in the funeral plan market; higher service standards; increased protections, including dispute resolution mechanism; improvements in the conduct of the sales and administration of funeral plan contracts.

Benefits for funeral plan providers: reputational benefits for funeral plan providers, increased competition and innovation.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
<p>All costs are estimates to the best of our ability given the lack of data: we have used proxy costs from similar policies where appropriate, as well as estimates from the Financial Conduct Authority (FCA), Funeral Planning Authority (FPA), the Financial Ombudsman Service (FOS) and the government's call for evidence. All costs set out in this impact assessment are based on discussions with the FCA, FPA, FOS and the information gathered as part of the government's call for evidence. FCA estimates are based on the assumption that they will take on the regulatory oversight of 31 firms in May 2021. Further impacts on businesses will arise once the FCA has designed its detailed rules. These impacts have not been assessed as part of this impact assessment, as the FCA has not yet developed its rules for the market.</p> <p>The government would welcome stakeholder input on the assumptions used as part of this impact assessment, in particular:</p> <ul style="list-style-type: none"> • the number of funeral plan providers in the market • the amount currently paid to the FPA in membership fees • the number of intermediaries in the market • the average price of the sale of a funeral plan • the average liability of a funeral plan for the provider • the likely cost to a funeral plan provider for familiarisation with FCA rules 		

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: 0.7
Costs: 0.4	Benefits: 0.3	Net: 0.1	

Evidence Base (for summary sheets)

Problem under Consideration:

1. The regulatory framework for funeral plans is governed by the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the RAO). Under article 59 of the RAO, the entering into a funeral plan contract as a provider is a specified kind of activity. However, under article 60 of the RAO, a provider is excluded from carrying on this regulated activity if the plans into which it enters are either insurance or trust-backed and meet certain conditions. The FCA has not authorised any firm for the purposes of entering into a funeral plan contract, which suggests that the majority of providers in the market operate business models that meet the exclusion criteria in the RAO.
2. The Funeral Planning Authority is the self-regulatory body for the sector. The FPA maintains a Code of Practice and a set of rules with which registered providers must comply. The FPA's Code of Practice is not legally binding and the voluntary nature of its jurisdiction means the FPA cannot prevent firms from trading. However, the FPA reviews registered providers' compliance with the Code on an annual basis and may terminate membership, which may have reputational consequences for firms, or levy a fine of up to £5,000 should a firm fail to adhere to its principals. These powers have never been used.

Rationale for Intervention:

3. Following a call for evidence and meetings with stakeholders from across the sector, the government has identified that consumer detriment is present within the funeral plan market, both at the point of sale and after a funeral plan has been entered into. This has taken the form of high pressure and mis-leading sales tactics, including cold calling, poor levels of disclosure around what was included as part of the plan and reports of the mismanagement of trusts in the market.
4. In light of the consumer detriment identified in the funeral plan market, the government has concluded that the current framework of self-regulation is not sufficient to ensure the fair treatment of consumers, and that a more robust regulatory framework is required.
5. 84% of respondents who directly answered question 14 of the call for evidence considered that the regulation of pre-paid funeral plans should be compulsory across the market.¹ Therefore, government proposes to amend the regulatory framework to ensure that all funeral plan providers are subject to enhanced regulatory oversight.

Policy Objective:

6. The government's objectives are that the future regulatory framework will ensure that:
 - All pre-paid funeral plan providers are subject to robust and enforceable conduct standards.
 - There is enhanced oversight of providers' prudential soundness.
 - Consumers have access to appropriate dispute resolution mechanisms if things go wrong.

¹ Question 14 of the call for evidence: "What are your views on the government's proposal for FCA regulation of all funeral plan contracts and whether such a proposal will meet the government's stated objectives (as set out above)? Do you consider that an alternative proposal could better meet these objectives?"

7. The government considers that the proposal to bring all funeral plans plan providers within the remit of FCA regulation would meet the policy objectives outlined above.

Description of Options:

8. The government has considered three options for regulating the pre-paid funeral plan sector:
 1. Maintaining the framework of self-regulation for the sector
 2. Establishing a new statutory regulator
 3. Amending the regulatory framework to all funeral plan providers within the remit of the FCA

Maintaining the current framework of self-regulation:

9. Under this option, the government would not make any amendments to the regulatory framework of the funeral plan market and the current model of self-regulation would continue. Membership of the FPA would remain voluntary and the FPA would continue to have limited enforcement and sanctioning powers.
10. Without amending the legislative framework, the government cannot make regulation compulsory across the whole funeral plan market. Most of the reports of consumer detriment stem from non-FPA members, and with a voluntary framework, it is likely that only reputable providers would comply. This approach would therefore not meet the government's objectives for the future regulatory framework, outlined above.

