



HM Treasury

Regulation of pre-paid funeral plans: response to the consultation

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Executive summary

Following concerns about the risk of consumer detriment in the pre-paid funeral plan market, the government launched a Call for Evidence on the regulation of the sector in June 2018. Currently, funeral plan providers can seek registration with the Funeral Planning Authority ("the FPA"), a self-regulatory body for the sector. The Call for Evidence sought views and information on how the funeral plan market currently operates and the government's initial policy proposal to bring all funeral plan providers within the remit of the Financial Conduct Authority ("the FCA"). The government's objectives were that any regulation of the sector should seek to 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

Responses to the Call for Evidence confirmed that consumer detriment was present in the market and that there was broad demand for the sector to come under compulsory regulation.

In the light of the responses to the Call for Evidence and meetings with stakeholders, in June 2019, the government launched a consultation on its proposed approach to strengthening the regulation of the funeral plans market. The government had considered a range of policy options, including whether a new statutory regulator should be established, and maintained its position that bringing all funeral plan providers within the remit of the FCA would be the most effective and proportionate approach.

The government has fully considered the responses to the consultation. This document sets out the government's response.

The majority of those who responded to the consultation agreed that the draft statutory instrument that was annexed to the consultation document accurately captured the activities which should be subject to FCA regulation.

Following consideration of the responses, the government has:

- decided to extend the jurisdiction of the Financial Ombudsman Service ("FOS") so that it can deal with complaints relating to funeral plan providers that were previously regulated by the the FPA, even where funeral plan contracts may have been transferred to other providers

- received confirmation from the FCA that funeral plan providers will have the option to seek permission solely for administering funeral plan contracts where they are no longer seeking to sell new plans, thus helping to address concerns raised around the transition to FCA regulation
- revised its impact assessment calculations, having regard to the fact that the FCA will undertake further cost-benefit analysis when it consults on its rules

The government will shortly lay before Parliament secondary legislation to amend the regulatory framework for funeral plan providers, and will publish a de minimis impact assessment when the statutory instrument is laid. The proposal is that the new regulatory framework will come fully into force 18 months after the legislation is made. This will allow time for the FCA to design, consult on and implement the relevant architecture for the new regulatory regime, and for funeral plan providers and intermediaries to take the necessary steps (including seeking authorisation) to meet the requirements of the new regulatory framework.

Chapter 1

Introduction

- 1.1 A funeral plan contract is a contract under which a policyholder makes one or more payments to a funeral plan provider, who subsequently provides, arranges or pays for a funeral upon the death of the policyholder.
- 1.2 Under the current regulatory framework, entering into a funeral plan contract as a provider is a regulated activity. However, a provider is excluded from carrying out this regulated activity if the plans into which it enters are either insurance or trust-backed and meet certain conditions. All known providers meet these conditions and as a result the Financial Conduct Authority (“the FCA”) has not authorised any firm for the purpose of entering into funeral plan contracts. The exclusions were introduced in 2001 because the then government considered that plans which met the conditions afforded sufficient consumer protection such that their providers did not require authorisation.
- 1.3 Funeral plan providers can seek registration with the Funeral Planning Authority (the “FPA”), a self-regulatory body for the sector. The FPA requires its members to abide by a set of rules and a Code of Practice that include standards on: conduct; marketing and advertising; information; contracts and documents; plan funds; and complaints and disputes.
- 1.4 Over recent years, concern has grown about the potential risk of consumer detriment within the pre-paid funeral plan sector. In the light of reports produced by [Citizens Advice Scotland](#) and [Fairer Finance](#), as well as informal consultation between HM Treasury and relevant stakeholders in the market, the government came to the conclusion in 2018 that the current regulatory regime is not sufficient to ensure the fair treatment of consumers and a more robust regulatory framework is required.
- 1.5 The government launched a Call for Evidence into the regulation of the prepaid funeral plan market in June 2018. The Call for Evidence sought views and information on how the funeral plan market currently operates and the government’s initial policy proposal to bring funeral plan providers within the remit of the FCA. Responses to the Call for Evidence confirmed that consumer detriment was present in the funeral plan market and that there was broad demand for the sector to come under statutory regulation.
- 1.6 In the light of the information and views received in the 2018 Call for Evidence, the government maintained its position that bringing funeral plan providers within the remit of the FCA would be the most proportionate and effective way to regulate the sector in the light of concerns relating to consumer detriment. This was on the basis that:

