

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

Telephone: 020 7066 9346
Email: enquiries@fs-cp.org.uk

Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

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By email: cp21-04@fca.org.uk

Dear Sir/Madam,

The Financial Services Consumer Panel (the Panel's) response to the FCA Consultation on Funeral plans

The Panel welcomes the opportunity to respond to this important consultation especially considering the impact the pandemic has had on consumers, especially the most vulnerable, and on those made vulnerable by bereavement.

With the huge growth of the funeral plans market recently, we welcome this sector coming under FCA jurisdiction. Given the harms found in the Treasury's consultation, FCA intervention is certainly needed to protect consumers and ensure this market operates well. Access to the Financial Ombudsman Service (FOS) when things go wrong, and clear signposting to the FOS in communications will be a key part of protecting consumers. We hope that the FCA works with the Money and Pensions Service and other stakeholders to ensure messaging is clear and consistent, guiding consumers to relevant information on funeral plans where appropriate.

The Panel would call for firms to adhere a duty of best interests in *this* market in particular, due to the nature of the product and the vulnerability of the customer *and* the 'covered individual.' This duty would raise the standard above mere 'fair treatment' to ensure that consumers are adequately protected from harm. This should drive better, fairer and more consistent outcomes for consumers overall.

We do agree with the FCA's approach to regulating this market however, and the intended changes stated on pages 7-8. It is evident that consumers need information on the funeral plan's costs, in pounds and pence, presented clearly and, on what it does and does not provide from the outset, so they can make an informed decision of its value for money. Greater transparency is key in this market.

The Panel would always advocate for clearly defined outcomes for the consumer within this market and hopes the FCA will use these outcomes to assertively supervise firms, taking action where necessary, before its formal evaluation of the market in 2026.

Yours faithfully

Wanda Goldwag
Chair, Financial Services Consumer Panel

Consultation questions

Q1. Do you agree that our proposed rules will not have a material impact on groups with protected characteristics?

We agree that the rules going forward will not have a material impact on groups with protected characteristics. We do, however, wonder whether such groups have been impacted or even excluded in the past. For existing contracts we would wish the FCA to lead the industry through a review of such cases, and where it is clear that such groups have been impacted (for example with higher premiums, either one-off or instalments) that these contracts are brought in line with those for non-impacted groups. They should be normalised as such, with a range of outcomes, from benefits being enhanced, premiums adjusted, or excess sums returned to the consumer.

Q2. Do you agree with our proposal for applying high-level standards to funeral plan firms?

As stated above, we feel a duty on the firm to act in the consumer's best interests, given the vulnerability associated with funeral plans in particular, will best help the FCA achieve good consumer outcomes.

Q3: Do you agree with our proposal to require firms to back funeral plan contracts with a trust or insurance arrangement going forward?

We agree with the proposal to require firms to back funeral plan contracts, however we would leave it to the FCA to decide the most appropriate format for these arrangements. From a consumer perspective it is vital that the appropriate funds are available to meet the contractual expectations of the insured consumer when required and that no top up (either expected or unexpected) is necessary at the time of the funeral. Where such arrangements are based on actuarial calculations (as opposed to a life insurance contract) we would expect the regulation to specify and supervise regular, ongoing, valuations comparing the value of the funds to the outstanding liability and ensuring that any shortfall is made up in a short time frame to minimise, if not remove, the risk that the funds are insufficient to cover all the funeral costs required.

Q5. Do you agree with our proposals for trust solvency and how trust solvency should be assessed?

The Panel agrees with the proposals for trust solvency and how trust solvency should be assessed and increased if required. We note the ability of firms to deduct surplus from the trust if the solvency level is above 110%, and would expect that this ability is clearly stated in the marketing and sales literature of the plan so that consumers are aware of the circumstances under which a firm may take additional money from the trust. We would also expect to see appropriate controls on this process to ensure that trusts never feel pressured to take inappropriately high levels of risk to deliver an excess surplus in the trust.

Q6: Do you agree with our proposed prudential requirements on funeral plan providers and intermediaries?