Establishing a new independent regulator

11. The government has considered whether to establish a statutory regulatory body. The FPA's existing sanctioning and enforcement powers could be used as a starting point, with the government tailoring a new statutory regulator's strategic objectives and powers to the funeral plan market.
12. Establishing a new independent regulator would allow for a sole focus on funeral plans regulation. It could pursue its objectives without risk of the interference or competition from other organisational priorities. It would also be free to set priorities directly according to issues in the funeral plan market, without having to divert resources to other issues or sectors, and would be well-placed to retain existing knowledge and expertise. However, establishing an entirely new regulator would be more expensive than other options, with the cost of regulation falling to the sector and ultimately to consumers. Furthermore, establishing a new regulator would run contrary to the government's drive to reduce the number of public and arms-length bodies. The introduction of a new statutory regulator would also take considerable time to implement, meaning that the consumer detriment that has been identified in the market could persist over an extended period.

FCA Regulation

13. The government's preferred policy option is to bring all funeral plan providers within the remit of the FCA. The FCA has a reputation for being an effective conduct regulator that has a track record of taking strong regulatory action where necessary. The FCA's experience of conduct regulation and rulemaking powers will provide a solid basis for establishing any additional conduct rules that are necessary to improve the functioning of the funeral plan market. The FCA also has the necessary powers and experience of aiming to ensure that the firms that they regulate are able to meet their liabilities as they fall due.

14. The FCA has proven itself capable of taking on additional regulatory responsibilities, including the regulation of consumer credit and claims management companies. Furthermore, funeral plans are often backed by a financial services product (either an investment held in trust or a contract of insurance), which are familiar structures to the FCA.
15. Some insurance products claim they will be able to pay for funeral expenses (e.g. Guaranteed over 50s Life Insurance), placing them in direct competition with funeral plans. Having a single regulator for these types of products will result in a more coherent regime, and may improve competition in the market.
16. The government's policy proposals have been separated into three sections: (i) what activities will be regulated; (ii) the regulation of intermediaries; and (iii) transferring complaints handling to the Financial Ombudsman Service (FOS).

Policy proposals

What activities will be regulated:

17. The call for evidence identified that consumer detriment was particularly evident in the funeral plan market at the point of sale, including through the use of high pressure and misleading sales tactics and poor standards of disclosure. The government therefore intends to ensure that the sales' conduct of all funeral plan providers is subject to FCA regulation. In order to achieve this, the government proposes to remove the exclusion criteria in article 60 of the RAO. The effect of this amendment will be to ensure that all funeral plan providers, irrespective of their business model, will require FCA authorisation to enter into new funeral plan contracts, once the new regulatory framework comes into force.
18. The call for evidence also identified consumer detriment after a funeral plan had been entered into. Respondents noted concerns, about the removal of high up-front costs from funeral plan monies and reports of conflicts of interest within some of the trusts' investment strategies.
19. The government intends to introduce a new regulated activity - the "carrying out" of a funeral plan contract – to address these concerns. The carrying out of a funeral plan contract will cover activities relating to the administration of consumers' money after they have purchased a funeral plan. Such activities include the handling of claims and the settlement and payment of funeral plan contracts. The FCA will be able to introduce rules to ensure that providers are able to fulfil these duties.
20. The government intends to apply this activity to both new and existing funeral plans. The call for evidence demonstrated broad support for existing plans to be brought within the scope of any amended regulatory framework. By bringing existing plans within the scope of regulation, the government aims to ensure that (i) the standards to be applied to new plans are equally applicable to existing plans, and (ii) consumers of existing plans are better protected, with FCA oversight of the market as a whole.
21. Any decision to only require providers who enter into new plans to be authorised for the purposes of carrying out activities under funeral plan contracts would, in the government's view, leave consumers of existing plans in a less favourable position, because they may no longer benefit from FPA oversight and may therefore be less protected than they are currently (at least where they have bought a plan from an FPA-regulated provider).

