



Law Society
of Scotland



Consultation Response

Regulation of pre-paid funeral plans

August 2019



Introduction

The Law Society of Scotland is the professional body for around 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Consumer Law Sub-committee welcomes the opportunity to consider and respond to the UK Government's consultation on the *Regulation of pre-paid funeral plans*.¹ We have the following comments to put forward for consideration.

Response to questions

Question 1: Do you agree with the government's proposed approach to amend the RAO to require funeral plan providers to be FCA authorised in respect of the "entering into" of new funeral plan contracts and the "carrying out" of both new and existing plans?

Yes. Bringing the market under the auspices of the FCA would be much easier to achieve in a practical sense than creation of a new statutory regulator and the FCA is well-placed to take on this role as it has extensive experience of regulating financial contracts involving consumers.

Question 2: Do you agree with the government's proposal to allow intermediaries to operate as ARs of principal firms?

Yes. We note that this already exists for firms/persons who run regulated activities under the auspices of the FCA. Principal firms should also make sufficient checks on either the firm/individual to ensure financial stability and competence. This would give consumers further protection and confidence in the use of AR's.

Question 3: Do you agree to government's proposed approach to allow DPBs to be exempt from FCA regulation, provided that they meet certain requirements set out in legislation?

Yes. Given that DPB's who sell funeral plans already operate under regulation as per their own professional bodies and can meet the requirements set out as per the legislation, we would support this

¹ <https://www.gov.uk/government/consultations/regulation-of-pre-paid-funeral-plans-consultation-on-a-policy-proposal>

approach. As the market is relatively small at present, we would also welcome a regular review of the number of DPB's (market share) involved in the selling of funeral plans.

Question 4: Do intermediaries in the market create bespoke funeral plans and enter into these on behalf of funeral plan providers? If so, do providers allow both third- party distributors and funeral directors to create bespoke plans?

We understand that some intermediaries create bespoke funeral plans. We have no further comment on this question.

Question 5: Do you agree with the government's position that funeral plans should be brought within the remit of FOS?

Yes. This would give consumers buying funeral plans the opportunity to complain to the FOS if things were to go wrong.

Question 6: Do funeral plan providers currently sell plans with the expectation that the funeral will occur within one month? If so, how many of these types of plan have been sold in the past year?

We have no evidence on this question.

Question 7: Do you consider that one month is the appropriate timescale for this exemption?

The current definition as contained within the RAO sets a one month timescale, however, if the plan is sold to the consumer in the future under the regulation of the FCA, we do not see any reason why a shorter timescale (in line with other financial products) should not be provided for, albeit subject to certain conditions.

Question 8: Do you agree that the territorial scope of the regulatory regime should remain unchanged?

We agree that the territorial scope should remain unchanged.

Question 9: Do you consider that the draft Statutory Instrument delivers the stated policy intention?

Yes. Our only concern may be the review periods as per Part 5 – we consider that a shorter review period, perhaps every three years, might be more appropriate.

Question 10: Do you agree with this impact assessment and the assumptions used?

Yes.

Question 11: To what extent would funeral plan providers be willing to take on the book of business of a provider who was unable to obtain FCA regulation and operated a trust in surplus?

We have no evidence on this point. However, from a consumer perspective, it would be hoped that funeral plan providers might be willing to take on the book of a business which was unable to obtain FCA regulation where the book presented a viable business acquisition. In practical terms a provider would be more likely to take on a trust that has been well managed, and where its assets and liabilities had been assessed on a regular basis (eg at least every three years). The more mature the trust which has produced a prudent surplus over the years, the risks are lower albeit with liabilities such as commission and administration fees but in practical terms, we would anticipate that such trusts would succeed in obtaining FCA regulation in any case.

Question 12: To what extent would funeral plan providers be willing to take on the book of business of a provider who was unable to obtain FCA authorisation and operated a trust in deficit?

Many of the same considerations would apply in the context where the trust was in deficit but the acquirer would be likely to seek additional guarantees in relation to limiting liabilities such as commissions and other “hidden fees” as well as gaining a fuller understanding as to why the trust is in deficit in the first place. Other factors, such as the age of the trust (eg whether it had had time to build up a surplus to cope with the effects of poor returns and market downturns to meet its liabilities) would be relevant in determining the acquirer’s decision.

Question 13: Are there any other central scenarios that you believe may arise where a funeral plan provider cannot obtain FCA authorisation?

No.

For further information, please contact:

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