The Panel agrees with the proposals for Prudential rules relating to funeral plan providers to ensure that consumer needs and expectations can be met, even in the event of a providing firm failure, however we have no view as to the structure of the Prudential requirements other than an expectation that these will be reviewed on a regular basis to ensure that the regulatory provisions remain appropriate based on the learnings of the early years of the regulation of funeral plans.

Q8: Do you agree with our proposed general conduct of business standards for funeral plans?

The Panel agrees with the proposed general conduct of business standards for funeral plans.

Q9: Do you agree with our proposed ban on intermediaries receiving remuneration other than advice or arrangement fees from the customer?

Q10: Do you agree with our assessment that commissions are leading to mis-matched incentives and conflicts of interests between firms and customers in the funeral plan market? If you disagree, it would be helpful to explain why by reference to current commission structures and practices you are aware of in the market and, in particular, why you do not consider these to risk creating mis-matched incentives and conflicts of interests.

Q11: Do you agree with our assessment that commissions are leading to customers paying prices which are too high relative to the benefits the funeral plan provides?

Q12: Do you agree with our assessment that intermediaries receiving commission are providing little or no benefit to customers? If you disagree, it would be helpful to explain why by reference to current commission structures and intermediary services you are aware of in the market and, in particular, how you think they provide benefit to customers.

Q13: Do you have any comments on the alternative approaches to tackling the harms caused by commission? In particular, do you have any comments on the alternative option we would be minded to follow if we conclude that a ban is not required?

The Panel agrees with the proposed ban on intermediaries receiving remuneration other than advice or arrangement fees paid directly and explicitly by the consumer. We believe it is important that the consumer understands the full nature of the fees associated in setting up a funeral plan, who is receiving these fees, and any potential impact on the value of the final product. By splitting the advice or arrangement fee from the sum required to secure the funeral plan, and stating the value of this advice or arrangement fee separately, the consumer has the opportunity to understand the fees involved and make an informed decision as to whether they are receiving value for money.

Without this approach we would be concerned, as the consultation paper highlights, that there may be a mismatch of incentives and a conflict of interest that could lead to consumer harm or poor outcomes.

The Panel notes that the rules would not prohibit the early payment of a proportion of the funeral director's fees. Where this payment is made by the funeral plan provider, the expectation of the Panel is that the provider remains fully liable for the provision of the funeral to a standard agreed with the consumer. If a funeral director, who has been pre-paid an element of the funeral cost on the basis that they will provide the services for the funeral, ceases trading, our expectation is that the provider would find another suitable funeral director and would pay the full fees for the funeral rather than the consumer be required to top up any element viewed as being 'lost' when the initial funeral director ceased trading.

Q14: Do you agree that with our proposals for remuneration of plan providers?

The Panel agrees with the proposal for the remuneration of the plan providers.

Q15: Do you agree with our proposals for pre-contract disclosures?

The Panel agrees in part with the proposal for pre-contract disclosures. We agree that it is important that the provider communicates in a simple and easy to understand way what is and isn't being provided by the funeral plan - this should be informed by insight into what the average consumer reasonably expect to be included in a funeral plan. For example, if the average consumer expects that the full cost of a burial plot would be covered by a plan it is important, if this is not the case, that this is brought to their attention and highlighted in the communication. It is also important that the consumer understands, before entering into the contract, key information such as:

- when the cover will start
- the impact of missing any payments
- the process to cancel or cash in the plan and any associated fees
- how the plan is governed
- details of the firm's complaints policy
- what elements may be covered by the FSCS

Regarding the provision of information about the price of the funeral plan, the Panel would want the regulation to go further than outlined in the consultation paper. An 'average' consumer will probably only purchase one, or maybe two, funeral plans in their life and therefore has little knowledge, insight or experience of the costs of funerals or the benefits provided by funeral plans. The Panel would therefore like to see, alongside the information about the price of the plan, an industry-standard illustration of the cost of the funeral being provided for at current-day prices, in pounds and pence. Whilst there may well be price inflation impacts between the date of the purchase of the funeral plan and the date of the actual funeral itself, we believe that by providing the price of the funeral plan alongside the indicative price of that funeral (at the current date) consumers will be able to make a better informed decision with regard to whether the funeral plan offers value for money or not.

Q16: Do you agree with our proposals for plans sold through instalments?