22. Also, were the regulation not to apply to existing funeral plan contracts, funeral plans would be subject to different regulatory regimes depending on when they were sold, potentially creating confusion for firms and consumers. By requiring providers who have entered into existing funeral plans to be authorised in relation to the carrying out of those plans, the policy would ensure providers could take a consistent approach to administering all their funeral plan contracts and avoid the creation of a two-tiered regulatory framework.

Regulation of intermediaries:

23. The call for evidence highlighted that the sales practices of some intermediaries in the market result in consumer detriment. Cold calling is a particular concern, despite an apparent decline in its usage in recent years. Responses to the call evidence were broadly supportive of the inclusion of intermediaries in any amended regulatory framework. However, several respondents noted concerns as to the proportionality of requiring these businesses to obtain full FCA authorisation.

24. The government considers that it is essential that intermediaries who market, sell or promote funeral plan contracts are brought within the scope of the amended regulatory regime, given their prevalence within the market, and their role at the point of sale.

25. The government does, however, recognise the concerns raised by stakeholders about the proportionality of requiring intermediaries to obtain full FCA authorisation in order to sell, market and promote funeral plans since many funeral directors are small and micro enterprises and are therefore unlikely to have experience of financial services regulation.

26. The government therefore intends to enable intermediaries to become appointed representatives. An appointed representative (AR) is an individual or entity who undertakes regulated activities under the responsibility of an authorised firm. This firm is known as the AR's "principal".

27. Under this approach, the "principal" firm would take responsibility for the conduct of any AR, in respect of whom they agree to act as principal. Principal firms are required to ensure that their ARs comply with the relevant regulatory requirements applicable to the activities for which the principal has accepted responsibility. There are no regulatory application fees for appointing an AR. However, the principal firm will be required to pay fees for the regulated income (i.e. commission) that is paid to its ARs. The government therefore considers that allowing intermediaries to operate as ARs is a proportionate approach that will address the concerns about the sales practices of intermediaries in the market.

28. By bringing all funeral plan providers within the remit of the FCA, the financial promotion regime will also apply to the communication of invitation or inducements to enter into such plans. The FCA will therefore be able to make rules relating to the promotion of funeral plans.

Transferring complaints handling to the Financial Ombudsman Service (FOS):

29. The FPA currently provides dispute resolution services to customers who purchase funeral plans from FPA-regulated providers. In line with the government's proposal to bring all funeral plan providers within the remit of the FCA, the government considers that consumers should have access to FOS. This will ensure greater consumer protection in the market and meet the government's objective of ensuring that consumers have access to appropriate dispute resolution mechanisms.

30. The government considers that consumers who purchase a funeral plan after the amendments to the regulatory framework come into force should be entitled to pursue a complaint to FOS in relation to any act or omission by the provider under that contract.
31. FOS will also be able to deal with complaints relating to acts or omissions of FPA providers before the the amendments to the regulatory framework come into force. Therefore, consumers who have purchased a funeral plan from an FPA-regulated provider will continue to have access to a dispute resolution scheme after the FPA ceases to have a regulatory role in the market.
32. Given that FOS has responsibility for dealing with complaints against all firms currently regulated by the FCA, transferring complaints handling responsibility from the FPA to FOS will result in a more coherent framework. Having a single ombudsman for all FCA-regulated firms removes the risk of confusion from both firms and consumers who have to navigate complicated complaints resolution procedures. Crucially, FOS has experience of working closely with the FCA and understands its regulatory framework.
33. The government considers, however, that all outstanding complaints (i.e. complaints that have been made to the FPA before the introduction of FCA regulation, but are unresolved at the point of regulatory transfer) should be determined by the FPA. The number of complaints of this type is likely to be small (the FPA dealt with a total of 87 complaints in 2017) and therefore the government considers that the FPA would be well placed to resolve these complaints through their dispute resolution scheme.

Monetised costs and benefits:

Policy 1: Transfer to FCA

One-Off Costs

Cost of bringing all funeral plan providers within the remit of the FCA:

34. Bringing the all funeral plan providers within the regulatory remit of the FCA will require the FCA to incur a range of costs: technology and data transition; policy, legal, strategy and market research staff; project management, proposition and communications support; operating model and process design and; the cost of developing a new handbook. These costs will be recouped through a supplementary levy on funeral plan providers, spread over a number of years, beginning from the point at which the amended regulatory framework comes into force, which is expected to be in 2021. The length of this supplementary levy is yet to be determined, but will be set at a sustainable level, once there is a clearer indication of the overall transition costs. The FCA have provided an initial estimate that the cost of transfer will be £1.5 million.
35. The range of transition costs borne by the FCA are dependent upon a number of policy choices which are yet to be finalised and therefore this figure is an early estimate.