- the FCA has a reputation for being an effective regulator and has a track record of taking strong regulatory action where necessary. The FCA's experience of conduct and prudential regulation, alongside their extensive rule-making powers will provide a solid basis for strengthening the regulatory framework for funeral plans
 - the FCA can develop a targeted and proportionate regulatory regime for funeral plan providers. The FCA is required to undertake a cost-benefit analysis and publicly consult on the rules for any new sectors that come within their perimeter. As a result, the FCA is well placed to develop an effective regulatory regime in line with its strategic objectives
 - bringing the activities of all funeral plan providers within the regulatory remit of the FCA could be achieved through secondary legislation, which would ensure that the consumer detriment identified in the market could be tackled as quickly as possible
 - this policy proposal would result in a more coherent regulatory framework, as the FCA already regulates providers of products which compete with funeral plans (e.g. Guaranteed over 50s Life Insurance)
- 1.7 Consequently, the government launched a consultation in June 2019 which sought views on the government's proposed legislative approach to bringing funeral plan providers within the remit of the FCA. The government sought views on areas including the regulated activities that should apply to funeral plans, the ability of intermediaries to operate as appointed representatives in the funeral plan market, transitional protections relating to the coverage of the FOS, and the transition to FCA regulation.
- 1.8 The government has fully considered the responses to the consultation. This document sets out the government's response.
- 1.9 In total, the government received 30 responses from funeral plan providers, funeral directors, trade associations, consumer groups, charities, an MP and individual members of the public.
- 1.10 A list of the respondents can be found at Annex A.
- 1.11 The government would like to thank all respondents for taking the time to respond to the consultation and for sharing their views.

Chapter 2

Regulation of funeral plan providers

- 2.1 This chapter summarises the responses to the consultation relating to the proposed scope of FCA regulation. In particular, the government sought views on:
- the proposal to require funeral plan providers to be FCA authorised in respect of (i) the “entering into” of new funeral plan contracts, and (ii) the “carrying out” of both new and existing plans
 - plans sold with the expectation that the funeral will be delivered within one month
 - the territorial scope of the regulatory regime

Regulated activities

- 2.2 In the consultation, the government outlined its proposal that funeral plan providers will need to be FCA-authorised in respect of two regulated activities, namely the “entering into” and “carrying out” of funeral plan contracts, which apply to the sale and administration of funeral plan contracts respectively.
- 2.3 Specifically, the government proposed to remove the existing exclusions that currently apply in relation to the activity of “entering into” a funeral plan contract, which means that funeral plan providers would need to be authorised in relation to the sale of all funeral plans sold after the amendments to the regulatory framework come into force.
- 2.4 In order to address concerns about the administration of funeral plan contracts, the government also proposed to include a new specified activity, namely the “carrying out” of a funeral plan contract. Under the government’s proposal as set out in the consultation, funeral plan providers would be required to have FCA authorisation in order to administer both new plans and existing plans. New plans are those entered into after the new regulatory framework comes fully into force and existing plans are those that were entered before the new regulatory framework comes fully into force.
- 2.5 The majority of respondents to the consultation agreed with these two regulated activities. Respondents considered that this approach would effectively address the areas of detriment which the government had identified, both at the point of sale and after a funeral plan contract had been entered into.