The Panel agrees with the proposals for plans sold through instalments. In reality, most customers are buying "peace of mind" alongside the provision of a funeral and it is important that this is delivered to consumers irrespective of whether they pay via a lump sum or instalments. We note that this approach may lead to an increase in prices which in effect reflects an element of cross-subsidy between consumers. The Panel therefore wonders whether for trust-based schemes, where the valuation exceeds 110% of the liabilities, whether this excess should first be used to offset any price increase associated with these proposals before the excess can be removed from the trust by the provider.

Q17: Do you agree with our proposed standards sales standards?

We agree with the proposed sale standards and believe it is important to ban cold calling as a sales technique in this area. We would also wish to see rules that control the promotion and sales of funeral plans to consumers who are, at the time, arranging funerals for a loved one - with the same funeral plan provider, funeral director or intermediary. The then-current situation for these consumers (as identified in the consultation paper 5.25) means that they are more likely than normal to be susceptible to suggestions that they buy a plan for themselves and as such are more likely to be vulnerable to harm.

In these circumstances, we would expect there to be a mandated period of time between a consumer arranging a funeral for someone else and then being contacted by either the funeral plan provider or the funeral director to discuss the funeral plan for their own needs. In this way, consumers would still be able to engage with a provider or funeral

director that they have come to trust, but with a suitable interval after a bereavement to ensure that they are better placed to make well informed and considered decisions.

Q18: Do you agree with our proposed approach to cancellation rights and other fees?

The Panel agrees with the proposed approach to cancellation rights and other fees. Where a consumer pays by instalments they should be made aware of the additional cost associated with the instalments (above the cost had they have paid a lump sum) and this additional cost should be communicated in pounds and pence so it can be clearly and easily understood, and form part of the consumers decision-making process.

Q20 - Do you agree with our proposal to require plan providers to nominate a funeral director within 30 days of the plan being purchased?

We agree with the proposal to require plan providers to nominate a funeral director to ensure that the funeral can be delivered, as and when required, to the standard and cost that the consumer has agreed. Furthermore, we would expect this nomination to be included in the annual statement so that the consumer can review this nomination as necessary.

Q21 - Do you agree with our proposal to require plan providers to send a letter to the customer's representative once a plan has been purchased?

We agree with the proposal requiring plan providers to send a letter to the customer's representative once a plan has been purchased, with the option for an opt-out where required. Furthermore, we would suggest that the rules around the sales and set up process obligate intermediaries and/or funeral plan providers to communicate, to the customer, the benefits of naming a representative (potentially a family member, friend, solicitor or the executor of the will) who can be kept up-to-date of the status of the funeral plan. We would also expect the annual statement or letter to be copied to this representative so that they are always aware of the existence and status of the plan.

Q22: Do you agree with our proposal to require plan providers to send an annual letter to consumers?

We agree with the proposal to require plan providers to send an annual letter to consumers and (see our response to question 20) would suggest that this is also used to keep consumers informed of information such as the name of the nominated funeral director.

Q23: Do you agree with our proposed rules for plan redemption?

We agree with the proposed rules plan redemption and would add our comments with regard to selling other funeral plans during this redemption process (see our response to question 17).

Q24: Do you agree with our proposals for rules to apply to plans entered into before 29 July 2022?

We agree with the proposals for rules to apply to plans entered into before the 29th of July 2022.

Q25: Do you agree with our proposed product oversight and governance requirements for funeral plan manufacturers?

Q26: Do you agree with our proposed product oversight and governance requirements for funeral plan distributors?

Q27: Do you agree with our proposed rules on fair value for funeral plans?

We agree with the proposals regarding product oversight and governance for both manufacturers and distributors and in relation to fair value. We would, however, note that the existing PROD rules currently apply to existing products and providers in other financial services markets where we have observed, especially during the recent COVID pandemic, some interpretations of these rules that has led to consumer harm through actions that are 'legal but not fair'. Recent issues such as reducing insurance cover whilst maintaining, or even increasing, premium levels are examples of this. We would therefore reiterate our view that the consumer is likely to be best served by a wide-ranging duty of best interest approach.

Q28: Do you agree with our proposed resolution rules?