Incurring 2019/20 (expected), £million

	FCA	Total
Best Estimate	1.5	1.5

Authorisation of funeral plan providers

36. For the purposes of the below calculations, the government has assumed that there are 31² funeral plan providers currently in the market, and that all providers will seek to become FCA authorised.

Administration:

37. There will be a series of one off costs that funeral plan providers will incur as part of the administrative process for applying for FCA regulation. These include: administrative costs associated with filling in forms and responding to queries from the regulator in relation to their authorisation; familiarisation with the relevant FCA rules and; implementation of these FCA rules into respective funeral plan provider businesses.

38. In line with the impact assessment for claims management companies³, the government has assumed that the administration process of applying for FCA authorisation will require 3-4 working days of a compliance officer’s time. The FCA assume that the hourly rate of a compliance officer is £65 per hour and, assuming a 7.5 hour working day, this suggests a day rate of £488.⁴ This indicates costs per funeral plan provider of £1,463 and £1,950.

Authorisation:

39. FCA authorisation fees are based on complexity of the firms which apply. The FCA has indicated that it is likely that funeral plan providers will be considered as ‘moderately complex’ for the purposes of authorisation fees. This would result in funeral Plan providers paying £5,000 in authorisation fees to the FCA.

	Authorisation admin costs for funeral plan providers	Authorisation fees paid by funeral plan providers	Total
Maximum	£60,450	£155,000	£215,450
Best estimate	£52,902	£155,000	£207,902
Minimum	£45,353	£155,000	£200,353

Transfer to FOS

40. The government considers, as part of the amendments to the regulatory framework, that FOS should have jurisdiction for complaints brought in relation to funeral plan contracts.

41. FOS have indicated that they would expect to cover the one-off costs of the transfer of complaints relating to funeral plans within their usual budget envelope, as the legal, policy and project support will be covered within existing resources, with negligible impact on the sector.

Ongoing Costs:

² This figure comes from the addition of funeral plan providers currently regulated by the FPA (<https://funeralplanningauthority.co.uk/registered-providers/>), and the providers that Fairer Finance identified were not FPA registered (<https://www.fairerfinance.com/assets/uploads/documents/The-road-to-regulating-prepaid-funeral-plans.pdf>).

³ <https://www.parliament.uk/documents/impact-assessments/IA17-005A.pdf>

⁴ See p. 89: <https://fca.org.uk/publication/consultation/cp18-15.pdf>

42. There will also be costs to funeral plan providers arising from the FCA's annual levy and the case fees for FOS, explained below.

FCA Levy:

43. The FCA have indicated that funeral plan providers are likely to be considered as part of fee block "A4", which has been developed for insurance companies. Under this methodology, insurers pay £262.78 per £million of premiums they receive, plus an additional £8.25 per £million of liabilities they hold. The FCA's working assumption is that this methodology would translate into the funeral plan market, and be based on the value of plans sold each year and total outstanding liabilities respectively. HM Treasury has used the 2018 figures published by the FPA, and the estimates used as part of Dignity's 'White Paper' on the regulation of pre-paid funeral plans to inform its calculations.⁵ Using the methodology outlined above, the government estimates that the FCA levy on funeral plan providers would come to £197,262.⁶

Beginning 2021 (expected) full year amounts, at 2019 prices

	FCA Levy	Total
Maximum	£199,663 ⁷	£199,663
Best Estimate	£197,262 ⁸	£197,262
Minimum	£189,977 ⁹	£189,977

FOS case fees:

44. The FPA dealt with 87 complaints in 2017, while FOS resolved 339,967 cases for the year 2017/18. Assuming a similar run-rate of complaints once FCA regulation has come into force would mean that complaints about funeral plan providers would represent a small proportion of FOS's overall case load. FOS have confirmed that the impact taking on responsibility for funeral plan complaints will be negligible. FOS is funded through a combination of case fees, which is currently £550 per complaint and a levy on industry, which is collected through the FCA's annual levy. This latter cost to business has already been included in the calculations above, and does not appear in the tables below. Firms covered by FOS' complaints scheme are entitled to 25 free cases. Based on current run-rates it is unlikely that any firms will breach this threshold, so the best estimate is that funeral plan providers will not incur any additional costs via case fees.

