

Discussion paper

4 May 2022

Responding to the FCA's regulation of the pre-paid funeral plan market

- The discussion paper ended on **1 June 2022**

About this discussion paper

The purpose of this paper is to engage with stakeholders to gather information to help inform our policy response to the new rules of the Financial Conduct Authority (FCA) for the regulation of the pre-paid funeral plan market.

Through this discussion paper, we want to invite views on the impact of the FCA's regulation of the pre-paid funeral plan market on SRA-authorized firms and the options for meeting the statutory obligations placed on the SRA as a Designated Professional Body under the Financial Services and Markets Act 2000 (FSMA). The responses we receive will help us to decide on the most appropriate approach.

We will be exploring:

- the scale of pre-paid funeral plan market activity across SRA-authorized firms
- the benefits and/or risks associated with the SRA extending its regulation to activities relating to pre-paid funeral plans for both firms and consumers
- the benefits and/or risks associated with the SRA not extending its regulation to activities relating to pre-paid funeral plans for both firms and consumers.

We particularly welcome views from firms that we regulate and who currently sell pre-paid funeral plans, consumers and those who represent their interests, other regulators and those who work with law firms that provide pre-paid funeral plan services.

We encourage firms and other stakeholders to provide evidence supporting their response, particularly quantifiable evidence of any identifiable beneficial or detrimental impact, or potential unintended consequences related to either of the options we explore in this paper.

We will collate and analyse all the responses and information received to help inform our next steps.



We will then consider the options in discussion with the FCA and will likely proceed to consult on the chosen approach.

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The new FCA rules and what they mean for SRA- authorised firms

From 29 July 2022, the FCA intends to regulate the pre-paid funeral plans market. The FCA has identified that some SRA-authorised firms are engaged in the selling of pre-paid funeral plans.

The SRA, through the Law Society, is a Designated Professional Body (DPB) under 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 regulated by the FCA if they can meet the conditions [in section 327 of FSMA](#)

[\[https://www.legislation.gov.uk/ukpga/2000/8/section/327\]](https://www.legislation.gov.uk/ukpga/2000/8/section/327). Where firms carry out any regulated financial services activities under Part 20 of FSMA they must make sure that those activities 'arise out of, or are complementary to, the provision of a particular professional service to a particular client'. This means that regulated financial services cannot be offered as a standalone service under Part 20 of FSMA, firms must be providing other services to the client which are not regulated financial services activities.

Example of a regulated financial service being offered alongside services that are not regulated financial services activities:

Where a law firm is acting for a client in relation to selling a house, the solicitor identifies that an historic extension to the property did not receive planning permission, nor building regulations consent. The buyer's solicitor requests an indemnity insurance for their client to cover any risks from enforcement action and the seller's solicitor arranges for this.

Presently, SRA-authorised firms acting under Part 20 of FSMA cannot enter into or administer funeral plan contracts as a provider as this is a prohibited activity as specified in an order made under section [327\(6\) of FSMA](#) [\[https://www.legislation.gov.uk/ukpga/2000/8/section/327\]](https://www.legislation.gov.uk/ukpga/2000/8/section/327).

However, SRA-authorised firms can currently act as intermediaries, selling pre-paid funeral plans on behalf of plan providers without having to do so under Part 20 of FSMA because these activities are not yet regulated under FSMA.

From 29 July 2022, these activities will be regulated under FSMA so SRA-authorised firms will only be able to act as intermediaries in relation to pre-paid funeral plans where they are authorised to do so by the FCA or if they are able to do so under Part 20 of FSMA.



As indicated in this paper, our policy position will not be finalised until after the FCA's 29 July start date. We are discussing our position on these arrangements with the FCA and will issue an update to SRA-authorised firms in advance of 29 July.

The FCA's new regulatory regime

From 29 July 2022, the FCA intends to regulate the pre-paid funeral plans market. This means that the FCA will regulate:

Providers: firms that enter into and administer funeral plan contracts

Intermediaries: firms that sell funeral plans to customers on behalf of providers.

The aims of the FCA's new rules are to:

- ensure firms provide plan holders, and their nominated representatives, with the necessary information to make clear and well-informed decisions
- require firms to ensure their documents are clear, fair and not misleading and also ensure that firms are selling products that better meet consumer needs and more closely align with consumer's expectations of the plans they purchase
- prohibit the payment/receipt of commission for arranging a funeral plan
- ban intermediaries from holding monies paid by consumers for funeral plans.