- 2.6 Some respondents questioned how the “carrying out” of a funeral plan contract might apply to legacy plans sold before 2001, when the Regulated Activities Order¹ was introduced. The government understands that such plans may not be backed by either a trust or a contract of insurance. The government considers that the need for consumers to be properly protected applies equally, regardless of when plans were sold, so no specific provision has been made in respect of such plans in legislation and as such the government’s proposed regulated activity of “carrying out” funeral plan contracts will apply to these plans.

Exclusion for local authorities

- 2.7 As part of the consultation, the government proposed to exclude local authorities from the regulated activities of “entering into” and “carrying out” funeral plan contracts.
- 2.8 It was noted that local authorities have become increasingly active in the funeral plan market. Some considered that local authorities should be brought within the future regulatory framework in order to ensure there is consistent application of regulation across the market.
- 2.9 The government has not seen evidence that plans offered by local authorities require regulation from a conduct or prudential perspective and has, therefore, maintained its position to exclude local authorities.

Plans with expectation of delivery within one month

- 2.10 The definition of a funeral plan contract in article 59(2) of the Regulated Activities Order currently does not include contracts where, at the time of entering into them, the policyholder and the funeral plan provider intend or expect the funeral to occur within one month.
- 2.11 The government posed two questions in the consultation which related to funeral plans sold with the expectation that the funeral will occur within one month: firstly, whether funeral plan providers sell such plans and how many if so; and secondly whether one month is an appropriate timescale.
- 2.12 In general, respondents noted that these plans represent a small portion of the market. Some agreed with the government’s understanding that such plans are considered to be part of the “at-need” market – funerals sold when there is clarity on when the funeral will be delivered, rather than funeral plan contracts under which a policyholder makes one or more payments to a funeral plan provider, who subsequently provides, arranges or pays for a funeral upon the death of the policyholder. There was a variety of suggestions around whether one month was an appropriate timescale, with some respondents suggesting it should be extended and one suggesting it should be reduced. Other respondents suggested that it should be removed altogether.

¹ Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

- 2.13 Overall, the government considers that there is not a strong justification for changing the definition, and that one month remains an appropriate timescale.

Territorial scope

- 2.14 Article 59 of the Regulated Activities Order provides that a funeral plan contract is a contract where the provider undertakes to provide, or secure the provision of, a funeral in the United Kingdom for the customer.
- 2.15 The government asked, as part of the consultation, whether respondents agreed with its proposed position to maintain this territorial scope for funeral plans.
- 2.16 Most of those who responded to this aspect of the consultation agreed that the territorial scope of funeral plans that are subject to regulation should remain unchanged.
- 2.17 The government did not see any evidence to support altering the territorial scope for the regulation of pre-paid funeral plans as set out in the Regulated Activities Order, and as such considers that it should remain unchanged.

Chapter 3

Regulation of intermediaries

- 3.1 This chapter summarises the responses that the government received in relation to how intermediaries should be regulated in the market.
- 3.2 The government sought views on:
- the proposal to allow intermediaries to become appointed representatives
 - the proposed approach relating to members of designated professional bodies
 - whether intermediaries sell bespoke plans

Appointed representatives

- 3.3 As part of the consultation, the government proposed that it would enable intermediaries to become appointed representatives of 'principal' firms in the funeral plan market. This would allow principal firms to take responsibility for the conduct of any appointed representatives they appoint to sell, market or promote funeral plans. Principal firms are required to ensure that their appointed representatives comply with the relevant regulatory requirements applicable to the activities for which the principal has accepted responsibility.
- 3.4 Over half of respondents agreed with the government's proposed approach to allow intermediaries to become appointed representatives.
- 3.5 Some respondents did note concerns around whether lead generators – typically third-party websites seeking to provide contact details of potential customers to a funeral plan provider – would be caught by the intermediation activities in the Regulated Activities Order. Respondents also raised concerns around whether an appointed representative could sell the plans of more than one provider.
- 3.6 The government considers that lead generation is likely to be caught under the existing provisions in the Regulated Activities Order, specifically article 25(2) (making arrangements), although business structures always fall to be considered on a case-by-case basis. The government also notes that the legislation does not prevent appointed representatives from selling the funeral plans of multiple providers.
- 3.7 Overall, in the light of the responses to the consultation, the government has concluded that the appointed representatives model remains an appropriate approach to regulating intermediaries in the market. In particular, it ensures

that all sales of funeral plans are subject to the same conduct requirements, while allowing for a proportionate approach that does not require FCA authorisation of intermediaries where they choose to become appointed representatives.