45. The government understands that non-FPA members have been responsible for a greater proportion of consumer detriment, suggesting their conduct may result in more complaints. For the purpose of this impact assessment we have assumed that once they are brought into the regulatory perimeter the overall rate of complaints will be similar to that of FPA members.

	Annual Levy	Case Fees	Total
Best Estimate	£0	£0	£0

⁵ <https://funeralplanningauthority.co.uk/statistics/>; <https://www.dignityfunerals.co.uk/media/2922/dignity-funeral-plan-regulation-white-paper-april-2018.pdf>.

⁶ The calculations are as follows: Premiums - 177,000 x 3,400 = 601,800,000; 601.8 x 262.78 = 158,141. Liabilities - 1,385,900 x 2,600 = 3,603,340,000; 3,603.34 x 8.25 = 29,727.56. Total - 158,141 + 29,727.56 = 187,868.56. In order to account for FPA registered providers covering 95% of the market - (0.05 x 187,868.56) + 187,868.56 = 197,261.99.

⁷ Assumes average sale of a funeral plan is £3,400 and the average amount in liability is £2,600 per plan.

⁸ Assumes average sale of a funeral plan is £3,400 and the average amount in liability is £2,800 per plan.

⁹ Assumes average sale of a funeral plan is £3,300 and the average amount in liability is £2,400 per plan.

Monetised Ongoing Benefit:

FPA fees:

46. There will also be a corresponding ongoing benefit to funeral plan providers who are currently registered with the FPA, from no longer paying fees to the FPA.
47. Currently, 25 funeral plan providers choose to be registered with the FPA, the sector's voluntary regulator.
48. The FPA requires members to pay £4.22 per plan sold in registration fees. Providers must pay a minimum of £600 per annum, with an upper cap of £82,400. All fees include VAT. As set out above, this will be replaced by a levy by the FCA. 177,000 plans were sold in 2018. Based on the information that the government received as part of the the call for evidence, the best estimate takes into account the market share of three of the largest providers in the market, which shows that their fees are capped at the maximum level. This would suggest total annual fees for the sector of £434,074. Further input is requested from stakeholders to refine this analysis for the final stage impact assessment.

	FPA Fees	Total
Maximum	£746,940 ¹⁰	£746,940
Best Estimate	£433,935 ¹¹	£433,935
Minimum	£96,200 ¹²	£96,200

Policy 2: Regulation of intermediaries

49. As outlined above, the government intends to enable intermediaries to become ARs. The appointed representatives' regime will enable third-party intermediaries to market, promote and sell funeral plans, without needing to be directly authorised with the FCA. There are around 1,386 funeral directors in the UK, operating 5,231 branches¹³, although exact numbers are difficult to pinpoint as they are unregulated. For the purpose of this analysis we have assumed that all funeral directors sell funeral plans. HMT understands that there are a small number of dedicated intermediaries, such as call centres, selling funeral plans. These will also fall within the AR model, but are sufficiently small in number such that they do not have a material impact on the central assumption of the number of ARs.

One-off costs

50. Although ARs will not be subject to direct FCA oversight, they will be subject to FCA rules. ARs will therefore incur costs to familiarise themselves with the new framework. Some aspects of the FCA framework are unlikely to be relevant for ARs, it is expected their compliance costs will be roughly half that incurred by their principal. We have assumed therefore that each AR will incur the costs of 2 days of a compliance officer's time. This is to cover activities such as delivering training to staff and administrative tasks necessary to establish a relationship with their principle.

£million, at 2019 prices

¹⁰ Calculations: 177,000 x 4.22 = 746,940.

¹¹ Calculations take into consideration the market share of three of the largest providers in the market.

¹² Calculations assume one provider sells all plans in the market and the rest pay registration fees.

¹³ See paragraph 2.3 of https://assets.publishing.service.gov.uk/media/5c9ba9bf40f0b633f6c52a7e/funerals_market_study_-_final_report.pdf

	Administration for AR model
Best Estimate	1.35

Ongoing costs

Fees

51. The FCA have indicated that the levy for ARs is likely to be £2.597 per thousand pounds of regulated income. This amount would not be payable directly from the AR to the FCA, but would be paid via the AR's principal firm. In the insurance market, "regulated income" takes the form of commissions paid from the insurer to ARs. The relevant comparator in the funeral plan market would be the fees or commissions paid to the AR before the money is placed in trust. The call for evidence indicated a wide range of rates of commission used across the industry, ranging from £200 to £1,000. Overall, in light of the evidence received, the government considers that £500 would be an appropriate figure for the average cost of commission. We will seek further input to refine this assumption during the consultation.