The FCA says that the rules are in response to the significant growth in the funeral plans market, which now stands at 1.5 million undrawn plans. There is reportedly some consumer detriment emerging, which was detailed in HM Treasury's [consultation](https://www.gov.uk/government/consultations/regulation-of-pre-paid-funeral-plans-consultation-on-a-policy-proposal) [\[https://www.gov.uk/government/consultations/regulation-of-pre-paid-funeral-plans-consultation-on-a-policy-proposal\]](https://www.gov.uk/government/consultations/regulation-of-pre-paid-funeral-plans-consultation-on-a-policy-proposal) on the future regulation of this market in 2019.

The FCA has considered a range of harms arising from practices employed by some firms in the market including:

- plans that do not meet consumers' needs or expectations, like those paid by instalment that do not guarantee a funeral service
- the use of high-pressure sales tactics by some intermediaries, including cold calling of potentially vulnerable consumers, resulting in consumers taking out plans which are not suitable for their needs
- consumers paying high prices in relation to product benefits driven by high rates of commission and fees
- poor governance and controls within plan providers, including oversight of intermediaries and potential conflicts of interest where an intermediary gets a high commission



- plans are not claimed because the consumers' families do not know about them, which increases the risk of harm as families cannot use plans they discover at a later date
- poor financial management of trusts, meaning that there might not be sufficient funds available to cover funeral costs, with unclear and potentially poor outcomes for consumers if firms fail.

[Read more detail on the FCA's proposals \[https://www.fca.org.uk/firms/regulating-funeral-plans\]](https://www.fca.org.uk/firms/regulating-funeral-plans).

The SRA's response to the new regulatory regime

We welcome the FCA's plans to strengthen protections for consumers in the funeral plans market. We acknowledge that consumers will access these products because of the emotional and psychological benefits highlighted by the FCA, for example where consumers want to protect their next of kin from increases in the price of funerals in the time between buying the plan and their death.

At a time of increasing living costs, and the continued impact of the pandemic, we expect vulnerable consumers to be increasingly looking at protecting their families through considering a funeral plan policy. At the same time, we have recently seen a [high-profile case \[https://www.bbc.co.uk/news/business-60861793\]](https://www.bbc.co.uk/news/business-60861793) where a funeral plan provider has collapsed, leaving consumers with limited or no financial protection, despite paying into the policy. We therefore agree with the FCA that it is appropriate that regulation of the pre-paid funeral plan market is introduced to protect consumers.

It is also important that consumers can access pre-paid funeral plans easily. SRA-authorized firms are required to meet high ethical standards and to act in the best interests of their clients. It is therefore possible to see the potential benefits to consumers of the firms we authorise continuing to be able to offer pre-paid funeral services. Although this discussion paper aims to improve our evidence-base for understanding how firms we regulate interact with the pre-paid funeral plans market, we have not seen any evidence of consumer detriment caused by SRA-authorized firms providing services in this area.

Our regulatory approach is focused on principles and outcomes rather than detailed rules covering activities. We ensure that regulation is properly targeted and proportionate, without unnecessary regulatory prescription and barriers. This is to enable the firms we regulate to tailor their service to best meet the needs of the customers they serve, while still maintaining high professional standards. This approach is intended to increase innovation and competition, enabling firms to better serve the consumers of legal services, while still making sure they are protected.

We are therefore considering two options:



- i. We can exercise our statutory powers as a DPB, mitigating the harms identified through highlighting where our existing rules meet the FCA's consumer outcomes, and adopting new rules where we have identified gaps.
- ii. We can require the firms we authorise to seek FCA authorisation to carry out activities relating to pre-paid funeral plans, meaning that these firms would be dual regulated.

To inform our approach, we need to understand the market in greater detail. Our own initial research shows that some SRA-authorised firms advise on, arrange and sell pre-paid funeral plans either as part of a package or standalone activity. However, we cannot precisely estimate the scale of pre-paid funeral plan activities across all SRA-authorised firms, nor whether firms are conducting this work in a standalone capacity or in conjunction with providing other professional services, such as will writing. This makes it difficult for us to assess the impact that the two approaches we are considering might have on firms and consumers.

We therefore want to understand how advice is currently being offered on pre-paid funeral plans, how plans are arranged or sold by SRA-authorised firms and to explore whether they are offered as a standalone service or included as part of a package of services.

We are also interested in what the FCA's decision to ban commission payments will mean for firms and their arrangements and invite firms to share insight into the extent to which firms receive commission for pre-paid funeral plans, and whether this ban will mean that firms choose to exit the market.

Questions

Question 1

Are you an SRA-authorised firm that advises on, arranges or sells pre-paid funeral plans to clients? (Yes/No)

If NO: Proceed to Question 2

If YES: Go to Question 1a

Question 1a

Do you offer the services relating to pre-paid funeral plans as part of a package of services, or are these standalone services?

Please select one:

- a package of services
- a standalone service



If as part of a package, please provide details.

Question 1b

On average, how many clients purchase pre-paid funeral plan services from you each year?

