HM Treasury

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Regulation of pre-paid funeral plans: consultation on a policy proposal

Please find, below, the NAFD's responses to HM Treasury's consultation in relation to its policy proposal to regulate funeral plans.

Nothing contained in this response should be considered confidential and it may be published as submitted, if appropriate. Where the document refers to other, more sensitive material, the NAFD would be pleased to discuss or provide this to HM Treasury separately.

Introductory comments

The National Association of Funeral Directors is the largest and most inclusive trade association for the UK funeral profession. It represents the interests of the entire spectrum of funeral directing businesses – including independent and family owned firms, co-operatives and major funeral groups – and has more than 4,000 UK funeral homes in membership. Between them, NAFD member firms conduct the vast majority of UK funerals each year.

Our 'Category A' (funeral director) members currently interact with the funeral plan market in a variety of ways. The majority are simply funeral directing firms and cannot in any way be described as funeral plan providers. These firms may sell funeral plans, but they do so on behalf of a separate funeral plan provider or providers. Some of these members can be described as being partnered with a particular plan provider. For example, it is not uncommon for a funeral directing firm to enter into an exclusivity agreement with a particular funeral plan provider.

A smaller group of our Category A members, while members of the NAFD by virtue of their status as funeral directing firms, also have a secondary role as funeral plan providers. However, the NAFD's primary role is not to represent these members in this regard but to represent the interests and views of the funeral directing profession as a whole.

The NAFD also has over 160 'category B' supplier members, some of which are funeral plan providers. It is important to make clear at the outset that the role of the NAFD is not to represent the views or interests of these category B members.

Response to consultation questions

Question 1: Do you agree with the government's proposed approach to the 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?

Our previously expressed concerns about the limits of the FCA's suitability to effectively regulate the very small yet complex funeral plan market still stand. Notwithstanding this, we agree that the government's proposed approach to require funeral plan providers to be FCA regulated would be an improvement on the current situation.

<u>The "entering into" of new funeral plan contracts</u>

In relation to regulating the "entering into" of a new funeral plan, it is important that care is taken not to inadvertently create a regulatory loophole through which funeral plan providers are able to circumvent remedies being considered by the CMA to improve transparency in the funerals market.

The Competition and Markets Authority's (CMA) recent study of the funerals market raised concerns that a lack of transparency currently limits the ability of customers to compare funeral directors' offerings in terms of price, quality and range.[1] As a result, the CMA is currently considering measures aimed at improving the way such offerings are presented to consumers.[2] However, as the sale and marketing of pre-paid funeral plans falls outside of the scope of the CMA's market investigation, such measures are unlikely to apply to funeral plan providers or their agents.

There is no reason to think that pre-need consumers are better informed about the price, quality and range of funeral directors' offerings than those who purchase funerals at the point of need. It therefore stands to reason that the concerns raised by the CMA musty also apply to people who purchase funeral directors' services through pre-paid funeral plans. This is why it is important that measures are put in place to prevent a situation in which 'pre-need' funeral plan providers are able to sell and market funeral services in a less transparent way than their 'at need' counterparts.

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

The NAFD agrees that this is a more proportionate and sensible approach than requiring intermediaries to obtain direct authorisation.

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?

The NAFD is not aware of any intermediary to which this exemption would apply. However, we challenge the view that, due to there not being any evidence of poor practice from this category of intermediaries to date, they should be subject to less stringent regulation than other market players in future.

Regulation should not be treated as a form of punishment to be applied only to those who are viewed to have engaged in poor practice in the past, but as a positive tool to ensure the healthy and fair functioning of the market in future. A decision to exclude any category of market player from the scope of regulation carries a risk of distorting the market and should therefore, at very least, be supported by a positive case setting out why the exemption is felt to be beneficial or justified. If there is such an argument for excluding DBPs, it has not been made out in the consultation document.

Similarly, we do not feel the government has made an adequate case for excluding local authorities from the scope of FCA regulation. On the contrary, in light of a recent trend towards local authorities seeking to provide commercial funeral services in direct competition with private businesses, we are concerned that excluding them from scope is likely to put funeral directors and other intermediaries at a competitive disadvantage.

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?

Yes, the NAFD is aware that some of our members are able to create bespoke plans with families on behalf of funeral plan providers. Services are typically charged at the funeral director's usual rate with an administration fee added on.

