

Ms Gosia McBride
Clerk
Treasury Select Committee
House of Commons
London
SW1A 0AA

26 July 2019

Our Ref: SA190704A

Dear Ms McBride

RE: Regulation of Funeral Plans

I am replying to the former Chair's letter of 2 July 2019. As we discussed at the TSC meeting on 25 June 2019, this is an important area for the FCA and I welcome the opportunity to set out our initial thinking.

At present, entering into a funeral plan contract is a regulated activity; however, we do not currently authorise any firm for this activity, as there are exclusions in the Financial Services and Markets Act 2000 (Regulated Activities Order 2001) for firms which enter into plans that are either insurance or trust-backed and meet certain conditions. However, HM Treasury is consulting on changes¹ to the perimeter by removing these exclusions to bring this activity within our remit.

Whilst we cannot pre-empt the outcome of this consultation we are already conducting research to establish what we would need to do if HM Treasury proceeds with its proposals.

Your letter raises a number of important points, many of which require detailed analysis and discussion with the Financial Ombudsman Service before we can provide a definitive answer. For example, we will need to consider whether our current complaints-handling requirements are appropriate for pre-paid funeral plans or whether amendments are required. Furthermore, any changes of this nature would be subject to the usual requirement for cost benefit analysis and consultation.

I have set out my initial thoughts below in answer to your questions.

Does the Financial Ombudsman Service have the resources and right experience to meet those expectations?

If HM Treasury proceed with their proposals, we will have to consider the nature of consumers' rights of access to the Financial Ombudsman Service and whether it will require any further resources to deal with complaints about pre-paid funeral plans. The Financial Ombudsman Service currently deals with complaints on a wide range of financial services and has experience of dealing with complex cases from vulnerable consumers.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/813252/Funeral_Plans_Consultation_Final_PDF.pdf

Should the FCA and the Financial Ombudsman Service have a special fast-track process for dealing with complaints about funeral plans?

We will consider whether the current timescales in our rules for complaints-handling by firms and the Financial Ombudsman Service are appropriate.

How quickly should the FCA be able to act against firms that may be handling pre-paid funeral plans in an unsatisfactory way?

Where we identify consumer harm, we aim to prevent or stop it as quickly and proportionately as possible. Our decision-making framework guides our decisions and helps us make consistent regulatory judgments. This framework underpins our decision making by helping prioritise issues where we need to act quickly to prevent harm occurring or to tackle actual harm. If we receive intelligence about harm arising from pre-paid funeral plans in the future, we would look at the scale and severity of the potential harm and the seriousness of the potential misconduct, and determine how best to act.

We always seek to make timely decisions and are mindful that particularly with pre-paid funeral plans, circumstances will necessitate the need to act swiftly to prevent or tackle harm.

Where a complaint arises after the plan holder has died, who would be eligible to make a complaint and what would they be able to seek redress for? Should the bereaved be entitled to compensation for their own time, trouble, distress and personal financial loss (or loss to the deceased's estate) caused by the actions or failure of a funeral plan provider?

Our current complaints-handling rules enable the Financial Ombudsman Service to deal with complaints by persons authorised to act on a deceased person's behalf. We would need to consider whether any amendments might be necessary, for example in a scenario where probate had not yet been granted but there are no other available funds to pay for a funeral. The Financial Ombudsman Service is currently able to award compensation for distress and inconvenience, or pain and suffering.

What resource will the FCA commit to ensure that funeral plan providers are given proper supervision that adequately reflects the severe impact their actions or failure may have on people already in a vulnerable state?

If pre-paid funeral plans are brought within our remit, we will consider and apply an appropriate level of resource to these firms that reflects the harms affecting consumers, their vulnerability and the scale of issues in the sector. Before we begin regulating, we will undertake research and planning to ensure we are ready to regulate the sector to reduce and/or stop harms arising.

Planned timetable for funeral plan regulation

HM Treasury's consultation closes on 25 August 2019 and we expect that they will confirm in the fourth quarter of this year whether they are taking forward these proposals. If they do so, we intend to publish a Consultation Paper setting out our approach to regulation shortly after the relevant legislation has been laid before Parliament. We would aim to publish a Policy Statement and the final rules shortly after the legislation is made.

HM Treasury's consultation proposes an 18-month implementation period from the point at which the legislation is made. This would provide time for the FCA consultation to be completed, and for firms to familiarise themselves with the new regime and to apply for authorisation.

² <https://www.fca.org.uk/news/newsletters/regulation-round-january-2019#hottopics>

Whole of Life/Guaranteed Over 50s Life Insurance

The FCA undertook work in relation to the promotions and adverts of Over 50s plans, most recently in January 2019. This latest work found examples where the promotions were misleading in claiming to consumers they covered the costs of funerals. Remedial action was taken with the individual firms involved. The wider findings were communicated to firms and placed on our website².

Separately, as part of our ongoing Supervision work, we take account of complaint levels and other sources of intelligence to determine whether any firms or product areas are outliers that we should follow-up. Additionally, the four largest providers of Over 50s plans, which together account for approximately 75% of sales, have dedicated supervisors who focus on significant areas of potential harm to consumers in these firms.

For holiday insurance, should the Financial Ombudsman Service be able to order redress in a wider range of circumstances and for a wider range of claimants?

The Financial Services and Markets Act provides at s.229 that an ombudsman may make a money award against a firm for such amount as the ombudsman consider fair compensation for any financial loss or any other loss or damage of a specific kind suffered by the complainant. FCA complaints-handling rules allow the Financial Ombudsman Service to make an award against the firm for a range of circumstances, including financial loss, pain and suffering, and distress and inconvenience. If we consult on pre-paid funeral plan regulation, we will ask stakeholders for views on whether any additional categories of redress and further powers are necessary for this sector. As mentioned above, relatives authorised to act on the ill or deceased person's behalf can currently ask the Financial Ombudsman Service to consider whether it is appropriate to award compensation for distress and inconvenience suffered by the complainant.

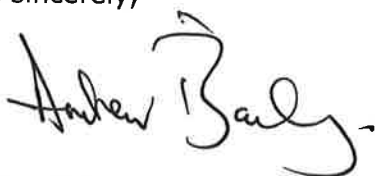
We are mindful that the considerations for the provision and distribution of funeral plans is relevant to other areas, such as travel insurance. We would need to consider the wider impact of any changes to complaints-handling rules on these areas and whether changes are needed.

As with funeral plans, does the FCA have a fast-track process for dealing with complaints against such firms, given the life-and-death issues they may be covering?

The FCA does not have power to adjudicate in individual complaints against regulated firms; this is the role given by Parliament to the Financial Ombudsman Service. Where the complaint gives rise to concerns about a firm's processes, however, the supervision team can investigate the broader issues to determine if changes to the firm's processes are required. We would aim to follow up on intelligence received in a timely manner to minimise consumer harm.

I hope that my response to your letter has been helpful. In summary, you have raised a number of important points but further work is needed before we can provide a definitive answer to your questions. If you agree, I would suggest that we consider these issues again later in the year, once HM Treasury has confirmed how they propose to proceed following their consultation.

Yours sincerely,



Andrew Bailey
Chief Executive

² <https://www.fca.org.uk/news/newsletters/regulation-round-january-2019#hottopics>