Designated professional bodies

- 3.8 Some intermediaries which currently sell funeral plans are regulated by designated professional bodies (DPBs), for example, members of the Law Society.¹
- 3.9 Under section 327 of the Financial Services and Markets Act 2000, members of DPBs are exempt from some FCA regulation, provided that they meet certain requirements set out in the legislation. The government proposed that this exemption should apply to intermediaries selling funeral plans.
- 3.10 Some respondents to the consultation suggested that all intermediaries in the market should be regulated, including members of DPBs. The government has not seen evidence of conduct by such intermediaries that would justify deviating from its proposed approach in this area. This is consistent with the regulatory approach in other markets, such as financial advice and insurance.

Intermediaries selling bespoke funeral plans

- 3.11 As part of the consultation, the government asked whether intermediaries create bespoke funeral plans and enter into them on behalf of funeral plan providers. This was in order to confirm the government's understanding that intermediaries may deal in the rights under a funeral plan contract as agent for the provider.
- 3.12 Respondents highlighted that funeral plan providers do allow intermediaries – particularly funeral directors – to sell bespoke funeral plans.
- 3.13 On this basis, the government has maintained its position to amend article 21 of the Regulated Activities Order, which concerns “dealing in investments as agent”. This will ensure that all activities undertaken by intermediaries will come within scope of the new regulatory framework.

¹ A DPB is a professional body designated by HM Treasury under section 326 of the Financial Services and Markets Act 2000 (Designation of professional bodies) for the purposes of Part XX of the Financial Services and Markets Act 2000 (Provision of Financial Services by Members of the Professions). The following professional bodies have been designated: The Law Society of England & Wales; The Law Society of Scotland; The Law Society of Northern Ireland; The Institute of Chartered Accountants in England and Wales; The Institute of Chartered Accountants of Scotland; The Institute of Chartered Accountants in Ireland; The Association of Chartered Certified Accountants; The Institute of Actuaries; The Council for Licensed Conveyancers; and The Royal Institution of Chartered Surveyors.

Chapter 4

Transition to FCA regulation

- 4.1 This chapter summarises the responses that the government received in relation to the proposals around the transition to FCA regulation.
- 4.2 The government posed three questions in relation to the transition:
- whether providers would be willing to take on a trust in surplus
 - whether providers would be willing to take on a trust in deficit
 - whether there were any other scenarios in which providers would not be able to obtain FCA authorisation

Responses to questions on the transition

- 4.3 Responses to the consultation included concerns that capital adequacy requirements could considerably impact whether a firm could become authorised by the FCA. Since this relates to the FCA's rules for the sector, the government encourages stakeholders to engage with the FCA's process for developing its regulatory approach.
- 4.4 Where providers are unable or unwilling to obtain FCA authorisation and are also unable to transfer their funeral plan contracts, this would mean that their existing policyholders would be without a regulated provider to administer their funeral plans.
- 4.5 Responses to the consultation highlighted that funeral plan providers would need to conduct thorough due diligence before deciding whether or not to take on the contracts of another provider. Respondents generally suggested that a provider would be more willing to take on a trust in surplus, but did not rule out the possibility of taking on a trust in deficit.
- 4.6 Some respondents noted that there may be little economic value in administering transferred funeral plans themselves and that other factors, such as the opportunity to increase market share, and the potential costs associated with historic conduct issues, are likely to be the driving factors for providers when considering whether to take on another provider's book of business. Vertically-integrated providers may have additional incentives to take on plans if their own funeral director business is able to deliver the funerals, which will depend on the nature of any relevant contracts between the provider, the policyholder and any funeral director.