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

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[1] https://assets.publishing.service.gov.uk/media/5c9ba9bf40f0b633f6c52a7e/funerals_market_study_-_final_report.pdf para. 4.26

[2] https://assets.publishing.service.gov.uk/media/5ca7196ced915d0ae2104ad6/Funerals_issues_statement_final.pdf paras. 115-122

We have no objection to this proposal. As stated in our previous response, we agree that all funeral plans should be brought under the remit of an independent body to help resolve disputes and problems within the funeral plan market.

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?

Some NAFD member firms that operate their own funeral plans currently sell plans in the full expectation that they will be serviced within a month. We understand that their customers tend to report positively on feelings of control and peace of mind when they purchase a plan for the near future.

It is important to note that such firms tend not to make additional charges for offering a plan, meaning that the customer suffers no financial detriment compared to a customer who purchases an equivalent 'at need' service. In fact, one NAFD member offers more favourable prices in relation to some pre-paid options than the 'at need' equivalents, so can save their customers money by selling them funeral plans to be serviced in the near future.

The majority of our members however, act as intermediaries rather than plan providers. These members are far less likely to offer a plan to someone hoping to arrange a funeral to take place in the very near future as this would likely cause the customer to incur unnecessary third-party administration fees.

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

The NAFD believes it is important that all funeral plans fall within the scope of FCA regulation, even if they are sold with the expectation of near-immediate redemption. It is very difficult to accurately predict a person's date of death, which means people could find they have an unregulated plan for much longer than a month.

We would also highlight that the scope of the CMA funerals market investigation does not currently extend to the sale of pre-need funeral plans of any description. Unless the CMA's remit is extended to include exempted plans, any exemption period risks creating a regulatory gap. It is important to keep in mind that a person who seeks to purchase a funeral plan with the expectation that the funeral will take place within a month is likely to be terminally ill and vulnerable and therefore at greater risk of being exploited than a typical funeral plan customer.

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

The NAFD has no view on this.

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

The proposal to exempt local authorities and DPBs from FCA regulation undermines the stated policy intention to ensure that all pre-paid funeral plan providers are subject to robust and enforceable conduct standards.

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

<u>Impact on stakeholders</u>

As set out in our answer to question 1 above, if not carefully managed, an unintended consequence of bringing the sale of funeral pre-paid funeral plans within the regulatory remit of the FCA could be to set lower sales and marketing transparency requirements in relation to funeral directors' services sold under a funeral plan as opposed to those purchased at the point of need. If were to be the case, funeral plan customers would be placed at a disadvantage when seeking to compare funeral service offerings.

Impact on funeral plan providers

The policy proposal assumes that those providers who choose not to, or are unable to, meet the new regulatory requirements will be able to transfer or sell their book of business to other providers with relative ease. The paper predicts that there will be strong economic and reputational incentives for FCA compliant plan providers to do this. It is not for the NAFD to make predictions about the future behaviour of regulated plan providers but we are concerned that the assumptions made are unsafe and based on little evidence. We would urge the government to speak directly to the largest funeral plan providers to ensure it fully understands the extent to which they are likely to take on the business books of unregulated providers.

We are also concerned that the consultation document over-simplifies the rather complex legal challenges that will be faced by any trust-based plan provider that wish to sell their business books to other providers. For example, a trust, the terms of which do not grant trustees the necessary dispositive powers, cannot be wound up so that assets can be transferred to a new company. The government’s proposal could therefore force some providers that are unable to meet the new regulatory requirements into a situation where they have no option but to operate in breach of them. The end result of this is likely to be that these plan providers will collapse and their plans become orphaned.

Finally, it is unclear form the consultation document whether the proposal is for plans that predate the commencement of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO). If the intention is for the carrying out of all existing funeral plans to fall within the FCA’s regulatory remit, this could prove extremely challenging for plan providers with mature business books.

Impact on intermediaries

The NAFD agrees that this is a more proportionate and sensible approach than requiring intermediaries to obtain direct authorisation.

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?

It is not for the NAFD to make predictions about the future behaviour of regulated plan providers.

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?

It is not for the NAFD to make predictions about the future behaviour of regulated plan providers.

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

We would urge the government to plan on the basis that some plans may become orphaned as a result of bringing the funeral plan market under FCA regulation.

National Association of Funeral Directors

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