	FCA Fees
Maximum	£275,801.40 ¹⁴
Best Estimate	£229,834.50 ¹⁵
Minimum	£183,867.60 ¹⁶

Non-monetised costs and benefits of each option:

Costs

Consolidation within the market:

52. Bringing all funeral plan providers within the remit of the FCA will involve increased one-off and ongoing costs for funeral plan providers. Some firms may choose not to incur these costs and exit the funeral plan market. Such firms would need to transfer or sell their book of business to another provider, driving some consolidation. Based on the impacts assessed above it is not expected there will be a significant contraction in the number of providers, and it is expected that any loss of competition within the market will be more than offset by other aspects of the regime which will aim to ensure that the remaining players compete more effectively – such as rules on disclosure and ensuring that funeral plans compete on a level playing field.

Monetised costs out of the scope of this impact assessment

53. The costs to funeral plan providers from the proposed amendments to the regulatory framework have been monetised above. However, further impacts on businesses will arise once the FCA has taken over the regulation of all funeral plan providers and has designed and implemented its detailed rules. Therefore, it is possible that there will be additional

¹⁴ Assumes £600 in commission per plan.

¹⁵ Assumes £500 in commission per plan. Calculations: $500 \times 177,000 = 88,500,000$; $88,500,000/1,000 = 88,500$; $88,500 \times 2.597 = 229,834.50$

¹⁶ Assumes £400 in commission per plan.

compliance costs and further increases to annual fees resulting from as yet unknown FCA rules. The FCA will provide a full cost benefit analysis before any new rules are introduced, in line with their statutory obligations. There will be corresponding benefits of no-longer complying with the FPA's rules and Code of Conduct which have therefore not been assessed for this impact assessment, to avoid double counting.

Benefits

Benefits to consumers:

54. The proposed amendments to the regulatory framework for the pre-paid funeral plan market will enhance consumer protection and increase consumer confidence in the sector. Bringing activities of funeral plan providers within the FCA's remit will seek to address the concerns currently identified with the market and give consumers the certainty that they will have sufficient regulatory protection going forward.
55. FCA rules will apply at the point of sale, either directly to funeral plan providers or via the AR model in relation to third-party intermediaries. The government considers that, as a result of the proposed amendments, consumers will be less likely to experience the high-pressure sales tactics currently identified in the market, as the FCA will require improved conduct standards. For example, there is a general requirement for all communications with consumers to be "clear, fair and not misleading". Consumers will also benefit from improved standards around the administration of their funeral plan contract, which will seek to address the detriment identified as part of the call for evidence after a funeral had been entered into. The precise nature of FCA rules will be subject to consultation, but they will seek to address these risks and ensure that funeral plans are administered prudently and in consumers' interests.
56. The government considers that all consumers who purchase a plan following the amendments to the regulatory framework should benefit from access to FOS. The service is more robust because, unlike FPA's dispute resolution service, FOS would be binding on all providers who enter into new plans going forward and is a service used in other financial services sectors. Consumers who purchased a plan sold from an FPA-registered provider before the amendments to the regulatory framework will also be able to make complaints to FOS, about acts or omissions made before the introduction of regulation. This will ensure that consumers do not miss out on services they were previously entitled to.
57. The government also understands that the FCA will consult on whether to bring funeral plans within the scope of FSCS. Consumers may therefore have access to compensation if a provider defaults.

Benefits to Funeral Plan Providers:

58. There are likely to be reputational benefits for the funeral plan industry, which will face tougher regulation and therefore be required to have higher service standards. Tougher regulation and increased competition are also likely to improve funeral plan provider's capability and practices, and improve innovation.
59. Going forward, funeral plan providers will be required to administer all funeral plan contracts (whether those entered into before or after the coming into force of the amended regulatory framework) in the same way and according to the same rules. This will enable providers to take a consistent approach to the handling of their plans sold before and after regulation.

