

## Pre-paid funeral plans

Financial Services Consumer Panel response to:  
'Regulation of the pre-paid funeral industry', a HM Treasury  
document

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### Contents

Summary.....	1
Introduction .....	2
General comments.....	3
What is appropriate consumer protection?.....	4
Life assurance/endowment based exemption .....	5
General insurance based exemptions.....	6
Trust-based arrangements.....	7
Other possible exemptions.....	8
Existing funeral plans .....	8

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## Summary

The Financial Services Consumer Panel:

- a. welcomes the Government's intention that pre-paid funeral plans should be underpinned by FSA regulation (*paragraph 2*)
- b. calls for separate action by the DTI/OFT to address other potential consumer problems associated with the sale of pre-paid funeral plans (eg endorsement by charities, clarity of contract terms) and the delivery of the funeral itself (*paragraph 3*)
- c. recommends that the investments underpinning pre-paid funeral plans should be subject to prudential and conduct of business regulation (*paragraph 4*)
- d. considers that pre-paid funeral plans backed by a life assurance policy are likely to offer appropriate consumer protection for the pre-payment element on the assumption that: the underlying investment would be

subject to prudential and conduct of business regulation; there would be access to the Financial Services Ombudsman Scheme and the Financial Services Compensation Scheme; and there would be sufficient funds to cover the cost of the funeral (*paragraph 6*)

- e. considers that pre-paid funeral plans backed by general insurance are unlikely to offer sufficient consumer protection for the sale of the pre-payment element because there would be no FSA conduct of business regulation (*paragraph 9*)
- f. is strongly of the view that trust arrangements based on industry self-regulation will be inadequate (*paragraph 11*)
- g. calls on the Treasury to undertake further public consultation if the industry comes forward with proposals for exemption from FSA regulation that the Treasury considers worthwhile (*paragraph 12*)
- h. recommends that action is taken to apply adequate protections to the pre-payments of existing plan holders (*paragraph 13*).

## Introduction

1. This is the response of the Financial Services Consumer Panel to the Treasury's consultation '*Regulation of the Pre-paid Funeral Industry*'. The Financial Services Authority (FSA) established the Consumer Panel to advise the FSA Board on the interests and concerns of consumers and to report on the FSA's effectiveness in meeting its consumer protection and public awareness statutory objectives. There are eleven members of the Panel representing a broad range of consumer interests. The Panel is independent of the FSA –it can raise its own concerns, initiate its own research and publish its own reports.

## General comments

2. **The Panel welcomes the Government's intention that pre-paid funeral plans should be underpinned by regulation by the FSA.** This will address some of the problems identified by the Office of Fair Trading (OFT) in its investigation of pre-paid funerals<sup>1</sup>. The problems identified by the OFT fall into two main categories:

- those concerned with the security of pre-payment and of the eventual funds for the funeral; and
- those concerned with the sale of the funeral plan and the delivery of the funeral itself.

3. The Treasury's consultation paper deals with the former although without saying precisely how pre-paid funeral plans will be brought within the Act. **It is important that separate action is taken by the Department of Trade & Industry (DTI) and the Office of Fair Trading (OFT) to deal with consumer problems associated with the sale of funeral plans and the delivery of the funeral itself.** This should address the following problems:

- pressure on vulnerable elderly people; the endorsement of plans by nursing homes/charities or other institutions in positions of trust and respect which may give a misleading impression about the safety of the plan and the involvement of the charity/nursing home; and ensuring that there are adequate opportunities for exercising choice between plans;
- unclear contract terms that do not explain what elements of the funeral are excluded from the pre-payment; and
- the lack of a single complaints and redress scheme in the event of disputes about the delivery of funeral services.

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<sup>1</sup> Pre-paid Funeral Plans – A report by the Office of Fair Trading (May 1995).

4. Potential consumer problems associated with the pre-payment aspect of funeral plans are of two types:

- the financial risks of potential fraud, lack of segregation of pre-payments from the commercial business of the funeral director or plan provider, business failure or insufficient funds to pay for the funeral; and
- the marketing of the investment including the potential for pressure selling, over-selling or mis-selling to elderly and vulnerable people.

**We note that there will be separate FSA consultation on the regulation of pre-paid funeral plans that are not exempted.** We recommend that regulation addresses both the financial risks and the marketing of any investment associated with the plan and therefore involves both prudential supervision and conduct of business regulation covering the marketing of the investment.

## What is appropriate consumer protection?

5. In order to provide appropriate consumer protection we consider that the investment underpinning the pre-paid funeral plan should meet the following criteria:

- prudential regulation of funds including segregation of the pre-payment from the commercial business of the plan provider or funeral director;
- conduct of business regulation to ensure that the investment is suitable for the purpose for which it is bought and to ensure, for example, that the marketing of the investment and any promotional material associated with it is not misleading;
- arrangements to compensate customers in the event of insolvency by the investment company;
- access to a single independent complaints and redress scheme.