Authorisation only for 'carrying out' funeral plans

- 4.7 Several respondents raised concerns about the prospect that some providers may be unable to (i) secure FCA authorisation, or (ii) find a regulated provider to take on their book of business before the new regulatory regime becomes fully operable.
- 4.8 The FCA has confirmed that funeral plan providers who do not wish to sell new plans will have the option to apply for authorisation solely in respect of the "carrying out" of funeral plans. Such firms would not be able to enter into new funeral plan contracts.
- 4.9 Where firms seek authorisation only in respect of the "carrying out" of funeral plans, they would need to meet the FCA's Threshold Conditions¹ and applications would be assessed by the FCA on a case-by-case basis. Where obtained, such authorisation would afford providers unable to obtain authorisation for both administering and selling plans more time either to meet the threshold required for selling new plans or to transfer their book of business. Alternatively, it would also allow such providers to run down their books of business by delivering all of their outstanding contracts.

Firms that do not obtain FCA authorisation

- 4.10 Stakeholders have suggested that there are a range of commercial incentives for regulated providers to take on contracts of providers exiting the market, including increasing market share. Furthermore, providers who obtain FCA authorisation are likely to want to minimise the risk of reputational damage to the market which could occur if existing policyholders were left without a regulated provider to administer their plans, and so may be willing to take on the books of business from providers who would otherwise exit the market. This is supported by the fact that under the current voluntary regulatory system, FPA members have signed up to a "pledge" in which they commit to try to deliver funerals that have been paid for in the event that a provider becomes insolvent.
- 4.11 However, there is a possibility that some providers may fail to satisfy the FCA's Threshold Conditions or choose not to apply for authorisation at all. In such circumstances, the provider would need to divest itself of its book of business before the new regulatory framework comes fully into force. If no authorised provider were willing to take on the book of business, the provider would need to wind-up, returning premiums to policyholders.

¹ The FCA threshold conditions represent the minimum conditions for which the FCA is responsible, which a firm is required to satisfy, and continue to satisfy, in order to be given and to retain Part 4A permission. For more detail, see: <https://www.handbook.fca.org.uk/handbook/glossary/G1173.html>.

Chapter 5

Financial Ombudsman Service

- 5.1 This chapter summarises the responses that the government received in relation to its proposal that funeral plan policyholders should have access to FOS.
- 5.2 A majority of respondents supported the government's position that funeral plan providers should be brought within the remit of FOS. In the consultation, the government proposed that (i) plans entered into after the new regulatory framework comes into force would be covered by FOS, and (ii) FOS would be able to deal with complaints relating to acts or omissions of FPA-registered providers that occurred before FCA regulation comes into force.
- 5.3 Respondents raised concerns about FOS timescales for complaints resolution in the context of the funeral plan market. They noted that as complaints may need to be resolved in the period between an individual passing away and the delivery of the funeral, it would need to be possible for this process to happen quickly. The government understands the sensitive nature of such complaints and is satisfied that FOS will deal with complaints on a case-by-case basis in an appropriate way, and that nothing in existing rules or legislation would prevent them doing so.
- 5.4 Some respondents suggested that FOS protection should extend to policyholders of all existing plans, including plans entered into with providers who are not members of the FPA. To extend coverage in this way would require changes to primary legislation. This is not considered to be proportionate on the basis that policyholders of non-FPA providers do not currently have access to a complaints procedure of this type, and as the FPA covers the vast majority of the market, this issue would only impact a small proportion of policyholders.
- 5.5 Under the proposal upon which the government consulted, FOS would not have jurisdiction to consider complaints made by policyholders of existing plans, unless the FPA-registered provider became FCA-authorised. Where those plans transferred to a different provider, consumers would have been unable to bring a complaint to FOS.
- 5.6 Following the consultation, the government has amended its approach to ensure FOS will have jurisdiction to deal with complaints relating to funeral plan providers that were previously registered with the FPA, even where plans have been transferred to other providers. In such cases, the availability of redress would depend on whether commercial liability has also transferred between the providers and whether the provider is in a position to pay.

