

Guidance

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Solicitors undertaking regulated financial services activities relating to pre-paid funeral plans

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Status

This guidance is to help you understand your obligations when carrying on regulated financial services activities relating to pre-paid funeral plans. We will have regard to it when exercising our regulatory functions.

Who is this guidance for?

SRA-authorised firms that carry on regulated financial services activities relating to pre-paid funeral plans under Part 20 of the Financial Services and Markets Act 2000 (FSMA).

Purpose of this guidance

This guidance clarifies the position of SRA-authorised firms following the introduction of new regulatory requirements relating to pre-paid funeral plans.

Introduction

The SRA, through the Law Society, is a designated professional body (DPB) through Part 20 of FSMA. This means that firms (including recognised sole practices) authorised by us may carry on certain regulated financial services activities without being authorised by the Financial Conduct Authority (FCA) if they can meet the conditions in section 327 of FSMA [<https://www.legislation.gov.uk/ukpga/2000/8/section/327>] .

As a DPB, we are required to have rules that govern the way those regulated financial services activities are undertaken; these are the SRA Financial Services (Scope) Rules (scope rules)

[<https://www.sra.org.uk/solicitors/standards-regulations/financial-services-scope-rules/>] and

the SRA (Conduct of Business) Rules (COB rules).

[<https://www.sra.org.uk/solicitors/standards-regulations/financial-services-conduct-business-rules/>] Any SRA-authorised firm carrying on activities under Part 20 of FSMA must comply with these rules.

Position from 29 July 2022

As of 29 July 2022, certain activities relating to pre-paid funeral plans had to be regulated under FSMA. These activities include acting as the provider of pre-paid funeral plans or administering them, and activities undertaken by intermediaries such as advising, arranging or dealing as an agent in relation to pre-paid funeral plans.

SRA-authorised firms are not to act as the providers of pre-paid funeral plans or administer such plans unless they are authorised by the FCA to do so. However, SRA-authorised firms are able to act as intermediaries in relation to pre-paid funeral plans under Part 20 of FSMA as long as they comply with the scope rules and the COB rules.

Scope of regulation

You need to be aware that a breach of any of the scope rules, including undertaking regulated activities that are only allowed to be carried on by FCA-authorised firms, may be a criminal offence under FSMA.

What regulatory arrangements apply?

You must, at all times, ensure compliance with the SRA Principles [<https://www.sra.org.uk/solicitors/standards-regulations/principles/>], the SRA Code of Conduct for Solicitors, RELs and RFLs (Code for Solicitors) [<https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/>] and the SRA Code of Conduct for Firms (Code for Firms) [<https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/>].

In addition, when carrying on regulated financial services activities relating to pre-paid funeral plans, you must comply with the SRA Financial Services Scope rules [<https://www.sra.org.uk/solicitors/standards-regulations/financial-services-scope-rules/>] and the SRA Financial Services (Conduct of Business) [<https://www.sra.org.uk/solicitors/standards-regulations/financial-services-conduct-business-rules/>] Rules (COB Rules).

It is your responsibility to ensure full compliance with the SRA Standards and Regulations at all times.

Permitted activities for SRA-authorised firms acting as an intermediary under Part 20 of FSMA

Acting as an intermediary in relation to pre-paid funeral plans involves activities such as advising, arranging and dealing as an agent on behalf of a funeral plan provider. However, SRA-authorised firms acting under Part 20 of FSMA will only be able to undertake these activities where they arise out of, or are complementary to, the provision of a particular professional service to a particular client.

For example, a firm might have prepared a will for a client and then arranged a pre-paid funeral plan for that client. The regulated financial services activity of arranging a pre-paid funeral plan has arisen out of the will writing matter.

Acting in the best interests of the client

The FCA wants to stop high-pressure sales tactics, make sure customers receive accurate information, and has banned commissions which might have incentivised poor sales practice pre-regulation, which resulted in consumers purchasing plans which were not suitable for their needs. The FCA's rules that apply to FCA-authorised firms are intended to reduce the risk to consumers, make sure consumers are treated fairly and to improve the quality of information that is provided.