Question 1c

Does the sale of funeral plans make up a significant proportion of your business? (Yes/No)

Question 1d

Do you currently receive commission from an insurance provider upon the sale of pre-paid funeral plan to your clients? (Yes/No)

Question 1e

Do you receive or make any payments to another person or business in respect of referrals of clients in relation to funeral plans?(Yes/No)

Question 1f

Will the FCA's ban on commission mean you will no longer sell pre-paid funeral plans? (Yes/No)

If YES: Proceed to question 2

If NO: Go to question 1g

Question 1g

If NO will you charge clients for these services after 29 July 2022? (Yes/No)

Question 2

Do you think there is significant consumer demand for SRA-authorized firms to undertake, as intermediaries, activities relating to pre-paid funeral plans?

[Options for SRA-authorized firms acting as intermediaries in relation to pre-paid funeral plans](#)

In considering how we might develop our regulation of the pre-paid funeral plans market we have set out two options below. We would welcome your views on them before we consult formally on how to proceed:

Option 1: SRA regulates pre-paid funeral plan activities

Under this option, we would, in our capacity as a DPB, regulate activities relating to pre-paid funeral plans carried out by SRA-authorized firms under Part 20 of FSMA. This would enable firms to continue with pre-paid funeral plan selling activities as intermediaries, without being separately authorised by the FCA (provided that these arise out of, or are complementary to, another professional service provided to that client). To achieve this, we would need to make sure that the FCA is satisfied that we have rules in place that achieve the same outcomes for consumers as their own.

We would therefore, following public consultation, introduce new rules and guidance that meet the same outcomes as those outlined by the FCA. To achieve this, we would amend the [SRA Financial Services \(Conduct of Business\) Rules](https://beta.sra.org.uk/solicitors/standards-regulations/financial-services-conduct-business-rules/) [https://beta.sra.org.uk/solicitors/standards-regulations/financial-services-conduct-business-rules/], which regulate the way in which firms carry on regulated financial services activities under Part 20 of FSMA.

To develop new rules and guidance, we would look to see where our current rules meet the outcomes outlined by the FCA, and if we identify gaps, our intention would be to fill those with outcomes-based requirements wherever possible. The FCA has developed very detailed rules and we will need to satisfy the FCA that our approach will deliver equivalence of outcome. Therefore, we still envisage a level of prescription through additional rules may be necessary.

Taking this approach will also require us to train our staff to understand the rules, monitor compliance and enforce, and report to the FCA annually to show we have met our statutory obligation as a DPB. We want to ensure that our approach is proportionate to the scale of the activity and the level of consumer risk across SRA-authorized firms. We need to be sure that we do not unnecessarily introduce regulation that may lead to additional regulatory costs that would be borne by the profession, and ultimately passed onto the consumer.

Option 2: Firms are required to be authorised by the FCA to undertake pre-paid funeral planning activities

Under this option, we would not allow SRA-authorized firms to undertake activities relating to pre-paid funeral plans under Part 20 of FSMA. This means that firms would need to apply to the FCA for authorisation to carry out funeral plan activities and would be subject to the FCA's rules.

This might be a more proportionate option if:

- the scale of pre-paid funeral plan activities is low across SRA-authorized firms or
- if for equivalence we would need to adopt, monitor and enforce against a regulatory approach that is not compatible with our



broader regulatory approach and systems.

However, we accept that this option might also add an additional regulatory burden on the firms we regulate who carry out these activities, requiring them to be dual regulated in order to continue. We want to understand the additional cost or burden from adhering to FCA rules and regulation and the impact on consumers. There is a potential risk of market exit related to this option if firms conclude that the regulatory burden is too great and so cease to offer pre-paid funeral activities. Without the necessary sector data and insight, it is difficult to assess this accurately.

Questions

Question 3

Considering Option 1, do you envisage any positive or negative impacts to: firms? Consumers?

Question 4

Considering Option 2, do you envisage any positive or negative impacts to firms? Consumers?

Question 5

Are you an SRA- authorised firm that advises on, arranges or sells pre-paid funeral plans to clients (YES/NO):

If NO, survey complete

If YES:

Question 5a

If Option 1 were to apply, would you continue to undertake pre-paid funeral plan activities at your firm? (Yes/No)

Question 5b

If Option 2 were to apply, would you continue to undertake pre-paid funeral plan activities at your firm? (Yes/No)

Next steps

On conclusion of this discussion exercise, we will analyse the responses and use it to inform our next steps. Our intention is to establish our policy position as quickly as possible.

We will then likely proceed to a formal consultation on our recommended approach. We expect this consultation exercise to conclude in late

summer and we would then look to implement our proposed changes, subject to FCA and LSB approval, in the autumn.

Publishing responses

We will publish and attribute your response unless you request otherwise.