Chapter 6

Statutory instrument and impact assessment

- 6.1 This chapter summarises the responses the government received in relation to the draft statutory instrument and draft impact assessment that were annexed to the consultation. The government sought views on the extent to which the draft statutory instrument delivered the policy proposals set out in the consultation and on the assumptions used in the draft impact assessment.
- 6.2 Comments relating to the draft statutory instrument largely concerned policy issues considered elsewhere in this document.
- 6.3 Some respondents noted that the assumptions in the draft impact assessment seemed reasonable. However, some respondents felt one-off administrative costs to industry involved in implementing regulation were underestimated and that there would be ongoing costs such as alternative representative oversight costs which should be reflected. Respondents also questioned whether the number of funeral plan providers had been underestimated.
- 6.4 Where possible, the government has reflected firms' comments in its revised impact assessment calculations. This includes increasing the estimate of the number of firms in the market and including estimated costs to funeral plan providers for overseeing appointed representatives.
- 6.5 The government agrees that there will be further one-off and ongoing impacts arising from the costs of firms needing to familiarise themselves, and comply, with FCA rules. However, as any rules will be subject to the FCA's cost-benefit analysis, these impacts have not been considered further at this stage in the government's impact assessment calculations.
- 6.6 Some respondents questioned whether FSCS levy costs should be included in the government's impact assessment calculations. Decisions on the scope of the FSCS rest with the FCA. The FCA has a detailed procedure for analysing the costs and benefits of such a decision and as such, this has not been included in the government's impact assessment calculations.
- 6.7 In line with government Better Regulation guidance, a full impact assessment has not been prepared because the government considers that the net impact of the policy proposal on businesses will be less than net £5 million Equivalent Annual Net Direct Costs to Business. Due to this limited impact, a de minimis assessment will be published when the statutory instrument is laid.

Chapter 7

Next steps

- 7.1 There are a number of steps that the government and the FCA will take to put in place the framework for FCA regulation of the pre-paid funeral plans market:
- legislation: the government will shortly lay a statutory instrument and explanatory memorandum before Parliament, and will publish a de minimus impact assessment when the statutory instrument is laid
 - FCA rules: the FCA will consult on its proposals for regulating pre-paid funeral plan providers and intermediaries, which will involve a cost-benefit analysis. The FCA will announce its final rules once it has fully considered the responses to its consultation
 - implementation period: in order to allow sufficient time for the FCA to design, consult on and implement the relevant architecture for the new regulatory regime, and for funeral plan providers and intermediaries to take the necessary steps (including seeking authorisation) to meet the requirements of the new regulatory framework, the new regulatory framework will come fully into force 18 months after the statutory instrument is made
- 7.2 The government recognises the important role the FPA has played in driving up standards to date and notes that consumers may wish to consider using providers that are registered with the FPA until FCA regulation comes fully into force.

Annex A

List of respondents

A.1 In addition to the organisations listed, the government received two responses from individuals and one response from an MP.

- Age UK
- Avalon
- Blatchly and Sons Funeral Directors
- CPS Trust Consultancy
- Citizens Advice Scotland
- Co-op
- Dignity
- Ecclesiastical
- Ethical Funeral Plans Trust
- Fairer Finance
- Forbes Management
- Fosters Family Funeral Directors
- Freeman Brothers
- Funeral Partners
- Funeral Plan Advice Service
- Funeral Plan Market
- Funeral Planning Authority
- Golden Charter Trust
- Golden Charter
- Golden Leaves
- Institute and Faculty of Actuaries
- Kevin Cobbold Funeral Services
- Kingfisher Independent Funeral Services
- KR Group

- Law Society of Scotland
- National Association of Funeral Directors
- Open Prepaid Funerals

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