SRA-authorised firms who act as intermediaries must comply with paragraphs 1.1 and 1.2 of the code for solicitors and the code for firms, which require you to ensure that clients are treated fairly and Principle 7 which requires you to act in the best interests of your clients. Solicitors and SRA-authorised firms must comply with paragraph 3.3 of the code for solicitors (paragraph 4.2 of the code for firms) by making sure that the funeral plans meet the attributes and needs of the client in question.

Solicitors and SRA-authorised firms must also comply with paragraph 8.6 of the code for solicitors (paragraph 7.1(c) of the code for firms) which requires you to make sure that clients are given information in a way that they can understand and are in a position to make informed decisions. In the context of pre-paid funeral plans, this means that you must make sure that the client is informed about all relevant details of the product so that the client can make an informed decision (eg FCA-authorised intermediaries are required to provide a two-page funeral plan summary setting out important product information).

You must always act in the best interests of the client and therefore you should notify the client if information that has been provided by the funeral plan provider appears to be inaccurate or misleading. Where you have reason to believe the information about the funeral plan is misleading or inaccurate, you should also notify the funeral plan provider.

For further information, the FCA handbook

[<https://www.handbook.fca.org.uk/handbook/FPCOB/6/?date=2104-01-01>] details formal



requirements that are expected of FCA-authorised providers and intermediaries. This might serve as a useful reference point when engaging with FCA-authorised providers who will normally manufacture the funeral plan product that SRA-authorised intermediaries will offer clients.

FCA commission ban

From July 29 2022, FCA-authorised funeral plan providers and intermediaries were not allowed to pay commission, remuneration or benefits of any kind to intermediaries in relation to pre-paid funeral plans.

The FCA said that pre-regulation, consumers had been paying prices which were high relative to the benefits they provided. The FCA believes that commission creates a mis-match of incentives between firms and consumer needs. For example, commission incentivises firms to sell products that generate the highest profit, rather than offering fair value plans that meet the needs of the customer. The new rules prohibiting payments to intermediaries are therefore intended to reduce the risk of consumers paying too much for their plan.

In practice, this means that SRA-authorised firms who act as intermediaries will not be able to receive commission, remuneration or any other benefit from third parties in relation to pre-paid funeral plans. The firm can, of course, charge the client for any legal services provided to the client by the firm in relation to a pre-paid funeral plan.

In the unlikely event that an SRA-authorised firm involved in the sale of a pre-paid funeral plan receives commission from an FCA-authorised plan provider or intermediary, they should notify the FCA. They would also be required to account to the client for it. This is because under Part 20 of FSMA (s327(3)) the firm must account to the client for any commission from a third party arising out of the firm carrying on regulated financial services activities.

FCA rules on Product governance and the SRA Code of Conduct for Firms

The FCA has highlighted concerns about poor governance and controls across funeral plan providers, with a lack of oversight to deter poor practices. In response, the new rules relating to funeral plans include prescriptive elements that FCA-authorised providers and intermediaries are required to follow.

The new rules therefore require FCA-authorised intermediaries to have the necessary processes in place to ensure they are selling plans in line with the identified target market and are not adversely affecting the product's value. They are expected to work with providers by informing them of

issues they identify and providing information on their distribution processes.

When undertaking activities related to pre-paid funeral plans as an SRA-authorized firm, you should have regard to the code for firms (paragraph 2 – compliance and business systems) and thereby have effective governance structures, arrangements, systems and controls in place to ensure you comply with all SRA regulatory requirements, as well as with other regulatory and legislative requirements which apply to you.

An SRA-authorized firm acting as an intermediary under Part 20 of FSMA is likely to work closely with an FCA-authorized provider who is subject to the FCA handbook. Therefore, you might want to be aware of the requirements outlined in the FCA Handbook [<https://www.handbook.fca.org.uk/handbook/FPCOB/6/?date=2104-01-01>] in relation to product governance. In particular, the following:

FCA product governance rules:

- Intermediaries are required to distribute the product in line with the target market
- Intermediaries are required to design and implement an appropriate distribution strategy
- Intermediaries are required to review the distribution strategy at an ongoing basis, with a full review at least annually
- Intermediaries are required to report to the manufacturer, information on regular reviews of product distribution arrangements.
- Intermediaries are required to implement regular review of arrangements (12 months) to make sure they are up to date and valid.