Rationale and evidence that justify the level of analysis used in the IA:

60. In compiling this Impact Assessment, the government has taken into account the Better Regulation Framework Manual's guidance, which states that the resource invested in undertaking an Impact Assessment should be proportionate.
61. There are a number of factors we have taken into account when assessing the level of resource to invest in this analysis. Firstly, the policy is not contentious. It was noted that FCA regulation was government's initial preferred approach as part of the call for evidence launched in June 2018, and there is broad support from stakeholders and some parliamentarians for the enhanced regulation of the funeral plan market. Secondly, much of the impact on business cannot be assessed by government at this stage, as it largely depends on the detail of the FCA's regulatory regime, which is yet to be designed. Consequently, this impact assessment is focused on the aspects of the regime on which there is currently certainty, namely the costs associated with the transfer of responsibility, the authorisation process, the transfer of complaints-handling responsibility and the regulation of intermediaries. Thirdly, the data available on the cost of the FCA's regulation remains subject to change as the FCA continue to make policy decisions related to resourcing the transfer. The figures used are accurate as of June 2019.
62. Given the above, this Impact Assessment has been carried out based on the information presently available to the government and having regard to the fact that the total cost to business will only be known once the FCA has designed its regulatory regime and finalised any decisions on the future regulation of this market, in a manner proportionate to the impact of the policy at this stage. Respondents to the consultation on funeral plans are invited to comment on the assumptions used as part of this Impact Assessment, to further inform the figures that have been used.

Wider Impacts:

Devolved Issues

63. Financial services matters are reserved in Wales, Scotland and Northern Ireland, and the Financial Services and Markets Act 2000 and the RAO apply to the whole of the UK. Therefore, the proposed amendments to the RAO being given effect by the draft Order will bring all funeral plan contracts sold and administered within the UK within the scope of the revised regulatory framework. This matches the current jurisdiction of the FPA.

Impact on competition:

64. These measures are likely to enable more effective competition within the funeral plan market, by improving transparency and ensuring that firms compete on a level playing field. All competing firms in the industry will be affected in essentially the same way.

Impact on small firms and micro-businesses:

65. Many funeral plan providers use funeral directors to market or sell their products, which are often small and micro business. The government has sought to take a proportionate approach to regulating these entities, while meeting the policy objectives outlined above.
66. The prevalence of intermediaries in the market, and their role in consumer detriment at the point of sale, means it is essential that they are regulated as part of the amended regulatory regime. However, stakeholders have raised concerns about the proportionality of requiring these businesses to apply for full FCA authorisation. Therefore, and as noted above, the government has decided to enable intermediaries to become ARs. This approach, a common feature of the insurance market, would ensure that principal firms take full responsibility for the conduct of the persons or entities which they appoint as ARs. This will ensure that all

intermediaries will, as part of the contract they enter into with their principal, be required to abide by the relevant FCA conduct standards and rules, without having to pay the costs of full FCA authorisation.

Equality impact

67. The government has considered its obligations under the public sector equality duty as set out in the Equality Act 2010. It does not consider these reforms will impact upon persons with relevant protected characteristics and has given due regard to the need to eliminate discrimination, harassment, victimisation and other prohibited conduct, the need to advance equality of opportunity and the need to foster good relations. All residents in the United Kingdom have the potential to be affected to a greater or lesser extent by misconduct or poor performance from funeral plan providers and will benefit accordingly from tougher regulation.

Summary and preferred option with description of implementation plan.

68. In light of the consumer detriment identified in the funeral plan market and the demand for enhanced regulation of the sector, the government has concluded that it is necessary and proportionate to bring funeral plans within the remit of the FCA.

69. This will ensure that the government can meet its three stated aims for the future regulatory framework for funeral plans, namely that:

- all pre-paid funeral plan providers are subject to robust and enforceable conduct standards
- there is enhanced oversight of providers' prudential soundness
- consumers have access to appropriate dispute resolution mechanisms if things go wrong

70. Although the costs set out above are only estimates at this stage, based on the information presently available to the government and the requirement on the FCA to consult on detailed rules, the government considers that the positive impacts of introducing FCA regulation outweigh the costs to funeral plan providers and the FCA. This is because of the pressing need to tackle the consumer detriment that is currently present in the market, and ensure that consumers benefit from enhanced protection going forward.

71. The policies outlined above can all be implemented through secondary legislation. The government has included a draft statutory instrument as part of this consultation on funeral plans and will seek views on this as part of the consultation process.

Questions:

Do you agree with this impact assessment and the assumptions used?