The Panel agrees with the proposed resolution rules. We agree, in particular, with paragraph 7.12 in that our expectation is that the requirements regarding capital levels and other arrangements to ensure consumers are protected in the event of firm failure are set at a level that mitigates potential calls on an already stretched FSCS. Indeed, we would see any new burden on the FSCS in relation to funeral plans, other than at a minimal level, as being a failure in the application of this new regulation.

Q29: Do you have any views on reimbursement and what amount should be considered adequate noting option 1 (to reimburse an amount equal to the retail cost of an equivalent replacement plan), option 2 (an amount linked to monies paid by the consumer), and other options that sit between these e.g. sums paid by the consumer that have been paid into a trust plus a pro-rated share of the remainder of the trust assets?

The Panel believes that in the event of firm failure the level of reimbursement should either be at a level sufficient to secure an equivalent replacement plan or an amount linked to the monies already contributed by the consumer, whichever is the greater. This protects the consumers' original objective of providing in advance for their funeral. In addition, for funeral plans using trusts we would agree with the FCA's proposal that any funds remaining in the trust after individual reimbursement should be shared (in a manner to be agreed) between the consumers covered by that trust.

Q30: Do you have any views on how these reimbursement options could be funded? In particular, how could funeral plan arrangements be structured in such a way as to ensure that the funeral plan provider's obligations could be met at all times?

Q31: Do you have any views and evidence on the costs and benefits of these options, including relating to consumer protection and commercial impact on firms? We also welcome any evidence on the likely differential between the amounts relating to options 1 and 2, and between these amounts and the amount available from trust and insurance arrangements.

Q32: Do you agree with the proposal to introduce FSCS protection for certain funeral plan activities in relation to firms that are declared "in default" by FSCS, and for acts or omission arising, from the date FCA takes on regulation of the funeral plan activity?

Q33: Do you agree with the scope of proposed FSCS coverage?

The Panel agrees with the proposal to introduce FSCS protection for certain funeral plan activities in relation to firms that are declared in default and for acts or omissions arising

post regulation (although noting our response to question 28). It is also important that consumers understand what would and wouldn't be protected by the FSCS, especially in relation to plans that commenced pre-regulation but where the liability arose after that date. We would hope that the FCA, the FSCS and the industry would work together to develop an industry standard communication, that could be sent to all consumers either taking a new funeral plan or with an existing funeral plan, that would describe this protection in a simple and easy to understand way.

Q34: Do you agree with the proposed approach to FSCS quantification, the payment of compensation and the compensation limit?

The Panel partly agrees with a proposed approach to the FSCS quantification and the payment of compensation and the associated limit. We do understand the reasons for suggesting a consistent approach to the compensation limit at £85,000, and are always keen to make things as simple as possible for consumers to understand, however as most successful claims through the FSCS are likely to be at a significantly lower level we do question whether setting the limit this high may set an incorrect expectation with consumers. Furthermore should the limit be set at this level it will be important to ensure that promotional and sales materials relating to funeral plans do not highlight the high level of this limit in an attempt to paint funeral costs as being much higher than they actually are.

Q35: Do you agree with the proposal to introduce a new funeral plan activity FSCS funding class as set out above? If not, please set out an alternative funding approach with justification.

Q36: Do you agree that an initial class limit of £5 million for the new funeral plan activity FSCS funding class would be appropriate, on the basis that this limit will be reviewed at least one year after regulation commences?

Q38: Do you agree with our proposal to apply the SM&CR to funeral plan providers?

Due to the nature of the product, the potential vulnerability of the clients and the lack of an overriding duty of best interest, the Panel believes that it is vital to apply the SM&CR to funeral plan providers.

Q45: Do you agree with our approach to apply our complaint handling rules and guidance in DISP, including the compulsory jurisdiction of the ombudsman service, to all authorised funeral plan providers and which will also apply to intermediaries (e.g. appointed representatives)?

The Panel agrees with the approach to apply complaint handling rules and guidance to funeral plans including the compulsory jurisdiction of the FOS. We recognise that complaints made shortly after a bereavement are both highly sensitive and time critical and would expect that the rules and expectations on firms, and their processes, relating to the way they handle complaints during this time frame, reflect these circumstances.

Q46-Q49: We are happy with the proposals in the consultation paper and have nothing to add.