In some cases the complainants may be the family and not the person who took out the plan, so it is vital that the Compensation Scheme and the Ombudsman Scheme are open to beneficiaries as well as the person who took out the policy. It also needs to be ensured that there are clear working arrangements between the Financial Services Ombudsman Scheme and any complaints and redress mechanism introduced to cover the problems with service delivery (see paragraph 3 above).

## Life assurance/endowment based exemption

6. We understand that one of the Treasury's proposals for the exemption of plans backed by a life assurance policy would involve use of the pre-payment to purchase a life assurance policy. The proceeds from the policy would be conditionally assigned to a funeral director (who could also be the plan arranger) who would give a commitment to provide a funeral at no additional cost (apart from any exclusions). We understand that this arrangement would involve the following:
- the life assurance company would be subject to prudential regulation. The policy and policy proceeds would be held for the customer and in the event of the plan arranger failing, the investment would revert to the customer;
  - the sale and marketing of the life assurance policy to consumers would be subject to conduct of business regulation;
  - in the event of insolvency of the insurance company, consumers would have access to compensation from the Financial Services Compensation Scheme; and
  - the Financial Services Ombudsman could deal with complaints about the life assurance policy.

On the assumption that all the above points are met we consider that these arrangements are likely to offer sufficient consumer protection for

the pre-payment element. However, there may be some products such as flexible whole of life policies (where part of the premium is invested, and premiums are adjusted after a period depending on the outcome of the investment) that would be unlikely to give consumers the certainty they require. For example, if the investment was poor and premiums needed to rise.

7. The above arrangements will not cover the commitment to provide a funeral or other matters associated with the delivery of the funeral. As we noted at paragraph 3 of our response it is important that separate action is taken to address these problems. This action also needs to address the points of contact between the aspects of plans which are subject to FSA regulation and the aspects which are not regulated.
8. One other option the Treasury propose which could give rise to an exemption is possible use of endowment policies to back pre-paid funerals. This seems to us to give rise to difficulties. For example, what would happen if the policyholder outlives the maturity of the policy? What would happen if the policy had not produced enough at the time of death? If a safety margin was built in to ensure sufficient funds were available who would own any excess? It should be ensured that the policyholder's beneficiaries receive any excess.

## General insurance based exemptions

9. The Treasury has also invited comments on whether pre-paid funerals could be backed by general insurance to qualify for exemption from FSA authorisation. **The Panel does not consider that such arrangements would provide appropriate consumer protection as the marketing and sale of general insurance is not subject to conduct of business regulation by the FSA. The Treasury should undertake further consultation if the industry puts forward any worthwhile suggestions based on general insurance.**

## Trust-based arrangements

10. The Treasury has invited plan providers to submit details of any trust-based arrangements to ascertain whether they provide sufficient consumer protection to qualify for exemption from FSA regulation.

11. **We are strongly of the view that self-regulatory trust-based arrangements would not provide appropriate consumer protection** for the following reasons:

- Trust-based arrangements will not ensure effective consumer protection unless they are regulated. If there is no regulation, what would happen if a trust-based scheme failed to meet whatever criteria were set for exemption from authorisation?
- This proposal may be placing an over-reliance on the ability of trustees to competently safeguard funds. Consideration needs to be given to how the trust arrangements would be supervised and what would happen if trustees are found wanting. Use of professional trustees may not be a viable option because of the cost implications.
- It is unlikely that it would be possible to provide similar standards of compensation to that provided by the FSA. It is highly unlikely that a self-regulatory approach could offer similar levels of reimbursement to customers in the event of the collapse of a major plan provider.
- We do not believe marketing could be effectively regulated to prevent pressure selling, over-selling, or mis-selling without monitoring and sanctions imposed by statutory regulation.
- We doubt that the industry will provide a single independent complaints scheme given its inability to do so to date.

## Other possible exemptions

12. The relationship between consumers, plan arrangers, any insurance company involved and funeral directors means that there are numerous potential variants to the arrangements for exemptions from FSA regulation. We note that the Treasury has invited the industry to come forward with detailed proposals for exemptions from FSA regulation. Whether or not other exemptions provide appropriate consumer protection may vary depending on the nature of the relationship between the various parties. **It is important that the Treasury undertakes further consultation if other types of exemption from FSA regulation are proposed by the industry which the Treasury considers worthwhile.**

## Existing funeral plans

13. The consultation paper notes that new arrangements will not apply to existing plans although the Treasury is looking to the industry to enhance existing plans to provide sufficient safeguards for consumers. **We recommend that the Treasury works with the industry to ensure adequate protections are applied to the pre-payments of existing customers.**